

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD., a Cayman Islands
corporation,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

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Clerk of Supreme Court

Case Number: 67576

District Court Case Number
A627691-B

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

**Volume I of I
(PA43912 – 44107)**

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER Volume I of I (PA43912 – 44107)** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY (CD)

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

Respondent

VIA ELECTRONIC SERVICE

James J. Pisanelli
Todd L. Bice
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Pisanelli Bice
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Las Vegas, NV 89101

Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 31st day of March, 2015.

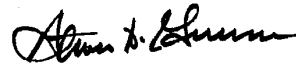
By: /s/ PATRICIA FERRUGIA

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

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and Sands China, Ltd.*

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

17 STEVEN C. JACOBS,

18 Plaintiff,

19 v.

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

23 Defendants.

24
25 AND ALL RELATED MATTERS.

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

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

Date:
Time:

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

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

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

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

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

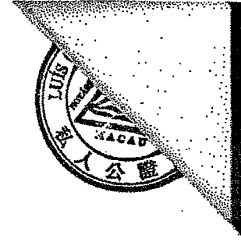
3. I make this affidavit in support of SCL's Motion for Summary Judgment on Personal Jurisdiction ("Motion").

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

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

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

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



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

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

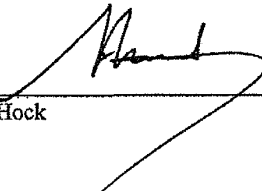
9. Exhibit F to the Motion denotes the total payments made to LVSC by SCL in 2009, for services rendered by LVSC in that same year under the terms of the Shared Services Agreement. Exhibit F is a true and correct copy of its purported counterpart.

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

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

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

Dated this 26 day of June, 2014.



Toh Hup Hock

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

NOTARY PUBLIC in and for



CARTÓRIO DO NOTÁRIO PRIVADO, LUÍS CAVALEIRO DE FERREIRA

Reconheço a assinatura, feita perante mim, de TOH HUP HOCK, cuja identidade verifiquei pela exibição do Bilhete de Identidade de Residente Não Permanente de Macau nº 1510865(7), emitido em 27 de Maio de 2014, pela Direcção dos Serviços de Identificação.
Conta nº 125

Macau, 26 de Junho de 2014.
Notário,

\$7,00

TRANSLATION

OFFICE OF THE PRIVATE NOTARY LUÍS CAVALEIRO DE FERREIRA

I certify that TOH HUP HOCK, whose identity I verified by way of the Macau Non-Permanent Identity Card nº 1510865(7), issued on the 27th May 2014 by the Identification Bureau of Macau S.A.R., signed this document before me.
Account nº 125

\$7,00

Macau, 26th June 2014
The Notary
(signature)

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

LUÍS CAVALEIRO DE FERREIRA



EXHIBIT E

EXHIBIT E

DATED NOVEMBER 8TH 2009

LAS VEGAS SANDS CORP.

and

SANDS CHINA LTD.

SHARED SERVICES AGREEMENT

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	SCHEDULE: Scheduled Products and Services	17

I hereby certify that this copy document is true and complete copy of the original for a properly certified copy of the original
Dated 12 NOV 2009

Yuen Lai Sze, Iris
Solicitor Hong Kong SAR
SIDLEY AUSTIN

Sidley Austin

39/F Two International Finance Centre
8 Finance Street, Central Hong Kong
Tel: (852) 2508 7888
Fax: (852) 2508 3110

Our Ref: CH2/09
HX752872

THIS AGREEMENT is made this 8th day of November, 2009

BETWEEN:

- (1) **LAS VEGAS SANDS CORP.**, a corporation organized under the laws of the State of Nevada and having its principal executive offices at 3355 Las Vegas Boulevard South, Las Vegas, Nevada 89109, United States of America ("Parent");

AND

- (2) **SANDS CHINA LTD.**, an exempt limited liability company duly incorporated under the laws of the Cayman Islands and having its registered office at Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9005, Cayman Islands ("LISTCO").

WHEREAS:

- (A) Parent, through its domestic operating subsidiaries, is the owner and operator of The Venetian Resort Hotel Casino, The Palazzo Resort Hotel Casino and The Sands Expo and Convention Center in Las Vegas, Nevada, which together form the largest hotel and resort complex in the world.
- (B) LISTCO was incorporated on July 15, 2009 under the direction of Parent to act as the holding company of its casino gaming, hotel and integrated resort and associated businesses in Greater China and VML, an indirect subsidiary of LISTCO, is the holder of a gaming sub-concession in Macau for a term ending on June 26, 2022 pursuant to the Sub-Concession Contract.
- (C) Pursuant to the Sub-Concession Contract, VML opened its first casino hotel property in Macau in May 2004, as part of the Sands Macao, followed by a second casino in August 2007, as part of The Venetian Macao-Resort-Hotel integrated resort, and a third casino called the Plaza Casino in August 2008, as part of the Four Seasons Hotel Macao, Cotai Strip, and VML, through direct and indirect operating subsidiaries, is currently developing for future operation, and has ongoing plans for the future development and operation of additional casinos, hotels and integrated resorts and associated facilities, as part of its overall Cotai Strip integrated resort development, including the partially completed Shangri-La, Traders, Sheraton and St-Regis branded hotels and associated casinos, convention space, restaurants, retail malls, entertainment facilities, spas and other amenities located on Sites 5 and 6 of its Cotai Strip development.
- (D) LISTCO may also, either itself or through other members of LISTCO Group, design, develop, construct, open and operate additional casinos, hotels and integrated resorts and associated facilities elsewhere in Greater China.

Shared Services Agreement

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- (E) Both in the construction and in the operation of LISTCO's casinos, hotels and integrated resorts and associated facilities, LISTCO Group has benefited from the coordinated procurement and provision of products and services by Parent Group, and LISTCO wishes even after the listing of its shares on the Main Board of the Stock Exchange to be able still to secure, for itself and the other members of LISTCO Group in their ongoing and future development projects and operations in Greater China, the benefit of certain products and services which Parent Group is able to continue to make available on competitive terms.

- (F) Conversely, Parent Group may in certain circumstances be in need of products and services which members of LISTCO Group may be in a position to provide.

THE PARTIES HAVE AGREED to enter into this Agreement, subject to the following terms and conditions:

1. INTERPRETATION

- 1.1 In this Agreement, including the Recitals, unless the context requires otherwise:
- "associate" shall have the meaning ascribed to it under Rule 1.01 of the Listing Rules;
- "Base Price" means the price determined in accordance with Clause 4.1 hereof;
- "Contractual Price" means the method for pricing the relevant Scheduled Products and Services used in the market as further particularized in the fourth column of the Schedule hereto;
- "controlling shareholder" means a person which is, or which together with other persons is, either (a) entitled to exercise or control the exercise of 30% or more of the voting power at general meetings of LISTCO or (b) in a position to control the composition of a majority of the board of directors of LISTCO;
- "Cost Price" means the actual cost incurred in providing the relevant Scheduled Products and Services, allocated to the recipient of the Scheduled Products and Services on a fair and equitable basis, and includes, but is not limited to, Fully Burdened Cost;
- "Cost Plus Price" means the actual cost incurred in providing the relevant Scheduled Products and Services, allocated to the recipient of the Scheduled Products and Services on a fair and equitable basis and

Shared Services Agreement

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	includes, but is not limited to, Fully Burdened Cost, plus a fee equal to the statutory minimum mark-up required to be charged with respect to such cost;		business;	CL000444
"Fully Burdened Cost"	means, in relation to the provision of administrative and other similar services, the total cost of employment of the employees who provide the relevant service, including, but not limited to, their salary, bonus, stock-based compensation and other compensation, health, disability, workmen's compensation and other employment-related insurance, benefits, taxes, general and administrative expenses and out-of-pocket expenses;	"Parent Group"	means Parent and companies directly or indirectly owned or controlled by it, whether or not wholly-owned, from time to time, other than members of LISTCO Group;	
"Greater China"	means all the territories belonging to or under the domination of the People's Republic of China, Macau, the Hong Kong Special Administrative Region and Taiwan, and their respective territorial seas;	"Parties"	means Parent and LISTCO and "Party" means any one of them;	
"Implementation Agreement(s)"	means the implementation agreement(s) to be entered into between members of Parent Group and members of LISTCO Group from time to time as more particularly described in Clause 5 of this Agreement;	"Relevant Event"	means any of the following events:	
"LISTCO Group"	means LISTCO and its direct and indirect subsidiaries, whether or not wholly-owned, from time to time;	(a)	Parent ceases to be the controlling shareholder of LISTCO through shares held directly or through its associates;	
"Listing Date"	means the date of initial listing of the shares of LISTCO on the Main Board of the Stock Exchange;	(b)	the shares of LISTCO cease to be listed on the Stock Exchange;	
"Listing Rules"	means The Rules Governing the Listing of Securities on the Stock Exchange as amended or varied from time to time;	(c)	any creditor, encumbrancer, receiver or judicial administrator or similar person takes possession of, or other legal process is enforced against all, or a substantial part, of any Party's business or assets;	
"Macau"	means the Macau Special Administrative Region of the People's Republic of China;	(d)	any Party stops or suspends payments to its creditors generally, or is unable or admits its inability to pay its debts as they fall due, or seeks to enter into any composition or other arrangement with its creditors, or is declared or becomes bankrupt or insolvent, or any insolvency proceedings are instituted by or against any Party;	
"Most Favoured Price"	means the price charged by members of Parent Group to independent third parties or to other listed subsidiaries of Parent other than members of LISTCO Group from time to time for the provision of the same or comparable types of products or services as the relevant Scheduled Products and Services under conditions which are comparable to the conditions under which such Scheduled Products and Services are to be provided to the LISTCO Group, in all cases in the ordinary course of	(e)	any event occurs which has an effect analogous to the matters set out in paragraphs (c) or (d) above in any relevant jurisdiction;	
		(f)	any Party ceases to carry on its business or any substantial part thereof, or any Party disposes of, or any governmental or other authority expropriates, all or any substantial part of its business or assets; or	
		(g)	45 days elapse after a material breach of this Agreement by a Party without such material breach being remedied or steps have been instituted to remedy such material breach;	
		"Scheduled Shared Services Agreement"	means any product or service set out in the	6

Products and Services"	Schedule hereto the same as may from time to time be amended by written agreement between the Parties, and subject to compliance with the requirements of the Listing Rules applicable to any amendment of this Agreement;	designated by LISTCO in writing from time to time during the Term, such that the Scheduled Products and Services as LISTCO may designate in such writing and which are Scheduled Products and Services reflected in the Schedule hereto are products or services Parent Group is willing to make available to members of LISTCO Group.
"Stock Exchange"	means The Stock Exchange of Hong Kong Limited;	2.2 The supply of Scheduled Products and Services hereunder to LISTCO Group shall reflect the requirements and/or needs of LISTCO Group from time to time, as determined by LISTCO, and nothing in this Agreement or any Implementation Agreement shall be construed as requiring any member of LISTCO Group, absent a request by LISTCO under Clause 2.1, to commit to the provision of any quantity of supply of Scheduled Products and Services from Parent Group over any duration of time.
"Sub-Concession Contract"	means the sub-concession agreement dated December 26, 2002 made by VML with Galaxy Casino S.A. and the government of Macau;	2.3 Notwithstanding this Agreement or any Implementation Agreement, LISTCO expressly reserves the right to choose to receive products and services of the same type and scope as the Scheduled Products and Services from independent third parties.
"subsidiary(ies)"	shall have the meaning ascribed to it under the Listing Rules;	2.4 The provision of products and services by any member of Parent Group is on a non-exclusive basis, and any member of Parent Group may provide products and services of the same type as Scheduled Products and Services to other parties, provided nothing herein shall be construed as absolving any failure to provide or any delay in providing any Scheduled Products and Services requested under Clause 2.1 or any breach of any provision of this Agreement or any Implementation Agreement.
"Term"	means the term of this Agreement as determined in accordance with Clause 3 hereof;	3. TERM OF THIS AGREEMENT
"Third Party Price"	means the price charged or quoted by independent third parties for the provision of the same or comparable types of products or services as the relevant Scheduled Products and Services under conditions which are comparable to the conditions under which such Scheduled Products and Services are to be provided, in all cases in the ordinary course of business, to customers that are unrelated to the providers of the products or services; and	3.1 This Agreement shall commence on the Listing Date and shall last for a term ending with the third financial year-end of LISTCO following the Listing Date, unless at any time prior to the expiration of such term either LISTCO gives not less than 3 months prior written notice of the termination of this Agreement to Parent or a Relevant Event occurs, in which case this Agreement shall end upon the earlier of (i) the expiration of such notice and (ii) the occurrence of such Relevant Event, but without prejudice to (a) the obligation to pay for any Scheduled Products and Services previously provided prior to such early termination date or (b) any obligations under or in relation to arrangements with third parties entered into in accordance with this Agreement prior to such early termination date and which do not by their terms automatically end upon such early termination date.
"VML"	means Venetian Macau Limited.	3.2 This Agreement may be renewed by the Parties before its expiration for a term not exceeding the third financial year end of LISTCO following the date of commencement of the renewed term, provided that the requirements of the Listing Rules in relation to connected transactions shall be complied with in connection with such renewal. Every renewal of this Agreement shall be made on the basis that this Clause 3.2 shall be re-incorporated into the terms and conditions of the renewed term and permit the Parties to further renew this Agreement for additional periods prior to expiration of any renewed term.
1.2 References herein to Clauses and the Schedule are references to the clauses of, and the schedule to, this Agreement.		Shared Services Agreement
1.3 All references to a Party shall, where the context permits, include that Party's successors and permitted assigns.		8
1.4 The headings in this Agreement are inserted for convenience purposes only and shall not affect (and shall be disregarded in) the construction and interpretation of this Agreement.		
1.5 Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing a gender include every gender.		
2. PROVISION OF PRODUCTS AND SERVICES		
2.1 Subject to the provisions of this Agreement and the relevant Implementation Agreements, Parent hereby agrees to provide and/or to procure another relevant member of Parent Group to provide to any member of LISTCO Group		

4. PRICING

4.1 The pricing of each Scheduled Product and Service provided hereunder shall not exceed the relevant price set out against it in the fourth column of the Schedule hereto, being as the case may (a) the Cost Price; (b) the Cost Plus Price; or (c) the Contractual Price.

4.2 If the Contractual Price is higher than any demonstrated Third Party Price then pricing of the Scheduled Product and Service shall be benchmarked down to the Third Party Price; if the Contractual Price is higher than the Most Favoured Price, then pricing of the Scheduled Product and Service shall be benchmarked down to the Most Favoured Price; and if the Contractual Price is higher than both of any demonstrated Third Party Price and the Most Favoured Price, then pricing of the Scheduled Product and Service shall be benchmarked down to the Third Party Price or the Most Favoured Price, whichever is the lower.

5. IMPLEMENTATION AGREEMENTS

5.1 Each of Parent and LISTCO agrees to enter into and to procure the relevant members of Parent Group or LISTCO Group (as the case may be) to enter into, from time to time, and as required, Implementation Agreements that set out the details of the material terms and conditions for the provision of Scheduled Products and Services requested by LISTCO pursuant to Clause 2.1 above, which material terms shall include, but not be limited to:

- (a) the relevant Scheduled Products and Services to be provided;
- (b) the quantity required to be provided, if applicable;
- (c) the time(s) at which or duration during which the relevant Scheduled Products and Services are to be provided;
- (d) the pricing for the Scheduled Products and Services provided, determined in accordance with the provisions of this Agreement; and
- (e) the payment terms (including, where applicable, terms providing for deduction of withholding taxes).

5.2 Parent agrees that the quality of the Scheduled Products and Services to be provided must be reasonably satisfactory to the relevant member of LISTCO Group receiving the same.

5.3 The terms and conditions on which Scheduled Products and Services are to be provided shall comply with the following principles:

- (a) all terms and conditions, including pricing, shall not be worse for LISTCO Group as the recipient of the Scheduled Products and Services than would be generally available in the market prevailing at the time, as evidenced by quotations issued by unrelated suppliers or

established by or deduced from other reasoned analysis and readily available market information; and

- (b) all terms and conditions, including pricing, shall not be worse for LISTCO Group as the recipient of the Scheduled Products and Services than offered by Parent Group from time to time to independent third parties or to other subsidiaries of Parent other than members of LISTCO Group from time to time.

5.4 The term of any Implementation Agreements entered into pursuant hereto shall not exceed the existing term of this Agreement as such term may be extended from time to time pursuant to Clause 3.2 above, provided that prior to any extension under Clause 3.2 coming into effect, any part of the term of an Implementation Agreement which exceeds the original term set out in Clause 3.1 shall remain a term that is conditional on the extension under Clause 3.2 coming into effect.

5.5 The governing law of an Implementation Agreement shall be the same as the governing law of this Agreement unless the use of the law of another jurisdiction as its governing law is mandatory under the law of such other jurisdiction or is otherwise mutually preferred by the parties, in which event the Implementation Agreement shall be executed in such form as will comply with the requirements of the law of such other jurisdiction or reflect the mutual agreement of the parties but substantially have the same effect as if it were governed by the same law as the governing law of this Agreement.

5.6 The provisions of each Implementation Agreement are subject to the terms of this Agreement and shall be interpreted consistently with the interpretation of this Agreement. If any of the provisions of any Implementation Agreement conflict or appear to conflict with any provisions of this Agreement, the provisions of this Agreement shall prevail and the relevant provisions of the Implementation Agreement shall be interpreted accordingly.

5.7 The Parties hereto acknowledge and agree that all products and services listed in Section (1) of the Schedule hereto and each of their respective Implementation Agreements, to the extent applicable, constitute connected transactions for LISTCO under the Listing Rules, and that such transactions will therefore be subject to and conditional upon the fulfilment of the requirements of the Listing Rules and any conditions imposed by the Stock Exchange. If any waiver which may be granted by the Stock Exchange in relation to this Agreement and any Implementation Agreement has been revoked, cancelled or otherwise becomes invalid, or any applicable requirements of the Listing Rules in relation to connected transactions cannot or can no longer be fulfilled, this Agreement and each of the applicable Implementation Agreements shall *pro tanto* be cancelled or terminated as the case may be, and no Party shall thereafter have any liability hereunder or thereunder, save and except for (a) the obligation to pay for any Scheduled Products and Services previously provided prior to such early termination date, (b) any obligations under or in relation to arrangements with third parties entered into in accordance with this Agreement prior to such early termination date and which do not by their terms automatically end upon such early

termination date and (c) any antecedent breaches of provisions which are compliant with the Listing Rules.

- 5.8 Consistently with Clause 5.7, provision of any particular Scheduled Products and Services shall be subject to the maximum annual caps (if any) which are set out against it in the sixth to eighth columns of the Schedule hereto, which caps shall in respect of each year be based on the Scheduled Products and Services actually delivered in that year after taking into account all relevant cancellations, terminations and non-deliveries.

6. INTELLECTUAL PROPERTY AND EMPLOYEES

- 6.1 Neither this Agreement nor any Implementation Agreement nor the provision of any Scheduled Products and Services hereunder or thereunder will affect the ownership of any assets or property or any intellectual property rights owned by any member of Parent Group or any of its intellectual property rights in any changes, additions or improvements thereto.

- 6.2 Unless secondment arrangements are agreed between Parent and LISTCO pursuant to any Implementation Agreement, no employee of any member of Parent Group shall be deemed to be, or have any rights as, an employee of any member of LISTCO Group.

- 6.3 Parent acknowledges that in performing its obligations under this Agreement and the Implementation Agreements, it or the relevant member of Parent Group and/or their respective employees may be processing or come into possession of information which is confidential to the relevant member of LISTCO Group receiving the relevant Scheduled Products and Services, or otherwise protected by data privacy laws applicable to such member of LISTCO Group, and hereby agrees that (a) it shall, and will procure that the other members of Parent Group shall, keep all such information confidential using all physical, organizational and technological safeguards that are reasonably appropriate in light of the nature, quantity and sensitivity of such information, applying security standards and procedures equivalent to those used to protect its own and its other customers' confidential information and in conformity with any specific security directives provided by LISTCO and accepted by Parent, and (b) none of them or their respective employees will use such information except for the purpose of performing under this Agreement or an Implementation Agreement with respect to the provision of the relevant Scheduled Products and Services.

- 6.4 Where the Scheduled Products and Services are comprised of services in respect of the negotiation of contracts with third parties, to the extent feasible and appropriate, the relevant member of LISTCO Group will be the party entering into such contracts and responsible for all obligations and entitled to all benefits thereunder, and the relevant member of Parent Group providing the Scheduled Product and Service shall not be liable for such obligations or entitled to such benefits.

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7. PARENT INDEMNITY TO LISTCO GROUP

- 7.1 Parent shall indemnify and keep indemnified each member of LISTCO Group receiving from Parent Group any Scheduled Products and Services against any losses, damages or liabilities suffered or incurred by the relevant member of LISTCO Group as a result of or in connection with any bad faith, gross negligence or wilful misconduct of any member of Parent Group or any employee of a member of Parent Group which is or who is deployed in the provision of Scheduled Products and Services to a member of LISTCO Group, after a final determination of a court of competent jurisdiction.

- 7.2 Notwithstanding the above, Parent shall not be liable for any special, indirect, incidental, or consequential damages of any kind whatsoever (including, without limitation, attorneys' fees) regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise, and regardless of whether such damages are foreseeable or whether Parent has been advised of the possibility of such damages.

8. FORCE MAJEURE

- 8.1 Continued provision of a Scheduled Product and Service may be suspended to the extent caused by force majeure, without liability for any failure to fulfil any obligation under this Agreement or any Implementation Agreement, so long as and to the extent to which the fulfilment of such obligation is prevented, frustrated, hindered, or delayed as a consequence of such force majeure, provided that Parent shall (a) give notice in writing to LISTCO of the occurrence of the relevant force majeure event as soon as reasonably practicable after any member of Parent Group becomes aware of the same, (b) provide, where reasonably practicable, details of the anticipated duration of suspension in the provision of the Scheduled Product and Service; and (c) (if reasonably requested by LISTCO) cooperate with LISTCO to find alternative means and methods for the provision of the suspended Scheduled Products and Services.

- 8.2 For purposes of Clause 8.1, "force majeure" refers to an event beyond the control of Parent or the relevant member of Parent Group, which by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared), threats or acts of terrorism including biological terrorism, outbreaks of endemic or pandemic disease, and failure of energy sources.

9. SCHEDULED PRODUCTS AND SERVICES TO PARENT GROUP

- 9.1 Unless otherwise specified, the provisions of this Agreement relating to the provision of Scheduled Products and Services by members of Parent Group to members of LISTCO Group shall apply, on a reciprocal basis, to the

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SCHEDULE

Scheduled Products and Services

SERVICE / PRODUCT	PROVIDER	RECIPIENT	PRICING	PAYMENT TERMS	2009 US\$	2010 US\$	2011 US\$
PROCUREMENT CONSTRUCTION & OPERATION SERVICES							
Connected Services of De Minimis Amount							
Provision on normal commercial terms, which on an annual basis and relative to LISTCO's gross assets or revenue from principal activities, amount to either < 0.1% or 0.1% ≤ x < 2.5% and annual consideration < HK\$1 million							
Procurement consultancy services in relation to the global procurement of raw materials, furniture, fixtures and equipment, operating supplies and room amenities, among other items, with respect to the design, development, construction, equipping, management and operation of casinos, casino hotels and integrated resorts.	Members of Parent Group	Members of LISTCO Group	Costs incurred in providing procurement services plus 8% and allocated on the basis of the number of rooms or employees for such materials, furniture, fixture and equipment, operating supplies or room amenities are purchased.	Invoices to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	2.0 million	1.9 million	1.9 million
Procurement consultancy services in relation to the global procurement of raw materials, furniture, fixtures and equipment, operating supplies and room amenities, among other items, with respect	Members of LISTCO Group	Members of Parent Group	Costs incurred in providing procurement services plus 8% and allocated on the basis of the number of rooms or employees for such materials, furniture, fixture and equipment, operating supplies or room	Invoices to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in	0.6 million	1.0 million	1.0 million

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SERVICE / PRODUCT	PROVIDER	RECIPIENT	PRICING	PAYMENT TERMS	2009 US\$	2010 US\$	2011 US\$
to the design, development, construction, equipping, management and operation of casinos, casino hotels and integrated resorts.			amenities are purchased.	the event of dispute within 30 days of resolution of dispute			
Transportation and related logistics services in connection with the use of private jets and corporate aircraft owned by or available to the Parent Group under timeshare arrangements with other proprietors controlled by the controlling shareholders of LISTCO Group.	Members of Parent Group	Members of LISTCO Group	Actual costs incurred related to the aircraft based on the use of the LISTCO Group (crew salaries) and actual monthly overhead costs incurred allocated on the basis of the number of aircraft used by the LISTCO Group as a percentage of the total number of aircraft in Parent Group's fleet.	Invoices to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	1.6 million	1.7 million	1.9 million
Transportation and related logistics services in connection with the use of private jets and corporate aircraft owned by or available to the Parent Group under timeshare arrangements with other proprietors controlled by the controlling shareholders of LISTCO Group.	Members of LISTCO Group	Members of Parent Group	Actual monthly overhead costs incurred allocated on the basis of the number of aircraft used by the LISTCO Group as a percentage of the total number of aircraft in Parent Group's fleet.	Invoices to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	0.1 million	0.1 million	0.1 million
Certain administrative and logistics services such as legal and	Members of Parent Group	Members of LISTCO Group	Actual costs incurred in providing services calculated as the estimated salary and	Invoices to be provided, together with documentary support, no	4.7 million	5.0 million	8.3 million

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SCL000450

PA43923

SERVICE / PRODUCT	PROVIDER	RECIPIENT	PRICING	PAYMENT TERMS	2009 US\$	2010 US\$	2011 US\$
regulatory services, back-office accounting and handling of telephone calls relating to hotel reservations, tax and internal audit services, limited treasury functions and accounting and compliance services.			benefits for the employees of the Parent Group and the hours worked by such employees providing such services to the LISTCO Group.	earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute			
Certain administrative and logistics services such as legal and regulatory services, back-office accounting and handling of telephone calls relating to hotel reservations, tax and internal audit services, limited treasury functions and accounting and compliance services.	Members of LISTCO Group	Members of Parent Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the LISTCO Group and the hours worked by such employees providing such services to the Parent Group.	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	3.0 million	3.0 million	3.0 million
<u>Connected Services which are Discloseable</u>							
Provision on normal commercial terms, which on an annual basis and relative to LISTCO's gross assets or revenue from principal activities, amount to either < 2.5% and annual consideration \geq HK\$1 million; or 2.5% \leq x < 25% and annual consideration < HK\$10 million							
Design, development and construction consultancy services with respect to the design, development and construction of casino, casino hotel and integrated resort projects.	Members of Parent Group	Members of LISTCO Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the Parent Group and the hours worked by such employees providing such services to the LISTCO	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute	1.5 million	5.1 million	5.0 million

Shared Services Agreement

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SERVICE / PRODUCT	PROVIDER	RECIPIENT	PRICING	PAYMENT TERMS	2009 US\$	2010 US\$	2011 US\$
			Group plus 5%.	within 30 days of resolution of dispute			
Design, development and construction consultancy services with respect to the design, development and construction of casino, casino hotel and integrated resort projects.	Members of LISTCO Group	Members of Parent Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the LISTCO Group and the hours worked by such employees providing such services to the Parent Group plus 5%.	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	3.0 million	2.3 million	0.7 million
Joint international marketing services targeting VIP players and premium players who wish to patronize the LISTCO Group's properties in addition to those of the Parent Group. Retail leasing, management and marketing services related to the retail malls owned or operated by the LISTCO Group.	Members of Parent Group	Members of LISTCO Group	Costs incurred in providing services plus 5%	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	19.8 million	19.9 million	21.0 million

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SERVICE / PRODUCT	PROVIDER	RECIPIENT	PRICING	PAYMENT TERMS	2009 US\$	2010 US\$	2011 US\$
(2) Arrangements that Do Not Constitute Connected Transactions							
INSURANCE COVER							
Global Insurance Policies procured by the Parent Group that provide coverage to members of the LISTCO Group and will continue until maturity and may be renewed							
Macao & Int'l Commercial General - ACE American Ins. Co.	Global Coverage - Parent as named insured	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on coverage	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	1.0 million	1.1 million	1.4 million
Directors and Officers Liability - Layered program with various insurers and National Union as lead carrier	Global Coverage - Parent as named insured	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on coverage	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	2.5 million	3.0 million	3.7 million
Employment Practice Liability - National Union (AIG)	Global Coverage - Parent as	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on	Invoice to be provided, together with	0.3 million	0.2 million	0.3 million

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SERVICE / PRODUCT	PROVIDER	RECIPIENT	PRICING	PAYMENT TERMS	2009 US\$	2010 US\$	2011 US\$
	named insured		coverage	documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute			
Master Global Property Insurance Program - FM Global	Global Coverage - Parent as named insured	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on coverage	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	0.3 million	0.3 million	0.4 million
Crime - Great American Ins. Co.	Global Coverage - Parent as named insured	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on coverage	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	0.2 million	0.2 million	0.3 million
Fiduciary Liability - Chubb	Global Coverage - Parent as	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on	Invoice to be provided, together with documentary support, no	0.0 million	0.0 million	0.0 million

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SERVICE / PRODUCT	PROVIDER	RECIPIENT	PRICING	PAYMENT TERMS	2009 US\$	2010 US\$	2011 US\$
	named insured		coverage	earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute			
Special Coverage - Kidnap, Ransom, Extortion - Great American Ins. Co.	Global Coverage - Parent as named insured	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on coverage	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	0.0 million	0.0 million	0.0 million
INFORMATION TECHNOLOGY							
Enterprise level agreements procured by the Parent Group that provide information technology products and services to members of the LISTCO Group.							
Infinium software	Members of Parent Group	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on modules purchased, number of users and size of AS400	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of	0.4 million	0.3 million	0.1 million

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SERVICE / PRODUCT	PROVIDER	RECIPIENT	PRICING	PAYMENT TERMS	2009 US\$	2010 US\$	2011 US\$
				resolution of dispute			
Symantec Endpoint Protection antivirus software	Members of Parent Group	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on number of personal computers	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	0.1 million	0.0 million	0.0 million
Microsoft Premier Support Services	Members of Parent Group	Members of LISTCO Group	Allocated pro rata to the LISTCO Group based on number of hours for selected services	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute	0.1 million	0.1 million	0.1 million
Microsoft Select Agreement - Agreement to compile bulk purchases from various locations to obtain highest possible level of discount. Each location procures the individual license independently under the one master agreement.	Members of Parent Group	Members of LISTCO Group	N/A	N/A	N/A	N/A	N/A

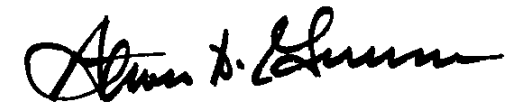
Shared Services Agreement

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<i>TIBCO Enterprise Bus Software Agreement</i>	<i>Members of Parent Group</i>	<i>Members of LISTCO Group</i>	<i>Allocated pro rata to the LISTCO Group based on number of properties using software</i>	<i>Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute</i>	<i>0.4 million</i>	<i>0.1 million</i>	<i>0.1 million</i>
<i>Microsoft Enterprise Application Platform (EAP) Agreement for Marketing and CRM Software Platforms</i>	<i>Members of Parent Group</i>	<i>Members of LISTCO Group</i>	<i>Allocated pro rata to the LISTCO Group based on number of properties using software</i>	<i>Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute within 30 days of resolution of dispute</i>	<i>0.1 million</i>	<i>0.7 million</i>	<i>0.7 million</i>



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS TO DISMISS THIRD AMENDED COMPLAINT

THURSDAY, FEBRUARY 26, 2015

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 26, 2015, 8:41 A.M.

2 (Court was called to order)

3 THE COURT: Jacobs versus Sands.

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

5 THE COURT: Good morning.

6 MR. MORRIS: Good morning, Your Honor.

7 THE COURT: So, Mr. Morris, do you have your jokes
8 planned for this morning?

9 MR. MORRIS: You mean we'd like to make fun of the
10 opposition? Certainly.

11 THE COURT: Okay.

12 MR. PEEK: It was just set up, Your Honor.

13 THE COURT: Good morning, Mr. Morris. How are you?

14 MR. MORRIS: I'm fine, Your Honor.

15 THE COURT: It's your motion. Or we're going to
16 start with your part of the motion.

17 MR. MORRIS: Sure.

18 THE COURT: Because it sort of covers most of the
19 issues that are interrelated with the others, besides the
20 jurisdiction issue, which I'll handle separately.

21 MR. MORRIS: Your Honor, good morning. And thank
22 you for entertaining this.

23 When we were here several years ago you made the
24 right decision. The Supreme Court said --

25 THE COURT: The never Supreme Court said I did not,

1 Mr. Morris.

2 MR. MORRIS: Just a moment, let me finish here now.
3 I don't think we're in disagreement here. Nevada Supreme
4 Court said you made the decision for the wrong reason. You
5 may recall that when we were here initially we presented this
6 motion to dismiss the defamation claim. This has now been
7 supplemented by a tortious discharge. But we presented our
8 motion on the basis of absolute privilege.

9 THE COURT: See, the last time I made a
10 determination on a conditional privilege they reversed me and
11 said I should have determined it was absolute. That was in a
12 different case that Pisanelli Bice had. So, I mean, it just
13 -- it doesn't matter what I do; they're going to reverse it
14 and send it back and say I have to make a factual
15 determination. That's just how my life is.

16 MR. MORRIS: Well, I think I would -- in this
17 instance I think I would disagree with that. I believe the
18 court has invited you to consider this case and this claim of
19 defamation and the related -- the new claim, but it's first a
20 discharge, under Anzalone and the conditional privilege.
21 Remember, Your Honor, in the decision Jacobs versus Adelson at
22 130 Nev. Adv. Op. 44, 325 P.2d 1282, this is what the court
23 said with respect to the conditional privilege. This is after
24 pointing out, Your Honor, that we had presented this ground
25 for dismissal but that you had not considered it.

1 The court said, "The conditional privilege's
2 application is generally a question of law for the court."
3 That's you. They didn't say it's generally a question of law
4 for the jury, they didn't say it's always a question of law
5 for the jury. They said, contrary to a number of decisions
6 and distinguishable case authority from other jurisdictions
7 that it's a question of law for the Court.

8 We have here, I submit, if we follow the precepts
9 and ruling in Anzalone, we have the opportunity to do what the
10 court said should be done in a conditional privilege case.
11 You have two sets of statements. You have what Jacobs says,
12 what he alleged and what was, as you know -- there's no
13 quarrel with this, it's been publicized over and over and over
14 and over worldwide -- it can be summarized in this way.
15 Jacobs says Adelson is a crook. And Adelson said, following a
16 hearing in this court attended by the press and reported by
17 the press, attributing again to Jacobs the allegations that he
18 makes against Adelson, he's a crook, the defendant Sheldon
19 Adelson said in substance, it isn't true, it's based on lies
20 and appears to be the product of delusion.

21 The Supreme Court has said and says in Anzalone and
22 that's consistent with the case that it followed in reaching
23 its decision in Anzalone Fortage, the Fourth Circuit case,
24 which it cites and relies on for that pronouncement, that you
25 can determine from comparing these two statements whether we

1 have a defamatory statement of fact or an expression of
2 opinion. And I submit to you, as we have argued in our brief
3 over and over and over -- or in our two briefs, our motion and
4 our reply, that this was Mr. Adelson's expression of opinion
5 and it was in response to --

6 THE COURT: Or a mixed type of disclosure, a mixture
7 of fact and opinion.

8 MR. MORRIS: I'm sorry?

9 THE COURT: Or a mixed disclosure, fact and opinion.

10 MR. MORRIS: Could be. But I think we can say it is
11 predominantly an expression of opinion. Your Honor, if this
12 statement had -- and the reason I say that is because the
13 statement has to be considered. And that's why we pointed
14 out, as the court did in Anzalone, you must consider this in
15 the context in which it was made. I would agree with you and
16 I'd agree with the plaintiff --

17 THE COURT: Well, I'm reading from your brief.

18 MR. MORRIS: Pardon me?

19 THE COURT: I'm reading from your brief.

20 MR. MORRIS: Yes.

21 THE COURT: So, you know, the issue of delusions is
22 typically something that is neither -- is not pure opinion.
23 It's usually based on some facts that you think result in
24 someone being delusional. So --

25 MR. MORRIS: Or the absence of fact which gives rise

1 to just the spontaneous decision -- statement that, in my
2 opinion this is the product of delusion. He doesn't say --
3 Mr. Adelson doesn't say that, based on these facts or based on
4 the facts that he sets out he suggests that Jacobs is
5 delusional. He makes that statement in the context of having
6 been called a crook and having been assailed over and over
7 worldwide for his "illegal conduct," according to Jacobs. And
8 all that this expression, this statement of Mr. Adelson says
9 is, Mr. Jacobs is wrong, it must be the product -- the word is
10 used "delusional" -- it must be the product of imagination.
11 And that is where we come to rest here. We think and we
12 believe we have supported this by a substantial, substantial
13 amount of authority, not only in this state, but from
14 elsewhere, in evaluating statements that a plaintiff says are
15 uncomplimentary and libelous as to me that what we have here
16 amounts to mere rhetoric. Some cases call it, and we've cited
17 it in our brief, name calling. It's hard to distinguish, I
18 believe, substantively from the case that we cite from South
19 Dakota. There are others like it, but this is the most
20 graphic example I could give you. The Supreme Court there
21 said the police chief who was called out of court a dumb
22 sonofabitch does not have an action for defamation, because
23 the speaker was expressing his opinion of that police chief.
24 That is, the court said, conditionally privileged. And that
25 is the position that we take here.

1 Look, we didn't -- Mr. Adelson didn't just invent
2 this statement out of the clear blue and one day say to the
3 press, Jacob is a liar and delusional. He said that in the
4 context of being accused of criminal activity, continuing and
5 multiple criminal activity by Mr. Jacobs that was reported in
6 the press. And, as we point out in our moving papers and our
7 brief, we believe that you can determine -- we believe, that
8 almost anyone could determine that with respect to the
9 sensational allegations that are made in the complaint that
10 are well beyond what Rule 8 requires for a plain and
11 straightforward statement of the claims you are making those
12 statements were made to invite, to entice, if you will, or to
13 encourage Mr. Adelson to speak. And that would be consistent
14 with the allegations in the complaint that he's rude and he's
15 bellicose, he's quarrelsome. Well, all we have here in
16 response to those allegations is a single statement, one
17 statement made against multiple statements made, publicized
18 and republicized, observed in this court by the media and
19 dutifully reported by the media worldwide, picked up and
20 repeated and repeated and repeated and blogged about, written
21 about, commented on over and over. In that context we have
22 one statement of opinion that you can summarize -- or I will
23 summarize in this manner. Mr. Adelson's response to Mr.
24 Jacobs's allegations saying that, it isn't true, I don't
25 accept that, this must be imagination, call it delusional, if

1 you will, but it is nonetheless in response to what Jacobs
2 says or said a statement of Mr. Adelson's opinion that he is
3 dead wrong. And I submit to you that in the context of the
4 cases -- take a look at the Illinois Court of Appeals case,
5 take a look at the Fourth Circuit case on which Anzalone is
6 built, the uncomplimentary statements made in -- not a
7 dissimilar case by a disgruntled plaintiff who was, she
8 claimed, wrongfully discharged and about whom the defendant
9 made a number of uncomplimentary remarks. And the Fourth
10 Circuit said, as our court said when it wrote Anzalone, those
11 remarks amount to nothing more than name calling, and name
12 calling isn't actionable as defamation.

13 Now, that's the -- I believe those are good
14 precedents and analogues for our case here, but the principal
15 case -- and I'm -- I recognize what you said about the Supreme
16 Court. You know, sometimes it's difficult to determine from
17 the court's opinions what it is that they would like the
18 District Court to do.

19 THE COURT: Occasionally they give me instructions
20 to do things I've already done.

21 MR. MORRIS: Yes, they do. But, Your Honor, in this
22 case in particular what the Supreme Court said with respect to
23 the motion and the basis for the motion that we are making
24 here this morning, they said, the judge did not consider
25 Anzalone and conditional privilege and we are remanding this

1 case, we're vacating her decision on absolute privilege, but
2 we're sending this case back to the District Court where you,
3 Mr. Adelson, can present the conditional privilege case and
4 Anzalone to Judge Elizabeth Gonzalez. And that's what we're
5 doing. And I believe that we have not only ample allegations
6 of fact and expressions of opinion, but we have a substantial
7 amount of law on which we base our contention that Mr. Adelson
8 in making the single statement that he did in response to
9 being assailed over and over and over by Mr. Jacobs,
10 publicized by invitation to the press, he did nothing other
11 than what anyone would be entitled to do who has been attacked
12 and accused of criminal conduct. He said, it ain't true, and
13 he expressed an opinion as to the reason or the basis for Mr.
14 Jacobs making those scurrilous remarks.

15 Now, Your Honor, if this were a stand-alone case, if
16 this was something that Mr. Adelson initiated, he just called
17 a press conference and said, you know, Jacobs is a liar, he's
18 delusional and he's a crook and I won't put up with it, we'd
19 have a much different situation than we have in the context of
20 this proceeding. And that's why context I believe is
21 important. That's why Anzalone said, look, take the
22 statements, the statements attacking you in the press and take
23 the response to that and compare them and you -- and that's
24 why the court said the conditional privilege's application is
25 generally a question of law for the court. If you conclude,

1 Judge Gonzalez, as we concluded in Anzalone that what we have
2 here when comparing these two statements is an expression of
3 opinion in a response to the statements attacking the speaker,
4 the alleged defamer, we have a privileged remark that is not
5 actionable as defamation. That is essentially what the Fourth
6 Circuit said in Fortage.

7 Now, I point that out again to emphasize that in the
8 opposition that Mr. Bice is about to argue they don't address,
9 they don't address Anzalone, they don't address the Fortage
10 case. They address a variety of other cases under different
11 facts, both substantively alleged and procedural, that are
12 distinguishable from this case and don't provide authority for
13 the proposition that anytime somebody expresses an opinion
14 that a person who is defaming him is nuts they have a jury
15 trial. That's the basis of their opposition. And that is, I
16 submit to you, not consistent with what our Supreme Court has
17 said and what it cited when it sent this case back to you,
18 Anzalone. That case is significant. It is a case that not
19 only departs from and is dissimilar from the authorities
20 relied on in the opposition, it is consistent with the
21 proposition that I'm arguing to you here today, and that is in
22 context, not in a vacuum, not as an abstract proposition, but
23 in context this remark made by Mr. Adelson in response to what
24 Mr. Jacobs had been saying about him and publicizing, when you
25 look at those two his remarks are his opinion that the person

1 defaming me does not know what he is talking about. And that
2 is a privileged reply.

3 Now, Your Honor, there are other claims made here,
4 too, as you know.

5 THE COURT: Let's not go to the other claims right
6 now. Let's just stick to the defamation issue. So whenever
7 you're done with that, then I'm going to go to Mr. Bice.

8 MR. MORRIS: I have told you -- I'd like to keep
9 talking, and I'd like to crack a few jokes, but I've told you,
10 Your Honor, what I believe our case is and on what it is based
11 and why under Anzalone you should grant this motion.

12 THE COURT: Thank you, Mr. Morris.

13 MR. MORRIS: And I'll tell you -- I'll wager with
14 you. If you do, I'll give you two to one that the Supreme
15 Court does not reverse you.

16 THE COURT: The last time I made a ruling on a
17 conditional privilege they affirmed me, but said I was wrong
18 because it was an absolute privilege. So I just can't win,
19 Mr. Morris.

20 MR. MORRIS: Well, you were right, but for a
21 different reason.

22 THE COURT: Yeah. Mr. Bice.

23 MR. BICE: Thank you, Your Honor.

24 With respect to the defamation issue, Your Honor,
25 we're back to the Supreme Court sent the case back. I would

1 note that if you were to go back and look at the Supreme Court
2 briefs, including from Mr. Adelson, you will see the exact
3 same argument, he made the exact same argument to the Supreme
4 Court and told the Supreme Court that it should affirm your
5 decision on this alternative grounds, and it was sent back.
6 And even in that decision the Supreme Court noted that that is
7 generally a question of fact. And here is why.

8 First of all, the Court should note -- I'm unclear.
9 Is this a motion for summary judgment, or a motion to dismiss?
10 Because there's a lengthy, lengthy appendix attached to this
11 motion to dismiss well beyond the scope of the pleadings,
12 attaching all sorts of extraneous materials, including news
13 articles and the like. So I'm unclear on what this motion
14 exactly is. It's styled as a motion to dismiss, but then
15 proceeds to attach extrarecord materials.

16 What we have is a claim by Mr. Adelson and both the
17 other two defendants that Mr. Adelson's statement is
18 privileged and, if not privileged, it's just opinion. Well,
19 Your Honor, all I can say is that we look forward to hearing
20 Mr. Adelson tell the finder of fact that it was merely his
21 opinion that Mr. Jacobs was terminated for cause and it was
22 merely his opinion that Mr. Jacobs was lying about what was
23 really going on relative -- and the real reasons why Mr.
24 Jacobs was fired. That should prove interesting with the
25 chairman of the company, who says he had all these grounds for

1 firing him, now running away from his own statements and
2 saying, well, it's just my opinion that he was fired for cause
3 and that he was lying about what was really going on for the
4 real reasons for his termination.

5 Obviously, as we cite you, numerous cases, Your
6 Honor, both of those statements, saying someone was terminated
7 for cause is a statement of fact, and it's actionable when
8 it's false. Mr. Adelson is rightly running away from his own
9 statement, because he fears, justifiably, that it is going to
10 be proven as false. Because it is false, just like his claims
11 that Mr. Jacobs was lying about what was going on in Macau and
12 why he was fired. That again, as courts say, that's --
13 calling someone a liar about those sorts of things constitutes
14 a statement of fact. You're claiming that they're not telling
15 the truth and that you are. That is a provable fact one way
16 or the other. And if it's proven to be false, it's
17 defamatory. And that is again why Mr. Adelson now wants to
18 recast what he said as opinion when in fact it was not
19 opinion.

20 But, more fundamentally, qualified or conditional
21 privileges, Your Honor, turn on one central element. They all
22 fail on one thing, malice. As the Nevada Supreme Court has
23 said, if a statement is made with malice there is no
24 conditional privilege, there is no qualified privilege. And
25 again it's interesting we're criticized by including too many

1 allegations in the complaint by Mr. Morris now on behalf of
2 Mr. Adelson and too few in his motion to dismiss. He says we
3 don't have enough in there to demonstrate the basis for
4 punitive damages, which, of course, turns also on the issue of
5 malice, Your Honor. And our point here is malice, as we have
6 highlighted in the complaint and all of the allegations,
7 malice is a question of fact. All of the facts are assumed to
8 be true, and any inferences that can be drawn from the facts,
9 reasonable inferences, are also assumed to be true on a motion
10 to dismiss standard.

11 That being the case, and as Rule 9(b) says, malice
12 is averred generally, does not have to be pled with
13 specificity, notwithstanding the fact that I think we've
14 included a whole host of allegations about Mr. Adelson's
15 motive, about why Mr. Adelson was doing what he was doing to
16 try and undermine Mr. Jacobs. Let's remember the context.
17 We're hearing the argument a lot about context of the
18 statement. The context of the statement was Mr. Adelson's
19 company's lost a motion to dismiss. That's the context of the
20 statement. So Mr. Adelson retaliated by then going to the
21 media and issuing a press release that made false statements
22 of fact. So this assertion that, well, this is just, you
23 know, Mr. Adelson responding to the complaint, no. Mr.
24 Adelson responded to losing a motion to dismiss and went out
25 on one of his, we would maintain, legendary diatribes with the

1 media. And that's what he did. And, again, our point is he
2 did that with malice, he made false statements to the media
3 with malice, and that is actionable defamation, Your Honor.

4 And what the Nevada Supreme Court has said and all
5 other courts have said is whether or not a statement is made
6 under a qualifying condition is a question for the court. But
7 whether or not the statement was made with actual malice, if
8 there are allegations from which malice can be inferred, is a
9 question for the finder of fact.

10 So, while understand Mr. Morris's citation to you of
11 cases like the -- I always butcher the name -- Anzalone --

12 THE COURT: Anzalone.

13 MR. BICE: -- Anzalone, which is, of course, the
14 Attorney General making a response to an employee who claims
15 that he had been discouraged from pursuing an investigation.
16 But as we cite to you in the Circus Circus versus Witherspoon
17 decision, what the court actually says on this criteria about
18 these qualified privileges, if it's abused, if it's
19 excessively published, or if the statement is made with
20 malice, the privilege that you are claiming is conditional
21 privilege fails under the law. And that right there is again
22 why this conditional privilege fails, whether you style it as
23 the conditional privilege of reply or the ability to -- you're
24 claiming now it was invited, which there is zero legal
25 support, none of the cases they cite would plausibly support

1 that. Because an invited defamation, Your Honor, occurs when
2 you make a statement -- you as the plaintiff are telling the
3 defendant to repeat it. It's a statement that's made that's
4 false and defamatory. You then as the plaintiff either
5 entice, cajole, invite, as the courts say, or you force the
6 defendant to repeat the defamatory statement. That's what
7 invited defamation is, Your Honor. And that doesn't apply
8 here. Under Mr. Adelson's argument or under the defendants'
9 arguments, Your Honor, anytime someone files a lawsuit
10 detailing the basis for their claim they have somehow now
11 invited a media smear. This is exactly the same argument,
12 it's just recast as something else, that they made to the
13 Supreme Court, which the Supreme Court rejected, that somehow
14 when you file a lawsuit you now are allowed -- your opponent
15 is somehow now allowed under the guise of privilege to go out
16 into the media and smear their litigation opponent. And
17 that's what Mr. Adelson and his companies have attempted to
18 do. And the Nevada Supreme Court said there is no such
19 absolute privilege for that. And simply recasting this now as
20 invited -- no one invites a media smear simply by filing a
21 lawsuit detailing the allegations that give rise to a claim.

22 And with that, Your Honor, that's why these again --
23 there are questions of fact as to whether or not Mr. Adelson,
24 one, abused this privilege that he wants to claim and acted
25 with malice. And that is a question of fact that can't be

1 decided by way of a motion to dismiss, Your Honor.

2 THE COURT: Thank you.

3 Mr. Morris, anything else?

4 MR. MORRIS: I believe it is an exaggeration, if not
5 disingenuous to say that we are -- we have just relabeled
6 arguments that the Supreme Court has rejected.

7 THE COURT: Now, Mr. Morris, you know our Supreme
8 Court, if they feel strongly about something that is purely a
9 legal issue, has no hesitation at all about issuing an
10 opinion, especially or even when those issues weren't even
11 brought up to the District Court. So we all recognize that
12 our Nevada Supreme Court historically, if they feel like
13 making a decision on a certain basis, they will. They didn't.
14 They sent it back here.

15 MR. MORRIS: But they did make -- they made two --
16 they made two decisions here. One is they made a decision on
17 about privilege, and Justice Hardesty said, absolute privilege
18 -- "We are not willing to extend absolute privilege to the
19 statement made here. Mr. Adelson also makes an argument, as
20 he did in the District Court, under Anzalone, but the District
21 Judge did not consider that. So our decision is in reversing
22 and vacating the decision -- the order on absolute privilege
23 grounds we're sending this back to the District Court where
24 Anzalone and conditional privilege can be raised by Mr.
25 Adelson." And that's what we're doing.

1 THE COURT: I understand. I'm just -- you know, you
2 have a long history with the Nevada Supreme Court, as well as
3 I do. You all have a longer history with the Nevada Supreme
4 Court than I do. And when they feel strongly about something,
5 they usually issue an opinion about it.

6 MR. MORRIS: Yes. I don't disagree with that. But
7 they haven't issued an opinion in this case, Your Honor,
8 saying that Anzalone does not apply to these statements. If
9 they had done so, we'd have a different story here.

10 THE COURT: Absolutely.

11 MR. MORRIS: So I just want to turn to one argument
12 that Mr. Bice made as he folded his argument into we have been
13 accused of saying too much in our complaint and at the same
14 time we're accused of saying too little with respect to
15 pleading malice and requesting punitive damages.

16 Your Honor, if we look at -- with respect to the
17 punitive damages that are being alleged against Mr. Adelson,
18 if you look at paragraphs 79 through 83 of the third amended
19 complaint, we have nothing, nothing in the way of
20 particularity under 9(b) or under any other rule that
21 describes the fraudulent, oppressive, and maliciously
22 motivated conduct that Mr. Adelson allegedly engaged in. This
23 is all, this is all that's said in the complaint.

24 "Adelson --" This is paragraph 79. "Adelson retaliated
25 against Jacobs by terminating his employment because Jacobs

1 objected to and refused to participate in the illegal conduct
2 demanded by Adelson and attempted to engage in conduct favored
3 by public policy. In so doing Adelson tortiously discharged
4 Jacobs in violation of public policy."

5 Now, here's the allegation for punitive damages.
6 "Adelson's conduct was done with malice, fraud, and
7 oppression, thereby entitling Jacobs to an award of punitive
8 damages." There's no particularity there with respect to the
9 conduct, which we pointed out in our moving papers, both the
10 motion and in the reply. There's just a general allegation.
11 You didn't hear Mr. Bice articulate or you didn't see in his
12 opposition his articulation of the requirements that are
13 imposed upon him and anyone asking for punitive damages as a
14 consequence of intentionally tortious fraudulent, oppressive,
15 and reckless remarks made in a case like this. It's not
16 there. It's not pled. That's why we say -- or why we've said
17 in our points and authorities twice that we don't have a
18 sufficient basis to sustain a claim for punitive damages
19 pleaded in this complaint.

20 THE COURT: Thank you.

21 MR. MORRIS: Thank you.

22 THE COURT: The motion with respect to the
23 defamation claim is denied. The statement appears to be based
24 on mixed opinion and fact. And given the allegations related
25 to maliciousness, the Court will not make a determination at a

1 motion to dismiss stage.

2 Can we go to the termination issue, Mr. Morris.

3 MR. MORRIS: Sure. This point I think I can
4 conclude in less time than I took to unsuccessfully argue my
5 motion to dismiss to you, which I intend to renew in the form
6 of a different motion in the very near future.

7 THE COURT: After some discovery happens maybe.

8 MR. MORRIS: Yes, and after you permit us to do a
9 little discovery of the plaintiff, who thus far has been
10 completely shielded from inquiry and deposition.

11 Now, with that having been said, Your Honor, let's
12 turn our attention to tortious discharge. This much we know
13 from the complaint and from the arguments that have been made
14 thus far in this case. Mr. Jacobs was not employed by Sheldon
15 Adelson. He is suing for wrongful discharge. He sued for
16 wrongful discharge -- he sued for wrongful discharge, sued
17 Sands China and Las Vegas Sands Corporation for wrongful
18 discharge. His employer was, we believe, but whether we're
19 right on this or wrong, was VML or Venetian Macau Limited.
20 But under no circumstances was it Sheldon Adelson.

21 Now, the opposition in this case takes this bizarre
22 position. I say it's bizarre because it happens to be
23 contrary even to the California Supreme Court, which
24 ordinarily endorses almost anything plaintiffs say. They take
25 the position that because Mr. Adelson was the chairman of the

1 board of Sands China -- or Las Vegas Sands or some other
2 related company, because of his officership he can be held
3 liable for tortiously discharging an employee of one of the
4 corporations of which he is an officer or a director.

5 We know from the Schoen case -- I understand that
6 Mr. Bice believes the Schoen case did not pass directly upon
7 the point that we're urging here, but it did say this: There
8 has to be an employment relationship before you can accuse
9 somebody of abusing that relationship by wrongfully
10 discharging. D'Angelo versus Gardner, a case that I had a
11 little something to do with some years ago, addresses a
12 related point, and that is with respect to tortious discharge
13 of an employee. What we get here, what we come out with, and
14 this takes us to the California Supreme Court, the California
15 Supreme Court said in Mikhailovsky versus Regents of the
16 University of California I think that's consistent with Allum
17 versus Valley Bank, a Nevada Supreme Court decision that we
18 discuss in our moving papers, it said that, "Officers and
19 directors cannot be held liable for a corporation's tortious
20 discharge of an employee." I don't know how it can be made
21 any clearer than that. There has to be an employment
22 relationship between the person being sued for tortious
23 discharge and the plaintiff. And that is absent here. It was
24 Absent in Mikhailovsky, and it was absent in Schoen versus
25 Amerco, D'Angelo versus Gardner, and by implication in the

1 Allum case.

2 The plaintiff then turns to -- in this case the
3 plaintiff then turns to, well, Mr. Jacobs was discharged
4 because he blew the whistle. I coined an expression for that.
5 It's in our reply points and authorities. And I believe it's
6 apt. Internally blowing the whistle does not make the noisy
7 party a whistleblower under the law. And that is supported, I
8 suggest, Your Honor -- and I don't think this one is the
9 product of the Nevada Supreme Court saying one thing one day
10 and something the next day on the same or a similar issue --
11 Wiltsie versus Baby Grand Corporation --

12 THE COURT: You're going back far.

13 MR. MORRIS: Pardon me?

14 THE COURT: You're going back pretty far.

15 MR. MORRIS: It's a long time. But I go back pretty
16 far, Your Honor. I was around when that case was decided.

17 -- reporting misconduct inside the corporation is
18 not protected whistleblower activity. The plaintiffs don't
19 have anything more -- or the plaintiff doesn't have anything
20 more than what he's alleged, and he has alleged that he
21 reported to Michael Leven.

22 THE COURT: And general counsel.

23 MR. MORRIS: And general counsel. And both of those
24 people are inside the company. They are not governmental or
25 regulatory authorities outside the company, which

1 whistleblowing -- or the law with respect to whistleblowing
2 and the federal whistleblower statute is designed to protect.
3 What we have here is we don't have anyone who has -- who
4 survives the absence of an employment relationship who can
5 say, I can nevertheless allege that I've been wrongfully
6 discharged because I engaged in whistleblowing activity by
7 reporting to Mr. Leven and the company's general counsel.

8 The last argument that we make is the statute of
9 limitations. And that argument addresses, and I can be brief
10 with this, Jacobs was terminated in July of 2010. He filed
11 his first complaint shortly thereafter. He filed a first
12 amended complaint in which he added Mr. Adelson as a
13 defamation defendant, he then filed a second amended complaint
14 which was superseded by the one we're now arguing, the third
15 amended complaint. And that's when the tortious discharge
16 claim makes its first appearance, four years after the fact --
17 the alleged fact that he was tortiously discharged.

18 Now, I know what Mr. Bice is going to say. I think
19 I do at least in part. He's going to say, well, all this
20 relates back.

21 THE COURT: He said that in his brief.

22 MR. MORRIS: Yeah.

23 THE COURT: We all know he's going to say that.

24 MR. MORRIS: Sure.

25 THE COURT: And then he says something about a stay.

1 MR. MORRIS: Right. And that's what the plaintiff
2 said in Nelson versus City of Las Vegas, that it all relates
3 back. And the Supreme Court said, when you have a new claim
4 being made in an old case or the current case that adds new
5 claims based on new facts, all of which was available to you
6 presumably when you initially filed but didn't make these
7 allegations, the statute has run on you, Ms. Plaintiff, in
8 Nelson. And I would suggest to you, Your Honor, that the
9 statute has run on Mr. Jacobs in this case. Thank you.

10 THE COURT: Thank you.

11 Mr. Bice.

12 MR. BICE: Yes, Your Honor.

13 Your Honor, the law in Nevada, as is elsewhere, is
14 hardly unique in providing that corporate officers who commit
15 torts in their capacity as corporate officers are nonetheless
16 liable for the torts that they commit. The corporate officer
17 commits a fraud against someone, whether it's an employee,
18 whether it's a non employee, et cetera, a corporate officer is
19 individually liable for that, as is the corporation.

20 THE COURT: Can be.

21 MR. BICE: Can be. Can be, yes. My assumption was
22 that they had committed the offense, Your Honor. Same is true
23 for battery, same is true for a whole host of other torts that
24 officers commit.

25 Now, Mr. Morris is right about one thing. I would

1 agree with him on the proposition that as a general rule
2 corporate officers, especially corporate board members, aren't
3 liable for tortious terminations of employees if they didn't
4 have some direct involvement in it, in other words, if they
5 weren't orchestrating it, they weren't the ones directing it
6 to be done because they were trying to cover up or they were
7 doing it for their own interests because they needed to shield
8 something else that was going to come to light from this.

9 Now, we know that Mr. Adelson has admitted in his
10 deposition he's the one who demanded that Jacobs be fired.
11 There's no dispute about that now, because he's now admitted
12 it in his deposition. So our point here, Your Honor, is very
13 simple. And this is why we cite caselaw to you and cases that
14 say that the modern approach to this now is that corporate
15 officers who orchestrate, who are the active participants or
16 the arrangers of the tortious termination are individually
17 liable because they've committed a tort; just like if it was a
18 fraud that they had committed against an employee or a third
19 party, just like if it was a battery that they had committed
20 against an employee or a third party. They are individually
21 liable for having undertaken that type of tortious activity.
22 And that's what we are saying with respect to Mr. Adelson, and
23 that's why the cases, especially as we cite to you -- I can't
24 remember the name of it, it's one of the -- it's the Southern
25 District of Ohio catalogs all of the courts that are now

1 recognizing that corporate officers, if they are directly
2 involved in orchestrating, executing, and carrying out a
3 tortious termination to get rid of an employee for an improper
4 purpose or in this particular case, as we have alleged, to get
5 rid of this employee, and it's not a coincidence that it was
6 right before a board meeting was going to be -- or had been
7 scheduled to discuss many of these improprieties that he was
8 -- his termination was arranged by Mr. Adelson and
9 orchestrated by Mr. Adelson to keep him quiet. And that is
10 exactly a violation of public policy and gives rise to tort
11 liability for the company, as well as the individual who
12 carried it out and who orchestrated it. And that is Mr.
13 Adelson.

14 So let me deal, then, Your Honor, if I might, with
15 the statute of limitations argument. Again we've got this
16 sort of contradiction. We can't amend because of the stay,
17 but if you amend, it's too late. Again we're back to the --
18 you're too -- you're too soon and you're too late at the same
19 time so you can never have additional causes of action.

20 As Her Honor knows from the rule, Rule 15 provides
21 that an amendment relates back if it arises out of the
22 conduct, transaction, or occurrence set forth in the original
23 pleading, all right. And this rule is liberally construed,
24 et cetera. Our point, Your Honor, is very simple. They've
25 conceded the relation back doctrine in their briefs, and Mr.

1 Adelson's arguments to you in open court this morning de facto
2 concede it; because they say that Jacobs asserted these claims
3 already, but he just asserted them against other defendants in
4 the action and so therefore they're already -- the facts of
5 those claims are already part of this case and have been long
6 within the statute of limitations. So what they're trying to
7 claim to you -- and, again, they're trying to suggest that,
8 well, you didn't name Mr. Adelson as a party to that, he was a
9 party to the case, but you didn't name him in that particular
10 count of the complaint and so therefore he somehow isn't a
11 party subject to notice under Rule 15 under the relation back
12 doctrine. And, Your Honor, that's when we point out -- and
13 you'll notice there's no response to it in the reply, they
14 just -- their only response is to act like the case doesn't
15 exist because they know it's on all fours, and that's the
16 Ninth Circuit's decision in Martell. Exact same arguments
17 were made by the litigant in that case, saying, well, you sued
18 Merrill-Lynch for all these counts and you sued Trilogy for
19 different. And, as the Ninth Circuit said, but it relates
20 back because those original counts were in the original
21 complaint and, by the way, all those allegations were
22 incorporated into all of the counts in the complaint, just
23 like we did here. If you look at our first amended complaint,
24 Your Honor, the paragraphs all are incorporated into each of
25 the counts of the complaint. And so under the law, as the

1 Ninth Circuit said, you're under notice, it relates back, this
2 is a classic application of Rule 15 to the relation back
3 doctrine.

4 Here you cannot claim that you somehow did not know
5 about the facts and circumstances giving rise to the
6 liability, because it's specifically set out in the complaint.
7 Your only argument is, well, you're adding a defendant who's
8 already a party to this case, you're incorporating them into
9 this additional count that was already -- also already part of
10 the complaint, and as the Ninth Circuit says, that's right,
11 that's exactly what Rule 15 contemplates and exactly what it
12 allows to do.

13 This is not a case of someone here that there are
14 new claims based on new facts which give rise to a separate
15 and distinct liability. This is a claim that is, as Mr.
16 Morris correctly observes, well, could have been -- Mr.
17 Adelson could have been added to it the very day that the
18 complaint was filed. That's right. But that's a confession
19 to the relation back doctrine, because Mr. Adelson was already
20 a party within the statute of limitations and therefore he was
21 on notice, and if the allegations were all incorporated into
22 each of the counts, and thus it relates back.

23 And we make the additional point in our opposition,
24 Your Honor, which I won't belabor, is, again, the statute of
25 limitations -- even if we were to treat -- ignore Rule 15,

1 treat this as a stand-alone complaint where Rule 15 wasn't
2 even implicated, statute of limitations is an affirmative
3 defense which requires them to make a clear showing that we
4 knew all of Adelson's -- or we knew Adelson's direct
5 involvement and how he had personally orchestrated this at the
6 time. And, of course, as the Court knows, much of exactly how
7 Mr. Adelson participated in this what we call "the scheme" we
8 learned in the jurisdictional discovery. And with that,
9 unless the Court has questions for me --

10 THE COURT: I don't have any more.

11 MR. BICE: Thank you.

12 THE COURT: Mr. Morris, anything else?

13 MR. MORRIS: Just this one point. Personal
14 liability of an officer for an intentional tort that results
15 in an injury is something that can be asserted. But that
16 doesn't equate with wrongful discharge by a non employer
17 through an officer. Remember, corporations act only through
18 individuals.

19 THE COURT: I have a jury instruction I read to
20 jurors that says exactly that.

21 MR. MORRIS: That says that.

22 THE COURT: Yeah.

23 MR. MORRIS: So we all understand that.

24 I point out to you and that's why I said a little
25 earlier that I thought the Allum case was in point here, Allum

1 versus Valley Bank of Nevada. The court said in that case,
2 "Public policy tortious discharge actions are severely limited
3 to those rare and exceptional cases where the employer's
4 conduct violates strong and compelling public policy." The
5 strong and compelling public policy that would support this
6 very tenuous claim of tortious discharge against the non
7 employer is absent here. It hasn't been identified. It isn't
8 provided by saying he was discharged just ahead of a board of
9 directors meeting in which some issues that are of interest to
10 the plaintiff in this case were going to be discussed.

11 If you take a look at -- in our reply we cite -- and
12 I think this summarizes it about as concisely as any court has
13 done, including the California Supreme Court. That's Buckner
14 versus Atlantic Plant Maintenance. That happens to be a case
15 cited by Mr. Bice in his opposition. That case says and the
16 court -- and I'm quoting from the court, "The only proper
17 defendant in a retaliatory discharge action --" that's a
18 relatively current case, it's 1998, that's long after I
19 started practicing law and long before and in the context of
20 the Southern District of Ohio cases that Mr. Bice cataloged in
21 his reply. The court said, "The only proper defendant in a
22 retaliatory discharge action is the plaintiff's former
23 employer." And that is not Sheldon Adelson.

24 THE COURT: Thank you.

25 The motion is granted as to the tortious discharge

1 claim. While I understand that intentional torts may be
2 pursued against officers, directors, and employees of a
3 company, this type of claim is independent and must be brought
4 against the employer.

5 There are still remaining issues about punitive
6 damages pending in this motion. Does anybody want to say
7 anything more about punitive damages?

8 Mr. Morris, you've already briefly addressed it. Is
9 there anything else you want to add?

10 MR. MORRIS: I've said mine on that.

11 THE COURT: Okay.

12 MR. BICE: My only point, Your Honor, is Mr. Morris
13 had quoted some of the paragraphs dealing with just 79, but I
14 would submit the biggest omission there is if you look at
15 paragraph 77 it incorporates all of the other allegations,
16 which, of course, are what's set -- I believe it's 77,
17 paragraph 77 of the amended complaint, which sets forth all of
18 the other allegations, incorporates them so as to set forth
19 the basis for the malice that we have alleged both in the
20 defamation context as well as in the tortious discharge count.

21 THE COURT: Mr. Morris, anything else on punitive
22 damages issue?

23 MR. MORRIS: You don't plead punitive damages by a
24 shotgun complaint that incorporates prior allegations. That
25 doesn't meet the requirements of Rule 9(b).

1 MR. BICE: Oh. Then I want to respond to that,
2 because this isn't a Rule 9(b) motion. If you look at the
3 motion, it's a 12(b) motion. There is no Rule 9(b) motion
4 that has been brought.

5 THE COURT: Okay. The motion is denied as to the
6 punitive damages. Given the remaining claim related to the
7 defamation, punitive damages, if malice occurred, are an
8 appropriate remedy.

9 This is appropriate for you to bring with your
10 renewed issue, Mr. Morris.

11 So, Mr. Peek, Las Vegas Sands has a motion.

12 MR. PEEK: They do, Your Honor. I don't want to
13 speak for Randall, but I guess I can go ahead, because I'm --

14 THE COURT: You don't want to speak for Randall,
15 because he's different.

16 MR. PEEK: Yeah, he does have different --

17 THE COURT: He's got a jurisdictional issue --

18 MR. PEEK: He has a different argument.

19 THE COURT: -- and he and I are going to have a
20 discussion in a minute about jurisdiction.

21 MR. PEEK: But I do tag along at least on some of
22 the authority that he cites, as well.

23 THE COURT: Yeah. But I'm not going to deal -- he's
24 got jurisdictional issues, and I have an evidentiary hearing
25 on jurisdiction.

1 MR. PEEK: Yes, you do, Your Honor.

2 And, Your Honor, my motion addresses at least three
3 of the counts, three of the claims that relate to defamation,
4 the conspiracy, aiding and abetting, I can lump those two
5 together, as well as tortious discharge. I think you have
6 already dealt with defamation, so I'm not going to address
7 that.

8 We also have a motion to strike, Your Honor,
9 paragraphs 12 through 16 and paragraphs 33 and 34 as being
10 immaterial, impertinent, and scandalous.

11 THE COURT: You know, the only time I've ever
12 granted that was when Patty Glaser had me strike somebody's
13 divorce from a complaint because it had nothing to do with the
14 breach of contract claim.

15 MR. PEEK: And I think, Your Honor, much of what Mr.
16 Bice has cited in 12 through 16 and in 33 and 34 follows along
17 that same line that you just described.

18 THE COURT: It still relates to corporate governance
19 issues; right, Mr. Peek?

20 MR. PEEK: Your Honor, I didn't -- I don't see this
21 as a corporate governance issue. And maybe you do, but I
22 don't see this so-called -- whether you call it tortious
23 discharge, whether you call it breach of contract, whether you
24 call it breach of the covenant of implied -- breach of the
25 covenant of good faith and fair dealing, whatever you call it,

1 I don't see this as corporate governance. Perhaps the Court
2 sees it differently than I do. Perhaps the Court sees it
3 broader than I do. But to add allegations here that we see in
4 12 through 16 -- for example, and we've cataloged in our --

5 THE COURT: I thought I was reading a shareholder
6 derivative complaint.

7 MR. PEEK: Pardon?

8 THE COURT: Thought I was reading a derivative
9 action complaint.

10 MR. PEEK: I kind of thought that, as well, Your
11 Honor. And I don't see this as a shareholder derivative case
12 brought under Chapter 41, I believe it is, or Rule 23.1,
13 whichever one you bring it under. You know, it's one of those
14 two. And this is certainly not one of those. But --

15 THE COURT: I understand.

16 MR. PEEK: -- here's what we see, is we talk about
17 Mr. Adelson's failure to fund the company or Mr. Adelson's,
18 you know, problems with erratic behavior, failure to inform
19 the shareholders of actions that he's taking, failure to -- or
20 the way he has acted toward Edmund Ho in Macau and that it
21 alienated outsiders, all this in 2008 and 2009, and then he
22 forced Wagner's removal from the company so as to preserve his
23 control, and then he therefore came in and later on as a
24 result of this dysfunctional behavior and paralysis of the
25 company he offered to provide additional capital, and for that

1 he received certain stock grants, none of which goes to
2 whether or not Mr. Jacobs was or was not discharged in breach
3 of a contract or whether he was tortiously discharged because
4 of allegations of whistleblower, which do not go to this so-
5 called erratic behavior in '08 and '09.

6 And I'm reminded a little bit of the argument that
7 Mr. Morris made about having to respond -- Mr. Adelson having
8 to respond to these lies and this delusion of Mr. Jacobs, and
9 we see more of these lies and delusions of Jacobs of trying to
10 tie this action of 2008 and 2009 and the accusations made
11 against Mr. Adelson. This becomes personal. And we see more
12 of it in his complaint, and then this Court says, well, you
13 know, because of, you know, the conditional privilege and the
14 pleading of malice, that those statements of Mr. Adelson that
15 he made in 2011 after the motion to dismiss are not protected
16 or at least could be the subject of fact -- mixed fact and
17 opinion.

18 But we see this action on the part of Jacobs to
19 continuously make these allegations that are unnecessary to
20 the complaint, unnecessary to his claims for relief,
21 unnecessary to plead in a short and concise statement under,
22 what, Rule 1 and then Rule 8 of the Nevada Rules of Civil
23 Procedure. This is much broader. And so I think that those
24 immaterial, impertinent, and scandalous allegations of at
25 least 12 through 16 should be dismissed for that reason.

1 And then we turn to paragraphs 33 and 34, where
2 there's talk about he brought to the attention of suspicious
3 practices. And I looked at these so-call suspicious practices
4 in 34 and 35 -- excuse me, 33 and 34. He began developing
5 suspicions concerning the propriety of financial practices and
6 transactions. So he became suspicious about them. And I'm
7 trying to see, okay, so what did he do about that, hmm, he
8 became suspicious about it. And then he says he -- one
9 suspicious entity was WDR LLC. And then he said he raised
10 that -- when Jacobs raised that entity -- I don't know what
11 that means, "raise that entity," and certain transactions with
12 Sands China's then existing CFO, whom he does not identify,
13 does not tell us when he did that, and then he says, he
14 similarly considered the transaction -- I don't know who that
15 means, I don't know if he means that the CFO considered that
16 or Jacobs did -- and expressed concerns over potential money
17 laundering. And then he goes on and talks about LVSC CFO,
18 when asked about that in a deposition for jurisdictional
19 discovery, did not have any knowledge of WDR or what purpose
20 it would serve. And then he goes and says, well, a few months
21 later Kay was questioned -- after Kay was questioned Leven
22 quietly had the entity dissolved, somehow trying to link those
23 two together. Those again are just impertinent, no question
24 scandalous, and certainly immaterial to the discharge here,
25 because he doesn't say to whom he raised this so-called

1 suspicious activity and how that so-called suspicious activity
2 related to his -- his claim for tortious discharge or the
3 claim for breach of contract or the claim for conspiracy or
4 the claim for aiding and abetting.

5 So for that reason, Your Honor, 12 through 16 and 33
6 and 34 should be stricken.

7 I don't know if you want me to go now to each of the
8 claims. I'm happy to do that, or if you want to just --

9 THE COURT: Yes, please.

10 MR. PEEK: Okay.

11 THE COURT: Because I know your argument won't be as
12 thorough and lengthy as Mr. Morris's.

13 MR. PEEK: You are correct, Your Honor. I don't
14 need to -- I don't think -- I think Mr. Morris has addressed
15 the tortious discharge claim already, and I know you only
16 address the grant of the motion to dismiss as it related just
17 to Mr. Adelson. However, many of the very same arguments that
18 he made about whether or not this fits within Allum versus
19 Valley Bank as to rise to that level of public policy and
20 that, you know, there is at least some public policy when you
21 make internal reports, as opposed to external reports, and we
22 all know the cases in Nevada that talk about employees who are
23 fired for Workmans Comp claims or for reporting things to the
24 government, as opposed to internally. So I don't think that
25 this rises to that level and would create the tortious

1 discharge claim for relief that they have.

2 I can address with respect to at least the malice
3 that there are not claims that support the malice in the claim
4 for punitive damages and the tortious discharge. Mr. Morris
5 has already addressed that. The Court has at least addressed
6 it, as well. But I think with respect to the tortious
7 discharge that this does not rise to the level of tortious
8 discharge.

9 When we get to the conspiracy and the aiding and
10 abetting, I think you've seen that within the body of both
11 Sands China Limited's brief, as well as our brief, Your Honor,
12 that that goes to whether or not those Las Vegas Sands
13 employees who were pled to have been the ones involved in the
14 discharge, they are all Las Vegas Sands employees, with the
15 exception of Mr. Adelson, who had a role -- officers
16 directors, Mr. Adelson had a role as both chairman of SCL, as
17 well as chairman of Las Vegas Sands so he's conspiring with
18 himself or he's aiding and abetting with himself, because it
19 doesn't say that there were certainly individuals within Sands
20 China Limited who were specifically identified with whom there
21 could have been this conspiracy.

22 We also deal with the issue of conspiring with an
23 affiliate. There's the distinction between a wholly owned
24 versus an affiliate in this case, as well, but there certainly
25 -- the claims for conspiracy and the claims for aiding and

1 abetting have to at least come from a pleading that says there
2 was a conspiracy between this individual at Sands China
3 Limited and this individual at Las Vegas Sands, not being the
4 same person, in this case Mr. Adelson or Mr. Leven, or there
5 has to be some aiding and abetting claim, as well, Your Honor,
6 where there was at least this activity where, you know, a
7 separate individual from Mr. Adelson or separate individual
8 from Mr. Goldstein or any of those who went over to Macau in
9 that July 2010 period of time, that being Ms. Hyman, Mr.
10 Nagle --

11 THE COURT: Mr. Kostrinsky.

12 MR. PEEK: -- Mr. Kostrinsky. The host of people
13 who went over there, Your Honor, they were all Las Vegas Sands
14 employees. The only one who had crossed over at that time was
15 Mr. Adelson, who was the chairman of Sands China Limited, as
16 well as the chairman of Las Vegas Sands. That doesn't give
17 rise to a conspiracy of Mr. Adelson with himself or an aiding
18 and abetting of Mr. Adelson with himself acting in that
19 capacity as Las Vegas Sands chairman and/or Sands China
20 Limited chairman to the extent that we're just dealing with
21 allegations in the complaint, because that's all that we have
22 in the allegations of the complaint, is who those individuals
23 were and not giving separate identification of employees,
24 officers, directors, board members of Sands China Limited.

25 So I think, Your Honor, for that reason that both

1 the conspiracy and the aiding and abetting should also be
2 dismissed, along with the tortious discharge.

3 THE COURT: Thank you.

4 Mr. Bice.

5 MR. BICE: Let me deal, Your Honor, first with the
6 tortious discharge in general. I would note this was in the
7 original complaint, and I don't believe any such motion to
8 dismiss was made about it. In fact, LVSC has already filed an
9 answer to this particular claim. But I guess we're going to
10 rehash it in a new motion to dismiss now on the third amended
11 complaint.

12 Nonetheless, Your Honor, LVSC argues that there
13 aren't any facts alleged giving rise to a violation of public
14 policy. Your Honor, if you go -- again, this seems to be a
15 contradiction by the defendants, the complaint is both --
16 contains too much detail while it simultaneously contains not
17 enough detail. If Your Honor looks at the complaint, it
18 details specifically this whole history of -- again, the
19 paragraphs even 12 through 16 that they're asking you to
20 strike out, details the whole history of where does
21 dysfunction inside this organization stem from, how it arose,
22 the financial calamity that it caused, and then Jacobs's
23 involvement in trying to undo it along with Mr. Leven. Which,
24 of course, is why Mr. Jacobs got great praise from Mr. Leven
25 at the time, until, of course, Mr. Jacobs started in the eyes

1 of the public and in the eyes of other board members -- excuse
2 me, Your Honor -- getting too much credit for it from them.
3 And, of course, that raises Mr. Adelson's ire, which, of
4 course, becomes the motive for Mr. Adelson to make sure that
5 Mr. Jacobs is undone. Which is precisely what happens.

6 So all of these allegations relate directly to what
7 is the impetus of Mr. Adelson's animus towards Mr. Jacobs.
8 Which Mr. Adelson, by the way, has admitted to in his
9 deposition. He wanted him fired a long time ago. And we
10 submit that the reason that he wanted him fired a long time
11 ago is because of all this dysfunction that Mr. Adelson's
12 behavior, which we believe in discovery is going to be
13 confirmed by many of his former executives, probably not those
14 that are still there out of fear for their employment, but
15 there are several former executives that were witness to and
16 some of them had testified in other proceedings as to this
17 dysfunction and what it created and that the company -- again,
18 Your Honor, that's why we point out the auditors of the
19 company issued a going concern warning that the entity was on
20 the verge of collapse and on the verge of failure. And then
21 Mr. Jacobs joins up with Mr. Leven at Mr. Leven's request to
22 try and help turn this thing around. Which he does, and which
23 Mr. Leven, you know, as I believe the Court knows and as I
24 recall we put into the complaint, there's even an email where
25 Mr. Leven concedes that Mr. Jacobs had saved the Titanic from

1 sinking and all aboard. And, of course, who's all aboard?
2 Well, the principal all aboard of that ship is Mr. Adelson,
3 because he is the majority owner of the LVS shares and was
4 financially saved as a result of all of the efforts. That
5 then, of course, transitions into why it is that Mr. Adelson
6 then tries to undermine Mr. Jacobs after the fact, which again
7 is set forth in the complaint.

8 So the legal standard, Your Honor, is an allegation
9 -- a claim that an allegation should be stricken from the
10 complaint requires a showing, an extraordinary showing that it
11 could have no plausible basis, no plausible connection to the
12 complaint. And the allegations in 12 through 16 set forth
13 exactly where Mr. Jacobs's role comes in at the company and
14 why this dysfunction existed and why he had this ongoing
15 battle with Mr. Adelson. It's -- by the way, it's not a
16 coincidence that it was much of the ongoing battle that
17 ultimately was Bill Weidner's very undoing. And we believe
18 that the discovery's going to demonstrate that. Mr. Adelson
19 has tried to characterize what Mr. Weidner did as an attempted
20 coup to remove Mr. Adelson from the company. And, again,
21 that's this very same impetus that Mr. Adelson gets. When
22 executives don't do what he wants, again, he undertakes a
23 campaign to undermine them and fire them and then, as we have
24 alleged in the complaint, manufacture grounds after the fact
25 to try and make it look like it was for cause, as opposed to

1 him trying to cover up for himself.

2 Then we go to paragraphs 33 through 34. Again, Your
3 Honor, these relate directly -- we hear this assertion that,
4 well, this, you know, sounds like some sort of a shareholders
5 action. This is in no small part a corporate governance
6 dispute. As we have pointed out before, the reason that Mr.
7 Jacobs was being terminated in no small part was because he
8 had insisted that the board be informed about certain things,
9 which is why we cite the specific email from Mr. Leven right
10 at the end, where he in a candid confession to other board
11 members is, this is the problem with Jacobs, he thinks he
12 reports to the board, as opposed to Adelson. And that right
13 there tells you what was really going on inside this company
14 and why this guy was being fired at the very moment he was
15 being fired because a board meeting had been scheduled where
16 he had insisted that the board be informed about a host of
17 activities that Adelson had been involved in. And, as the
18 Court knows from the some of the hearings we've already held,
19 including on the sanctions hearing, one of those matters
20 involved Mr. Alves, which, as I recall, the testimony played
21 by Mr. Leven even in the sanctions hearing was Mr. Leven
22 acknowledging that Mr. Alves's email about this hundred
23 million dollars was -- it stunk, it smelled of illegality.
24 That, of course, is one of the things Jacobs had complained
25 about, but Adelson insisted that this guy be used and that he

1 in fact be hired to replace the company's then-existing
2 general counsel.

3 And again we maintain the discovery -- well, we know
4 it will, because Adelson's already admitted it in the
5 jurisdictional depositions, he is the one who insisted on
6 Alves being retained notwithstanding that email which his own
7 COO acknowledges smelled of illegality. That is why these
8 allegations relate to the complaint or the causes of action
9 don't remotely come close to the rule satisfying the 12(f)
10 standard, Your Honor.

11 Let me then -- and I apologize. I think I jumped
12 around a little bit. Turning specifically to the tortious
13 discharge, it's suggested that somehow alerting the board of
14 directors to improper conduct of the chairman or alerting a
15 board of directors to cost overruns or alerting the board of
16 directors to involvement and financial dealings with nefarious
17 people somehow does not give rise -- and then terminating them
18 so that those reports are not made to the board of directors
19 is -- somehow does not serve an important public interest. I
20 think the Court would be hard pressed to find a public
21 interest that is more implicated here than that. And that's
22 why this gives rise -- and the cases we cite point out that
23 gives rise to a claim for tortious discharge, because you're
24 violating them for reporting matters to both the board and
25 others. This is, again, a highly regulated industry. That's

1 why, Your Honor, we have stated this claim and why there was
2 no motion to dismiss on it in the first basis.

3 Let me turn next, Your Honor, then to the conspiracy
4 count, as well as the aiding and abetting, because I do
5 acknowledge that they are sort of related to each other.

6 THE COURT: Interrelated.

7 MR. BICE: Interrelated to each other. Your Honor,
8 the conspiracy count -- there seems to be now -- again we've
9 got the contradiction, well, the complaint's not detailed
10 enough, well, it's too detailed. Because now, you know, we're
11 not alleging exactly --

12 THE COURT: So assume for a minute I'm going to
13 order you to amend the seventh and eighth causes of action.
14 How long do you need to amend those?

15 MR. BICE: Well, it's going to depend on -- I can
16 amend them whenever the Court would like me to amend them. It
17 would probably take me just a few days, depending on what's
18 the amendment that the Court thinks I need to make. Because,
19 Your Honor, a conspiracy, you do not have to identify all of
20 the participants in it. We cite caselaw for that point.

21 THE COURT: You're absolutely. right.

22 MR. BICE: And Mr. Adelson has --

23 THE COURT: But I need to have -- I need to have
24 more definition than you currently have.

25 MR. BICE: Mr. Adelson swore under oath that he was

1 wearing exclusively -- this is his testimony -- his Sands
2 China hat when he was undertaking these activities relative to
3 Mr. Jacobs. That's his testimony. He's wearing his Sands
4 China hat, he's acting for Sands China in Nevada, giving
5 direction to LVSC representatives as part of this scheme to
6 get Jacobs out. That is a conspiracy. If Mr. Adelson wants
7 to testify, I'm acting for Sands China, I'm not acting for
8 LVSC --

9 THE COURT: He can't have a conspiracy with
10 himself --

11 MR. BICE: He's not.

12 THE COURT: -- even though he has six or seven hats
13 on.

14 MR. BICE: He's not. According to him, he was not
15 wearing his LVSC hat. He's wearing his Sands China hat, and
16 he insisted upon that. That states a claim. If they want to
17 argue in discovery or on summary judgment that, no, at the end
18 of the day these are really all -- these are really the same
19 entity even though we want to insist that for purposes of
20 jurisdiction it's not and we have Mr. Leven, of course, also
21 claiming he's wearing his Sands China hat, Your Honor, not
22 LVSC, they then -- and, again, they claim that all this was
23 done pursuant to the shared services arrangement when they
24 were giving direction to these LVSC employees here in Nevada
25 to execute this little scheme to terminate Mr. Jacobs. We're

1 not claiming -- Mr. Adelson's not conspiring with himself,
2 because, according to Mr. Adelson, Mr. Adelson's acting for
3 Sands China only, not LVSC. This is his hat that he is
4 wearing.

5 And, again, we've then got -- back in Macau we've
6 got -- or overseas we've got other board members at Sands
7 China who aren't even on the Sands China -- or on the LVSC
8 board, Your Honor. And, again, they're all participating in
9 this, as well. So they can't plausibly be claiming that those
10 individuals are somehow wearing two hats at once, because they
11 insist that those individuals don't even have any involvement
12 with Las Vegas Sands Corporation.

13 Again, the -- what they're really arguing is the
14 intercorporate --

15 THE COURT: Okay. So let me ask the question a
16 different way, because apparently I didn't communicate well.

17 MR. BICE: Okay.

18 THE COURT: We haven't done anything except
19 jurisdictional discovery yet. Before you amend on the
20 conspiracy and aiding and abetting claims or the seventh and
21 eighth claims do you need to do discovery, or based on the
22 information you've gleaned from the jurisdictional discovery
23 do you believe you have enough information to give me more
24 specific allegations related to the entities or persons, not
25 necessarily their names, but their positions, that were

1 involved in the aiding and abetting and conspiracy.

2 MR. BICE: Well, I know one. I can give you more
3 specificity. I don't believe the law requires it, but if the
4 Court is saying that it does, then I'm going to give the Court
5 more specificity. I will also -- there's no question that we
6 have been hampered, to say the least, in terms of discovery
7 even though this case is four years old or more --

8 THE COURT: I know, Mr. Bice. And that's why I
9 asked the question the way I did.

10 MR. BICE: Yeah. So there's no question -- do I
11 believe that discovery -- more discovery would flesh those out
12 in even greater detail? Well, of course they would. But this
13 is a 12(b) standard. This is on the face of the complaint are
14 there facts and reasonable inferences that can be drawn from
15 the facts that would give rise to the claim. And we maintain
16 we've met that standard. If the Court says, well, I want you
17 to give more specificity, we will do that. But there's no
18 question when discovery happens we're going to have even more
19 specificity, because that happens in every case.

20 THE COURT: Okay. So the short answer was, yes,
21 Judge, I would like to wait to amend those claims until I have
22 the opportunity to do something other than jurisdictional
23 discovery.

24 MR. BICE: Do I want to -- I will probably amend
25 them. But if the Court is telling me that you're going to

1 dismiss them right now --

2 THE COURT: That's not what I said, Mr. Bice.

3 MR. BICE: Okay. Then I -- I'm the one who's doing
4 the misunderstanding here, Your Honor.

5 THE COURT: What I said is I'm going to require you
6 to amend. That is not the same as dismissing them.

7 MR. BICE: Understood. Then, yes, if you're going
8 to require me to amend, I would obviously like to do some
9 discovery, which I think will aid me in fleshing that out.

10 THE COURT: Okay. How much of the beyond
11 jurisdictional discovery do you believe you need to do? How
12 long, given our history of problems in this case? Because I'm
13 trying to get an idea of the timing, because I'm trying to do
14 a trial in the fall before my five year rule runs.

15 MR. BICE: Yes. I would think, Your Honor, we could
16 take some depositions in 30 days. And do that and then amend.

17 THE COURT: And so --

18 MR. BICE: And then it would take us a couple of
19 weeks after those depositions are done.

20 THE COURT: So if I say 45 days after the conclusion
21 of the jurisdictional evidentiary hearing and entry of my
22 order, that would give you enough time?

23 MR. BICE: Yes.

24 THE COURT: Okay.

25 MR. BICE: Now, remember, just so that we're clear

1 on this, part of our additional -- we believe that these
2 additional claims also give rise to jurisdiction, as well.

3 THE COURT: I understand that. Believe me, I
4 understand that. But my concern is there -- in every case I
5 have where aiding and abetting and civil conspiracy are
6 alleged I try to have a little more beefiness --

7 MR. BICE: Understood.

8 THE COURT: -- in the complaint. But I always give
9 you plenty of time to do it, because I'm concerned.

10 MR. BICE: I appreciate that, Your Honor.

11 THE COURT: Mr. Peek.

12 MR. PEEK: If I understand where the Court is going,
13 is the Court is inclined I guess to impose a Rocker standard
14 on this pleading.

15 THE COURT: I didn't use the word Rocker.

16 MR. PEEK: I know you did not use the word Rocker.
17 However, that is the only place where I think the Court can
18 find comfort in allowing an amendment without just dismissing
19 and then saying, you have leave to amend.

20 THE COURT: Then I can deny your motion to dismiss
21 if --

22 MR. PEEK: Yes, you can -- I agree you can deny my
23 motion to dismiss, Your Honor. And certainly the Court is
24 well within its discretion to do that if it believes that
25 based on the facts pled that there's something more than

1 Adelson conspiring with himself. Because we actually heard
2 that from Mr. Bice, saying, well, Mr. Adelson said in his
3 deposition that he was acting on behalf of Sands China Limited
4 when he did what he did and that he therefore had to have been
5 talking to himself over here on behalf of the Las Vegas Sands
6 to conspire to terminate him. So -- that's what I heard, so I
7 think that there is a further standard the Court can impose,
8 which is there's no set of facts -- if we listen to what Mr.
9 Bice said -- that he could plead that would allow him to amend
10 and survive a motion to dismiss. So I get where the Court is
11 going, is that she wants -- the Court wants more facts pled
12 within the conspiracy and the aiding and abetting so that at
13 least I would know and the Court would know, as well, whether
14 there are facts that do survive a motion to dismiss. And
15 that's why I used Rocker. I'm not saying that Rocker applies
16 here, but that's the only place kind of go to is without a
17 dismissal. And, yes, the Court can deny my motion, and, you
18 know, we can deal with that. I would like to see more facts,
19 Your Honor, certainly.

20 THE COURT: I would, too. But that's a different
21 issue.

22 MR. PEEK: That seems to be a different issue. And
23 what I'm also troubled by, Your Honor, just in terms of that
24 is the timing Mr. Bice said, well, I think I can do a
25 deposition in 30 days. Well, given the fact that we now have

1 a third amended complaint that we've only had a Business Court
2 conference that addressed the complaint --

3 THE COURT: I don't usually hold another conference
4 after there's an amended complaint.

5 MR. PEEK: I understand. Whether or not there is
6 or --

7 THE COURT: Sometimes I do.

8 MR. PEEK: But I think, Your Honor, in this case
9 that there probably should be something. More so when he
10 says, I can do a deposition in 30 days after the Court rules
11 on the jurisdictional issues related to Sands China Limited, I
12 think that's putting it too fast, Your Honor. Because we
13 haven't done the discovery necessary to prepare our folks for
14 depositions. I don't want them to be deposed twice. We don't
15 have merits discovery from Mr. Jacobs, we don't know what all
16 his -- what the bases are and the documents are to support his
17 claims, and I think I should be entitled to at least know that
18 from the standpoint of preparing my witnesses for what would
19 now be merits discovery, as opposed to jurisdictional
20 discovery. So if the Court is going to allow him to amend, I
21 think that the time frame that Mr. Bice is setting forth is
22 too short if he's going to do it based on what he thinks his
23 merits discovery -- although I heard Mr. Bice say that he has
24 sufficient facts today to be able to make that pleading. And
25 we certainly would know that from the fact that there are over

1 two hundred, 300,000 -- I don't know what the -- I don't know
2 what the final count is, Your Honor, of documents that we have
3 produced to Mr. Bice and as well as the documents that his
4 client took with him when he left Macau in July of 2010, so
5 that universe of documents certainly is sufficient for him to
6 know what to plead or not to plead. He has all of the records
7 relating to the board meetings, he has the -- you know, the
8 correspondence, he has the discharge papers, so he has all of
9 that already, so he doesn't need that much time within which
10 to plead.

11 So that addresses at least the claims of conspiracy
12 and aiding and abetting, because I still maintain, Your Honor,
13 and based upon what Mr. Bice said I think it actually can be
14 shown that this conspiracy and this aiding and abetting was
15 Mr. Adelson with himself, acting as chairman of SCL and acting
16 as chairman of LVSC and similarly with Mr. Leven or any
17 others. There's no allegation here that there was a
18 conspiracy with a member of or with the board of directors of
19 Sands China Limited by Mr. Adelson acting in his capacity as
20 Las Vegas Sands chairman, as opposed to acting in his
21 capacity, as he said in his deposition, Sands China Limited.
22 chairman. So we don't have facts to support a conspiracy or
23 aiding and abetting.

24 I go back, Your Honor, to at least the -- what
25 appears to me, whether it be in the tortious discharge or in

1 the aiding and abetting and conspiracy, is that he's making a
2 governance argument, not a public policy argument, that there
3 is somehow some public policy regarding corporate governance
4 that is imported into all corporate governance, everything
5 under Chapter 78. Now, we can import some kind of public
6 policy into that when you have whistleblowers or when you have
7 individuals reporting conduct that he or she believes to be in
8 violation of some public policy. And I see that corporate
9 governance argument here, not a public policy argument. So I
10 don't think it meets the test of Allum versus Valley Bank that
11 Mr. Morris was so kind to provide us.

12 Getting back to the scurrilous or I guess
13 scandalous, impertinent, and immaterial allegations in 12
14 through 16 and 33 through 34, I did finally get exactly what
15 we said this was, which is an effort on the part of the
16 plaintiff to expand the scope of discovery. When we started
17 this case back in 2010 and when we met with this Court in 2011
18 for the Business Court conference we at that time agreed on
19 the temporal scope of discovery of this case. Now what Mr. --

20 THE COURT: That was disrupted, by the way, by the
21 stay order.

22 MR. PEEK: I agree it was disrupted by the stay
23 order. But it doesn't change the temporal nature that -- on
24 which we agreed, Your Honor, at that time. And so now what
25 the plaintiff is attempting to do is to create a new set of

1 facts, it believes, by making -- by importing into this case
2 what happened in 2008 with Mr. Weidner. Mr. Weidner, we all
3 know, although it's not pled, had been with Mr. Adelson from
4 1995 all the way up through 2008, versus Jacobs, who came on
5 board sometime in 2009 and was terminated for cause in 2010.
6 It's not the same relationship. It's not the same
7 relationship that Weidner had that now you can sort of import
8 what happened with Weidner into this case and use what
9 happened with Weidner as some basis to say, oh, look, this is
10 Mr. Adelson -- this is his behavior, this is his erratic
11 behavior, this is his dysfunctional behavior and that's what
12 he does, he rids himself of these employees and see what he
13 did with Mr. Weidner, he did the same thing with Mr. Jacobs.
14 So you're taking a 13-year -- 1995 to 2008 executive, Mr.
15 Weidner and what Mr. Weidner did in 2008-2009 and sort of
16 importing it into, oh, here's Mr. Jacobs, who comes on board
17 when Sands China Limited -- well, VML, actually, as its
18 executive and then later as Sands China executive in November-
19 December 2009, and then eight months later is terminated, in
20 July 2010 and saying, oh, well, that's Weidner all over again.
21 That's what they're trying to do. And it's impertinent and
22 it's immaterial, Your Honor, to this case, as are the so-
23 called suspicious activities of ATAs and transfers of money
24 that he says he had in paragraphs 33 and 34 that he didn't
25 report to anybody and says, oh, but my one example is this

1 entity include WDR and I think I talked to the CFO of Sands
2 China at the time and reported it. And that, again, more of
3 the delusions and lies of Mr. Jacobs.

4 THE COURT: Thank you, Mr. Peek.

5 The motion is denied with respect to the fourth,
6 fifth, and eighth causes of action.

7 However, I am directing the plaintiff after 45 days
8 from the entry of my order following the jurisdictional
9 hearing to file a amendment to the seventh and eighth claims
10 to provide more facts so when I am faced with the summary
11 judgment motions I will have a better framework to deal with
12 the issues.

13 MR. BICE: Understood, Your Honor.

14 THE COURT: All right. Mr. Jones, you've raised a
15 jurisdictional issue. Imagine that.

16 MR. RANDALL JONES: I'm sorry. Say that again?

17 THE COURT: Imagine, a jurisdictional issue in Sands
18 China.

19 MR. RANDALL JONES: Your Honor, just to clarify with
20 respect to your last order, you gave Mr. Bice 45 days to amend
21 his complaint. You'd also made some comment about discovery.
22 And -- but you did not -- you earlier made a comment about
23 discovery. I don't know -- are you allowing discovery or not?
24 Because it would seem to me that that would have to go to
25 merits or certainly would implicate merits.

1 THE COURT: Well, I'm going to allow merits
2 discovery the minute I finish the evidentiary hearing whether
3 there's jurisdiction or there's not jurisdiction.

4 MR. RANDALL JONES: No, I understand.

5 THE COURT: Then we're going to start merits
6 discovery.

7 MR. RANDALL JONES: Of course.

8 THE COURT: So that's what I'm saying.

9 MR. RANDALL JONES: I was talking about prior to.

10 THE COURT: No.

11 MR. RANDALL JONES: Okay. Thank you.

12 THE COURT: That's why I set it 45 days after the
13 entry of my decision on the jurisdictional issue, because then
14 I will be past the stay that the Nevada Supreme Court has
15 ordered me to try and respect --

16 MR. RANDALL JONES: Understood.

17 THE COURT: And we've all been battling given the
18 crossover.

19 MR. RANDALL JONES: Your Honor, I would submit to
20 the Court that -- and I know this -- there's been argument
21 that in some ways overlaps with my client, Sands China, by
22 both Mr. Morris and Mr. Peek --

23 THE COURT: Can I just ask you a question. Why do
24 you want me to hear this today when I'm going to do an
25 evidentiary hearing on jurisdiction and your whole issue is on

1 whether I have personal jurisdiction of your client?

2 MR. RANDALL JONES: Well, I'll tell you very
3 specifically I would -- I don't think it's appropriate to have
4 a claim -- or actually a couple of claims against my client
5 pending that don't -- aren't supported as a matter of law.
6 And so I would think that any good lawyer would say if there's
7 a claim that's not supportable, then I want to move to get rid
8 of it as quickly as possible. And I think I have an
9 obligation to my client to try to do that. So that's why,
10 Judge. And I understand, Your Honor.

11 THE COURT: And I appreciate that. And you filed
12 that motion. But I think the more critical issue is the
13 determination I'm going to make on a factual basis following
14 the evidentiary hearing on jurisdiction. And so if it's okay
15 with you, I'd like to continue argument on your motion on the
16 personal jurisdiction until that hearing. Because you've
17 raised the issue.

18 MR. RANDALL JONES: Well, Your Honor, if I'm
19 understanding you correctly, you're saying that you want to
20 basically just continue this particular motion --

21 THE COURT: On jurisdiction.

22 MR. RANDALL JONES: -- as it relates to
23 jurisdiction --

24 THE COURT: Correct.

25 MR. RANDALL JONES: -- until the -- and I just guess

1 as a matter of timing would that be argued before the hearing,
2 before the evidentiary hearing, or would it be argued --

3 THE COURT: No. It would be argued at the closing
4 of the evidentiary hearing as part of your closing argument
5 related to the jurisdictional issues.

6 MR. RANDALL JONES: And I understand your request,
7 Your Honor. I don't -- I guess I would put it this way. I
8 don't know that it is necessary to belabor the jurisdictional
9 argument --

10 THE COURT: Today.

11 MR. RANDALL JONES: -- at this point, with this
12 exception. There may be parts of my argument that may
13 implicate that that I think are relevant to today's
14 discussion. But I will -- hopefully won't be redundant about
15 something that would necessarily be covered later on or more
16 appropriately be covered later on. Does that make sense?

17 THE COURT: I do. But here's my concern. And my
18 concern is frankly paranoia related to the way that things
19 occur in Nevada and sometimes not knowing what the rules are
20 because they change in midstream. Some of the relief that you
21 are requesting in this motion seems to me to go beyond simply
22 the jurisdictional issue.

23 MR. RANDALL JONES: I -- when you say --

24 THE COURT: So I have a high level of paranoia.

25 MR. RANDALL JONES: And I guess the point of

1 clarification is I understand the reference to paranoia would
2 be more the Court's -- and I'll put it more gently -- concern
3 about violating the stay order from the court, Supreme Court,
4 if we get into something beyond jurisdictional arguments?

5 THE COURT: No, that's not my concern at all. I'm
6 going to take a quick break. I really think we should wait
7 and do this at the jurisdictional hearing, because then it's
8 all wrapped into the jurisdictional issue, and the relief you
9 are requesting is clearly related to jurisdiction at that
10 time.

11 MR. RANDALL JONES: Your Honor, I will say this. If
12 the Court will assure me that it will grant my motions, then I
13 would be happy to delay it.

14 THE COURT: I can't assure you that, Mr. Jones.

15 MR. RANDALL JONES: I pretty much figured you could
16 not. But I figure I would also ask the question just to see
17 if that was a possibility.

18 THE COURT: No.

19 MR. RANDALL JONES: You want to take a break?

20 THE COURT: I'm going to let you talk to the two
21 people sitting beside you to see whether anyone has understood
22 my cryptic comments, because I don't want to get involved in a
23 particular discussion today, because I have no idea what the
24 Nevada Supreme Court is going to decide the rules are
25 tomorrow. And given the number of times they change the rules

1 in midstream on cases while I'm in the middle of it, I have a
2 very high level of paranoia.

3 MR. RANDALL JONES: Your Honor, we'll be here when
4 you get back.

5 THE COURT: So I'm going to give you -- how long do
6 you need to consult with your friends at the table?

7 MR. RANDALL JONES: Five minutes.

8 THE COURT: Okay.

9 (Court recessed at 10:17 a.m., until 10:24 a.m.)

10 MR. RANDALL JONES: With that issue out of the way,
11 Your Honor, after discussing the issue with my colleagues
12 we've decided that your suggestion makes sense. And so we'll
13 defer these arguments until the jurisdictional hearing --
14 evidentiary hearing.

15 THE COURT: Okay. So that is scheduled to start on
16 April --

17 MR. RANDALL JONES: 20, I believe.

18 THE COURT: You think April 20th? Remember that
19 Monday is April 20th, and we're going three days that week.

20 MR. PEEK: Just three days?

21 THE COURT: Three days that week.

22 MR. PEEK: Okay.

23 THE COURT: Remember, I have to be in Reno for a
24 judges conference the Thursday and Friday.

25 MR. RANDALL JONES: You told us that before.

1 THE COURT: I did tell you that. And then Mr. Peek
2 said, so we'll go the next week; and I said, we will.

3 MR. PEEK: That was really -- I wanted to try to
4 make sure I blocked out the following week. Is it every
5 day --

6 THE COURT: I have blocked out the following week
7 for you.

8 MR. PEEK: Good.

9 THE COURT: In fact, my calendar says Sands China.

10 MR. RANDALL JONES: Very good, Your Honor.

11 MR. PEEK: Very good, Your Honor. Thank you.

12 MR. RANDALL JONES: We will see you next week.

13 THE COURT: Monday. Not all week. You only get
14 Monday. Mr. Ogilvie gets the rest of the week.

15 MR. RANDALL JONES: In that regard, Your Honor, Mr.
16 Bice and I are working towards trying to streamline some of
17 the witnesses, and we'll of course let the Court know as soon
18 as we can if we've been able to accomplish that goal.

19 MR. MORRIS: Your Honor, I'd like to make one
20 request before we go, and that is that a portion of this
21 record be certified so I can present it to the Supreme Court
22 at the appropriate time, and that is the remark that Mr. Bice
23 made that he found a point of agreement with me on one issue.

24 THE COURT: That sole part will be certified.

25 MR. BICE: I'd like a reconsideration on that,

1 because I'm quite sure that I misspoke.

2 THE COURT: No, no. No. Mr. Ogilvie is just
3 refreshed to know that there are other people who have cases
4 that cause me consternation.

5 Anything else, gentlemen? And I want to again
6 compliment you on the quality of the briefing and the
7 arguments. Good job, gentlemen. Have a nice day. See you
8 Monday.

9 MR. PEEK: Thank you, Your Honor.

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

11 THE PROCEEDINGS CONCLUDED AT 10:27 A.M.

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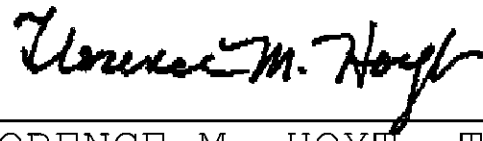
CERTIFICATION

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

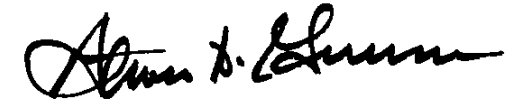
AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**EXPEDITED MOTION FOR
CLARIFICATION AND LIMITED
ADDED JURISDICTIONAL
DISCOVERY; ON ORDER
SHORTENING TIME**

Hearing Date:

Hearing Time:

Plaintiff Steven C. Jacobs ("Jacobs") moves this Court for clarification and a limited addition of the scope of permissible deposition topics at the renewed depositions that this Court has authorized. This Court recently allowed Jacobs to retake any previously-taken depositions so as to permit him to examine those witnesses based upon an additional search of documents this Court ordered. However, Jacobs seeks to clarify that should he retake depositions, he would also be permitted to examine the witnesses concerning any documents that were later produced in an unredacted form, not just those yet to be produced. Recall, Sands China acknowledged that it had produced nearly all of the so-called replacement images – the documents that had been redacted

1 in Macau but duplicates later located in the United States – at a time after they could be used in
2 the jurisdictional depositions. Jacobs asks this Court to explicitly allow the use of any
3 replacement images at the renewed depositions.¹ Similarly, Jacobs seeks this Court's
4 authorization to use any document over which Sands China had previously improperly withheld
5 as privileged. As the Court should vividly remember, Sands China previously claimed thousands
6 of documents were privileged and withheld them where they could not even be examined by
7 Jacobs' counsel. When this Court announced that it was going review each of these documents,
8 Sands China was forced to concede (begrudgingly) that some 70% of the documents for which it
9 claimed privilege had no legal support. Thus, Sands China released those document for the first
10 time to Jacobs' counsel in October of 2014, nearly two years after the depositions were taken.
11 Accordingly, Jacobs should also be permitted to use any documents of which his counsel was
12 deprived due to Sands China's improper – admittedly so – claims of privilege. This is particularly
13 so given that two of the deponents – Mike Levin and Ken Kay – are no longer residing in the
14 jurisdiction (according to Defendants) and they refuse to make them available to be examined at
15 the April 20, 2015 jurisdictional hearing.

16 Additionally, because these prior depositions were taken before reinstatement of the
17 defamation claim against Sands China, as well as the recent amendments adding claims for
18 conspiracy and aiding and abetting against Sands China, Jacobs should further be allowed to
19 conduct jurisdictional discovery relative to those claims at the renewed depositions. After all,
20 Sands China contends that it is not subject to personal jurisdiction in Nevada even for those
21 claims. Because those claims give rise to additional grounds for personal jurisdiction, and
22 Sands China contests personal jurisdiction for them, Jacobs should be permitted to develop the
23 evidentiary basis for personal jurisdiction relating to those claims as well.

24 Finally, because Sands China disputes personal jurisdiction even over the defamation
25 claim – false statements published in Nevada by Sands China's Nevada-based chairman – Jacobs
26 seeks to take the deposition of Ron Reese and obtain limited documentary evidence concerning

27
28 ¹ Of course, this does not eliminate the prejudice that this Court has already found relative to the
redactions because nearly 8,000 of the documents which Sands China flagged for jurisdictional
discovery remain redacted to this very day.

1 that claim. As this Court should recall, Reese serves as Adelson's spokesman and media handler.
2 Jacobs reasonably believes that Reese was intimately involved in the creation, dissemination and
3 publication of the defamatory statement. Because Reese would have undertaken those activities
4 on behalf of Sands China in Nevada, the evidence as to his involvement and those activities goes
5 directly to the question of personal jurisdiction.

6 Because the Court has scheduled the evidentiary hearing on jurisdiction for April 20,
7 2015, Jacobs requests that this Court consider this motion on an order shortening time.

8 DATED this 16th day of March, 2015.

9 PISANELLI BICE PLLC

10 By: 

11 James J. Pisanelli, Esq., #4027
12 Todd L. Bice, Esq., #4534
13 Debra L. Spinelli, Esq., #9695
14 Jordan T. Smith, Esq., #12097
15 400 South 7th Street, Suite 300
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17 *Attorneys for Plaintiff Steven C. Jacobs*
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PISANELLI BICE PLLC
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LAS VEGAS, NEVADA 89101

ORDER SHORTENING TIME

Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 19th day of March, 2015, at 8:30 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF STEVEN C. JACOBS' EXPEDITED MOTION FOR LIMITED EXPANSION OF JURISDICTIONAL DISCOVERY** on for hearing.

DATED: MARCH 17, 2015


DISTRICT COURT JUDGE

Respectfully submitted by:

PISANELLI BICE PLLC

By: 

James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
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Attorneys for Plaintiff Steven C. Jacobs

DECLARATION OF TODD L. BICE, ESQ

I, TODD L. BICE, Esq., being first duly sworn, hereby declare as follows:

1. I am one of the attorneys representing Plaintiff Steven C. Jacobs ("Jacobs") in the action styled *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A656710, pending before this Court. I make this Declaration in support of Plaintiff Steven C. Jacobs' Expedited Motion for Clarification and Limited Additional Jurisdiction Discovery on Order Shortening Time (the "Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. This Court recently authorized Jacobs to retake any previously-taken depositions so as to permit him to examine those witnesses based upon an additional search of documents this Court ordered from the data that Sands China had long ago brought to the United States.

3. Jacobs seeks to clarify that should he chose to retake depositions, he would also be permitted to examine the witnesses concerning any documents that were later produced in an unredacted form. Recall, Sands China acknowledged that it had produced substantially all of the so-called replacement images – the documents that had been redacted in Macau but later located in the United States – at a time that they could not be used at those depositions. The same is true with respect to the documents which Sands China deprived Jacobs' counsel of even reviewing with erroneous claims of privilege. As the Court knows, Sands China was recently forced to concede that it had withheld thousands of documents from Jacobs' counsel's review with claims of privilege that were not well founded. Jacobs' council could not even know the contents of these documents in preparation for the jurisdictional depositions until they were finally produced in October 2014, long after the depositions were taken.

4. Furthermore, because those depositions were taken before reinstatement of the defamation claim against Sands China, as well as the addition of Jacobs' claims for conspiracy and aiding and abetting against Sands China, Jacobs should be allowed to conduct jurisdictional discovery relative to those claims at the renewed depositions. Sands China contends that it is not subject to personal jurisdiction in Nevada even for those claims. Because those claims give rise to additional grounds for personal jurisdiction, and Sands China disputes jurisdiction, Jacobs

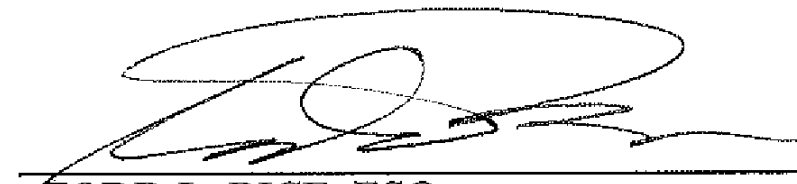
1 requests leave to develop the evidentiary basis for personal jurisdiction relating to those claims as
2 well.

3 5. Finally, as Sands China continues to dispute personal jurisdiction even over the
4 defamation claim – false statements published in Nevada by Sands China's Nevada-based
5 chairman – Jacobs seeks to take the deposition of Ron Reese and obtain limited documentary
6 evidence concerning that claim. As this Court should recall, Reese serves as Adelson's
7 spokesman and media handler. Jacobs reasonably believes that Reese was intimately involved in
8 the creation, dissemination and publication of the defamatory statement. Because Reese would
9 have undertaken those activities on behalf of Sands China in Nevada, the evidence as to his
10 involvement and activities goes directly to the debate over personal jurisdiction.

11 6. Because the Court has scheduled the evidentiary hearing on jurisdiction for
12 April 20, 2015, Jacobs requests that this Court consider this motion on an order shortening time.

13 7. I certify that the foregoing Motion is not brought for any improper purpose.

14 Dated this 16th day of March, 2015.

15
16 
17 TODD L. BICE, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

As set forth in the Declaration of counsel, Jacobs seeks this Court's authorization to use not only documents that are to be produced pursuant to this Court's March 6, 2015 Order (the "March 2015 Order") at any retaken depositions, but also any replacement image documents and documents improperly withheld as privilege prior to those depositions occurring. Also, Jacobs seeks to question those witnesses concerning the jurisdictional facts relating to the now-reinstated defamation claim as well as the new claims for conspiracy and aiding and abetting. As those claims give rise to additional bases for this Court's jurisdiction over Sands China, discovery should be permitted.

For the same reason, Jacobs should also be permitted to now depose Ron Reese. As a spokesman for Adelson, Reese likely had extensive involvement in the facts and circumstances giving rise to Jacobs' claim for defamation. As the plaintiff, Jacobs has a legal right to conduct jurisdictional discovery since Sands China is disputing jurisdiction on these recently-reinstated and added claims. *Toys 'R' Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003) (reversing district court's failure to permit jurisdictional discovery where it had determined that the plaintiff's claims were not frivolous). Jacobs' proposed request for production of documents – for which he proposes only two additional requests – are attached hereto as Exhibit 1 for the Court's advance review and approval.

DATED this 12 day of March, 2015.

PISANELLI BICE PLLC

By: 

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Las Vegas, Nevada 89101

Attorneys for Plaintiff Steven C. Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 17th day of March, 2015, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **EXPEDITED MOTION FOR CLARIFICATION AND LIMITED ADDED JURISDICTION DISCOVERY; ON ORDER SHORTENING TIME** properly addressed to the following:

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An employee of PISANELLI BICE PLLC

EXHIBIT 1

RPD

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Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF'S SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS TO
SANDS CHINA, LTD. (Nos. 25-26)**

AND RELATED CLAIMS

TO: DEFENDANT SANDS CHINA, LTD.; and

TO: KEMP, JONES & COULTHARD, LLP and HOLLAND & HART LLP, its
Attorneys

Pursuant to Rule 34 of the Nevada Rules of Civil Procedure, Plaintiff Steven C. Jacobs
("Jacobs" and/or "Plaintiff") requests that Defendant Sands China Ltd. produce for inspection and
copying the documents described in these papers. Production shall occur within thirty (30) days of
service hereof, at the offices of PISANELLI BICE PLLC, 400 South 7th Street, Suite 300,
Las Vegas, Nevada, 89101.

DEFINITIONS AND INSTRUCTIONS

A. Definitions

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

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

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

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

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

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

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

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

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

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

14 B. Instructions.

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

- 18 a. The type of document (*e.g.*, report, letter, notes, notice, contract, etc.);
 - 19 b. The number of pages it comprises;
 - 20 c. The name of the person(s) who prepared or authored the document;
 - 21 d. The name of the person(s) to whom the document was addressed, distributed,
22 and/or shown;
 - 23 e. The date on the document purporting to reflect the date the document was
24 prepared or transmitted;
 - 25 f. The general description of the subject matter of the document; and, if
26 applicable,
 - 27 g. The name of the person(s) who asked that the document be prepared.
- 28

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

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

- a. A description of the documents, including in the description as much detail as possible;
- b. The identity of the person or entity, including his, her or its address, believed by You to have possession or custody of the document or any copies of them at this time; and
- c. A description of the efforts, if any, You have made to obtain possession or custody of the documents.

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

REQUESTS

REQUEST NO. 25:

Identify and produce all documents and/or communications since October 18, 2010, where Ron Reese is either the author or a recipient that concerns or references Jacobs.

1 **REQUEST NO. 26:**

2 Identify and produce all documents and/or communications from October 18, 2010, to or
3 from any reporter, media representative or media consultant that references or concerns Jacobs
4 and/or the Action.

5 DATED this ____ day of March, 2015.

6 PISANELLI BICE PLLC

7
8 By: _____

James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

11 *Attorneys for Plaintiff Steven C. Jacobs*

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing **PLAINTIFF'S SECOND REQUEST**
FOR PRODUCTION OF DOCUMENTS TO SANDS CHINA, LTD. (Nos. 25-26) is hereby
acknowledged this _____ day of March, 2015, by:

HOLLAND & HART

By: _____
J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

KEMP, JONES & COULTHARD, LLP

By: _____
J. Randall Jones, Esq.
Mark M. Jones, Esq.
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

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PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: (702) 214-2100

Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF'S THIRD REQUEST FOR
PRODUCTION OF DOCUMENTS TO
LAS VEGAS SANDS CORP. (Nos. 26-27)**

AND RELATED CLAIMS

TO: DEFENDANT LAS VEGAS SANDS CORP.; and

TO: J. Stephen Peek, Esq. and Robert J. Cassity, Esq., HOLLAND & HART, its Attorneys

Pursuant to Rule 34 of the Nevada Rules of Civil Procedure, Plaintiff Steven C. Jacobs ("Jacobs" and/or "Plaintiff") requests that Defendant Las Vegas Sands Corp. ("LVSC") produce for inspection and copying the documents described in these papers. Production shall occur within thirty (30) days of service hereof, at the offices of PISANELLI BICE PLLC, 400 South 7th Street, Suite 300, Las Vegas, Nevada, 89101.

DEFINITIONS AND INSTRUCTIONS

A. Definitions

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

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

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

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

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

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

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

3 8. You or Your. The terms "You" and/or "Your" are synonymous and mean
4 "Las Vegas Sands Corp." and/or "LVSC," a defendant in this Action, and/or any of its subsidiary
5 entities and/or any other affiliated entities, as well as its owners, shareholders, officers,
6 employees, attorneys, accountants, agents, investigators, and/or anyone else acting on its behalf
7 and/or its direction and instruction.

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

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

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

18 B. Instructions.

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

- 22 a. The type of document (e.g., report, letter, notes, notice, contract, etc.);
- 23 b. The number of pages it comprises;
- 24 c. The name of the person(s) who prepared or authored the document;
- 25 d. The name of the person(s) to whom the document was addressed,
26 distributed, and/or shown;
- 27 e. The date on the document purporting to reflect the date the document was
28 prepared or transmitted;

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

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

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

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

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

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

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

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

27

28

REQUESTS

REQUEST NO. 26:

Identify and produce all documents and/or communications since October 18, 2010, where Ron Reese is either the author or a recipient that concerns or references Jacobs.

REQUEST NO. 27:

Identify and produce all documents and/or communications from October 18, 2010, to or from any reporter, media representative or media consultant that references or concerns Jacobs and/or the Action.

DATED this ____ day of March, 2015.

PISANELLI BICE PLLC

By: _____
James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
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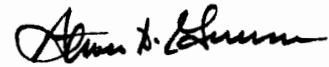
Attorneys for Plaintiff Steven C. Jacobs

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing **PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO LAS VEGAS SANDS CORP. (Nos. 26-27)** is hereby acknowledged this _____ day of March, 2015, by:

HOLLAND & HART

By: _____
J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134



CLERK OF THE COURT

1 J. Randall Jones, Esq.
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10 HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
11 Las Vegas, Nevada 89134
*Attorneys for Las Vegas Sands Corp.
and Sands China Ltd.*
12

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

15 STEVEN C. JACOBS,

16 Plaintiff,

17 v.

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

21 Defendants.

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

**DEFENDANTS SANDS CHINA LTD.
AND LAS VEGAS SANDS CORP'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR CLARIFICATION AND
LIMITED ADDED JURISDICTIONAL
DISCOVERY**

Date: March 19, 2015
Time: 8:30 a.m.

22 AND ALL RELATED MATTERS.

23 **INTRODUCTION**

24 This Court's March 6, 2015, Sanctions Order (the "Sanctions Order") permitted
25 Plaintiff only certain limited additional discovery, as follows:

26 "For purposes of jurisdictional discovery, Plaintiff may, at his sole discretion and
27 upon five judicial days written notice, retake any previously taken deposition and
28

1 examine the deponent on the information produced as a result of the preceding
2 paragraph.¹

3 Sanctions Order at 40:8-11 (emphasis added).

4 Not satisfied with this result, Plaintiff now seeks to conduct additional “limited
5 added jurisdictional discovery” beyond that specified in the Sanctions Order *in spite of*
6 *never having requested this discovery at any time* prior to his Expedited Motion for
7 Clarification and Limited Added Jurisdictional Discovery (the “Motion”). Of course, this is
8 not the first time Plaintiff has represented to the Court that he wanted to engage in limited or
9 narrowly tailored discovery. More than three years ago, when Plaintiff moved for
10 jurisdictional discovery in September 2011, his counsel stated that he had *“tried to narrowly*
11 *confine what it is that we want to do,”* so that discovery could be completed before the
12 evidentiary hearing that was then scheduled for November 21, 2011. 9/27/2011 H'rng Tr. at
13 20:16-17 (emphasis added). Since then, Plaintiff's discovery has mushroomed out of
14 control. Defendants have produced hundreds of thousands of pages consisting of tens of
15 thousands of documents to Plaintiff. Plaintiff now wants to commence round two of so-
16 called “limited added discovery,” and expand the scope of additional depositions authorized
17 by this Court's March 6, 2015 order by:

- 18 • including within the scope of depositions all unredacted documents produced by
19 Defendants over the course of the last two years;
- 20 • including within the scope of depositions all of the Advanced Discovery documents
21 released to Plaintiff;
- 22 • including within the scope of depositions all facts relating to the claims for relief
23 Plaintiff added in his Third Amended Complaint;
- 24 • permitting Plaintiff to depose Ron Reese;
- 25 • permitting Plaintiff to serve additional requests for production of documents.

26 This is not “limited added discovery.” It is a wholesale re-opening of discovery and would
27

28 ¹ The “previous paragraph” ordered SCL to produce to Plaintiff “any documents identified as
a result of a search run on the “transferred data” using the same custodians and search terms
described in Exhibit 213 against the electronically stored information contained in the
transferred data . . .”

1 significantly expand the very limited scope of the depositions contemplated by the Court's
2 March 6, 2015 order.

3 Plaintiff's request for additional discovery should be denied for three principal
4 reasons. First, Plaintiff's Motion is premised on depositions that were ordered in this
5 Court's Sanctions Order, which has now been stayed by the Nevada Supreme Court. There
6 is no basis for Plaintiff to request an expanded scope for depositions that have been stayed.

7 Second, Plaintiff's motion is in any event untimely and amounts to a blatant effort
8 by Plaintiff to employ an eleventh hour "litigation by surprise" strategy. All of the
9 documents and information from which Plaintiff wishes to seek additional discovery have
10 been known to Plaintiff for months. Yet Plaintiff filed a motion on December 24, 2014
11 requesting that this Court hold the jurisdictional hearing as soon as possible without
12 mentioning any purported need for additional discovery. Plaintiff's failure to raise this
13 "additional discovery" issue in that motion amounts to a waiver of any claim he might have
14 that he needs additional discovery to proceed with the hearing.

15 Third, Plaintiff's request for additional discovery is not sufficiently specific. Plaintiff
16 does not identify a single specific document or fact that would justify his request for an
17 expanded scope of discovery. For these reasons, Plaintiff's Motion must be denied.

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 I.

20 ARGUMENT

21 **A. Plaintiff's request for additional discovery based on depositions authorized in** 22 **the Sanctions Order is moot because the Sanctions Order has been stayed by** 23 **the Nevada Supreme Court.**

24 On March 17, 2015, the Nevada Supreme Court "temporarily stay[ed] the March 6,
25 2015 order in Eighth Judicial District Court Case No. A627691" in response to SCL's
26 Motion to Stay the Court's Sanctions Order. *See* Order Granting Temporary Stay and
27 Setting Briefing Schedule, attached hereto as Exhibit A. The additional deposition topics
28 and discovery Plaintiff seeks to obtain could only arise as a result of the Sanctions Order,
which is now stayed. Accordingly, there is no basis for Plaintiff to conduct additional

1 depositions and, therefore, no basis for Plaintiff's motion for additional discovery.

2 **B. The scope of additional depositions authorized in this Court's Sanctions Order**
3 **does not need clarification.**

4 Plaintiff requests that this Court "clarify that should he chose [sic] to retake
5 depositions, he would be permitted to examine the witnesses concerning any documents that
6 were later produced in an unredacted form." See Mot. at 5:12-14. Any clarification is
7 unnecessary because the Court's Sanctions Order is explicitly clear:

8 "For purposes of jurisdictional discovery, Plaintiff may, at his sole discretion and
9 upon five judicial days written notice, retake any previously taken deposition and
examine the deponent on the information produced **as a result of the preceding**
paragraph."²

10 See Sanctions Order at 40:8-11 (emphasis added). The Court was well aware of all of the
11 issues raised on Plaintiff's Motion when it entered the Sanctions Order. The fact that it
12 chose not to extend the scope of the discovery to include additional discovery demonstrates
13 an express intent by the Court to reject the relief Plaintiff is requesting. Based on the intent
14 that was clearly expressed in this Court's Sanctions Order, Plaintiff's request for
15 "clarification" should be rejected.

16 **C. Plaintiff's request for additional discovery should be rejected because it is**
17 **untimely. Plaintiff should have raised these issues prior to his December 24,**
18 **2014 Motion to Set Evidentiary Hearings.**

19 As noted above, Plaintiff requests to ask SCL's witnesses questions relating to the
20 following three items:

- 21 1. any unredacted replacement documents produced to Plaintiff;
- 22 2. any documents (in the custody of Advanced Discovery) released to
23 Plaintiff for which SCL does not claim privilege; and
- 24 3. any jurisdictional facts relating to the new claims against SCL in
25 Plaintiff's Third Amended Complaint.

26 Plaintiff also requests to take the deposition of Ron Reese and to serve SCL and LVSC with
27 two additional requests for production of documents. Plaintiff makes the request for this
28

² The "previous paragraph" ordered SCL to produce to Plaintiff "any documents identified as a result of a search run using the same custodians and search terms described in Exhibit 213 against the electronically stored information contained in the transferred data . . ."

1 additional discovery for the first time in his Motion, filed on March 17, 2015, approximately
2 one month prior to the evidentiary hearing on jurisdiction. This is clearly untimely and
3 amounts to an impermissible attempt to conduct litigation by surprise. It is clear that
4 Plaintiff was aware of these potential sources of additional discovery months and even years
5 before he filed this request. Furthermore, because Plaintiff requested that the Court hold the
6 evidentiary hearing related to jurisdiction on December 24, 2015, without ever raising any
7 issues relating to additional discovery, he waived any argument that such discovery is
8 necessary or appropriate.

9 **1. Plaintiff could have requested the discovery that he now requests long**
10 **before his current Motion.**

11 Plaintiff was aware of the information on which he now seeks to conduct discovery
12 well before he filed the instant Motion.

13 *(a) The Unredacted Replacement Documents*

14 As set forth more fully in Plaintiff's Ex. 216 for the recent evidentiary hearing, SCL
15 began producing unredacted replacement documents to Plaintiff in rolling productions
16 starting in January of 2013. The dates and quantity of documents produced in these
17 productions is listed in the table below:

Date	# of Documents Produced
1/25/2013	517
1/29/2013	369
2/6/2013	1330
2/25/2013	92
4/12/2013	10
11/14/2014	1206
1/23/2015	569

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27 See Plaintiff's Ex. 216. Plaintiff could have requested to reopen any jurisdictional
28 depositions related to these documents as early as January of 2013 or at any time thereafter,

1 but he failed to do so until now—approximately a month prior to the jurisdictional hearing.

2 *(b) Advanced Discovery documents*

3 As admitted in his Motion, most of the Advanced Discovery documents were
4 released to Plaintiff in October of 2014. In spite of this, Plaintiff did not request to re-take
5 the deposition of any witness at that time, nor did he do so at any time prior to his March 17,
6 2015 Motion.³

7 *(c) Discovery Related to Allegations in the Third Amended Complaint*

8 Plaintiff argues that “because those depositions [of certain SCL officers and board
9 members] were taken before reinstatement of the defamation claim against Sands China, as
10 well as the addition of Plaintiff’s claims for conspiracy and aiding and abetting against
11 Sands China, Plaintiff should be allowed to conduct jurisdictional discovery relative to those
12 claims at the renewed depositions.” Motion at 5:23-6:2. Plaintiff filed his motion for leave
13 to file the Third Amended Complaint on September 28, 2014. And prior to that, Plaintiff’s
14 defamation, conspiracy, and aiding and abetting claims were included in his proposed
15 Second Amended Complaint (that he received permission to file, but never filed), which
16 was attached to his Motion for Leave to File Second Amended Complaint on June 30, 2014.
17 See Exhibit A to Plaintiff’s Motion for Leave to File Second Amended Complaint, on file
18 herein, ¶¶ 70-77 (defamation); 78-83 (aiding and abetting); 84-89 (civil conspiracy). Thus,
19 Plaintiff could have made his request for additional discovery relating to his new causes of
20 action against SCL at least as early as June 30, 2014, but failed to do so until almost a year
21 later.

22 Plaintiff has been aware of his (supposed) need to obtain additional information
23 relating to the unredacted replacement documents, the Advanced Discovery Documents, and
24

25 ³ In addition to rejecting Plaintiff’s request as it relates to the Advanced Discovery documents for being untimely,
26 the Court should also reject Plaintiff’s request to depose SCL’s witnesses regarding the Advanced Discovery
27 documents released to him in the fall of 2014 because there is no reason to believe that any of them relate to
28 jurisdiction. Defendants reviewed the Advanced Discovery documents for privilege. But they did not produce
them nor were they ever searched for jurisdictional relevance. Furthermore, despite the fact that plaintiffs’ counsel
have had access to 84,000 documents that Jacobs took with him when he left Macau since September 2012, they
never showed any of those documents to the witnesses who were deposed.

1 the new claims in his Second and Third Amended Complaints for many months now. His
2 last-minute request to conduct additional discovery is clearly untimely and prejudicial to
3 Defendants.

4 **2. Plaintiff waived any argument for additional discovery by failing to raise**
5 **the issue on or before his December 24, 2014 Motion to Set Evidentiary**
6 **Hearing and Trial.**

7 “A waiver is the intentional relinquishment of a known right.” *Mahban v. MGM*
8 *Grand Hotels, Inc.*, 100 Nev. 593, 596, 691 P.2d 421, 423 (1984). “A waiver may be
9 implied from conduct which evidences an intention to waive a right, or by conduct which is
10 inconsistent with any other intention than to waive the right.” *Id.* Here, there can be no
11 question that Plaintiff waived his right to seek additional discovery, because he requested
12 that this Court set an evidentiary hearing regarding jurisdiction on December 24, 2015, and
13 never mentioned a need or desire to conduct additional discovery at that time. *See* December
14 24, 2014 Motion to Set Evidentiary Hearing and Trial, on file herein. By requesting that a
15 hearing be set, Plaintiff in essence represented to this Court that all jurisdiction-related
16 discovery was complete and he was ready to move forward with the hearing. In fact,
17 Plaintiff argued that the jurisdiction evidentiary hearing should be set as soon as possible. At
18 the hearing on Plaintiff’s Motion to Set Evidentiary Hearing and Trial, the Court discussed
19 all the discovery and related issues that needed to be resolved prior to the jurisdiction
20 evidentiary hearing in great detail. *See* 2/6/2014 H’ring. Tr. at 55-97. At that time, counsel
21 for SCL presented a lengthy list of items he felt needed to be resolved prior to the
22 jurisdiction hearing. *Id.* at 55-63. At the same hearing, Plaintiff presented no such list of
23 issues that needed to be resolved and certainly did not raise any of the issues he now
24 presents to the Court. Instead, Plaintiff represented to the Court that he wanted to have the
25 jurisdiction hearing within two to three weeks, which obviously would have been
26 impossible if he simultaneously requested additional discovery from SCL. *Id.* at 53:18-20.

27 Plaintiff’s conduct presents a black-letter case of waiver by conduct. Plaintiff’s
28 invitation to the Court to hold the jurisdictional evidentiary hearing and his failure to raise
his request for additional discovery *at the hearing in which the Court specifically addressed*

1 *all of the discovery to be completed prior to the jurisdictional hearing* is “conduct which is
2 inconsistent with any other intention than to waive the right.” Plaintiff has waived any
3 ability to request additional discovery against SCL and his request for additional discovery
4 should be rejected.

5 **D. Plaintiff fails to identify any specific document that would aid any of his (many)**
6 **jurisdictional theories.**

7 In addition to being filed extremely late, Plaintiff’s Motion requesting additional
8 discovery is insufficiently specific because it does not identify a single document that would
9 aid any of Plaintiff’s jurisdictional theories. Plaintiff does not provide any reasoning to
10 suggest that expanding the scope of inquiry to SCL’s witnesses would be anything other
11 than an exercise in futility. Plaintiff fails to identify a single unredacted document that might
12 have any jurisdictional importance to his case. Similarly, Plaintiff fails to identify a single
13 Advanced Discovery document that would have any bearing on his jurisdictional arguments.

14 The concern regarding the low or nonexistent value of information that would result
15 from expanding the scope of depositions is particularly concerning where the Court has
16 prospectively ordered that SCL must pay any attorney’s fees and associated costs with the
17 depositions. Plaintiff has a direct incentive to overburden SCL witnesses with unhelpful, or
18 even marginally helpful questions because SCL will have to bear the expense of the
19 deposition for both Plaintiff and itself.

20 Furthermore, Plaintiff’s request for additional discovery is so generic as to
21 potentially expand the scope of any contemplated future deposition into the merits of the
22 case—especially with respect to the Advanced Discovery documents. SCL has not been
23 permitted to perform any review or searches of the Advanced Discovery documents for
24 jurisdictional or merits-based relevance. If Plaintiff is permitted to question SCL witnesses
25 regarding all the Advance Discovery documents or all the unredacted documents produced
26 in this case, the expansive scope of such a deposition would be extremely burdensome to
27 SCL.

28 / / /

KEMP, JONES & COULTHARD, LLP
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Las Vegas, Nevada 89169
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kjc@kempjones.com

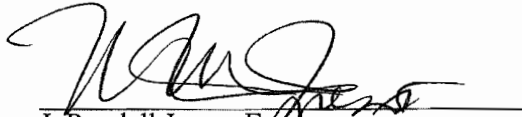
1 Accordingly, the lack of specificity to Plaintiff's expansive request for additional
2 discovery together with the potentially burdensome nature of any resulting deposition calls
3 into question Plaintiff's motives in seeking additional discovery. If there were unredacted
4 documents or Advanced Discovery documents that had significant value to Plaintiff, he
5 would identify them to the Court (prior to requesting that the Court hold a jurisdictional
6 hearing), attach them to his motion, and demonstrate why additional deposition questioning
7 is necessary. Here, Plaintiff has made no such effort. The fact that he has failed to do so
8 suggests that Plaintiff's motives are to burden SCL rather than gain information useful to his
9 case. Plaintiff has failed to demonstrate any need for the additional discovery requests and
10 his request for additional discovery should, therefore, be denied.

11 **II.**

12 **CONCLUSION**

13 For the reasons outlined above, the Court should deny Plaintiff's Expedited Motion for
14 Clarification and Limited Added Jurisdictional Discovery.

15 DATED this 18th day of March, 2015.

16 
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2015, the foregoing **DEFENDANTS**
SANDS CHINA LTD. AND LAS VEGAS SANDS CORP'S OPPOSITION TO
PLAINTIFF'S MOTION FOR CLARIFICATION AND LIMITED ADDED
JURISDICTIONAL DISCOVERY was served on the following parties through the Court's
electronic filing system:
ALL PARTIES ON THE E-SERVICE LIST

/s/ Erica M. Bennett

An employee of Kemp, Jones & Coulthard, LLP

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RECEIPT OF COPY

RECEIPT OF COPY of the foregoing **DEFENDANTS SANDS CHINA LTD. AND
LAS VEGAS SANDS CORP'S OPPOSITION TO PLAINTIFF'S MOTION FOR
CLARIFICATION AND LIMITED ADDED JURISDICTIONAL DISCOVERY** is hereby
acknowledged this _____ day of March, 2015.

PISANELLI BICE

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
400 South 7th Street, Suite 300
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EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

Respondents,

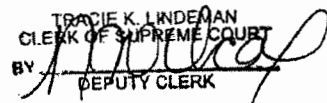
and

STEVEN C. JACOBS,
Real Party in Interest.

No. 67576

FILED

MAR 17 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER GRANTING TEMPORARY STAY
AND SETTING BRIEFING SCHEDULE*

Petitioners have filed a motion to stay the district court's March 6, 2015, order, which, in part, imposes sanctions against them, and also to stay an evidentiary hearing scheduled for April 20, 2015. Our review of the motion indicates that a temporary stay of the sanctions order is warranted, pending receipt and consideration of any opposition to the motion. NRAP 8(c); *Fritz Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Accordingly, we temporarily stay the March 6, 2015, order in Eighth Judicial District Court Case No. A627691, pending further order of this court.¹

¹We decline to stay the April 20 hearing at this time, pending our consideration of the forthcoming writ petition.

In their motion for stay, petitioners indicate that they will be filing a writ petition challenging the district court's March 6, 2015, order. Petitioners shall file such a petition on or before March 20, 2015, or the temporary stay will be vacated. If the writ petition is timely filed, real party in interest, on behalf of respondents, shall have until March 27, 2015, to file and serve a combined answer to the writ petition and any opposition to the motion for stay. Petitioners shall have until March 31, 2015, to file and serve a combined reply to the answer and to any opposition. All documents submitted in response to this order shall be filed and served personally, electronically, or by facsimile transmission with the clerk of this court in Carson City. *See* NRAP 2; NRAP 25(a)(2)(B)(i); NRAP 25(a)(4). For purposes of this motion, we suspend application of NRAP 25(a)(2)(B)(ii)-(iv) and NRAP 26(b)(1)(B).

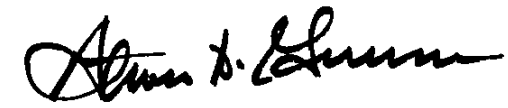
It is so ORDERED.

Hardesty, C.J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Kemp, Jones & Coulthard, LLP
Holland & Hart LLP/Las Vegas
Morris Law Group
Pisanelli Bice, PLLC
Eighth District Court Clerk



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, MARCH 19, 2015

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD BICE, ESQ.
DEBRA L. SPINELLI, ESQ.
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, MARCH 19, 2015, 8:37 A.M.

2 (Court was called to order)

3 THE COURT: As you guys know, I am frequently
4 confused by written communications by the Nevada Supreme
5 Court. That said, I believe that the Nevada Supreme Court has
6 said that the sanction portion of the order, which also
7 required both some activities on the part of Sands China, as
8 well as some evidentiary and discovery-related issues are
9 stayed. Does everybody agree with that?

10 MR. RANDALL JONES: That is my understand, Your
11 Honor.

12 MR. BICE: I believe, Your Honor, that the portion
13 that is stayed by the Supreme Court is their compliance
14 requirements on --

15 THE COURT: Right.

16 MR. BICE: -- on two points, one, the payment of the
17 monetary sanction, as well as the search for production of
18 additional documents.

19 THE COURT: How do you get that from this two-page
20 order?

21 MR. BICE: How do I get that from the two-page
22 order?

23 THE COURT: Yes.

24 MR. BICE: I'm probably just inferring how I think
25 that -- what the purpose of a stay is, perhaps. That's how I

1 interpret the order, is that it --

2 THE COURT: I'm going to interpret it a little more
3 broadly.

4 MR. BICE: Okay.

5 THE COURT: So for purposes of today let's all
6 assume that the portions of my order that related to the
7 search of the transferred information had been stayed, the
8 discovery issues, which had a five-day notice provision
9 related to that are stayed, the evidentiary issues are stayed,
10 and the payment issues are stayed. So let's just assume that
11 for purposes of today.

12 With that understanding, I've got in my hands two
13 motions that relate to what appear to be jurisdictional
14 discovery which are not stayed. While they may be items that
15 were covered by my sanctions order, I have authority to order
16 discovery related to sanctions hearing, and the Nevada Supreme
17 Court has specifically not stayed the April 20th hearing,
18 which is really the April 23rd hearing, I think, right -- no.
19 April 20th. Okay. April 20th.

20 So let's talk about the issues that both of you have
21 raised in the motions that are on calendar today as discovery
22 in advance of that hearing related to jurisdictional issues.

23 MR. BICE: Understood.

24 THE COURT: So let's just remember that and frame
25 our discussion that way, and that way I don't violate the

1 stay, I address the issues that I think are important for us
2 to talk about before we get to that evidentiary hearing on
3 jurisdiction, and maybe you'll get what you're asking for.

4 I would like to start with Mr. Jones. His issue
5 only relates to one deponent, and it is a little simpler than
6 the issue raised by the plaintiffs.

7 MR. BICE: All right.

8 MR. RANDALL JONES: Your Honor, Randall Jones on
9 behalf of Sands China Limited.

10 Your Honor, we did get the opposition that was filed
11 yesterday, and I just think the opposition misunderstood our
12 position. We agreed that the discovery related to Mr. Jacobs
13 at his deposition would be limited to jurisdictional issues.
14 And I don't know if it was just a miscommunication with Mr.
15 Bice, but Mr. Bice certainly seemed to be saying that we
16 intended to expand the scope or wanted to expand the scope
17 into merits issues. Which we absolutely do not. If you look
18 at the motion, there was a discussion about being limited --
19 the deposition being limited to some extent between Mr. Bice
20 and Mark Jones. But that was limited with respect to -- or
21 unlimited, as the case may be, with respect to jurisdictional
22 issues. So we were asking to take Mr. Jacobs's deposition
23 with respect to jurisdictional issues, and we would ask that
24 that deposition, if allowed, not be limited with respect to
25 any jurisdictional issues.

1 THE COURT: Okay. Thank you.

2 Mr. Bice, previously I had delayed the taking of Mr.
3 Jacobs's deposition for jurisdictional purposes until the
4 information that was in the possession of Advance Discovery
5 was produced.

6 MR. BICE: Uh-huh.

7 THE COURT: I believe, given the long history and
8 the final recognition by some of the parties they needed to
9 review their privilege log, which then gave me a smaller
10 universe of documents for me to review, my review of those,
11 the orders I've entered, the motions for reconsiderations I've
12 entered, that we're past all that.

13 MR. BICE: Well, we're past all that, but the
14 documents, even though you've entered rulings, have not been
15 produced.

16 THE COURT: How's that possible?

17 MR. BICE: You would have to direct that to the
18 defense. But there are documents that are still outstanding
19 from the motions for reconsideration, the Vickers reports
20 issues. I don't believe any of those have been produced, and
21 I don't know how many documents that remains, but there are
22 still documents outstanding on that issue.

23 THE COURT: Well, the Vickers reports are a support
24 issue. Those are not part of what was part of the Advance
25 Discovery. So I understand --

1 MR. BICE: We have a bit of a dispute about that in
2 light of what we have subsequently found. But you don't have
3 to address that --

4 THE COURT: They're not part of what I reviewed on
5 the Advance Discovery Website.

6 MR. BICE: Fair. We'll deal with it that way.
7 Okay.

8 THE COURT: Because I thought I was reviewing
9 everything on the Advance Discovery Website that there was an
10 issue about.

11 MR. BICE: Right. But we have located at least two,
12 if not three, of these reports in the Advance Discovery
13 documents that they previously claimed privilege on and then
14 withdrew it. Now, that we find interesting, because they came
15 to you and said --

16 THE COURT: Well, have they been produced?

17 MR. BICE: Those were.

18 THE COURT: Okay. Then you've got them.

19 MR. BICE: Those -- well, there are --

20 THE COURT: Okay.

21 MR. BICE: There are a couple of we think
22 potentially different ones. We're unclear on that.

23 THE COURT: Okay.

24 MR. BICE: We're waiting to see what we get from
25 them. So --

1 THE COURT: So let me stop you before you're going
2 to argue, because I understand you have some issues about
3 scope. I'm trying to make sure that those precedent events --
4 MR. BICE: Correct.
5 THE COURT: -- that I previously set up have been
6 accomplished.
7 MR. BICE: And once -- yeah.
8 THE COURT: It's your position that some of the
9 documents related to my privilege review on the Advance
10 Discovery and the rulings that I made and the motions for
11 reconsideration, those documents have still not been produced.
12 MR. BICE: That is correct.
13 THE COURT: Okay.
14 MR. BICE: That is my understanding.
15 MR. RANDALL JONES: Your Honor, they have control of
16 the Advance Discovery documents, so I'm not sure --
17 THE COURT: No, they don't.
18 MR. BICE: We do not.
19 MR. RANDALL JONES: Well, they -- the Court --
20 THE COURT: I have control of the Advance Discovery.
21 MR. RANDALL JONES: The Court has control of the
22 Advance Discovery documents.
23 THE COURT: I issued an order.
24 MR. RANDALL JONES: Right.
25 THE COURT: The order said, produce these, if you

1 have a reason not to, please let me know. You let me know. I
2 reviewed it. I then said, produce them. Then you filed a
3 motion for reconsideration. I thought about it again. I
4 said, yeah, I really meant produce them. Has somebody not
5 communicated that to Advance Discovery?

6 MR. RANDALL JONES: Your Honor, we don't control
7 Advance Discovery. The Court controls Advance Discovery. So
8 here's our understanding. There are documents that were given
9 to Advance Discovery. The Court ordered them to be treated a
10 certain way --

11 THE COURT: Yes.

12 MR. RANDALL JONES: -- and based upon the Court's
13 order either certain documents would be released or they would
14 not. To the extent that --

15 THE COURT: No. You're missing the step that took
16 three years, which was I wanted a privilege log related to
17 those and a review, and that took forever.

18 MR. RANDALL JONES: I'm assuming we're at now.

19 THE COURT: Oh. We're at now. Okay.

20 MR. RANDALL JONES: Actually, even we're at a month
21 ago or two months ago, whenever it was that the Court heard
22 all those motions of reconsideration and everything else.

23 THE COURT: Most recent ones.

24 MR. RANDALL JONES: Right.

25 THE COURT: Right.

1 MR. RANDALL JONES: Once those orders were entered
2 then we don't have control over what Advance Discovery does.
3 Mr. Bice would then presumably contact Advance Discovery, say,
4 I have an order that says we get to have those documents, and
5 he would presumably get those documents.

6 THE COURT: Well, did anybody give my order to
7 Advance Discovery?

8 MR. RANDALL JONES: Well --

9 THE COURT: It doesn't matter who gave it to them,
10 but did anyone? Could someone please give the order to
11 Advance Discovery.

12 MR. BICE: Your Honor, here's how the process has
13 always worked until this argument right now.

14 THE COURT: Right.

15 MR. BICE: They are the ones who tell Advance
16 Discovery what they can and can't release to us, and that's
17 how the process has worked until today. This is the first
18 time we've heard the story that --

19 THE COURT: Well, wait. Wait. Once -- let me ask a
20 question. It's a process question. After I finished my
21 privilege review and I ordered certain documents produced
22 those documents that were ordered produced to which you did
23 not have a further objection or motion practice, how did you
24 direct Advance Discovery to release those?

25 MR. RANDALL JONES: Your Honor, as we -- this is the

1 first I've heard of it, so --

2 THE COURT: Well, no. I'm just asking you. You
3 did. I know you did.

4 MR. RANDALL JONES: I can't answer the question as
5 to what happened or when. I have not heard from Mr. Bice
6 telling me that, hey --

7 THE COURT: Let's ask Mark Jones.

8 MR. MARK JONES: Your Honor, all I can say is -- you
9 know, this is an extremely complicated process. All I can say
10 is we've worked in good faith. I don't know exactly what the
11 status is of all that, but we have worked -- we not worked in
12 bad faith or withheld anything.

13 THE COURT: No. What I'm trying to ask is -- and my
14 question's really simple. It's a process issue. It's not
15 whether good faith or bad faith or timing. It's a once I
16 finished the -- you guys revised the privilege log, I started
17 the review again, I made rulings. For those that you did not
18 have an additional issue you wanted to raised, were those
19 produced?

20 MR. PEEK: Your Honor, no. They were not produced
21 by us, because we don't have them.

22 THE COURT: Well, I know. I understand. Okay.
23 Tell me.

24 MR. PEEK: Yeah. Mr. Bice and I have a fundamental
25 disagreement about the process. Because remember that these

1 came -- these devices were given to Advance Discovery for
2 Advance Discovery to put on their media devices, people to run
3 their own searches, Mr. Jacobs first for his personal
4 information, and us second for privilege information. Mr.
5 Jacobs still has all the media devices in his possession.
6 He's entitled to look at any documents on there, save and
7 except those that are by the Court ruled to be privileged. So
8 he still has possession of the documents. They're not
9 necessarily only in the possession of Advance Discovery.
10 They're in Mr. Jacobs's possession.

11 THE COURT: No, they're not. They in Advance
12 Discovery's possession.

13 MR. PEEK: Your Honor, the media devices were given
14 to them --

15 THE COURT: No. I had to put a password in -- no.
16 I had to put a password in to be able to look at the privilege
17 and the redacted documents. That release of information to me
18 was based upon my status for me to be able to review those
19 documents. The plaintiffs don't have that same status. They
20 don't have those same rights from Advance Discovery from an IT
21 perspective.

22 MR. PEEK: Okay. Then perhaps there is a complete
23 misunderstanding, then, between the two parties.

24 THE COURT: Yes. It's a technology issue, which is
25 why I'm asking this as a process issue.

1 Ms. Spinelli, after I entered the order on the
2 privilege issues that ordered certain documents produced did
3 you and Mr. Mark Jones have any communications with Advance
4 Discovery?

5 MS. SPINELLI: No.

6 THE COURT: Okay.

7 MS. SPINELLI: The process generally is that they
8 are released -- an email is sent to Advance Discovery saying
9 that they're released to counsel, from Advance Discovery to
10 plaintiff's counsel, and then we can review them.

11 THE COURT: Okay. So let me ask another question.
12 Mr. Mark Jones, when you changed the privilege log and you
13 decided to take some of the documents off of it how did you
14 communicate to Advance Discovery that those items that you
15 were no longer claiming privilege were subject to different
16 restrictions?

17 MR. MARK JONES: Your Honor, we -- the answer is we
18 had sent a series of letters in fact to Advance Discovery
19 telling them that certain documents could be released.

20 THE COURT: Okay.

21 MR. MARK JONES: Whether or not -- the bottom line
22 here is that we have not heard from the other side if there
23 was something pursuant to some order that we were supposed to
24 release. And I just can't off the top -- I don't -- I don't
25 know that that's correct. But we will be happy to, and of

1 course we'll release those.

2 THE COURT: Well, but here's the most complex issue.
3 Advance Discovery has to be directed that, even though you
4 made a claim of privilege, the Court has overruled your claim
5 of privilege and so regardless of the privilege that you
6 asserted they're now to release that information. So you can
7 either -- and the way I issued my orders is very complicated,
8 because I made the rulings on the privilege log. Somebody has
9 to send those privilege logs and then the subsequent orders
10 related to the reconsideration or additional review to Advance
11 Discovery so that they can then process that information. And
12 I think you're best served by sending the actual orders I
13 entered with the very lengthy privilege logs that have my
14 rulings on them so there's no confusion later about which of
15 you made which miscommunication.

16 Do you think you can do that by the beginning of
17 next week?

18 MR. MARK JONES: Your Honor, I'm not completely in
19 charge of that. But, yes, we will endeavor to do that.

20 THE COURT: Well, it's a joint effort.

21 MR. MARK JONES: Yes. We will --

22 THE COURT: It's not just you. It's a joint effort
23 between you and Ms. Spinelli.

24 Do you think you guys can do that?

25 MS. SPINELLI: Yes.

1 THE COURT: Okay. All right. So I think I'm past
2 that bridge.

3 MR. BICE: We think that there's one outstanding
4 order, however, on -- Mr. Smith at least whispered in my ear
5 he believes that there's actually one order that the Court has
6 not yet entered on the reconsideration issue.

7 THE COURT: Have people sent it to me?

8 MR. BICE: We believe so.

9 MR. SMITH: No. The parties are still exchanging
10 drafts on that.

11 MR. BICE: My mistake.

12 THE COURT: Because I was up to date as of Monday.

13 MR. MARK JONES: And that's where I thought we were.
14 Exhibits 21 through 23, 25, and 27. So --

15 THE COURT: And I'm not worried about that small
16 amount. I know that we're going to get to them. But that was
17 one of the precursors to Mr. Jacobs having his deposition
18 taken two years ago when we had this discussion. So that's
19 why I asked the questions this way before I let Mr. Bice
20 argue, because I'm trying to in my own mind get to where I was
21 or at least I thought I was the last time I heard this issue.

22 So it sounds like we'll be able to wrap those issues
23 up pretty quickly. Can you get me that order whether you
24 agree or not by Monday so I can enter it Monday one way or the
25 other.

1 MR. BICE: Yes.

2 THE COURT: And then you can then supplemental your
3 submission to Advance Discovery with that order in a second
4 batch.

5 All right. Now, Mr. Bice. Sorry for the
6 interruption on your motion -- or on your opposition.

7 MR. BICE: Your Honor, our opposition is, number
8 one, as we said in our very short opposition, when I was
9 contacted about this issue I believe I was contacted about it
10 the Monday after the Court's sanctions were, which was on
11 Friday. That's my best recollection as to when I was
12 contacted about it the first time. We've had -- Mr. Mark
13 Jones and I have had two -- I think two conversations about
14 this. And I had indicated that I was not opposed to
15 discussions about their ability and/or right to take Mr.
16 Jacobs's deposition, and in fact we talked about securing
17 dates. But we all understood that -- I think that the Court
18 was going to have to enter some orders. Because my position
19 is, you know, the defendants have been very adamant that any
20 jurisdictional discovery has to be very, very narrowly
21 tailored. And I don't know how many times we've heard from
22 them about how there has to be an explicit order and the
23 topics to be discussed had to somehow be preapproved by the
24 Court. That's been their position throughout. But for Mr.
25 Jacobs they take a contrary position. They say, well, we just

1 want to do jurisdictional issues, we don't want to tell you
2 what those are, we don't want to have to -- we do not want to
3 have to identify any jurisdictional issues, we just want to
4 use that word. And then where we had a real disagreement was,
5 and I don't think that there was a miscommunication about
6 this, because -- and I'll let Mark Jones address this -- he
7 specifically said -- because I specifically reminded him, you
8 know, if you go back and you look at the depositions of all of
9 the Sands executives, all the instructions not to answer that
10 were given despite the Court's rulings and this typical
11 argument about, you know, well, that's getting too close to
12 the merits, that's getting too close to the merits, any
13 question about why -- remember that whole debate, Your Honor,
14 the who, the what, the where, and then --

15 THE COURT: Yeah. I wrote down today, "can't ask
16 why."

17 MR. BICE: Right. And Mr. Jones's position to me
18 was they get to ask the why. And I said, you know, I find
19 that very odd, because it was the exact opposite position that
20 your litigants took throughout the discovery phase. So now we
21 get their motion, they don't say that that's what they're
22 doing, but that's what we discussed on the phone, that their
23 position was that they get to go into the why even though we
24 did not. So we have a problem with that.

25 But you'll notice in their motion they don't specify

1 -- despite the position that they took with respect to our
2 discovery, they don't specify what it is, other than just
3 using the word "jurisdictional issues." That wasn't
4 sufficient for us to get jurisdictional discovery. And so
5 they should have to specify, just like we had to specify to
6 the Court so that we could prepare our witnesses, just like
7 they claim that they were entitled to, to know, well, what are
8 the subject matters of this deposition and, no, you do not get
9 to get into the why like you insisted with respect to your own
10 witnesses. And that's been our position all along, Your
11 Honor. Because otherwise we think that this is just an
12 attempt to circumvent not only the sanctions order, but to
13 circumvent the prior discovery rulings that the Court has
14 entered and taking a contrary position that they have taken
15 throughout this case about the permissible scope of
16 jurisdictional discovery.

17 THE COURT: Thank you.

18 MR. BICE: Thank you.

19 THE COURT: Mr. Jones.

20 MR. RANDALL JONES: Yes, Your Honor. I don't know
21 if the Court wants me to address the document issue again.

22 THE COURT: I think I've got the document issue
23 resolved, and early next week it will no longer be an issue.

24 MR. RANDALL JONES: I thought you did, but I wanted
25 to make sure I addressed it just to make sure we were on the

1 same page.

2 THE COURT: And I'm not criticizing any of you. It
3 is a very complicated process with Advance Discovery, and I
4 will never do a similar process again.

5 MR. RANDALL JONES: With respect to the why, Your
6 Honor, there is a -- there's a difference of opinion about
7 that. And I understand Mr. Bice's argument. And there are
8 why questions that clearly would go to jurisdiction. For
9 example, Mr. Jacobs, why do you believe --

10 And we don't agree with this argument or theory,
11 this so-called nerve center theory or argument, we don't agree
12 with this executive headquarters-type argument, but it
13 appears, anyway, from some of the papers that have been filed
14 by Mr. Jacobs that that is a theory that they intend to
15 pursue.

16 So it would seem to me to be entirely appropriate as
17 to ask Mr. Jacobs, why do you believe that the nerve center
18 for Sands China is in Las Vegas, why do you believe that the
19 executive headquarters of Sands China is in Las Vegas. So
20 there are certainly why questions that would go directly to
21 jurisdiction and have nothing to do with merits. And that's
22 the difference of opinion about this issue, Judge.

23 Now, we believe, and there were issues brought to
24 the Court's attention about questions that they asked where we
25 objected in those depositions of the Las Vegas Sands

1 employees, that went -- why questions that went to the merits.
2 Certainly Mr. Bice is free to object if he thinks we ask a why
3 question that goes to the merits and not to jurisdiction. We
4 all -- in a circumstance like this, Judge, we all kind of get
5 into gray areas, and it's certainly -- doing our job as
6 lawyers we want to ask as many questions as we can without
7 going over that line, but we also want to make sure that we
8 ask -- do a thorough job and ask all the questions that would
9 implicate jurisdiction in this case. And so that's the
10 distinction.

11 We do think we are entitled to ask why questions
12 that relate to jurisdiction only. And to the extent that Mr.
13 Bice thinks we went over that line in a particular question,
14 then he has a right to object and the right to instruct the
15 witness not to answer, which he objected to when we disagreed
16 with him about his why questions. But to hamstring us ahead
17 of time and say up front, you can't ask any why questions, we
18 think would be inappropriate based on the examples that I just
19 gave you, which I believe to be complete appropriate in a
20 jurisdictional discovery setting.

21 THE COURT: Okay. Anything else?

22 MR. RANDALL JONES: No.

23 THE COURT: All right. The motion by Sands China to
24 take the deposition of Mr. Jacobs is granted.

25 The deposition, however, is limited, because Sands

1 China may not inquire as to any why questions related to the
2 termination. Why questions related to jurisdictional issues
3 are appropriate.

4 However, the deposition may not commence until five
5 days after the release of the information I have ordered
6 released from Advance Discovery to the plaintiffs consistent
7 with my orders.

8 Okay. And I'll go to your motion, Mr. Bice.

9 MR. BICE: Thank you, Your Honor.

10 THE COURT: Other than Mr. Reese, can you tell me
11 the names of the individuals that you would like to take --
12 retake depositions related to documents that were later
13 produced in an unredacted form?

14 MR. BICE: Yes. Well, Mr. -- I apologize, Your
15 Honor. Mr. Reese does not sort of fall within that category.

16 THE COURT: No. He's a different category.

17 MR. BICE: He's a different category.

18 THE COURT: He's the defamation claim that wasn't
19 here for a while.

20 MR. BICE: Right. There's really four -- there's
21 really four topics, Your Honor. And let me -- well, first let
22 me answer your specific question. That would be Mr. Adelson,
23 Mr. Leven, and Mr. Kay on the documents that were later
24 redacted. Because, remember, they didn't even obtain the --

25 THE COURT: You mean produced in a redacted form.

1 MR. BICE: Produced in a unredacted form, right,
2 because they --

3 THE COURT: Okay. So you could read them.

4 MR. BICE: You could read at least parts of them.
5 Because, remember there are some that are fully unredacted
6 that were produced later --

7 THE COURT: And some with revised redactions.

8 MR. BICE: -- and then some with revised redactions
9 that were then produced even later than that, just this last
10 fall.

11 So we really have four categories, Your Honor, that
12 we have sought. And the first category I acknowledge is --
13 the first category is stayed by the Supreme Court, and that is
14 forcing them to do the production of documents from the
15 documents that are --

16 THE COURT: I'm not talking about that issue.

17 MR. BICE: Gotcha.

18 THE COURT: I am only talking about --

19 MR. BICE: Yep. There's --

20 THE COURT: -- the retake depositions to examine
21 witnesses concerning any documents later produced in an
22 unredacted form or a revised redacted form.

23 MR. BICE: Right. And there are really two -- there
24 are really two categories of that, Your Honor. It's not just
25 documents that were either produced unredacted or in a revised

1 redacted. Because, remember, Your Honor, when we took the
2 deposition we could not access volumes and volumes of the
3 documents that Mr. Jacobs had because they claimed -- as we
4 all vividly remember, they claimed and insisted to the Nevada
5 Supreme Court that they had 11,000 documents that were
6 privileged. Those documents didn't come back until -- the
7 Nevada Supreme Court ruled last summer that you needed to look
8 at them. Then when you announced you're going to look at
9 them, well, lo and behold, they now acknowledge, okay, well, I
10 think it came out to something like 70 percent of those claims
11 of privilege had no factual basis whatsoever. They even
12 acknowledged that. They took them off by their own
13 acknowledgement voluntarily. So they produced some 7,000
14 documents that they had claims privilege on, and we only got
15 access to those, Your Honor, within this year or --

16 MR. SMITH: October.

17 MR. BICE: -- October of -- whenever they changed
18 their privilege log. And you recall that lengthy process,
19 Your Honor. So none of those documents --

20 THE COURT: Unfortunately, that ran into when I was
21 starting the CityCenter trial.

22 MR. BICE: Correct. Correct. Correct.

23 So we had no access to any of those documents, so we
24 should be allowed to use both of those categories of documents
25 to depose these witnesses, because, I mean, they clearly

1 should have been given to us. There was no basis for it.
2 They've acknowledged they had no basis for privilege. They
3 deprived us of those documents for a couple of years with
4 claims of privilege that had absolutely no basis in fact. We
5 think got affirmative relief at the Supreme Court based upon
6 the sheer volume of the documents that they later had to
7 acknowledge was not even defensible. So those are the two
8 categories with respect to those witnesses, Your Honor.

9 And then we go, Your Honor, to the issue about Ron
10 Reese, Your Honor. And Mr. Reese, as Her Honor knows from
11 other motion practice not in this particular case, but
12 stemming from the Florida case, Mr. Reese we believe had
13 intimate involvement in the defamation issue that we also
14 maintain gives rise to jurisdictional discovery. And, as Her
15 Honor knows, those claims were only reinstated this last year
16 by the Nevada Supreme Court. So we would want to depose him
17 on that issue, and we have asked the Court to approve two
18 additional discovery requests related to that so that we make
19 sure that we get Mr. Reese's mails or communications that bear
20 on that issue. And we've limited it to just two, Your Honor.

21 And so that is the basis for it, Your Honor. We
22 have the time in which to do this. The Sands China is still
23 insisting that it's not subject to jurisdiction on the
24 additional claims that have been asserted, notwithstanding the
25 fact that we believe that's not even plausible in light of Mr.

1 Adelson's role and making the defamatory statement in Nevada.
2 But that's why we want to do jurisdictional discovery on that
3 issue relative to Mr. Reese in light of their position.

4 And let me just address, Your Honor, their
5 opposition. Their opposition essentially comes down to one
6 of, well, we've waited too long to raise this issue. Well, as
7 Your Honor might remember, our position was that this
8 jurisdictional hearing should not go forward because the
9 defense should be stricken. That's -- and Your Honor did not
10 rule upon that issue until -- I don't remember what day it
11 was, a Friday about two weeks ago as of tomorrow, I believe.
12 So the notion that we somehow waived --

13 THE COURT: I moved pretty quick after we finished.

14 MR. BICE: Oh, no. I'm not commenting on that, Your
15 Honor. I'm just talking about when it was relative to the
16 calendar.

17 THE COURT: I'm trying to do my job, Mr. Bice.

18 MR. BICE: Oh, absolutely, Your Honor. That's not
19 my point. But to claim that we somehow waived this, you'll
20 recall they didn't -- they didn't come to you, notwithstanding
21 the setting of the evidentiary hearing at the time it was set,
22 and say, well, we need to depose Mr. Jacobs. So this argument
23 that somehow we waived any right to do followup discovery on
24 these additional points has no merits. They have contradicted
25 themselves on that. If we somehow waived, obviously they did.

1 And it's interesting they don't take that position relative to
2 their ability to depose Mr. Jacobs.

3 So we would ask the Court to approve those topics,
4 Your Honor, the depositions on later-produced either
5 unredacted or partially unredacted, the documents that were
6 later produced that were -- where claims of privilege had been
7 made and were either overruled by the Court or just withdrawn
8 by them, because we were deprived access to all those, and
9 then the point about Ron Reese.

10 And in the interim, Your Honor, so that you know, we
11 have asked the Supreme Court to modify that stay. We don't
12 believe -- I mean, just let me be just blunt with the Court.
13 We don't see how that stay was entered on less than 24 hours'
14 notice with no petition pending. That is not in keeping with
15 the Supreme Court's own rules and how they have treated other
16 parties who have petitioned for such relief without having the
17 petition on file to invoke the Court's original jurisdiction.
18 So we've raised that with the Supreme Court about how a stay
19 gets entered with no petition pending and no notice of appeal.

20 THE COURT: You've got three justices, including the
21 chief, signing this. So somebody --

22 MR. BICE: Yes, I know, Your Honor.

23 THE COURT: -- clearly read it.

24 MR. BICE: Correct. So we have raised that with
25 them, and then we've asked them to modify that if they

1 maintain that they had jurisdiction, because there can be no
2 harm from completing the discovery aspect pending the
3 evidentiary hearing. And that's pending in front of them,
4 Your Honor. So in the event that the Supreme Court agrees
5 with us on that we would then be able to complete Topic
6 Number 1 which we've outlined. But, regardless of how they
7 rule on that issue, we should be allowed to complete the other
8 three topics that we have outlined to the Court --

9 THE COURT: Okay. Thank you.

10 MR. BICE: -- so that we can be ready for the
11 April 20th date.

12 THE COURT: All right. Mr. Jones.

13 And then I'm going to go to Mr. Morris and Mr. Peek,
14 as well, since this involves your clients separately.

15 MR. RANDALL JONES: And actually, Your Honor, one of
16 the first points I was going to raise, since Mr. Reese was one
17 of the last points that Mr. Bice spoke about, Mr. Reese is an
18 employee of Las Vegas Sands. He's not even an employee of
19 Sands China. And I would also point --

20 THE COURT: But, you know, you've got that shared
21 services agreement.

22 MR. RANDALL JONES: There is a shared services
23 agreement, but he's not an employee of Sands China.

24 THE COURT: No. Nobody said he was. I don't think
25 anybody's trying to say he's an employee. Somebody's trying

1 to say he performed services for Sands China at the direction
2 of somebody else here in the United States.

3 MR. RANDALL JONES: Well, if you have a shared
4 services agreement, which certainly does not confer
5 jurisdiction over my client simply by having a shared services
6 agreement, that is from our perspective irrelevant to the
7 jurisdiction of my client in this case. The mere existence of
8 a shared services agreement in no way confers jurisdiction
9 over Sands China. I don't believe that any caselaw --

10 THE COURT: I agree. If it did, we wouldn't be
11 having an evidentiary hearing.

12 MR. RANDALL JONES: So in addition to that, with
13 respect to Mr. Reese we also have a -- we have an amended
14 complaint. And the amended complaint here is interesting in
15 the sense that back in June of 2014 the second amended
16 complaint was -- the order granting the right to file a second
17 amended complaint was entered, and yet they never acted on it.
18 And then it was I believe September when they got another
19 order for the third amended complaint, and yet they've never
20 acted on that. In other words, they've had all this time to
21 do this discovery that they never asked to do with respect to
22 Mr. Reese.

23 But before I even get there, with respect to this
24 issue of Mr. Reese we have a motion to dismiss pending. That
25 motion to dismiss you have asked -- you specifically suggested

1 because of the orders entered by the Supreme Court that we
2 don't hear Sands China's motion to dismiss until the
3 evidentiary hearing. So there's even as question as to --

4 THE COURT: There was a reason I said that.

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

6 THE COURT: It had to do with asking for affirmative
7 relief in the state of Nevada which might otherwise subject
8 somebody to jurisdiction when there might be jurisdiction
9 otherwise.

10 MR. RANDALL JONES: And, Judge, I appreciate that
11 point. So my point is this, is that we don't know whether or
12 not that third amended complaint as it relates to Sands China
13 is meritorious or should be pursued. That hasn't been decided
14 yet. So they're taking depositions of Mr. Reese on an issue
15 against my -- or related to my client that they should not
16 necessarily be entitled to do at this point in the case. So
17 that's another issue that the Court at least ought to consider
18 with respect to this request.

19 But, you know, I don't know that I -- again,
20 respectfully -- I'd agree with the Court as to the breadth of
21 the stay order and what the Supreme Court said. And I don't
22 want to belabor this point --

23 THE COURT: What do you think it is?

24 MR. RANDALL JONES: Well, it says that the -- and I
25 don't have it in front of me. I didn't bring it.

1 THE COURT: Here. I've got it.

2 MR. RANDALL JONES: It says, "Our review of the
3 motion indicates a temporary stay of the sanctions order is
4 warranted pending receipt and consideration of any opposition
5 to the motion. Accordingly, we temporarily stay the March 6th
6 order."

7 THE COURT: But they're not staying the evidentiary
8 hearing scheduled for April 20th on jurisdiction.

9 MR. RANDALL JONES: I don't disagree, Your Honor.

10 THE COURT: Okay. So I understand exactly what
11 you're saying, but the only parts of my order -- the sanctions
12 order that would impact what we're talking about today are
13 those at the end that relate to the discovery, financial, and
14 evidentiary sanctions; right?

15 MR. RANDALL JONES: Well --

16 THE COURT: All the rest are just findings and
17 conclusions.

18 MR. RANDALL JONES: The sanctions order says what it
19 says.

20 THE COURT: Right.

21 MR. RANDALL JONES: And this has to do with
22 discovery issues, so I --

23 THE COURT: This has to do with discovery issues
24 that are about jurisdiction, which I could have handled
25 anytime in the last several years if anybody'd asked me;

1 right?

2 MR. RANDALL JONES: I don't disagree with that. In
3 fact, that is also bringing up another point that we have
4 raised, which is the timeliness of this request. And I
5 certainly disagree with the timing issues that Mr. Bice
6 referred to. You know, we have been doing this a long time,
7 and Mr. Bice certainly has not been shy, it appears to me,
8 when he wants to do discovery or look for information. And
9 Mr. Bice I believe was corrected by Mr. Smith about when, for
10 instance, they got the access to the Advance Discovery
11 privileged documents or they could have had access to that. I
12 think he admitted that it was by October of 2014. The hearing
13 where they requested the evidentiary hearing was in December
14 of 2014. That is clearly an indication they had this
15 information, they didn't --

16 And, by the way, they had most of the redacted
17 documents -- unredacted documents by that date, too. We've
18 given a chart to the Court that's on page 5 of our opposition
19 that shows when the documents were produced. And with the
20 exception of January 23rd, when there was 569 documents, they
21 had all the other ones prior to their motion to set the
22 evidentiary hearing.

23 So when you go and ask the Court -- you say to the
24 Court, I have the -- now I have the privileged documents, with
25 the exception apparently of a few documents that Mr. Bice

1 raised this morning where there appears to have been some
2 confusion about whether they'd been asked for or not --

3 THE COURT: I'm not concerned. Those we're going to
4 get done by the beginning of next week. I have the utmost
5 confidence in Mr. Mark Jones and Ms. Spinelli in being able to
6 resolve the communication on that issue.

7 MR. RANDALL JONES: And my point was only this.
8 With the exception of those documents that Mr. Bice talked
9 about today and some unredacted documents that they got in
10 January -- on January 23rd of 2015, they have had all the
11 information that they claimed they needed for these
12 depositions prior to their motion to this Court saying that
13 they want to take these depositions. These witnesses have
14 been -- it's my understanding they've been deposed twice.
15 Each one of them has been deposed twice.

16 THE COURT: In this case?

17 MR. RANDALL JONES: In this case.

18 THE COURT: What about in the Florida case?

19 MR. RANDALL JONES: There's been additional
20 depositions in the Florida case. So they come to the Court in
21 December and they say, we want to have this hearing as soon as
22 possible, we don't need any more depositions. And in fact
23 they essentially say the opposite, we're ready to go and now
24 we have -- I think as of today we have 30 days before the
25 evidentiary hearing. We don't have the Advance Discovery

1 information, the documents. We don't have those documents
2 that they want to talk to our clients about. So now Mr. Bice
3 says it's not appropriate to take my --

4 THE COURT: Why don't you have them?

5 MR. RANDALL JONES: Because they haven't been
6 released to us.

7 THE COURT: They have in fact been released to you.
8 You did the privilege review. You've had access to them for
9 four and a half years -- four years.

10 MR. RANDALL JONES: No.

11 THE COURT: Yes.

12 MR. PEEK: We've only had access to run search
13 terms, Your Honor, to identify privileged documents. That's
14 all we've had access to. We've not had access to the full
15 universe.

16 THE COURT: So how did someone do the revised
17 privilege log to eliminate all of the erroneous and
18 longstanding claims of privilege that existed?

19 MR. PEEK: We had access, Your Honor, to those
20 documents that had been identified through search terms with
21 player lists given to Advance Discovery of documents on which
22 we claimed a privilege.

23 THE COURT: And?

24 MR. PEEK: And we identified those documents.

25 THE COURT: And you've looked at them.

1 MR. PEEK: That's a very narrow universe of
2 documents.

3 THE COURT: And you've looked at those documents.

4 MR. PEEK: And we've looked at a portion of the
5 those documents that were -- we looked at those documents over
6 which we -- that were -- that had those search terms. I don't
7 know what Mr. Jones did to -- he'll have to tell you that.
8 I'm just talking about what --

9 THE COURT: No. But this is a very basic question.
10 For those documents for which there was no claim of privilege
11 and no redaction sought are you telling me your client, Mr.
12 Morris's client, and Mr. Jones's client have never had the
13 opportunity to actually look at those documents?

14 MR. PEEK: We had the ability to look at those
15 documents for purposes of claiming privilege. We did not have
16 the right to then download those documents and take copies of
17 those documents until the Court had issued all of her rulings.
18 So, yes, we were able to look at the documents for purposes of
19 identifying those over which we claim privilege, and some were
20 partial, as you know, because you have redacted documents in
21 part.

22 THE COURT: And I even upheld some of those
23 redactions.

24 MR. PEEK: You did, Your Honor.

25 THE COURT: Amazing.

1 MR. PEEK: I'm not saying anything. I'm not going
2 to comment. But my point is we didn't have the ability to
3 download and keep copies of those documents. So I think
4 that's where Mr. Jones's focus is, is, okay, so you're asking
5 me to somehow remind myself what I looked at --

6 THE COURT: Tell me why you didn't have the ability
7 for those documents where there was no claim of privilege by
8 Jacobs and no claim of privilege by any of the defendants that
9 you couldn't look at them -- I mean you couldn't download
10 them, print them.

11 MR. PEEK: That was pursuant to the Court's
12 protocol, that we were not allowed to look at any of Jacobs's
13 documents other than those over which we had search --

14 THE COURT: Now I've got to go back to Ms. Spinelli.
15 Good morning again, Ms. Spinelli.

16 MR. PEEK: I was also part of this protocol, too,
17 Your Honor.

18 THE COURT: I know you were. That's why I'm going
19 over to her. You are the only two left who remember it.

20 MS. SPINELLI: Yes. It was largely myself and MTO.
21 So we -- those were --

22 THE COURT: MTO being Munger Tolles, who is no
23 longer counsel of record for anybody in the case.

24 MS. SPINELLI: That's right.

25 THE COURT: All right.

1 MS. SPINELLI: So these documents were the documents
2 that were in Mr. Jacobs's possession.

3 THE COURT: Right.

4 MS. SPINELLI: Your Honor has stated --

5 THE COURT: That Mr. Campbell and Mr. Williams then
6 gave to Advance Discovery --

7 MR. PEEK: Pisanelli Bice did. Because they were --
8 Campbell Williams were gone by that time.

9 THE COURT: Okay. That Campbell Williams identified
10 as an issue and then we came up with a protocol so that nobody
11 would be forced to disqualify themselves by looking at
12 potentially privileged information of the other side.

13 MS. SPINELLI: Exactly. We gave them to Advance
14 Discovery, and the agreement that the parties reached was that
15 they would not be allowed to download them or print them, but
16 just review them for privilege. These were documents in Mr.
17 Jacobs's possession. There's no -- as Your Honor has stated
18 or at least as the defendants have stated, there's no
19 Rule 16.1 disclosures in the jurisdictional discovery, so we
20 haven't been able to -- we weren't able additionally to
21 produce any. The defendants have taken a position there's no
22 16.1. There's no outstanding discovery requests to Mr.
23 Jacobs, so those documents have not been produced by us.

24 That said, Your Honor, these documents, they have in
25 their own possession and in theory, had they run the search

1 terms for jurisdictional discovery to respond to our request,
2 they would have produced them in this action in response to
3 our requests.

4 THE COURT: Right. So when you and Mark Jones
5 communicate with Advance Discovery early next week is it
6 possible that Advance Discovery can also be directed that any
7 of the documents to which I have not sustained a claim of
8 privilege are able to be reviewed by anybody and downloaded
9 and extracted?

10 MS. SPINELLI: Actually, I don't know, Your Honor,
11 that that could be true, because I don't know if they relate
12 to jurisdiction. I'm not even trying to be coy here, but
13 those were all the documents in Mr. Jacobs's possession. It
14 was his entire world, and we were only allowed to put search
15 terms in for privilege. So there could be documents in that
16 production that -- and I don't know. This is largely Mr.
17 Smith. There could be documents in that production that have
18 nothing to do with even these guys.

19 THE COURT: But you removed all of the documents to
20 which Mr. Jacobs would have a claim of privilege?

21 MS. SPINELLI: By search terms, yes. But that's it.
22 Not a more subsequent [sic] review.

23 THE COURT: Well, let me ask you the question,
24 because I always ask this question when we get into the ESI
25 issues. Are you planning to review every individual document

1 to make a determination as to whether there's a privilege, or
2 are you satisfied with the work you did with search terms?

3 MS. SPINELLI: We are reviewing every single
4 document, Your Honor, of course.

5 THE COURT: When did you start that?

6 MR. BICE: We don't have access. We can't have
7 access under -- their position is we can't have access.

8 MR. PEEK: Your Honor, that's not our position.
9 They have had access to those once the Court entered the order
10 with respect to privilege.

11 THE COURT: They still don't have access.

12 MR. BICE: We've never had access to the Advance
13 Discovery database.

14 THE COURT: I understand. You don't have access
15 yet. There is an issue with the way Advance Discovery has
16 been communicated with all of -- by all of us, and I guess
17 that's partly my fault.

18 Ms. Spinelli, since you chose to use search terms as
19 part of your work, if you're going to do an independent review
20 of every single document, you're going to have to do that very
21 quickly.

22 MS. SPINELLI: Sure, Your Honor. We didn't -- I
23 mean, you ordered us to use the search terms for privilege, so
24 I hope that they were good enough. But we do intend to review
25 them, and we can produce them if they respond -- well, I

1 suppose if there's a 16.1 for jurisdictional discovery because
2 there is no pending request, but --

3 THE COURT: How about it's just me ordering it.

4 MS. SPINELLI: Ordering us to produce 16. anything
5 related to jurisdiction?

6 THE COURT: The documents that are in the possession
7 of Advance Discovery I will give you two weeks from the day
8 you have access to all the documents to make any independent
9 claim of privilege that you believe is appropriate. I am not
10 going to restrict the method by which you choose to do that
11 review. You can do it by any method you want. But you've got
12 two weeks once you get the release of the information to you
13 or the access from Advance Discovery.

14 MR. RANDALL JONES: Your Honor, are we --

15 MR. PEEK: And then we get complete access to them
16 after that two weeks?

17 THE COURT: Well, not if they have a privilege
18 issue.

19 MR. PEEK: Well, other than to the privilege.

20 MS. SPINELLI: Beyond jurisdiction, Your Honor? Is
21 that your order?

22 THE COURT: Yes. Let's just get past this part of
23 the documents. Not that I'm going to allow them to use them
24 at the hearing, not that I'm going to allow them to use them
25 at the deposition. But these documents have been at issue for

1 a long time.

2 MS. SPINELLI: They'd certainly reviewed them, yes.

3 THE COURT: So let's just -- so let's just move past
4 that, because very quickly after the evidentiary hearing
5 concludes, regardless of whether Sands China is here or not,
6 we have to be ready for a trial in the fall. And the only way
7 we're going to get ready for a trial in the fall is if we
8 actually start substantive discovery. So, instead of
9 producing this information in two batches, let's just produce
10 it.

11 MR. BICE: Well, Your Honor --

12 MS. SPINELLI: If there's anything in there that's
13 unrelated to this case but is not privileged, can we provide a
14 log to you, as well?

15 THE COURT: Sure.

16 MS. SPINELLI: There's -- it was his whole life in
17 Macau.

18 THE COURT: Absolutely. Which is why I thought we
19 previously had taken out all of the communications that
20 related to his kids, his wife, his personal investments and
21 all that stuff.

22 MS. SPINELLI: We certainly tried with the search
23 terms, Your Honor.

24 MR. PEEK: So now she wants to do a relevancy log,
25 Your Honor, is what she just said.

1 THE COURT: Mr. Peek, I had her do that before.

2 MR. BICE: Your Honor, why -- I understand this
3 position, but why, then, on all the data that they brought
4 here did they not have to do this? They did not produce it.
5 They took the position that they got to determine whether it
6 was related to jurisdiction as whether they would give it to
7 us or not. Why is that Mr. Jacobs has to surrender everything
8 in his possession unless it's privileged but that's not true
9 for the defendants?

10 THE COURT: Mr. Bice, because I want to get to a
11 trial date.

12 MR. BICE: I understand that, Your Honor. We do,
13 too. Our client is the one that's being prejudiced. But
14 there needs to be some level playing field here. And that --
15 I mean, we have to address -- we have to tell our client why
16 are you being subject to these rules when these litigants, who
17 the Court has found on multiple occasions deceived us and
18 deceived the Court, now but we have a different standard for
19 them and a different standard for us.

20 THE COURT: Because I'm having you do the privilege
21 log and privilege review in one fell swoop to avoid further
22 delays, because in my personal opinion the information that is
23 contained on the data that was transferred by Jacobs is less
24 likely to prejudice you in the long run given the issues,
25 because it is information your client had possession of.

1 Now, I certainly understand I am bound by a writ
2 from the Nevada Supreme Court and the stay order that
3 restricts my actions against the defendants. So you can
4 explain that to Mr. Jacobs. I'm trying to get the case so I'm
5 going to have a trial in the fall, which you and I talked
6 about two weeks ago or last week, I don't remember which.

7 MR. BICE: I understand.

8 THE COURT: So we're going to have communications
9 with Advance Discovery. Ms. Spinelli and Mr. Smith are going
10 to do their best efforts to do whatever review you've got to
11 do. If there are documents that are irrelevant to the case,
12 and I understand that may well be, since it's off of personal
13 devices of Mr. Jacobs, I have told you before and I tell you
14 again I recognize that those may not need to be produced, and
15 I will accept a relevancy log for that information. Okay.

16 MR. BICE: Thank you, Your Honor.

17 MS. SPINELLI: Thank you, Your Honor.

18 THE COURT: Now, Mr. Jones, you wanted to talk to me
19 some more about this comment that Mr. Peek made and I think
20 you made about your clients not being able to review the
21 information that Advance Discovery has, which to me makes no
22 sense at all, since you've had the transferred data since it
23 was hand-carried or transferred over to the United States from
24 Macau five years ago. But I'm listening.

25 MR. RANDALL JONES: Well, Your Honor, here's the

1 issue. We don't -- we haven't been able to look at that
2 information that --

3 THE COURT: Baloney. I had testimony about people
4 reviewing that document in the office of general counsel by
5 U.S. lawyers on Las Vegas Boulevard. I had that testimony in
6 my original evidentiary hearing before you became part of the
7 case. I had testimony about attorneys from Glaser Weil and
8 attorneys from Holland & Hart both being part of that review.
9 I didn't have anybody from Munger Tolles, so I have no idea
10 what they did or the other L.A. that was in it before them
11 did.

12 MR. RANDALL JONES: We're talking about essentially
13 the Advance Discovery documents?

14 THE COURT: No. We're talking about what I've
15 defined as the transferred data that was housed on a server at
16 Las Vegas Boulevard South.

17 MR. RANDALL JONES: I just wanted to be sure we were
18 talking about the same thing. So what I was talking about was
19 Advance Discovery, Your Honor.

20 THE COURT: The Advance Discovery data it's my
21 understanding is substantially similar to the transferred data
22 because of the way it was selected and searched.

23 MR. RANDALL JONES: And that may be. I can't answer
24 that question.

25 THE COURT: I'm not saying it's the same. That's

1 why I said substantially similar.

2 MR. RANDALL JONES: What I'm saying, Judge, is I
3 don't know that. I understand what you're saying. I just
4 don't know, because we haven't looked at it. So we've talked
5 about -- you've talked about what you're going to do. I have
6 one question about that.

7 THE COURT: Okay.

8 MR. RANDALL JONES: Are we going to be provided what
9 -- the search terms or the protocol that they used to search
10 the information?

11 THE COURT: Nope. Not unless you're dissatisfied
12 with the results. Otherwise you can negotiate a protocol that
13 you both agree on. If you don't want to agree to a protocol,
14 I am not going to force them to disclose the search terms
15 until I get to an issue with the production.

16 MR. RANDALL JONES: All right. And, of course, we
17 did disclose -- and I understand that the plaintiff believes
18 that the search terms we used in some cases were not adequate
19 or they didn't like what we did or whatever, but we did
20 disclose that to them. Here's the problem that I foresee,
21 Judge. If I don't know what their search terms are that they
22 used, it will make it virtually impossible -- well, make it
23 difficult for me at best to determine whether their searches
24 were adequate. So that's the difficulty that we would have in
25 that regard.

1 THE COURT: But, Mr. Jones, my telling them to
2 produce documents is not the same as you requesting documents
3 from them.

4 MR. RANDALL JONES: I understand.

5 THE COURT: I've told them to produce documents.
6 You're going to get them. You're not going to -- you may like
7 them, you may not like them. You are not precluded from
8 asking them to produce documents that provide certain
9 information to you. If they choose to use search terms to
10 respond to that and you are dissatisfied with the search
11 terms, then we can deal with it. If you want to agree to
12 search terms for them to use to respond to your requests for
13 production of documents, then I have a different playing field
14 that I talk about as part of the work.

15 MR. RANDALL JONES: I understand.

16 THE COURT: But you're sending a request for
17 production of documents just like you would if it was paper.
18 They're going to do their best efforts to respond to that,
19 whether it's by using search terms, doing the manual searches,
20 printing them all out on paper, and giving them to you. But
21 the fact that the volume of information has changed with ESI
22 does not alter the obligations of counsel.

23 MR. RANDALL JONES: Judge, all I was trying to do
24 was get clarification, because this is obviously just coming
25 up for all of us right now. So that's all I was asking. And

1 you gave me the clarification. I appreciate that.

2 THE COURT: I've told them they need to produce the
3 information.

4 MR. RANDALL JONES: So it's my understanding what
5 you've told them just to produce that information within the
6 next two weeks -- or within --

7 THE COURT: Two weeks after they get access.

8 MR. RANDALL JONES: -- two weeks after they get
9 access. And the question then becomes we have a hearing on
10 the 20th --

11 THE COURT: We do.

12 MR. RANDALL JONES: -- and we would like to have the
13 opportunity to look at those documents. If the Court is going
14 to allow the depositions of -- with respect to this
15 information, which we obviously object to. And I don't know,
16 you know, if the Court's going in that direction; but if it
17 is, that presents a timing issue.

18 THE COURT: You already have substantially similar
19 information in the transferred data. It's already been
20 reviewed by attorneys from the United States.

21 MR. RANDALL JONES: So my question then is is the
22 Court suggesting that it's going to allow depositions of some
23 of these people --

24 THE COURT: Yes.

25 MR. RANDALL JONES: -- prior to the time that we get

1 access to this information.

2 THE COURT: Yes.

3 MR. RANDALL JONES: All right. So that answers that
4 question, Your Honor.

5 With respect to these documents -- I don't want to
6 belabor this, because I've already said it, but they made the
7 motion on December 24th. They made no mention of either
8 redacted depositions of anybody that they wanted to take. And
9 this had come up before, by the way. We had talked about
10 these issues going way back as to whether or not they needed
11 this information or -- this goes back to 2013, actually, where
12 there was discussions about whether or not there was more
13 discovery that was needed and whether we wanted to proceed.
14 And it was my understanding back in the spring and late winter
15 of 2013 they wanted to proceed then. They have had this
16 information, they've had the amended complaint well before
17 they ever asked the Court for the evidentiary hearing. They
18 have waived any opportunity to take those depositions under
19 the circumstances. And we also believe that it is with the
20 stay in place that the stay is broad enough to cover these
21 issues until further order of the Court. So that's our
22 position, Judge.

23 THE COURT: Okay. The stay does not apply to
24 discovery that is not specifically identified in the sanctions
25 order.

1 MR. BICE: Your Honor, let me address -- because
2 this story that somehow they do not have access to the Advance
3 Discovery and have not had access to review every piece of
4 paper in there except for what we withdrew on the grounds of
5 privilege is simply untrue. It is untrue. We have emails,
6 and I can bring them to the Court, where Mr. Peek and Mr. Mark
7 Jones were given access codes so that they could review those
8 documents --

9 THE COURT: I don't think they're denying --

10 MR. BICE: -- verbatim.

11 THE COURT: -- they couldn't review them. They say
12 they couldn't download them and print them.

13 MR. BICE: Your Honor, they have all of the same
14 data over here. And now what they're telling you is, well, we
15 just have chosen not to look at it, we were able to look at
16 every document that Mr. Jacobs had in his possession and we
17 know that if it pertains to this case we have a copy of it
18 sitting here on Las Vegas Boulevard because we secretly
19 brought his drive over here and didn't tell anybody about it
20 for a couple of hours but we chose not to look at it, so
21 because we made those strategic decisions, Your Honor, for two
22 years Mr. Jacobs's counsel shall now have two weeks to go
23 through this data and give it to us because we have chosen not
24 to look at what we brought over here.

25 Now, I don't believe for five seconds that they

1 haven't looked through that data extensively and that they
2 haven't run their own search terms regarding it. I don't
3 believe that for five -- like I said, five seconds. They have
4 looked at all of this. This is simply to try and create work
5 for us when they are the ones who actually have access to the
6 data. We haven't had access to it by their own insistence.
7 Do you know why? Because they claim that 11,000 pages = or
8 11,000 documents for privilege. We couldn't even access our
9 client's drives. We still can't access them to this day,
10 because they contain what Mr. Peek and his co-counsel have
11 claimed are privileged information. So the only data that we
12 can look at is from Advance Discovery, and it's what they tell
13 Advance Discovery to let us look at. That is --

14 THE COURT: You understand I've agreed with them on
15 some documents?

16 MR. BICE: Absolutely.

17 THE COURT: There were some documents that are in
18 those that are privileged.

19 MR. BICE: I understand that. We have an issue
20 about the waiver issue, we believe, but we understand that.
21 So that's why we can't access that data, Your Honor. That's
22 exactly why. We're --

23 THE COURT: Why you can't access the drives.

24 MR. BICE: Exactly.

25 THE COURT: You can access certain information from

1 Advance Discovery, or when the communication is completed you
2 will be able to access that information.

3 MR. BICE: The only access that we have from Advance
4 Discovery is what they tell Advance Discovery to allow us to
5 see. That is it.

6 THE COURT: Well, no. It's what I tell Advance
7 Discovery.

8 MR. BICE: I understand that. But that's not --

9 THE COURT: So we're trying to communicate what I've
10 told Advance Discovery.

11 MR. BICE: Understood. But this -- this fiction
12 that they do not know what Mr. Jacobs possesses is simply --
13 it is that. It's a complete fiction. They know verbatim what
14 he possesses. They've looked at it for a couple of years, and
15 then they have their own duplicate set right here in Las Vegas
16 that they have culled through in great detail, no doubt.

17 So our point, Your Honor, on this is making us do a
18 -- give them every piece of paper regardless of how it
19 pertains to this case is not a level playing field. They have
20 not been required to do that, and we know they haven't done
21 it, because they have tried to take the position that those
22 are -- our document production requests were extraordinarily
23 narrow and are very limited and so therefore they didn't have
24 to produce volumes of data. And how do we know that? Because
25 the documents that we get from Advance Discovery that we've

1 been able to go through that Mr. Jacobs had pertain a lot to
2 these jurisdictional themes that we have been advancing. But,
3 of course, they didn't make their way into the productions
4 from the defendants. The only reason we have these documents
5 is because Mr. Jacobs possessed them.

6 So we don't think it's appropriate to tell us,
7 you've got two weeks to give them your entire -- every piece
8 of paper that pertains to this lawsuit, when they don't have
9 to do the same criteria for us. I understand Your Honor's
10 ruling. I'm just making my record on that.

11 THE COURT: Okay.

12 MR. BICE: But with respect to --

13 THE COURT: Hold on a second.

14 MR. BICE: Yes.

15 THE COURT: I forgot to ask Mr. Morris if he had
16 anything to say, so --

17 MR. BICE: I apologize.

18 THE COURT: Mr. Morris, your client, Mr. Adelson, is
19 one of the specific individuals who is being requested for a
20 retaken deposition to examine him concerning documents that
21 were later produced in an unredacted form or later produced.
22 Do you have a position?

23 MR. MORRIS: Do I wish to contest your order?

24 THE COURT: No. I haven't ordered yet. I'm making
25 sure before I give Mr. Bice the final word that you, like Mr.

1 Jones and Mr. Peek, have the opportunity to say something if
2 you think it's appropriate, since Mr. Adelson is your client.

3 MR. MORRIS: I don't want to say anything more in
4 this debate than what's already been said.

5 THE COURT: Okay. Thank you. I just didn't want to
6 ignore you.

7 MR. MORRIS: I understand.

8 THE COURT: Mr. Peek, I already heard your concerns;
9 right?

10 MR. PEEK: Yes, Your Honor. And I just want the
11 record to reflect that I do not agree with the -- with Mr.
12 Bice's characterization of the data that we have and that was
13 transferred to the U.S. I do not agree with that position.
14 You know that.

15 THE COURT: I'm relying on what I heard at the
16 evidentiary hearing, which was testimony given to me in open
17 court.

18 MR. PEEK: Well, Your Honor, what you don't know and
19 what I don't know is what's in the Jacobs collection that
20 Jacobs downloaded and took --

21 THE COURT: That's a different issue.

22 MR. PEEK: -- that you keep saying is the same as
23 what was transferred.

24 THE COURT: No. I said substantially similar.

25 MR. PEEK: Well, I'm not even -- I can't even say,

1 Your Honor, I don't think there's any evidence that's even
2 substantially similar, because none of us know, other than the
3 plaintiff, as to what Mr. Jacobs took when he left Macau in
4 July of 2010. None of us know that.

5 THE COURT: You're right. None of us actually know.

6 MR. PEEK: Other than Jacobs. So there's no
7 evidence in this record that it is, as you suggest,
8 substantially similar. I'm not saying it is or isn't. I'm
9 just saying there's no evidence in this record.

10 THE COURT: I am basing my conclusion that it is
11 substantially similar based upon the method by which the data
12 that was transferred was chosen. So that's --

13 MR. PEEK: But you don't know what -- you never
14 heard from Jacobs as to what --

15 THE COURT: I have no idea what --

16 MR. PEEK: -- he chose when he downloaded and took
17 things from Macau --

18 THE COURT: You're right, Mr. Peek.

19 MR. PEEK: -- in July 2010.

20 THE COURT: Absolutely.

21 MR. PEEK: So you can't even draw that inference,
22 Your Honor, respectfully.

23 THE COURT: All right. I disagree with you, but
24 okay. I've explained why I believe it's substantially
25 similar. I understand you have a different perspective, and I

1 also understand that there is a huge issue with the Advance
2 Discovery information being provided to everyone to use. So
3 -- but there was --

4 MR. PEEK: And with respect to my client, my
5 client's employee --

6 THE COURT: Yes?

7 MR. PEEK: -- Ron Reese, I think that we have had
8 certainly comments from Mr. Jones already which I would adopt,
9 as well.

10 THE COURT: Right.

11 MR. PEEK: And this certainly is something brand new
12 that just came up as part of a third amended complaint, not as
13 part of the Supreme Court's mandate in August of 2011 for an
14 evidentiary hearing on the issues that went up to the Supreme
15 Court.

16 THE COURT: Anything else in opposition to the
17 plaintiff's motion, Mr. Peek?

18 MR. PEEK: None other than what Mr. -- nothing
19 additional.

20 THE COURT: I understand that.

21 Now Mr. Bice. Sorry. I had to hit all those
22 people.

23 MR. BICE: Your Honor, the only parties that know
24 what Advance Discovery has are sitting to my right. That's
25 it. I don't have access. So Mr. Peek keeps saying they don't

1 know. They are the ones who reviewed it. And if Mr. Peek and
2 Mr. Jones chose not to review it even though Advance Discovery
3 gave them access and they instead had Mayer Brown do it or --
4 who's also counsel of record in this case, or MTO, which was
5 also counsel of record in this case, the defendants are the
6 only ones that know what is there.

7 Ms. Spinelli has confirmed it is 81,000 documents, I
8 believe, that are with Advance Discovery that we would have to
9 review. We can't do that in two weeks. Your Honor, you gave
10 them months to review this data, and they did. It took them I
11 don't remember how long, certainly six months to go through
12 this data and make their claims of privilege. That's what
13 they did. And they are the ones who have access to it.

14 THE COURT: But you already had a first shot at it.
15 You've already done it once.

16 MR. BICE: We ran -- all we could do -- Your Honor,
17 because they said we couldn't look at it, all we could do was
18 run search terms. That's not -- Mr. Peek is just wrong on
19 that. He was allowed to look at every piece of paper if he
20 wanted to do it --

21 MR. PEEK: That is --

22 MR. BICE: -- and he chose not to do it.

23 MR. PEEK: That is false. That is --

24 THE COURT: Mr. Peek, don't interrupt. Mr. Peek,
25 don't interrupt.

1 MR. BICE: And that is exactly what has. And we
2 have emails, and he knows that. And if they chose to run
3 search terms because it was easier for them, that was a
4 decision that they made. So we know that they were allowed to
5 look at every document, and that's why they claimed it was
6 taking them so long. The story that somehow, well, we only
7 had access -- ability to run search terms against that data is
8 simply false. They have had the ability. And not only did
9 they have that ability, Your Honor, they've had his drive that
10 they brought over here that now -- apparently they just
11 haven't looked at it. I guess we're all supposed to believe
12 that. We know that they were looking at certain emails on Mr.
13 Kostrinsky's computer, because we heard that testimony during
14 the evidentiary hearing, all the while that they were telling
15 us and you they couldn't access that information in the United
16 States and it was such a serious issue that they couldn't even
17 disclose it to the Court.

18 But, nonetheless, Your Honor, our point is we can't
19 -- we can't look at this information in that amount of time.
20 And if that's what the Court is ordering us to do, the Court
21 is putting us in a position that is prejudicial considering
22 that they are the only parties who have had access to this
23 information this entire amount of time. And they have had the
24 ability to look at every piece of paper that is in Advance
25 Discovery, except for those over which Mr. Jacobs was able to

1 pull out via search terms.

2 THE COURT: Okay. Anything else?

3 MR. BICE: No, Your Honor.

4 THE COURT: All right.

5 MR. RANDALL JONES: Your Honor, this is a related
6 issue, so just a clarification. We have disclosures that are
7 due tomorrow, both sides --

8 THE COURT: Hold on. We'll get to that. We'll get
9 to that in a minute.

10 So I need to ask you both a question, because I am
11 not operating under any assumptions about my sanctions order
12 which previously had an issue about notice provisions. So I
13 have two issues related to notice and response provisions that
14 are raised by this issue. One is by what appear to me to be
15 well-tailored requests for production of documents, which are
16 attached as Exhibit 1 to the expedited motion --

17 MR. BICE: Yes.

18 THE COURT: -- which I approve for submission. The
19 question I have is the return of the responsive information.
20 Typically there would be a 30-day return period --

21 MR. BICE: Correct.

22 THE COURT: -- which will put us at the day before
23 or the morning of our hearing if you serve them by RSE today.

24 MR. BICE: Correct. There's only two, Your Honor.

25 THE COURT: They're fairly easy.

1 MR. BICE: I think they're narrow. I would ask for
2 15 days.

3 THE COURT: Okay. That was what I wanted to know.

4 Mr. Jones, can you look at what's under Tab 1 of the
5 expedited motion near the end of the document are two specific
6 requests for production. They're on page 5 of the exhibit at
7 the end, so the next-to-the-last page. Mr. Bice is saying
8 since I'm going to grant it he would like me to order it
9 responded to in 15 days. Do you have a position?

10 MR. RANDALL JONES: I certainly have a position,
11 Your Honor, and my position would be that again -- we
12 understand you've ordered it, so my only position would be
13 that we are -- I understand or I get the impression you're
14 going to allow depositions. So between the depositions that
15 you sound like you're going to allow and preparing for the
16 hearing we have disclosures that we're working on, we have
17 motions in limine, the 15 days is, in consideration of
18 everything else we're trying to deal with, is too much of a
19 burden on us to try to get all this done.

20 THE COURT: Okay. Then let's talk about the next
21 notice issue, which is the notice of any depositions that you
22 decide to take. And this will apply both to the deposition of
23 Mr. Jacobs that we discussed and the depositions that are
24 being sought by the plaintiffs. Do you have a position
25 related to the notice period? The statutory notice -- or the

1 rule period is 15 days. Fifteen days will get you before the
2 hearing.

3 MR. BICE: Yes. I would ask the Court to do the
4 following. Mr. Jones and I have -- Mark Jones and I have
5 spoken, because we figured that the Court was going to --
6 well, I figured that the Court was going to allow some
7 depositions. Mr. Jones and I have talked about a couple-of-
8 week time span. One of those weeks is a little fuzzy on our
9 end, but I'm not saying he committed to anything, because he
10 had to check with -- he has a number of people he needed to
11 check with, so I don't know where he stands sort of on that.
12 We were going to try and do those depositions --

13 Mark, help me out.

14 MR. MARK JONES: 6th.

15 MR. BICE: -- the 6th, which is not really good for
16 me, or the following week, which I think was better on my end.
17 I would ask the Court --

18 THE COURT: Those are the weeks of the 6th and the
19 13th, the 13th being the week before our hearing.

20 MR. BICE: I understand that, Your Honor.

21 THE COURT: I'm not criticizing anyone.

22 MR. BICE: We're trying. So I would ask the Court
23 to do it on five days' notice, but obviously an instruction
24 that the parties are to try to cooperate in good faith on the
25 schedule. But if -- you know, if somebody just says, well,

1 we're not giving you a reasonable date, then five days'
2 notice. And if we can't agree, then we'll have to come back
3 to you; right?

4 THE COURT: All right.

5 MR. BICE: That's what I would ask.

6 THE COURT: Mr. Randall Jones, Mr. Peek, and Mr.
7 Morris, and Mr. Mark Jones, you have an offer of five days.

8 MR. RANDALL JONES: Your Honor, well, there's a
9 couple of issues here. One is Mr. Jacobs is in Florida, and
10 we would obviously want Mr. Jacobs to come to Las Vegas. We
11 would not want to have to take his deposition --

12 THE COURT: He has to come. He's a party.

13 MR. RANDALL JONES: Well, that's what I would
14 normally think.

15 MR. BICE: We have an issue with that.

16 MR. RANDALL JONES: But I -- in this case I --

17 THE COURT: They haven't filed a motion that says he
18 doesn't have to come. Until I grant it, the rule says he has
19 to come.

20 MR. RANDALL JONES: So with respect to the other
21 witnesses I don't know if they're -- Mr. Leven does not live
22 here anymore.

23 THE COURT: Well, here's the issue. Whatever I
24 decide is going to apply to both of you. So I would encourage
25 you to adopt or agree to something that you both believe will

1 be fair given your respective clients, the locations of your
2 former employees and current employees, and everything else.
3 Because you've got scheduling issues.

4 MR. RANDALL JONES: In that regard, Your Honor, the
5 only thing I could say at this point -- and I don't represent
6 those individuals, they're obviously Las Vegas Sands employees
7 -- is that I think we have to talk to them. We didn't know
8 what you were going to do today, and so I certainly have no
9 idea of their schedules and what their availability is. So
10 that's something that I -- you know --

11 THE COURT: So if you want to have an a chance to
12 have an opportunity to discuss the time limit with me from
13 15 days to something else, which is what I've been requested
14 from plaintiff, I need to hear from you three now.

15 MR. PEEK: Your Honor, we're --

16 THE COURT: Because right now there's an offer of
17 five. There's a rule that says 15.

18 MR. PEEK: I'm okay with the five. I don't know
19 whether you're going to order Mr. Reese, but I certainly
20 haven't talked to Mr. Reese, but I'm sure we could work
21 through that as far as Mr. Reese is concerned. I don't know
22 about Mr. Adelson. I'll let Mr. Morris address that. But I
23 do know that Passover is coming up very quickly, and that's
24 going to be an issue for Mr. Adelson --

25 THE COURT: Sure.

1 MR. PEEK: -- on Passover.

2 THE COURT: And Mr. Leven.

3 MR. PEEK: Thank you, Your Honor.

4 MR. BICE: Your Honor, with respect to Mr. -- on
5 this depo location issue this was my position, is that the
6 address they gave us for Mr. Leven is in Florida, and here was
7 my only position, is we are under a time constraint. If we
8 have -- if their position is that we have to travel for Mr.
9 Leven to Florida to take that deposition, then Mr. Jacobs is
10 in Florida, and we should not have to be having these planes
11 going to Florida to take Mr. Leven, if that's their position,
12 and then have Mr. Jacobs get on a plane and come here to take
13 his deposition if we're already going to be in Florida for Mr.
14 Leven. That was my only position.

15 THE COURT: I understand what you're saying. That
16 is a rational and well-reasoned position. But the rule says
17 that a plaintiff has to come -- and a party has to come for
18 their deposition.

19 MR. BICE: But the rule says "generally" that is the
20 case.

21 THE COURT: I know. I'm not saying I won't change
22 it.

23 MR. BICE: I understand.

24 THE COURT: I'm just saying right now assume he has
25 to come here.

1 MR. BICE: Right. And I said, if Mr. Leven is going
2 to come here, then --

3 THE COURT: No. Don't assume that.

4 MR. BICE: -- we don't have an issue.

5 MR. PEEK: He's a defendant, Your Honor.

6 THE COURT: Defendants have to come, too. If you
7 notice their depo and they don't show up, they're in a world
8 of hurt. But only one --

9 MR. PEEK: Well, he's not a defendant, Your Honor.

10 THE COURT: Right.

11 MR. PEEK: He's a representative. He's on the board
12 of directors, a former executive.

13 THE COURT: Okay.

14 MR. BICE: A director. He can be noticed.

15 THE COURT: Let's assume for a minute, Mr. Bice --

16 MR. BICE: Yes.

17 THE COURT: -- that your going to have the same rule
18 that applies to you --

19 MR. BICE: Yes.

20 THE COURT: -- and applies to them.

21 MR. BICE: Yep.

22 THE COURT: Are you happy with a five-day notice
23 period?

24 MR. BICE: Five days, with the parties obviously
25 working in good faith trying to cooperate. And if they can't,

1 then they come back to you. And I agree with that. Fine.

2 You know what, Mr. Peek is chuckling, so we'll just agree to
3 five days flat. We'll do it.

4 THE COURT: What do you want?

5 MR. BICE: They have to live with the same thing.

6 MR. PEEK: I've already said I'm okay with five
7 days, Your Honor. But I can't speak for Mr. Adelson with
8 respect to Passover.

9 THE COURT: Well, that's why I'm going to Mr. Morris
10 next.

11 Mr. Morris.

12 MR. MORRIS: No less than 15.

13 THE COURT: Mr. Jones.

14 MR. RANDALL JONES: Your Honor, I don't control any
15 of these witnesses, so I certainly the longer period of time
16 the better just because of all the other things we're trying
17 to deal with at the moment, which, again, includes things like
18 disclosures and motions in limine.

19 THE COURT: And you're going to talk about those in
20 a few minutes. Anything else?

21 MR. PEEK: Your Honor, do I get to address the
22 requests for production? Because those are addressed to Las
23 Vegas Sands.

24 THE COURT: Uh-huh. Sure.

25 MR. PEEK: And there is a Request Number 26 -- well,

1 25 and 26.

2 THE COURT: 25 and 26. "Identify and produce all
3 documents and/or communications since October 18th, 2010,
4 where Ron Reese is either --"

5 MR. PEEK: I have a temporal issue, Your Honor,
6 because, as we know, the so-called defamatory statement
7 occurred on or about March 15th or 16th of 2011. This is a
8 temporal issue that goes from October 18th, 2010, all the way
9 up I guess to the present time on each of them. So I have a
10 temporal issue both with the commencement of the October 18,
11 2010, as well as the open-ended time. I think that this ought
12 to be a very narrow -- if at all, if the Court is going to
13 grant this request, ought to be very narrow to that period of
14 time in which the so-called statement of -- that they claim is
15 defamatory on which their complaint is based should be
16 allowed, as opposed to all these other documents.

17 THE COURT: All right. The motion is granted in
18 part. With respect to the requests for production that are
19 attached behind Tab 1 to the expedited motion, which are
20 separately directed to Sands China and to Las Vegas Sands, the
21 response period for those is 21 days. Those requests for
22 production are to be served by hand delivery or other means
23 today.

24 With respect to the request to take witnesses to
25 examine them on later-produced documents or revised production

1 of redactions the request is granted.

2 Those witnesses, as well as the depositions of Mr.
3 Jacobs, may be taken upon 10 days' notice. The parties are
4 instructed to cooperate in setting the depositions on mutually
5 agreeable dates, times, and, if possible, locations.

6 With respect to the deposition of Mr. Ron Reese, who
7 has not previously been taken, the Court is granting that
8 request. It will also be subject to the 10 request.

9 Anything else?

10 MR. MORRIS: Say that again about Ron Reese.

11 THE COURT: I'm granting the request for him to be
12 taken.

13 MR. PEEK: And you're also granting the request
14 without any temporal limitations?

15 THE COURT: I am. Anything else?

16 MR. MORRIS: So the October -- the October date 2010
17 to --

18 THE COURT: That is the date that is in the request
19 for production. It appears to me to be narrowly tailored and
20 relates to the filing of the litigation and subsequent
21 discussions related to that, not just the defamatory
22 statements. So I think it's a relevant date.

23 Anything else?

24 MR. PEEK: So you're saying all the way up to today,
25 or to the time of --

1 THE COURT: Yes.

2 MR. PEEK: Okay.

3 THE COURT: Can we talk about the issue you had, Mr.
4 Jones, which was related to disclosures and motions in limine.

5 MR. RANDALL JONES: Yes, Your Honor. In light of
6 the Court's ruling today, the question is is it appropriate to
7 have the disclosures be due tomorrow. And also I guess the
8 other issue that's impacted by this would be motions in
9 limine, which I believe are due Monday. Those are --
10 presumably could change, and could change radically, depending
11 on what happens with these productions.

12 THE COURT: Well, if you have a motion in limine
13 that is going to be changed because of subsequent events that
14 are filed, I'm certainly likely to sign an OST, but it has to
15 relate to issues that were unknown at the time the motions
16 were to be filed, which is Monday. So if you're saying you
17 have some issues that you think need to be raised or may need
18 to be raised, they need to be filed on Monday. If other
19 issues come up, then I will consider an OST.

20 MR. MARK JONES: Your Honor, if I may. I put a call
21 in to Mr. Bice yesterday. He was obviously busy. I haven't
22 had a chance to connect with him yet, and I don't know if his
23 position is no or not, but you might recall that originally we
24 had a disclosure date due on -- I can't remember the exact
25 date, but then motions were due --

1 THE COURT: Couple of weeks ago, wasn't it?

2 MR. RANDALL JONES: Your Honor, I think it was a
3 week ago today -- a week ago tomorrow.

4 MR. MARK JONES: The motions were due a week later.
5 So I think the anticipation was there from the initial
6 disclosures that were going to be made to have it a week
7 later. We forgot to address that.

8 THE COURT: Well, here's my concern. Here's my
9 concern, and this is why I don't want to move the dates. When
10 we move the dates the person who suffers is me, because I need
11 you to do a good job on the briefing so I have an opportunity
12 to read the briefs, digest what you've put in there, and then
13 think about them and then making a decision during the
14 argument that you have prior to the start of the hearing. If
15 you compress those dates, I lose that ability. So I try to
16 never put motions in limine on that short track where I lose
17 my ability to read and think. Because it's important to me,
18 and this is an important issue, and I want to address it. So
19 I'd rather not move them. But I do understand if issues come
20 up after the day they're supposed to be filed that I may have
21 to sign an OST, and then I'm going to compress your opposition
22 schedule.

23 All right. Anything else? Mr. Morris.

24 MR. MORRIS: Yes, there is, Your Honor. Your Honor,
25 I wasn't involved in the Florida litigation. Mr. Bice was.

1 And --

2 THE COURT: I was, too. I don't know how I got
3 involved in the Florida litigation, but I was.

4 MR. MORRIS: Well, you're more fortunate than I.

5 THE COURT: No, I wasn't going to say that.

6 MR. MORRIS: When I look at this motion that you've
7 just granted with respect to expedited motion for
8 clarification and limited jurisdictional discovery I notice
9 that the justification for Mr. Reese's deposition is at the
10 foot of page 2. "Finally," he says, "Jacobs seeks to take the
11 deposition of Ron Reese to obtain limited documentary evidence
12 concerning that claim." "That claim" is the relative pronoun
13 that refers to the defamation claim. And that claim arises
14 out of a single statement on a single date. And he points --
15 goes on to point out some other things here. This request for
16 production of documents that you've just granted without
17 limitation, the temporal point that Mr. Peek raised, covers
18 much more time and much more territory and many more
19 communications that could have been made than are required to
20 establish who it is, as Mr. Bice said a moment ago, told Mr.
21 Reese to do what with respect to the defamatory statement.

22 I point that out for this reason. You've now said
23 they get to pry into all of the communications with media for
24 this unlimited period of time starting in October 2010. But
25 when we sought to -- when Mr. Adelson sought to get Mr.

1 Jacobs's communications with the same media in Florida he
2 didn't get it. They wouldn't give it up.

3 THE COURT: I'm not the Florida judge.

4 MR. MORRIS: Well, I know you're not the Florida
5 judge. I'm telling you that for this reason. If Mr. Jacobs
6 is going --

7 THE COURT: Mr. Morris, I've already ruled.

8 MR. MORRIS: If Mr. Jacobs is going to be deposed
9 here, then the documents that he has to yield are those
10 related to the ones you're now requiring, requiring be yielded
11 by Las Vegas Sands.

12 THE COURT: So, Mr. Morris, if you want to serve two
13 narrowly tailored requests for productions upon Mr. Jacobs, I
14 will allow those to be responded on 21 days' notice, subject
15 to objection.

16 Yes?

17 MR. BICE: Your Honor, this is discovery in the
18 Florida action. That's all this is. And. by the way --

19 THE COURT: It may have already -- it may have
20 already been produced.

21 MR. BICE: He's simply wrong on that.

22 THE COURT: He may be. Remember --

23 MR. BICE: How does that pertain to jurisdiction
24 over Sands China?

25 THE COURT: It doesn't. It doesn't.

1 MR. BICE: Well, then the merits stay that they are
2 relying on precludes him from conducting that discovery. We
3 have been barred from doing that discovery by their
4 insistence, and now he's admitting, I really want to engage in
5 merits discovery here for a second action that is on appeal in
6 the Florida courts. And that is --

7 THE COURT: Absolutely.

8 MR. BICE: -- completely inappropriate. Mr. Morris
9 doesn't know anything about that case, because I was the one
10 handling it. So how he could come into this courtroom and
11 represent that they didn't get any of these communications --
12 Mr. Jacobs had to produce phone records, Your Honor, about any
13 communications.

14 THE COURT: Mr. Bice, you can file an objection to
15 those requests when they are served on you. But they're going
16 to be on the 21-day notice.

17 Anything else?

18 Mr. Pisanelli.

19 MR. PISANELLI: Your Honor, when you were wrapping
20 up and giving your rulings you didn't address -- and maybe I
21 just missed it, but this idea of these 81,000 documents you
22 want produced from us in two weeks is problematic, and I just
23 want to tell you why.

24 First of all, they haven't even asked for them. So
25 it's not that there's a request. We've heard Mr. Jones

1 rightly say how busy he is with motions and everything else
2 and couldn't, he didn't think, respond to two discovery
3 requests. Yet we are being -- I can't think of a different
4 word -- potentially hijacked, our entire law firm working 24/7
5 to get this done on a request that, number one, they didn't
6 ask for, and, number two, they already have these documents
7 and have already reviewed them. I understand totally your
8 point about getting this thing moving, do one review and get
9 it done. But the timing of hijacking us as we're preparing
10 for this hearing puts us in an untenable position that it is
11 feeling as I sit at this table right now as an impossible
12 task. I don't want to walk out of this courtroom knowing that
13 I cannot live up to the order that you entered or are about to
14 enter, and that's why I'm bringing it to your attention. If
15 there was prejudice, if there was a request, if there was
16 somehow we have documents they don't, if Mr. Peek had never
17 sat on Las Vegas Boulevard and reviewed them already, a whole
18 'nother discussion. But to take all of our time away from
19 this case to produce it because the big picture is helped, and
20 I understand the logic of it, seems to be outweighed by the
21 prejudice that we suffer.

22 And so I would ask Your Honor to give us a fair
23 amount of time unrelated to this jurisdictional hearing. We
24 want this to go forward as much as you do, as much as anyone,
25 quite frankly.

1 THE COURT: I didn't make anything about the
2 jurisdictional hearing contingent on this production. I've
3 been trying to get these documents produced because to me they
4 relate to the jurisdictional issue and have related to the
5 jurisdictional issue, and I've been trying to get them
6 produced for a long time.

7 MR. PISANELLI: Yeah. From this side, not from us.

8 THE COURT: From all sides.

9 MR. PISANELLI: We haven't had them.

10 THE COURT: From all sides.

11 MR. PISANELLI: We haven't had them. But I
12 understand your point.

13 THE COURT: From all sides. Your client had them.
14 You couldn't review them because of the potential issues about
15 reviewing the other side's privileged information. I am past
16 the privileged information stage.

17 MR. PISANELLI: Correct.

18 THE COURT: It is now time for those documents to be
19 produced. And while I understand that there may be some items
20 in there that do not relate to jurisdictional issues, given
21 the theme that we have in this case from your client, I think
22 most of them are going to relate to your theme.

23 MR. PISANELLI: I understand that point. But it,
24 respectfully, doesn't address both our prejudice and the fact
25 that there's nothing to be gained by the defendants, because

1 they already have them and they've already seen them.

2 THE COURT: You don't know that they already have
3 them. I said "substantially similar." And, as you heard from
4 Mr. Bice, there are different documents that he has gotten off
5 of Advance Discovery that were not produced by these folks.
6 Whether they should have been produced --

7 MR. PISANELLI: Well, that doesn't mean they don't
8 have them.

9 THE COURT: Whether they should have been produced
10 or not is an entirely different issue --

11 MR. PISANELLI: That's right.

12 THE COURT: -- that I might deal with some other
13 day, but not today.

14 MR. PISANELLI: So -- but understand even Mr. Peek's
15 words, we don't know what Mr. Jacobs downloaded. Downloaded
16 from their system and left behind in their hands.

17 THE COURT: They absolutely do know, because the IT
18 guy told me.

19 MR. PISANELLI: Exactly. And that's all I'm saying,
20 Your Honor, is we can accomplish your objective without taking
21 away all of our time to prepare for this hearing. It's not
22 the production that bothers me. It's the two weeks thing.

23 THE COURT: Here's the reason I gave you two weeks.
24 You've already done it once. You've gone through and you've
25 made that review. And I understand that it was done by search

1 terms.

2 MR. PISANELLI: For personal items.

3 THE COURT: Yes, personal items. And privilege
4 items.

5 MR. BICE: Yes.

6 THE COURT: So that search has already been done
7 once. So I don't anticipate redoing it is going to be that
8 complicated. Now, I understand that you may think
9 differently, but you did it once already. Those documents
10 that were identified by those search terms that were sought to
11 elicit personal and privileged and private and financial
12 information have never been disclosed and are protected on the
13 Advance Discovery site from everybody.

14 Two weeks --

15 MS. SPINELLI: Could I ask a clarification, Your
16 Honor?

17 THE COURT: -- from the time you get access,
18 whenever that is.

19 MS. SPINELLI: So the 82,000 documents that are not
20 -- that have been released because they're not privileged by
21 Sands and they exclude my client's privileged documents, I
22 don't know how many documents my -- the search terms for my
23 privilege and nonrelevant -- I don't know how many documents
24 came from that. They're isolated somewhere on the Advance
25 Discovery. I don't have access to those. They're just with

1 Advance Discovery. The ones that Advance Discovery could in
2 theory release to us or are in the process of releasing to us
3 or whatever are 81,000 documents. This order from Your Honor
4 is to review however many are privileged and put them on a
5 log, release the ones that aren't privileged that just came up
6 with a search term, and then review the 81,000 to produce them
7 if they relate to this case --

8 THE COURT: I may not get the log in two weeks,
9 because I know that sometimes doing the log takes longer and
10 there's a lag between the production and the log. I want the
11 review done in two weeks after you get access.

12 MS. SPINELLI: I honestly think that is near
13 impossible, Your Honor. But I will do my best and have my
14 whole firm on it.

15 THE COURT: Okay. Anything else?

16 MR. RANDALL JONES: No, Your Honor.

17 THE COURT: Goodbye. And it's 10:06, so I'm sorry
18 you're late for your other thing.

19 THE PROCEEDINGS CONCLUDED AT 10:06 A.M.

20 * * * * *

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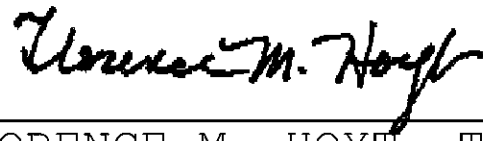
CERTIFICATION

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

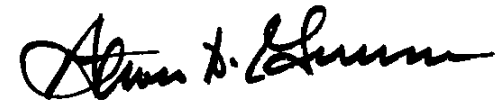
AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER



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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**ORDER ON DEFENDANTS' MOTIONS
TO DISMISS PLAINTIFF'S THIRD
AMENDED COMPLAINT**

Hearing Date: February 26, 2015

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

Before the Court is Defendant Sheldon G. Adelson's ("Adelson") Motion to Dismiss Third Amended Complaint, Defendant Las Vegas Sands Corp.'s ("LVSC") Motion to Dismiss Third Amended Complaint and Motion to Strike, and Defendant Sands China Ltd.'s ("Sands China") Motion to Dismiss Third Amended Complaint for Lack of Personal Jurisdiction and Failure to State a Claim.¹ Todd L. Bice, Esq. and Jordan T. Smith, Esq. of the law firm PISANELLI BICE PLLC appeared on behalf of Plaintiff Steven C. Jacobs ("Jacobs"). Steve Morris, Esq. appeared on behalf of Adelson, J. Stephen Peek, Esq. appeared on behalf of Sands China and LVSC, and J. Randall Jones, Esq., appeared on behalf of Sands China. Having considered the papers filed on

¹ Collectively, Adelson, LVSC, and Sands China are referred to as "Defendants."

1 behalf of the parties, oral argument of counsel, and being fully informed with good cause
2 appearing, the Court makes the following findings:

3 1. While the Court understands that intentional torts may be pursued against officers,
4 directors, and employees of a company, this type of claim is independent and must be brought
5 only against the employer. LVSC was Jacobs' employer, not Adelson. Accordingly, Adelson's
6 Motion to Dismiss Jacobs' Sixth Cause of Action for Tortious Discharge in Violation of Public
7 Policy is GRANTED.

8 2. Defendants' Motions to Dismiss regarding Jacobs' Fifth Cause of Action for
9 Defamation Per Se is DENIED. At this point, the subject statement appears to be based on mixed
10 opinion and fact. The allegations related to maliciousness defeat any qualified privilege at the
11 motion to dismiss stage. Sands China and LVSC may be liable for Adelson's defamatory
12 statement.

13 3. LVSC's Motion to Dismiss related to Jacobs' Fourth Cause of Action for Tortious
14 Discharge against LVSC is DENIED as Jacobs has stated a claim upon which relief may be
15 granted. NRCP 12(b)(5).

16 4. Defendants Sands China's and LVSC's respective Motions to Dismiss Jacobs'
17 Seventh Cause of Action against Sands China for Aiding and Abetting Tortious Discharge in
18 Violation of Public Policy and Jacobs' Eighth Cause of Action against Sands China and LVSC for
19 Civil Conspiracy related to Tortious Discharge in Violation of Public Policy are DENIED. These
20 claims relate back to the filing of the original complaint and are timely. NRCP 12(b)(5); NRCP
21 15(c).

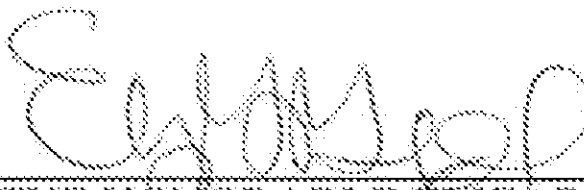
22 5. However, the Court believes that with the benefit of merits discovery – which is
23 presently stayed – Jacobs should be required to provide greater detail to his conspiracy and aiding
24 and abetting claims. Thus, Jacobs shall have 45 days from entry of the Court's Order following
25 the jurisdictional hearing to file an amendment to his Seventh and Eighth Causes of Action to
26 provide more facts as to the framework of these claims.

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6. Sands China's Motion to Dismiss for Lack of Personal Jurisdiction is deferred until the April 20, 2015 evidentiary hearing on personal jurisdiction and will be addressed by the Court at the close of evidence.

IT IS SO ORDERED.

DATED: MAY 11, 2015



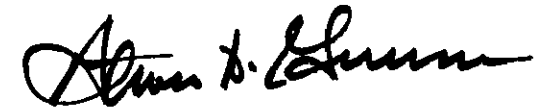
THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

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

15 STEVEN C. JACOBS,

16 Plaintiff,

17 v.

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

21 Defendants.

22 AND ALL RELATED MATTERS.
23

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

**ORDER DENYING SANDS CHINA
LTD.'S MOTION TO STAY COURT'S
MARCH 6, 2015 DECISION AND
ORDER AND TO CONTINUE THE
EVIDENTIARY HEARING ON
JURISDICTION SET TO COMMENCE
APRIL 20, 2015 PENDING
DEFENDANTS' PETITION FOR
WRIT OF PROHIBITION OR
MANDAMUS**

Hearing Date: March 13, 2015

Hearing Time: 8:15 a.m.

24 Before the Court is Defendant Sands China, Ltd.'s ("Sands China") Motion to Stay
25 Court's March 6, 2015 Decision and Order and to Continue the Evidentiary Hearing on
26 Jurisdiction to Commence April 20, 2015 Pending Defendants' Petition for Writ of Prohibition
27 or Mandamus and Ex Parte Application for Order Shortening Time (the "Motion"). Todd L.
28

1 Bice, Esq., James J. Pisanelli, Esq., and Jordan T. Smith, Esq. of the law firm PISANELLI
2 BICE PLLC appeared on behalf of Plaintiff Steven C. Jacobs ("Jacobs"). J. Randall Jones, Esq.
3 and Ian McGinn, Esq. appeared on behalf of Sands China. J. Stephen Peek, Esq. appeared on
4 behalf of Sands China and Defendant Las Vegas Sands Corp. ("LVSC"). Steve Morris, Esq.
5 appeared on behalf of Defendant Sheldon G. Adelson ("Adelson"). Having considered the
6 papers filed on behalf of the parties, oral argument of counsel, and being fully informed with
7 good cause appearing, the Court makes the following findings:

8 1. On March 6, 2015, the Court entered lesser sanctions that do not, in the Court's
9 opinion, infringe the due process rights of Sands China given the issues identified in the
10 procedural posture portion of the Court's March 6, 2015 Order.

11 2. Given the lack of a stipulation by the parties to extend the five-year rule set
12 forth in NRCP 41 or any tolling of the same period, the Court is prevented from granting a
13 stay.


14 3. Accordingly, Sands China's Motion is DENIED.

15 DATED: MARCH 27, 2015



THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

16
17
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