

IN THE SUPREME COURT OF THE STATE OF NEVADA

**Case No. 68265
(Consolidated with Case Nos. 68275 and 68309)**

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SANDS CHINA LTD., A CAYMAN ISLANDS CORPORATION,

Petitioner,

v.

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.

**ANSWER TO PETITION FOR WRIT OF PROHIBITION OR
MANDAMUS RE MAY 28, 2015 ORDER**

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that Justices of this Court may evaluate possible disqualification or recusal.

PISANELLI BICE PLLC and CAMPBELL & WILLIAMS are the only law firms whose partners or associates have or are expected to appear for Real Party in Interest Steven C. Jacobs.

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1 **I. INTRODUCTION**

2 Petitioner Sands China, Ltd. ("Sands China") now asks this Court to issue a
3 writ of prohibition against a non-binding jurisdictional determination after it
4 expressly asked the District Court to not enter any final or binding factual
5 determination.¹ Its Petition omits that fact. Nor did it include the volumes of
6 documentary evidence, including revealing internal emails, upon which the
7 District Court rests its findings and conclusions.

8 Based upon the evidence – including multiple admissions by Sands China's
9 own officers and directors – the District Court found that Sands China is properly
10 subject to personal jurisdiction to stand trial. Sands China's true home is in Nevada,
11 as is the case for the other subsidiaries of its parent, Las Vegas Sands Corp.
12 ("LVSC"). That fact did not change after the Sands China IPO, which was simply a
13 financing mechanism whereby LVSC partially spun off some of the Macau assets it
14 had long operated out of Las Vegas. On top of that reality, the evidence established
15 that Jacobs' claims specifically grew out of Sands China's contacts with Nevada,
16 including (but hardly limited to) its admitted assumption of the obligations of Jacobs'
17 Nevada employment contract with the parent, LVSC. And the facts constituting
18 Jacobs' claims – the contractual breach, the fabrication of false "for cause" excuses,
19 and the issuance/publication of false and defamatory facts – all took place in Nevada
20 by those claiming to be acting as officers/agents for Sands China in the State.

21 It is no coincidence that all such facts and evidence are omitted from
22 Sands China's Petition. Instead, Sands China confirms its lack of serious merit by,
23 of all things, asserting that the District Court's jurisdictional findings "resulted in
24 large part" from evidentiary sanctions that the District Court imposed for Sands
25 China's repeated discovery violations and non-compliance with court orders.

26 _____
27 ¹ At the same time that Sands China asked the District Court not make its
28 findings final or binding, it insisted that the District Court must apply the
preponderance of evidence standard. (15PA44169-70.) Once again, this is a
contradictory approach that Sands China asks the District Court to employ.

1 (Pet. at 29.) Jacobs encourages this Court to measure that representation against the
2 actual record and the District Court's true findings. When it does so, this Court will
3 see just how wide is the chasm between what Sands China asserts and what is actual
4 fact.

5 **II. FACTS CONFIRMING WHY THE PETITION FAILS.**

6 **A. LVSC Hires Jacobs to Aid in Saving the Company.**

7 The District Court found that the jurisdictional facts in this case are
8 inextricably intertwined with the merits. (28PA47331.) It is easy to see why.
9 Plaintiff Steven C. Jacobs' ("Jacobs") introduction to LVSC stems from its near
10 financial collapse at the end of 2008. At that point in time, LVSC's financial
11 problems were so dire as to be at risk of financial default. (16PA44322.) That
12 financial calamity involved serious management dysfunction between LVSC's
13 chairman and controlling shareholder, Sheldon G. Adelson ("Adelson"), and the then-
14 existing management team headed by William Weidner ("Weidner"). Adelson
15 terminated Weidner, leaving LVSC without a chief operating officer, or more
16 colloquially, without anyone to man the ship.

17 LVSC then turned to one of its existing board members, Michael Leven
18 ("Leven"), asking him to replace Weidner as COO. Before he would agree, Leven
19 reached out to a longtime friend – Jacobs – for input and assistance. (*See*
20 16PA44320-21.) Leven and Jacobs had worked together at other companies and had
21 known each other for eighteen years. (16PA44321.) Leven sought Jacobs' help in
22 turning the company around. (16PA44321.) Leven then agreed to become LVSC's
23 COO.

24 Initially, Leven brought Jacobs on board in March 2009 to act as a consultant
25 through Vagus, an entity Jacobs owned. (16PA44323.) Jacobs then evaluated
26 LVSC's operations in order to aid Leven in rectifying the company's faltering
27 operations. At that time, LVSC's Macau casino operations were its crown jewel asset
28 and principal revenue generator. And likewise then, as it is today, those Macau

1 gaming operations were set up under a subsidiary known as Venetian Macau Limited,
2 commonly referred to as "VML." (*See* 15PA44209.) VML is the entity that holds the
3 Macau gaming concession. (21PA45725.)

4 While VML is technically a corporation – including having its own board of
5 directors – LVSC did not actually treat it as one, as Leven revealed to the district
6 court. Leven admitted that VML's so-called board of directors did not actually govern
7 VML, its affairs, or its operations. (15PA44283-84) (VML had "a small board
8 because you had to have it for the corporation of the VML entity. The Board would
9 sign papers, things like that, same thing that we have in Singapore. LVS has – has a
10 small Board there because of the way it's incorporated in the country, things that are
11 done there [but the Board] didn't govern.") The VML board simply "signed
12 documents that LVSC told them to sign." (16PA44320.) Again, while VML is
13 ostensibly a Macau entity, it is in reality simply treated as an incorporated division
14 of LVSC, headquartered in Las Vegas.²

15 Cognizant of the importance of Macau to LVSC's financial future, Leven asked
16 Jacobs to go to Macau and take over first-hand control (i.e., VML). Thus, effective
17 May 5, 2009, as LVSC's COO, Leven installed Jacobs as acting president of LVSC's
18 Macau operations. (7SA1590). LVSC tasked Jacobs with correcting and organizing
19 its Macau operations so that it might effectuate a partial spinoff as a financing tool,
20 thereby obtaining liquidity to reduce LVSC's heavy debt and acquire much needed
21 capital. (22PA45978). Unremarkably, that is a process that would consume much
22 time and effort.

23 In short order, Leven asked Jacobs to join LVSC full-time. Between June and
24 early August, 2009, Jacobs and LVSC extensively negotiated the terms of Jacobs'
25 employment agreement. As Leven confirmed, his intention was to hire Jacobs

26 _____
27 ² Confirming that reality, none of the Defendants' witnesses could identify the
28 board members of VML, despite the fact that it holds the all valuable Macau gaming
concession and is the operator in Macau. (15PA44284; 19PA45207-08.) They don't
need to know because that board is an irrelevancy.

1 full-time to oversee LVSC's Macau operations, whether the spinoff ultimately
2 occurred or not. (15PA44249-50; *see also* 15PA44229-32.) Again, the Macau
3 operating assets were then, and still are, held by VML, which served simply as a
4 division of LVSC. Thus, it is LVSC, through Leven, and Adelson, that negotiated
5 and entered into the employment agreement with Jacobs, not any entity in Macau.
6 (15PA44284.)

7 As Leven told the District Court, those negotiations took place in Nevada, as
8 that is where he, Adelson, and LVSC are headquartered. (*See* 16PA4324.) Leven led
9 the negotiations and reported to Adelson. (15PA44294; 19PA45137-38.) The parties
10 exchanged numerous drafts and communications in striking the deal. (*See, e.g.,*
11 15PA44229; 6SA1363-67 (Memo regarding draft employment agreement);
12 15PA44266; 6SA1368-70 (revised draft term sheet); 15PA44270-71; 6SA1371
13 (continuing contract negotiations); 15PA44271-72; 6SA1372-74 (same);
14 15PA44273-74; 6SA1375 (same); 15PA44275-76; 6SA1221-22 (same);
15 6SA1223-26; (same); (19PA45294) (Goldstein: "I just remember them going back
16 and forth because you see it in emails that they were working through the deal . . .
17 .").) Tellingly, Sands China omits all such evidence from its writ application.

18 During the entirety of the negotiations, Leven acted on behalf of LVSC.
19 (15PA44272.) Ultimately, Leven presented the terms of the agreement he had
20 negotiated with Jacobs – which is commonly called the "Term Sheet" – and Adelson
21 approved it from his Nevada headquarters as Chairman and CEO of LVSC.
22 (15PA44228-29; 6SA1219.) Leven and other LVSC executives met with Adelson to
23 close Jacobs' deal. (6SA1221-22.) The LVSC compensation committee also
24 reviewed and approved the agreement. (15PA44274-75; 15PA44280.)

25 Thus, on August 3, 2009, Leven signed the Term Sheet on behalf of LVSC and
26 congratulated Jacobs. (6SA1227-28; 15PA44221-22; 15PA44228.) Although LVSC
27 now attempts to pretend that it did not consider the agreement binding, that is not
28 what Leven said. Leven expressly agreed with Jacobs that they had reached

1 agreement on August 3, 2007, even though they would later discuss adding what
2 Leven would characterize as the "boilerplate" that lawyers try to throw into contracts.
3 (18PA44826.). Leven reiterated that point at the time, affirmatively responding to
4 Jacobs' understanding "that we had a contract on August 3 as the major terms and
5 conditions were agreed." (6SA1361-62; 17PA44601-02 ("[A]fter the agreement
6 with Mr. Jacobs was made, yes.").)

7 As Leven further admitted to the District Court, he does not dispute that he
8 informed Jacobs that the parties would "live with the Term Sheet"
9 as the employment contract because it would take too much time for attorneys to
10 create a document with their "boilerplate." (16PA44343; 18PA44826.) Confirming
11 the agreement, LVSC later filed it with the United States Securities and Exchange
12 Commission representing that it constituted the "Employment Offer, Terms and
13 Conditions, Agreed on August 3, 2009, by Steve Jacobs and the Company."
14 (6SA1356-57.) And, as the law requires, Adelson, as LVSC Chairman, personally
15 certified that the representation regarding Jacobs' employment agreement is true.
16 (19PA45113-15.)

17 That Jacobs would have a Nevada employment agreement with LVSC to head
18 up the Macau operations is hardly surprising or unique. As Leven told the
19 District Court, it is not unusual for LVSC to have the employment agreement with
20 the executive who performs services for LVSC subsidiaries. (15PA44212; *see also*
21 15PA44183-89.) In fact, when Leven served as interim CEO over the Macau
22 operations, he did so pursuant to an employment agreement with the parent, LVSC.
23 (15PA44190-92.) The same is true even today: The CEO and COO of Macau both
24 act pursuant to employment agreements with LVSC. They do not have any
25 employment agreements with any Macau entity or Sands China.³ (6SA1227-28;

26 _____
27 ³ Adelson is now the CEO of Sands China, and serves in that capacity pursuant
28 to his employment agreement with LVSC. Goldstein currently serves as the acting
COO of Sands China and also does so pursuant to his employment agreement with
LVSC. The Sands China Board has agreed and accepted the service of these

1 15PA44289-90; 6SA1376-82; 6SA1383-86; 15PA44286-95; 6SA1387.) Those
2 entities simply accept the benefits of the Nevada-based employment agreements.
3 And, again, this is consistent with the fact that VML (which holds the Macau gaming
4 concession) was operated out of Las Vegas, with its own board simply serving as a
5 rubber stamp rather than governing its affairs. (15PA44284.)

6 Any suggestion that LVSC did not view the agreement as binding is further
7 belied by actual performance. As the agreement provides, Jacobs was to immediately
8 receive 500,000 LVSC options. (6SA1228.) LVSC thus granted the options. The
9 agreement provided Jacobs a base salary of 1.3 million USD, bonus, future stock
10 participation, housing allowance, travel and other employee benefits. (*Id.*) And no
11 one disputes that these terms were actually followed.⁴

12 The agreement also provided for accelerated vesting of the stock options, upon
13 the happening of either of two events: First, if Adelson or his wife lost control of
14 LVSC, all of Jacobs' options would vest immediately. (*Id.*) Second, if Jacobs were
15 terminated without proper cause during the three-year term, all options would again
16 vest immediately. (*Id.*) As Leven acknowledged, immediate vesting applied to the
17 options Jacobs received at the time of entering into the agreement – the initial 500,000
18 LVSC shares – as well as those that he would subsequently receive from any stock
19 option plan, including should the IPO go forward with the spinoff of some of the
20 Macau-based assets. (16PA44400-01.)

21 The agreement further provided that, if Jacobs were terminated without
22 proper cause, then he would receive one year of severance in addition to the
23 immediate vesting of options. (6SA1228.) The termination for "cause" provision
24 incorporated the "Standard Language" of other LVSC employment contracts. (*Id.*)

25
26 _____
27 executives pursuant to their Nevada employment contracts with LVSC. The same
was true with Jacobs.

28 ⁴ That is, until Jacobs was wrongfully terminated and the defendants started
looking for excuses to not honor the obligations.

1 **B. LVSC forms Sands China for the Spinoff and it Purportedly Later**
2 **Assumes Jacobs' Employment Agreement.**

3 Pursuant to the terms of his employment agreement (*i.e.*, the Term Sheet)
4 Jacobs continued to lead LVSC's Macau operations, which LVSC managed from
5 Las Vegas. Again, one of Jacobs' principal tasks was to prepare for a possible IPO
6 to sell a portion of LVSC's VML assets to the public as a finance tool to pay down
7 debt and provide funds for previously suspended Macau construction. (16PA44317.)

8 In preparation for that possibility, LVSC formed a Cayman Island entity on or
9 about July 15, 2009, which would become known as Sands China. (16PA44315-16.)
10 However, that entity existed only on paper and was inactive at that time.
11 (16PA44315-16.) Pursuant to his employment agreement with LVSC, Jacobs would
12 serve as the CEO of the newly-formed Sands China if the IPO later succeeded.
13 (6SA1228; 15PA44245). It is in that role, pursuant to his employment agreement, that
14 Jacobs served as the primary presenter during the IPO road show and "led the IPO
15 effort." (19PA45301-02.) And, while Sands China may have technically existed as
16 a corporation, Leven acknowledged that it did not actually "go live" until the closing
17 of the IPO on November 30, 2009. (17PA44786-87; 18PA44920-22; 22PA45983.)⁵

18 Because the IPO was a financing tool, LVSC sold off only about 30 percent of
19 Sands China's shares, thus retaining 70 percent ownership and complete control.
20 (16PA44419; 22PA45991.) Adelson and his family remained the majority
21 shareholder of LVSC and thus in control. (16PA44470.) As Leven confirmed,
22 Sands China is but a holding company, the principal purpose of which is to hold
23 VML, the Macau gaming concession holder that LVSC has long operated from
24 Las Vegas. (15PA44246; 17PA44788.) Sands China does not have any of its own
25 employees. (*See* 22PA45992-93; 23PA46137.) In fact, it has no actual operations or
26

27 ⁵ Due to the International Date Line, the date of the IPO is sometimes listed as
28 December 1, 2009.

1 apparently even records of its own, as it claims that the records it produced in
2 discovery are actually VML's records (*See, e.g.*, 4SA1072 n.24; 22PA45992-93.)

3 According to LVSC and Sands China, it was upon the IPO's closing on
4 November 30, 2009, that the employment agreement that Jacobs had negotiated in
5 Nevada with LVSC was purportedly transferred to Sands China, who assumed it.
6 (15PA44253-54; 15PA44293.) (15PA44293.) This is how Adelson described it:

7 Q. The Term Sheet was with LVS, and when it was spun off the
8 contract was with SCL?

9 [overruled objections omitted]

10 A. Yes.

11 (19PA45105-06.) As the District Court further recognized, even Leven
12 acknowledged that the Term Sheet was with LVSC and then the obligations were
13 somehow later assumed by Sands China. (28PA47291 ¶ 39.) Thus, Sands China's
14 long charade that this is not a Nevada dispute – when it purportedly assumed the
15 obligations of Jacobs' Nevada employment agreement – has been a known fiction to
16 stall Jacobs' rights.⁶

17 **C. The IPO Did Not Change the True Macau Headquarters.**

18 Leven conceded to the district court that prior to the November 30, 2009 IPO,
19 the headquarters of LVSC's Macau operations – VML – was Las Vegas.
20 (15PA44283-4.) Based upon the evidence, the district court reasonably concluded
21 that the creation of a holding company – as a financing tool to raise capital through a
22 limited IPO – did not change that long-standing reality. To be sure, for purposes of
23 the Hong Kong Stock Exchange, LVSC would not openly concede for Sands China
24 – as it did for VML – that governance, control, and management actually rested in

25 _____
26 ⁶ Based upon this admission about the transfer and assumption of contractual
27 obligations, on June 22, 2015, Jacobs formally moved to amend his complaint to add
28 Sands China as a defendant to the claim for breach of the employment agreement.
The district court granted that motion and, on June 22, 2015, Jacobs filed and served
his Fourth Amended Complaint, which is after entry of the May 28, 2015 order at
issue here.

1 Las Vegas. It would have to appear, on paper, to be separate and independent in order
2 to access the Hong Kong market and the financing LVSC needed. But the District
3 Court reasonably concluded from the evidence, including the equivocation of
4 witnesses, that this financing tool did not change the true home of corporate control
5 post-IPO.

6 Sands China fails to recognize its inherent contradiction in that regard. At the
7 evidentiary hearing, Sands China cited the employees, assets, and revenues of VML
8 as supposed proof of its Macau domicile. (*See generally* 9SA1783-853.) Tellingly,
9 it did that all the while ignoring Leven's admission that VML was not actually treated
10 as a foreign corporation, but as an incorporated division of LVSC. Thus, clinging to
11 VML's operations – which is essentially all Sands China did – is simply more support
12 for the District Court's conclusion that creation of a holding company for purposes of
13 accessing financing did not actually change the long-standing reality.

14 The District Court considered plenty of other evidence as well, including
15 documents and witness admissions, which further supplanted that conclusion:⁷

16 ***1. The corporate hierarchy and control remained unchanged post***
17 ***IPO.***

18 Admissions by witnesses and candid internal records show that the *real*
19 location of corporate control did not change post-IPO. Before the IPO, LVSC had
20 four operating divisions for each of its business segments: Las Vegas, Bethlehem
21 (Pennsylvania), Singapore, and Macau. (*See* 15PA44184.) Again, VML served as
22 the LVSC unit in Macau. (*See* 15PA44209.) All of LVSC's operating divisions were
23 treated as part of one large entity, even though the divisions were facially legal
24 entities. (15PA44283.) The Macau operations were controlled and managed by

25 _____
26 ⁷ As the district court ruled, its conclusions and findings are necessarily
27 preliminary because the issue of personal jurisdiction is inextricably intertwined with
28 the merits of Jacobs' claims. That being the case, the district court could not reach
any final conclusions, an outcome that Sands China specifically requested.
(28PA47328 n.5; 28PA47330-31.)

1 LVSC's governing corporate bodies, not the VML board. (16PA44319-20;
2 18PA44923; 22PA45979.)

3 Before the IPO, the company hierarchy had Adelson at the top and Leven as
4 second in command. (16PA44451-53; 19PA45222-24.) Leven oversaw and
5 controlled each of the operating divisions (entities) from his Las Vegas headquarters.
6 (15PA44185; 15PA44190; 15PA44181; 16PA44318-19.) That was true prior to
7 Jacobs's tenure, when Steven Weaver oversaw the Macau operations and reported to
8 Leven. (22PA45980-81.) When LVSC first sent Jacobs to Macau, that remained the
9 case because – as Leven repeatedly admitted – the VML board was not actually in
10 control. (16PA44375; 15PA44283-84.)

11 That same corporate hierarchy remained post-IPO. Adelson remained at the
12 top of the pyramid, followed by Leven. (16PA44457.) Adelson's official title was
13 only Chairman of the Sands China Board. (18PA44920.)⁸ But, as Leven testified,
14 Adelson "is the company, essentially. He was the major shareholder or whatever. He
15 was viewed as the company." (17PA44745.) Adelson remained at the top of the
16 Sands China's chain of command from his Nevada headquarters, as was the case
17 before the IPO. (19PA45072.)

18 Adelson's primary business office continued to be at the Venetian in
19 Las Vegas. (19PA45073.) His Sands China business card listed his Las Vegas
20 address, phone number, and e-mail. (7SA1642-43; 19PA45083-84; 19PA45085.)
21 Any work Adelson conducts in Nevada as head of Sands China is done from his
22 LVSC office. (20PA45548-49.) His business records related to Macau are kept in
23 Las Vegas. (19PA45075; 19PA45101.) No one in Macau maintains his records.
24 (19PA45075.) Adelson does not even have an office in Macau. (19PA45073.) When
25 he visits Macau, Adelson temporarily uses a room in one of the restaurants.
26

27 ⁸ Now that the IPO is multiple years passed, Adelson has even stopped
28 pretending that he does not exercise the powers of Sands China's CEO. He has now
assumed that title as well. (16PA44471-72; 17PA44598.)

1 (19PA45073.) Adelson uses his two Las Vegas e-mail accounts to direct and conduct
2 all of his Sands China business. (19PA45076-77; 19PA45086.)

3 Leven acknowledged that Adelson's role transcended that of mere Chairman,
4 as he was actually involved in directing day-to-day operations. (17PA44799; *see also*
5 17PA44802-03.) Unable to deny it, Adelson rationalized his involvement in "[a]ll
6 aspects of the day-to-day operations" because he "need[s] to know how the company
7 operates, and [he] need[s] to get a good feel to be a good chairman of SCL."
8 (18PA44960-61.)⁹

9 Even Adelson had to admit that his role might have been "mixed up" with the
10 role of a CEO. (18PA44929-30.) And Adelson acknowledged that any time he dealt
11 with Sands China business, he was wearing his Sands China "hat" while he was in
12 Nevada. (18PA44957; 18PA44982; 20PA45517; 20PA45528.) His word mincing
13 before the district court spoke volumes:

14 A. You keep throwing in "in Las Vegas" to say that the company in
15 Macau was run by us in Las Vegas. It was run by - - it was run -
16 - to the extent Mike [Leven] and I had any decisions it was - - it
was based upon both of us wearing our - -

17 Q. SCL hats.

18 A. - - SCL hats, period.

19 (21PA45571.)

20 Likewise, Ron Reese, LVSC's senior vice president of global communications
21 and corporate affairs, testified bluntly that there are "no illusions" about who is really
22 in charge, including of subsidiaries like Sands China. (16PA44468-69.) And there
23 have been "no illusions" about Adelson's complete control over all of the entities for
24 more than a decade — before and after Sands China's IPO. (16PA44469.) Reese also
25 attested that anyone foolish enough to think otherwise was promptly "dissuaded
26

27 ⁹ But of course, Adelson's involvement in day-to-day operations had nothing to
28 do with being the Chairman, as he was directing things such as food service and
restaurants in Macau, including even seating arrangements. (7SA1497;
18PA44978-85.)

1 about their mistaken beliefs." (16PA44469-70.) Adelson confirmed Reese's "no
2 illusions" admission: For most all substantive decisions, "[n]obody had authority
3 except me." (21PA45753.)

4 Leven's unaltered role was particularly revealing. Under Hong Kong
5 Exchange requirements, Leven could not serve on the Sands China Board at the time
6 of the IPO. Nor was he even an officer of Sands China. His role – officially on paper
7 – was only that of "special advisor" to the Sands China Board. (15PA44189-90.) But
8 internal emails show that this simply was a title for purposes of the Hong Kong Stock
9 Exchange. Just as it had always been with VML, Leven was internally designated as
10 the true "management" after the IPO. (6SA1400; 16PA44353.) Leven was still "in
11 charge of the operations in Macau." (16PA44527.) And Leven managed the Macau
12 operations from Las Vegas just as he had done before the IPO. His office remained
13 in Las Vegas, just as before the IPO, and his Sands China business card listed only
14 his Las Vegas address and contact information. (7SA1445; 17PA44606-07;
15 19PA45154.)

16 Reinforcing the district court's observation that the jurisdictional facts are
17 intertwined with the merits, internal e-mails shortly before and after Jacobs'
18 termination confirm that one of the disputes was over this control. For instance, as
19 Leven acknowledged to Jeff Schwartz – the now deceased former joint
20 LVSC/Sands China board member – "[S]teve will run his c[o]mpany []but he will
21 not last lon[g]er than end [o]f this year *he wants to be independent so do we all but*
22 *it doesn't work that[] way.*" (6SA1405 (emphasis added); 16PA44361-62.) Leven
23 later summed up one of Jacobs' supposed problems leading to his termination: "[T]hat
24 is the problem he [Jacobs] believes he reports to the bd [Board] not the chair
25 [Adelson]." (7SA1491-93; 18PA44820-21.) Adelson similarly dismissed the
26 suggestion that Jacobs' true responsibilities were to the Sands China Board as
27 opposed to himself. (18PA44950-51.):
28

1 [Jacobs] didn't want to report to me, so he went around my back and
2 tried to report - - he tried to make nice to particularly David Turnbull,
3 okay. And he wanted to get other directors on his side. ***He didn't want
to follow the rules. He wanted to override me as indirectly the major
shareholder of SCL and being the chairman of the board with the
responsibility.***

4 (21PA45736 (emphasis added).)¹⁰

5 In another candid e-mail written after Jacobs' termination, Leven mocked the
6 idea that Jacobs was the true Sands China CEO. Leven wrote "that's what Jacobs[]"
7 problem was ***he thought he was the ceo***" (6SA1421.) (emphasis added.) When
8 confronted with this e-mail at the hearing, Leven acknowledged what he said. He
9 conceded that, in many ways, Adelson had always been the real CEO of Sands China.
10 (17PA44804-05.) This is how it was before the IPO and how it remains.

11 Referring to Jacobs' Adelson-imposed departure, another LVSC executive
12 (Reese) boasted how, "***[t]he previous regime in Macau thought they could act
13 independent of LVS (and the Chairman![Adelson]) and look what that got them
14 (or at least Jacobs).***" (6SA1418 (emphasis added).) Recruits for Jacobs' position
15 were told that Jacobs was fired for "actively constructing walls between Maca[u] and
16 Las Vegas . . . and placing the interests of the minority shareholders [*i.e.*, the public
17 shareholders] over those of the majority shareholder [*i.e.*, Adelson]." (7SA1457-58.)

18 In the irony of ironies, Jacobs was castigated for naively thinking that it could
19 not be "business as usual" after the IPO on the Hong Kong Stock Exchange. But in
20
21
22

23 ¹⁰ Sands China's reference to the fact that it "held" board meetings hardly
24 establishes that it as its home. After all, and as discussed herein, Leven
25 acknowledged that VML also had its own board for incorporation purposes but it did
26 not truly govern its own affairs. It signed the paperwork as directed by LVSC.
27 Indeed, the Sands China Board meetings were typically held telephonically, with
28 Adelson chairing them from Las Vegas (or wherever he happened to be at that point
in time). (17PA44611-13; 6SA1260-64 (Telephonic board meeting minutes;
6SA1439A (same)). The fact that Sands China needed to technically have a board
for the purpose of the exchange requirements does not mean that the company's
affairs were not truly controlled out of Las Vegas, as had long been the case with
VML.

1 fact, one of the reasons for Jacobs' wrongful termination was his seeking to change
2 the way business had always been done.¹¹

3 **2. The Shared Services Agreement.**

4 Sands China erroneously thinks that it can brush all of that evidence aside by
5 self-servingly pointing to its Shared Services Agreement with LVSC, which the
6 district court recognized does not mask the actual facts. (28PA47341-44.) One of
7 the Hong Kong Stock Exchange's many requirements was that LVSC have a written
8 agreement with its controlled subsidiary (Sands China) setting forth financial terms
9 of goods and services that the controlling parent is going to charge the subsidiary.
10 (See 17PA44614.)¹²

11 After all, since LVSC had total control over the subsidiary, the minority 30
12 percent shareholders (*i.e.*, the public) must know in advance the economic terms of
13 the transactions for which the parent will charge against the subsidiary, an entity that
14 is partly publicly held. Thus, even before the IPO closed, LVSC and Sands China
15 entered into what is commonly referred to as the "Shared Services Agreement."
16 (6SA1233-52.) Because the IPO had yet to occur, Adelson directed Jacobs to sign
17 that agreement for Sands China. (17PA44616.) On its face, this agreement expressly
18 confirms many wide-ranging activities that LVSC undertakes for Sands China in
19 Nevada. (17PA44613-14.)

20 Under the Shared Services Agreement, personnel in Las Vegas act as
21 Sands China's agents in carrying out business. (17PA44616-17; 17PA44694

22 _____
23 ¹¹ Months prior to his termination, Jacobs had expressed concerns about the
24 "practical issues and requirements that come with being a public company on the
25 HKSE," noting that the Boards needed to understand their respective responsibilities
and that business could not be "run as usual" even though that is what people would
want. (6SA1401-02.) But of course, Adelson was insistent upon running all of "his"
entities from Las Vegas just as had occurred before the IPO.

26 ¹² In another of his candid slips, Adelson admitted that he regretted taking
27 Sands China public in Hong Kong due to all of the rules and regulations. In hindsight,
28 he would have conducted the partial spinoff in the United States. (See
22PA46000-01.)

1 ("[T]hese people under the shared services agreement are designed to help the people
2 in Macau . . . in where they have certain expertise.") According to Adelson, "if
3 something had to be done - - there's always a 15 or 16-hour time difference. So if
4 something had to be done in a day, *it was okay for somebody on this side, in*
5 *Las Vegas, to say I'm acting on behalf of SCL . . .*" (21PA45634 (emphasis added).)

6 But as the district court heard, this is anything but isolated or insignificant, as
7 key day-to-day operations are being carried out for Sands China in Nevada. Indeed,
8 during Jacobs' tenure, development of the stalled construction on Parcels 5 and 6 was
9 the single largest financial investment and undertaking for VML and the subsequently
10 created Sands China. (17PA44618.) Of course, before the IPO, that process was
11 controlled, like everything else, by LVSC in Las Vegas. And, that is how it remained
12 even after the IPO. (*See* 17PA44617-18.) All of the design work for Parcels 5 and 6
13 was handled in Las Vegas by Adelson and other LVSC executives. (17PA44617-18;
14 17PA44809.)¹³ Jacobs and others regularly held meetings in Las Vegas about the
15 project's design and construction. (7SA1496A; 7SA1496B-E; 7SA1485-88;
16 17PA44806-09.)

17 Adelson and Leven set out a clear policy that all design matters for Macau
18 were controlled by and undertaken in Las Vegas. (18PA44813-14.) Leven was clear
19 that input from people in Macau could be provided but "the final call is in las vegas."
20 (7SA1489-90.) Information did not even need to be sent to Jacobs as the purported
21 CEO, because "it isn't his decision its [sic] sga [Adelson]." (7SA1490.) Adelson and
22 Las Vegas executives controlled even the minutiae. (*See, e.g.*, 7SA1489-90;
23 18PA44815-17.) Adelson's attitude applied to Sands China's business dealings, not
24 just design and construction. "[A]ny deal needs las vegas approval." (7SA1495.) Or
25 more accurately, any deal needed Adelson's approval. (18PA44822-23.) Adelson put
26 it brusquely, "Any company, any of my companies, whether I'm just a chairman or
27

28 ¹³ Simultaneously, LVSC was working on its own refinancing with which Jacobs
was extensively involved, including meetings in Las Vegas. (17PA44618-19.)

1 I'm the CEO, they'd have to come to me for approval." (19PA45150.) That is how
2 Macau operated before the IPO and that is how it remained thereafter. Even the day-
3 to-day handling of furniture, fixtures, and equipment down to the "thread count in
4 sheets and pillow types and mattress types" were controlled by Las Vegas-based
5 executives acting for Sands China. (22PA45986.)

6 Just as before, after the IPO, Jacobs routinely met with Adelson, Leven, and
7 other LVSC executives in Las Vegas to report on the operations. (17PA44608;
8 7SA1446-47; 19PA45298; 20PA45535.) Meetings were held in Las Vegas "to
9 discuss future [M]acau strategy amongst other things." (7SA1446; 20PA45544-45.)
10 As chairman of both LVSC and Sands China, Adelson claims to wear two corporate
11 "hats," but during meetings about Sands China in Las Vegas he claims to wear his
12 Sands China hat. (18PA44957.) Jacobs had to attend LVSC Board meetings in
13 Las Vegas to report on Sands China, just like other operating divisions so reported.
14 (20PA45354; 20PA45537-38.) As Leven acknowledged,

15 Q. Well, even when you sent him over to Macau wasn't he here in
16 Las Vegas quite a bit for the IPO process, as well as LVSC board
meetings and the like?

17 A. Well, yes. But those were services for Sands China.
18 (18PA44887.)

19 The same is true for a broad range of other everyday business matters that were
20 then being directed or managed in Las Vegas:

- 21 • International Marketing (22PA45985);
- 22 • Player development (20PA45402);
- 23 • Credit extension decisions for players and junkets (7SA1635-36;
24 20PA4570-71; 20PA45473-74; 7SA1632-33; 7SA1634);
- 25 • Public relations (21PA45575);
- 26 • Legal services (21PA456790; 22PA45925); and
- 27 • Corporate security (21PA45691).

28

1 Despite Sands China's attempt to hide behind the Shared Services Agreement
2 as somehow insulating these continuous Nevada operations, the District Court
3 recognized that this agreement was treated as for appearances:

4 The Court: Are you aware of whether the billings actually occurred or
5 whether they were just accounting entries?

6 Adelson: I don't know if money actually changed hands. They
probably netted each other out.

7 (22PA45989.) There is no evidence that the so-called Shared Services Agreement
8 changed the way in which business had always been conducted before the IPO, with
9 Las Vegas serving as the true corporate headquarters. (22PA45900.)

10 **D. The Employment Agreement Controls Jacobs' Compensation,**
11 **Bonuses and Options Post-IPO as Well.**

12 While Adelson has now tried to smear Jacobs' performance to pretend that his
13 firing was based on legitimate reasons, the internal documents confirm otherwise and
14 once again how this entire dispute is tied to Jacobs' Nevada Employment Agreement.
15 Throughout 2010 (before his termination), numerous discussions were held
16 concerning Jacobs' job performance and compensation. Recognizing that Jacobs'
17 bonus compensation was controlled by the agreement and that Leven remained as the
18 true "management" after the IPO, e-mails confirmed how Leven, not the Sands China
19 Board, needed to set goals for Jacobs' future bonuses. (6SA1400; 16PA44353;
20 6SA1257-58).

21 Indeed, Adelson and his LVSC compensation committee effectively set Jacobs'
22 compensation and bonuses. (6SA1392-94; 6SA1395-99; 16PA44346-48; 19PA5284;
23 6SA1253-56; 6SA1376-82; 6SA1400; 6SA1383-86; 6SA1390-91; 7SA1499A
24 ("[B]onus for seniors was to be referred back to Las Vegas.")) Jacobs' executive
25 stock option plan was negotiated while Jacobs was in Las Vegas and it was approved
26 by Leven and Adelson in Las Vegas. (6SA1401-02; 16PA44355-56.) Adelson and
27 Leven had the final say on Jacobs' compensation. (16PA44348-49; 16PA44371;
28 18PA45008; 19PA45284-85.) Adelson determined the number of option shares that

1 could be awarded while others could only provide input or make recommendations.
2 (18PA45008-10.) Sands China Board members had to wait for Leven's approval.
3 (6SASA1403; 6SA1404; 16PA44358; 6SA1409-11; 16PA44371.)

4 With respect to Jacobs' bonus, Leven confirmed in writing what others had
5 been saying: "there is no question as to steves [sic] performance the titanic hit the
6 iceberg he arrived and not only saved the passengers he saved the ship."
7 (6SA1388-89; 18PA45002-05.) Others agreed: "Well put indeed." (6SA1388-89;
8 18PA44993.)

9 Likewise, when it later came time to discuss stock options for his performance,
10 Jacobs' accomplishments were again touted:

- 11 1) He is handling a difficult environment in Macau calmly and well.
12 Macau is not an easy place and is very different from HK
- 13 2) He is alone with Weaver leaving and who is now fairly demob
14 [sic] happy.
- 15 3) He handles the internal Sands politics and difficulties calmly and
16 well.
- 17 4) He is now well versed in how Asia/Macau works and is a
18 valuable commodity.

19 (6SA1403.) Based upon his performance and glowing reviews, Jacobs ultimately
20 was awarded 2.5 million options for Sands China shares, an amount above that called
21 for under the Executive Stock Option Plan. (6SA1266-69; 15PA44128-35;
22 6SA1409-11.)

23 Because of where the actual control rests, Leven had to personally approve the
24 award of these options. As Leven confirmed in an e-mail with Jacobs, he and Jacobs
25 agreed to this number. (6SA1409-11; 16PA44355-56.) And, Leven admitted to the
26 District Court that the stock options were the product of Section 7 of Jacobs'
27 Employment Agreement. (16PA44376; 6SA1228.) Leven also had to admit – over
28 repeated objections from Sands China to try to block the admission – that
Sands China's stock grant was inextricably linked to the Employment Agreement and
that it controlled the accelerated vesting of those shares:

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Q. Well, let's deal with the 2.5 million shares, Mr. Leven. 2.5 million shares vested immediately under the Term Sheet would vest immediately if Mr. Adelson and his wife lost control of LVSC; correct?

[overruled objections omitted]

Q. Correct?

A. Yes.

Q. And just like the 2.5 million shares vested immediately if Mr. Jacobs is fired without cause; correct?

[overruled objections omitted]

The Witness: Yes.

(16PA44400-01).

Once again, Sands China's pretending that its stock option award to Jacobs has no nexus to Nevada – when they were granted pursuant to the Nevada Employment Agreement and the vesting is controlled by it – is belied by the truth that Sands China has long known and sought to suppress.

E. Jacobs is Terminated in Las Vegas.

Confirming just where the actual control rests and that this dispute arises from actions in Nevada, the events of Jacobs' termination occurred here as well. Despite the reviews and substantial options awarded just weeks earlier, Leven claims that he decided to terminate Jacobs in June of 2010 during a dispute in Singapore. (16PA44401-03.) When Leven got back to Las Vegas, he hatched a plan with Adelson to terminate Jacobs. (16PA44404-05.) Adelson decreed, "I had the authority to terminate him. I was the chairman of the board." (21PA45661.)

The two of them enlisted other LVSC executives including Robert Goldstein, Gayle Hyman (General Counsel), Patrick Dumont (VP of Strategy), Ron Reese (Public Relations), and other advisors in the legal department. (16PA44405-07; 16PA44410-11; 16PA44436-37; 17PA44626) Leven and LVSC employees kept "tight control" over the termination plans. (16PA44407-08.) Anyone who actually

1 worked for Sands China was kept in the dark so word would not leak.
2 (16PA44407-08; 16PA44441.)

3 Leven internally referred to his plan as the "exorcism strategy." (6SA1412;
4 16PA44412.) He explained that the decision-making process to terminate Jacobs
5 "was carried out in the chairman's office" in Las Vegas. (16PA44409.) Leven,
6 Adelson, and the other LVSC executives were in Las Vegas "putting [their] ducks in
7 a row," *i.e.*, "getting all of the things in place that it would take to terminate
8 Mr. Jacobs." (16PA44414; 6SA1413.) When putting all of the "ducks in a row" in
9 Las Vegas, Leven claims that he was acting for Sands China at Adelson's direction.
10 (16PA444414-15.) Thus, agents of Sands China were working in Nevada with LVSC
11 employees to implement the so-called "exorcism strategy." (*See id.*)

12 Adelson claims that he personally prepared the termination notice in
13 Las Vegas. (7SA1496F; 17PA44633-34; 21PA45697; 21PA45700.) But this notice
14 is not on LVSC letterhead. Instead, it purports to be from Sands China. And, since
15 Adelson did not have any Sands China stationery on hand, some was simply
16 manufactured in Las Vegas. (21PA45698.) Press releases about Jacobs' termination
17 also were crafted in Las Vegas. (16PA44415-1; 6SA1414-15; 6SA1416;
18 16PA44448.)¹⁴ Reese and other LVSC employees were acting on behalf of LVSC
19 and assisting Sands China in the termination efforts. (16PA44418; 16PA44433;
20 16PA44440.) Hyman, another LVSC executive, prepared the SEC and Hong Kong
21 Stock Exchange disclosures in Las Vegas. (16PA44437.)

22 In Las Vegas, days before Jacobs' termination, Hyman also prepared a letter to
23 Sands China's Board members informing them that Adelson had made the decision
24 to terminate Jacobs. (7SA1448-52; 17PA44621-22.) Earlier drafts of the letter were
25

26 ¹⁴ Separate and apart from the plot to terminate Jacobs, Reese is involved with
27 issuing press releases on behalf of Sands China and LVSC's other subsidiaries.
28 (16PA4476; 16PA44501-02; 16PA44515 (Cheung Chi Tai); 6SA1432-33 (same);
6SA1434-35 (same); 6SA1436-39 (same).) Reese also deals with public relations
issues related to this litigation. (6SA1422-25.)

1 also prepared and circulated in Las Vegas. (7SA1453-56; 17PA44623-24.) The letter
2 told to the Sands China Board what the leadership and governance of Sands China
3 would be after Jacobs' dismissal. (17PA44629.) Just as with VML, the Board was
4 told after the fact of what was happening and that they would be expected to ratify
5 the decisions already made.

6 Adelson and Leven made the decision, took action first, and then directed the
7 Sands China Board's rubberstamp after the fact. (17PA44629-30.) Adelson wanted to
8 fire Jacobs by telephone to deprive him of "the dignity of resigning." (21PA45682.)
9 Nonetheless, on or about July 21, 2010, Leven and a parade of LVSC personnel
10 (Irwin Siegel, Reese, Hyman, Patrick Dumont, Brian Nagle) left Las Vegas and
11 traveled to Macau. (17PA44634; 17PA44636.) Jacobs' fate was already determined
12 before Leven and the others left Las Vegas. (17PA44634.) The decision to terminate
13 Jacobs had been made and it was decided (by Leven and Adelson) that Jacobs would
14 not be given to his stock options unless Adelson agreed. (17PA44634-35.) Adelson
15 acknowledged that he had a discussion with Leven before Jacobs' termination about
16 the negotiations he wanted Leven to have with Jacobs regarding the portions of
17 Jacobs' Employment Agreement that would not be honored. (21PA45693.)

18 Leven informed Jacobs of his termination on July 23, 2010. (15PA44189.)
19 When Jacobs asked if his termination was "with cause," Leven responded that he was
20 "not sure." (17PA44627-28.) It was not until August 5, 2010, that a letter was sent to
21 Jacobs purportedly from VML — not Sands China — outlining supposed bases for
22 his termination with cause. (21PA45697; 7SA1640-41.) Leven acknowledged to the
23 district court that the earlier drafts of the "for cause" letter were prepared in Las Vegas
24 by himself, the LVSC legal department, and other Las Vegas personnel.¹⁵

25
26
27 ¹⁵ Predictably, executives in Las Vegas were still directing the purported affairs
28 of VML.

1 (7SA1496G; 17PA44650-51; 7SA1453-56; 17PA44651.)¹⁶ The purported reasons
2 for Jacobs' termination were even developed in Las Vegas, not Macau. (17PA44687.)

3 Ironically, the theme of the draft reasons was that Jacobs tried to make his own
4 corporate decisions in Macau, purportedly resisting Adelson's Las Vegas directives.
5 (7SA1496G; 17PA44691 (describing the reasons for Jacobs' termination as being
6 related to failures to inform or consult Adelson in Nevada). In fact, as the district
7 court found, several of the alleged causes outlined in the draft termination letter
8 occurred in Nevada. Jacobs purportedly improperly engaged in negotiations for
9 Parcels 5 and 6 in Nevada. (17PA44656-57.) Jacobs also negotiated with Gary
10 Loveman from Harrah's while in Las Vegas and received instruction about the subject
11 from Leven. (7SA1459-60; 7SA1461-62; 17PA44663-66; 20PA45557-58;
12 21PA45757.) The supposed improper negotiations with Cirque du Soleil involved
13 Jacobs and LVSC executives in Nevada, including Robert Goldstein, Leven, and
14 Adelson himself. (17PA44688-90; 20PA43443-44; 7SA1609-28; 7SA1629-30;
15 7SA1631.) And Jacobs attended meetings in Las Vegas with Cirque du Soleil.
16 (20PA45445; 20PA45450; 7SA1631; 7SA1644.)

17 In the end, nearly everything about Jacobs' termination – including the who,
18 what, where, when, how and why – were tied to and occurred in Nevada.

19 **F. Jacobs' Replacement is Hired by Las Vegas.**

20 Following Jacobs' termination, Leven became Sands China's interim CEO.
21 (15PA44189.) Leven fulfilled the CEO role pursuant to his Nevada employment
22 contract with LVSC. (15PA44191.) He carried out his CEO duties from Las Vegas.
23 (15PA44192; 15PA44200; 15PA44202; 17PA44643.) His Las Vegas phone number
24 and e-mail address remained the same. (15PA44200.)

25
26
27 ¹⁶ Adelson testified that he has a list of thirty-five reasons Jacobs was terminated,
28 but that list has never been produced. (18PA44977; 21PA45714-15.) Conveniently,
just like Sands China's suggestion that it cannot locate any signed option award even
though it approved the shares (Pet. At 6-7.)

1 Adelson, Leven, and LVSC also controlled the hiring of Jacobs' replacement.
2 (15PA44210-13; 15PA44217-18; 20PA45345.) Goldstein could not recall if anyone
3 from Sands China's Board was involved in the hiring process. (20PA45346.)
4 Interviews for Jacobs' permanent replacement occurred in Las Vegas with Leven.
5 (20PA45344.)

6 In fact, even before Jacobs' termination, Leven had negotiated a consulting
7 contract to bring back Stephen Weaver as the potential CEO. (21PA45679-80.)
8 Consistent with LVSC practice, Weaver had the option of having the agreement be
9 with either LVSC or Sands China, and it did not matter which one. (15PA44211-12;
10 6SA1279-82.) That agreement was negotiated from Las Vegas by Leven, Adelson,
11 and LVSC legal personnel. (6SA1283-87; 15PA44218-19.) Sands China – in
12 actuality, Adelson – agreed that another executive could serve as CEO pursuant to a
13 Nevada contract with LVSC. (14PA44220-21.) Again, as Reese told the
14 District Court: there are "no illusions" by who and where the decisions are made.

15 **G. Leven is Served with the Complaint in Nevada and this Court**
16 **Orders an Evidentiary Hearing on Jurisdiction.**

17 On October 20, 2010, Jacobs filed his initial Complaint against LVSC and
18 Sands China. (1SA0001-16.) Jacobs served Sands China by serving Leven, who was
19 its CEO, in Nevada. (15PA44202.) Leven was in Nevada at the time because that is
20 where he worked. (15PA44202.) According to Leven, Sands China had authorized
21 him to be based in Nevada as its CEO and to fulfill that role from Nevada.
22 (15PA44203.) Leven was not in Nevada by accident, trick nor on a temporary basis
23 at the time of service. (15PA44202-03.)

24 After being served, both LVSC and Sands China filed motions to dismiss.
25 (1SA0170-71.) LVSC moved to dismiss for failure to state a claim and failure to join
26 an indispensable party, VML. (1SA0170-71.) Sands China moved to dismiss for lack
27 of personal jurisdiction and the omission of VML. (1SA170-71.) Jacobs opposed both
28 motions, (1SA0017-151), and the district court denied them. (SA0170-71.) However,

1 Sands China sought, and obtained, a writ of mandamus from this Court, as to its
2 jurisdiction defense. *Sands China Ltd. v. Eighth Judicial Dist. Court of State ex rel.*
3 *Cnty. of Clark*, No. 58294, 2011 WL 3840329 (Nev. Aug. 26, 2011). This Court's
4 writ informed the District Court that "you are instructed to hold an evidentiary
5 hearing on personal jurisdiction, to issue findings of [f]act and conclusions of law
6 stating the basis for your decision following that hearing" (2SA0282.)

7 **H. Sands China Defames Jacobs in Nevada and he Amends the**
8 **Complaint.**

9 Meanwhile, unable to score a legal victory with the motions to dismiss,
10 Adelson decided to undertake a public relations campaign to smear Jacobs. He
11 instructed Reese to send the following statement for publication to the Wall Street
12 Journal:

13 While I have largely stayed silent on the matter to this point, the
14 recycling of his allegations must be addressed. We have a substantial
15 list of reasons why Steve Jacobs was fired for cause and interestingly
16 he has not refuted a single one of them.

17 Instead, he has attempted to explain his termination by using outright
18 lies and fabrications which seem to have their origins in delusion.

19 (6SA1426; 16PA44482-83.) Reese, while in Nevada, drafted the initial statement and
20 discussed it with Adelson. (16PA44482-85.) Adelson admitted to making the
21 statement. (21PA45582-83.) And, he conceded to making the statement on behalf of
22 Sands China, LVSC, and himself. (21PA45585.) As Adelson agreed,

23 Q. You meant – you tell me if I'm wrong. Did you just tell us that
24 "we" means SCL has a substantial list of reasons?

[overruled objections omitted]

25 The witness: SCL has a substantial list of reasons.

26 (21PA45588.)

27 The statement was made to the Wall Street Journal with the expectation that it
28 would be published in the newspaper. (16PA44489.) The Wall Street Journal was

1 chosen because of its wide circulation. (16PA44490-91.) The statement was, in fact,
2 published in the Wall Street Journal as Adelson, Sands China and LVSC planned.
3 (6SA1427-28.)

4 As a result of the libelous statement, Jacobs filed an Amended Complaint to
5 assert a claim for defamation, including against Sands China. (1SA00152-69.)

6 **I. Sands China Conceals Evidence Trying to Avoid Jurisdiction.**

7 Jacobs will not rehash the long history that led the District Court to find that it
8 had been "deceived" about the location and access to evidence by LVSC and
9 Sands China. As a consequence of Sand China's lack of candor and deceit, the
10 District Court ordered that "[f]or jurisdictional discovery and the evidentiary hearing
11 related to jurisdiction, Las Vegas Sands and Sands China will be precluded from
12 raising the MPDPA as an objection or as a defense to admission, disclosure or
13 production of any documents." (1PA1366.) As this Court has previously observed,
14 Sands China "did not challenge this sanctions order in this court." *Las Vegas Sands*
15 *v. Eighth Jud. Dist. Ct.*, 331 P.3d 876, 878 (Nev. 2014).

16 But the lack of a legal challenge did not discourage Sands China from violating
17 the Order by redacting documents it had been ordered to produce. After more writ
18 wrangling by Sands China to avoid the District Court even hearing the evidence as to
19 the basis for this violation, this Court denied that then-requested writ. *Id.* Thereafter,
20 the District Court held a second evidentiary hearing on sanctions. (*See* 14PA43790-
21 830.)

22 After taking evidence and hearing testimony, it entered additional sanctions,
23 recognizing that Sands China had not even tried to comply with the Macau law, which
24 it claimed precluded production of un-redacted documents. (14PA43828-29.) In fact,
25 Sands China had eliminated all identifying names from emails and other documents
26 which its own reviewers had determined were responsive to jurisdictional discovery.
27 (14PA43824 ¶ 142.) The District Court's additional sanctions prohibited Sands China
28 "from calling any witnesses on its own behalf or introducing any evidence" at the

1 jurisdictional hearing. (14PA43838.) That order preserved Sands China's ability to
2 object to the admission of evidence, cross-examine witnesses, and make opening and
3 closing arguments. (14PA43828.) Additionally, it imposed a rebuttable inference for
4 the jurisdictional hearing that all improper MPDPA redactions would contradict
5 Sands China's denials of personal jurisdiction and support Jacobs' assertion of
6 personal jurisdiction. (14PA43828.)

7 Sands China sought yet another writ from this Court challenging the
8 District Court's sanctions. This Court denied that petition, staying only the payment
9 of the monetary sanctions. (5SA1216-18.) These sanctions, while entirely appropriate
10 and justified given the evidence presented, ultimately proved academic, as the
11 District Court found that there is more than adequate evidentiary basis for a trial in
12 Nevada on Jacobs' claims even ignoring Sands China's discovery misconduct.
13 (28PA47308 ¶¶ 123, 125; 28PA47317 ¶¶ 172-73.)¹⁷

14 **J. The District Court Holds the Jurisdictional Hearing and Finds that**
15 **Sands China is Subject to Jurisdiction in Nevada.**

16 In conformity with this Court's writ of mandamus, the district court held "an
17 evidentiary hearing on personal jurisdiction" over nine days, and thereafter issued a
18 thorough 38-page Decision and Order setting forth "findings of [f]act and conclusions
19 of law stating the basis for . . . [the] decision" (5SA1216-18; 28PA47327-65.)
20 The District Court noted that the facts and evidence for jurisdiction are "inextricably
21 intertwined" with the merits of Jacobs' claims. (22PA2847331.) Therefore, the
22 District Court made its "findings and reach[ed] conclusions related to jurisdiction,
23 *solely to comply with the Writ*, upon a preponderance of the evidence standard *based*
24 *solely on the evidence presented*. The findings and conclusions are [thus] preliminary
25 in nature. . . ." (28PA47331.) (emphasis added).

26
27 ¹⁷ In the interest of economy and brevity, Jacobs incorporates all arguments and
28 evidence presented to this Court in Case No. 67576 in its Consolidated Answer to
Petition of Prohibition or Mandamus and Opposition to Emergency Motion to Stay.

1 **III. REASONS WHY THE WRIT SHOULD NOT ISSUE**

2 **A. Sands China Seeks Extraordinary Review of What is a Preliminary**
3 **Non-Binding Determination that it Requested.**

4 At the express urging of Sands China, the District Court concluded that it could
5 not fully or finally determine the relevant facts, because the facts going to jurisdiction
6 overlapped with the merits of Jacobs' claims. Sands China insisted that the District
7 Court should not make any binding determination of these facts, thanking the District
8 Court for making its findings "preliminary." (15PA44167).¹⁸ Sands China opposed
9 any binding factual findings, because it did not want those findings to have effect on
10 the merits. (*Id.*)

11 Thus, the District Court concluded that the actual resolution of Sands China's
12 personal jurisdiction defense would have to await a full trial. Considering that
13 Sands China repeatedly insisted that the District Court should not and could not make
14 binding findings – which are necessary to actually resolve its defense – it is precluded
15 from claiming error now. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343,
16 345 (1994) (a party cannot claim error in a ruling that it induced or encouraged the
17 court to make).

18 Thus, Sands China's request by way of writ petition to invalidate the district
19 court's approach is improper. After all, a writ of prohibition, which is what
20 Sands China seeks here, is one that "serves to stop a district court from carrying on
21 its judicial functions when it is acting outside its jurisdiction." *Stephens Media, LLC*
22 *v. Eighth Jud. Dist. Ct.*, 125 Nev. 849, 857, 221 P.3d 1240, 1246 (2009) (quoting
23 *Sonia F. v. Dist. Ct.*, 125 Nev. 38, ---, 215 P.3d 705, 707 (2009)). But here,
24 Sands China provides no basis for even contending, let alone establishing, that the

25 _____
26 ¹⁸ Indeed, Sands China went on to warn how making any final factual
27 determinations would implicate its "constitutional due process rights. So what the
28 problem is, Judge, is that by getting into these merits issues, whether they're
intertwined with jurisdiction or not, it is essentially violates my clients' due process
rights with respect to merits before determination had been made with respect to
jurisdiction." (17PA44674-75).

1 District Court has acted outside of its jurisdiction. It limited its findings to being
2 preliminary just as Sands China asked.

3 Respectfully, it is not error for a trial court to forego final factual
4 determinations when the issue of "jurisdiction turns on the same facts as the merits
5 of the case." *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 694 n.2, 857 P.2d 740,
6 745 n.2 (1993) (quoting *Anderson v. Am. Soc. of Plastic Surgeons*, 807 P.2d 825, 827
7 (Utah 1990)). To the contrary, any final findings by the District Court – or this Court
8 – could impede the Seventh Amendment's guarantee of a jury trial. *Id.* As the First
9 Circuit Court of Appeals explained in *Boit v. Gar-Tec Products, Inc.*, 967 F.2d 671,
10 677 (1st Cir. 1992) – a decision this Court approvingly cited throughout *Trump* –
11 there are serious concerns about "issue preclusion" and "law of the case" if
12 intertwined merits and jurisdictional facts are resolved without a full trial. To avoid
13 these pitfalls, a district court may fashion a middle ground by holding an evidentiary
14 hearing without making final factual determinations but still determining that there is
15 a sufficient evidentiary basis to warrant a trial. *Id.* at 677-785. (Rather than "full"
16 evidentiary hearing, court hears evidence to decide whether jurisdiction seems likely
17 at the trial on the merits.)

18 Here, the District Court carefully navigated this Court's direction to hold an
19 evidentiary hearing and to make findings while preserving the parties'
20 Seventh Amendment rights. It made only non-binding findings based on the evidence
21 because the jurisdictional facts are intertwined with the underlying merits facts,
22 something that Sands China itself repeatedly confirmed by objecting to wide swaths
23 of evidence because it supposedly touched too close to the merits. (28PA47328 n.5;
24 28PA47330-31; *see, e.g.*, 20PA45499 (explaining the phrase "standard objection"
25 includes "going with respect to merits.").)

26 Again, one of the core factual disputes giving rise to Jacobs' claims is the
27 dispute about who really controlled Sands China – its Board of Directors or LVSC
28 and its Las Vegas-based executives, as was the case prior to the IPO. Those facts

1 traverse both the merits and jurisdiction. The same is true for the actions undertaken
2 to terminate Jacobs, most all of which, as the District Court found, occurred in
3 Nevada. The same is likewise true for the enforceability of the employment
4 agreement, its assignment and the true cause of the breach. Thus, central facts to be
5 decided at a trial on the merits also will be involved in determining personal
6 jurisdiction.

7 By making a preliminary and non-binding determination, the District Court
8 ensured that there is a sufficient factual basis to require Sands China to stand trial in
9 Nevada while still affording it the ability to contest jurisdiction at trial. And since
10 Sands China urged the District Court to make no binding determinations of those
11 facts, Sands China cannot be heard to complain.¹⁹

12 **B. The District Court's Amply-Supported Findings Cannot be**
13 **Disturbed.**

14 Cognizant that the record facts contradict its denials, Sands China resorts to
15 claiming that the District Court's factual findings have no significance because the
16 standard of review is *de novo*. (Pet. at 15.) But of course, that is not true when the
17 District Court makes its findings following an evidentiary hearing, including where
18 it considers live testimony. In these circumstances, this Court "review[s] legal issues
19 *de novo* but defer[s] to the district court's findings of fact if they are supported by
20 substantial evidence." *Catholic Diocese, Green Bay v. John Doe 119*, 131 Nev. Adv.
21 Op. 29, 349 P.3d 518, 520 (2015) ("evidentiary hearing held during the trial").²⁰ And,
22 as this Court has repeatedly said, "[s]ubstantial evidence is evidence that a reasonable
23 mind might accept as adequate to support a conclusion." *First Interstate Bank v.*

24 _____
25 ¹⁹ In fact, if anyone could complain about this duplication, it is Jacobs, not
26 Sands China. After all, Jacobs will now be put to the burden at trial of proving the
same facts over again. Sands China got the advantage of a preview of its problems
without the attendant consequences of a binding decision.

27 ²⁰ Even under the intermediate standard noted in *Boit*, the standard of review is
28 "for abuse of discretion," not *de novo* *Foster-Miller, Inc. v. Babcock & Wilcox*
Canada, 46 F.3d 138, 147 (1st Cir. 1994).

1 *Jafbros Auto Body*, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (internal quotation
2 marks and citation omitted). And this includes any reasonable inferences that may
3 be drawn. *Bongiovi v. Sullivan*, 122 Nev. 56, 581, 138 P.3d 433, 451 (2006).

4 Sands China's disregard of the actual standard is itself an acknowledgement of
5 the validity of the District Court's findings under the real one. There is no serious
6 debate that the record amply supports the District Court's factual findings –
7 preliminary as they may be – from the testimony and exhibits it considered.²¹

8 **C. Nevada May Properly Exercise Personal Jurisdiction Over**
9 **Sands China.**

10 The Fourteenth Amendment's Due Process Clause "requires a nonresident
11 defendant to have 'minimum contacts' with the forum state sufficient to ensure that
12 exercising personal jurisdiction over him would not offend 'traditional notions of fair
13 play and substantial justice.'" *Arbella Mut. Ins. Co. v. Eighth Jud. Dist. Ct.*, 122 Nev.
14 509, 512, 134 P.3d 710, 712 (2006) (quoting *Baker v. Dist. Ct.*, 116 Nev. 527, 531-32,
15 999 P.2d 1020, 1023 (2000)). The question is whether the defendant has sufficient
16 contacts to "reasonably anticipate being haled into court there." *Id.* (quoting *Trump*
17 *v. Dist. Ct.*, 109 Nev. 687, 699, 857 P.2d 740, 748 (1993)).

18 There are three principal ways in which personal jurisdiction exists: when the
19 defendant's contacts are so continuous and substantial that it is effectively at home in
20 the forum (general); when the defendant's contacts with the forum give rise to the
21 claims asserted (specific); or when the defendant is served with process while
22 physically present in the forum (transient). *Catholic Diocese, Green Bay*, 131 Nev.
23 Adv. Op. 29, 349 P.3d at 520 (general and specific); *Cariaga v. Eighth Jud. Dist. Ct.*,
24 104 Nev. 544, 546, 762 P.2d 886, 887 (1988) (transient). Here, the District Court
25 reasonably concluded that the evidence established all three.

26
27 ²¹ The District Court admitted over 200 exhibits during the jurisdictional hearing.
28 Yet, Sands China included only two of them in its Appendix, and omitted multiple
days of the hearing transcript.

1 ***1. Sands China is at home in Nevada since that is where corporate***
2 ***control actually resides.***

3 General jurisdiction – sometimes called "all purpose" jurisdiction – is the
4 broadest as it provides that a defendant is subject to jurisdiction for any claims,
5 regardless of their nexus to the forum. *Baker*, 116 Nev. at 532, 999 P.2d at 1023.
6 Because it is far reaching, general jurisdiction also requires the highest degree of
7 forum contacts. It exists when the defendant's "contacts with the forum state are so
8 continuous and systematic as to render [it] essentially at home in the forum State."
9 *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1156-
10 57 (2014) (quoting *Goodyear Dunlop Tires Operations, SA. v. Brown*, 131 S. Ct.
11 2846, 2851 (2011)) (internal quotations omitted).²²

12 As the United States Supreme Court holds, a company is "at home" in both its
13 place of incorporation and its principal place of business. *Daimler AG v. Bauman*,
14 134 S. Ct. 746, 760 (2014) (citing *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010)).
15 And as the Supreme Court observed in *Hertz Corp.*, a corporation's principal place
16 of business is that "place where the corporation's officers direct, control and
17 coordinate the corporation's activities" which means wherever its "nerve center" is
18 located. *Hertz Corp.*, 559 U.S. at 92-93; *see also Topp v. CompAir Inc.*, 814 F.2d
19 830, 836 (1st Cir. 1987) ("[T]he method for deciding whether a parent is doing
20 business in a state for the purpose of finding personal jurisdiction can be applied to
21 the analogous issue of determining the principal place of business for diversity

22 _____
23 ²² When assessing general jurisdiction, "most courts look back from that date a
24 'reasonable time,' typically between three and seven years, to assess whether there are
25 continuous and systematic contacts sufficient for general personal jurisdiction."
26 *Kormylo v. Forever Resorts, LLC*, No. 13-CV-511 JM WVG, 2015 WL 106379,
27 at *10 (S.D. Cal. Jan. 6, 2015) (citing 4 Wright et al., *Federal Practice & Procedure*
28 § 1067.5 & n.11.75 (3d ed. 2002 & Supp. 2014); *see Metro. Life Ins. Co. v.*
Robertson-Ceco Corp., 84 F.3d 560, 569–70 (2d Cir. 1996) ("[O]ur review of general
jurisdiction cases reveals that contacts are commonly assessed over a period of years
prior to the plaintiff's filing of the complaint.")). In *Helicopteros Nacionales*
de Colombia, S.A. v. Hall, 466 U.S. 408, 409-11 (1984), the United States Supreme
Court analyzed general jurisdiction over a seven year period.

1 jurisdiction."); Suzanna Sherry, *Don't Answer That! Why (and How) the Supreme*
2 *Court Should Duck the Issue in Daimlerchrysler v. Bauman*, 66 VAND. L. REV.
3 EN BANC 111, 118 (2013) ("A year before *Goodyear, Hertz Corp. v. Friend* had
4 defined "principal place of business" for purposes of diversity jurisdiction as the
5 corporation's "nerve center [], typically . . . [its] headquarters." Putting the two cases
6 together suggests that MBUSA's maintenance of three facilities in California, none
7 of them headquarters or a nerve center, was not sufficient to constitute continuous
8 and systematic contacts.") (footnotes omitted).).

9 A company's actual nerve center is "*where the enterprise's decisions are*
10 *made*, as opposed to carried out, and thus *centers on the 'brains' of an enterprise,*
11 *not the 'brawn'.*" *United States v. Chao Fan Xu*, 706 F.3d 965, 976 (9th Cir. 2013)
12 (emphasis added).²³ This is acutely so for a corporate holding company which does
13 not have actual operations of its own. A holding company's headquarters is
14 necessarily where true control over the corporation is exercised, which is typically
15 where the board meets and governs, assuming that it is who actually governs and
16 controls. *Johnson v. SmithKline Beecham Corp.*, 853 F. Supp. 2d 487, 491 (E.D. Pa.
17 2012) *aff'd*, 724 F.3d 337 (3d Cir. 2013); *Moore v. Johnson & Johnson*, No. 12-490,
18 2013 WL 5298573, *7 (E.D. Penn. Sept. 20, 2013).

19 And contrary to Sands China's needs, *Daimler AG* does not hold that the
20 activities of officers or agents in the forum are somehow irrelevant to the existence
21 of general jurisdiction.²⁴ "[T]he *Daimler* court neither rejected outright an agency
22

23 ²³ See also *Viega GmbH*, 130 Nev. Adv. Op. 40, 328 P.3d at 1162-63 (Pickering,
24 J., concurring) ("There may be other bases for general jurisdiction beyond these
25 paradigm examples . . ."); accord *Perkins v. Benguet Consolidated Mining Co.*, 342
26 U.S. 437, 447-48 (1952) (Philippine mining company subject to general jurisdiction
27 in Ohio because that is where its president operated it and directed the company
during World War II and "many of its war time activities were directed from Ohio
and were being given the personal attention of its president in that State at the time
he was served with the summons.")

28 ²⁴ Sands China's citation to *Gucci America, Inc. v. Weixing Li*, 768 F.3d 122
(2d Cir. 2014) is unavailing. In *Gucci*, the bank at issue was a non-party appealing

1 theory applied to [general] jurisdiction nor even criticized the invocation of such
2 theory; rather, it specifically found, 'we need not pass judgment on invocation of an
3 agency theory in the context of general jurisdiction, for in no event can the appeals
4 court's analysis be sustained.'" *Morrow v. Calico Res. Corp.*,
5 No. 14-CV-03348-MEH, 2015 WL 535342, at *5 (D. Colo. Feb. 9, 2015) (quoting
6 *Daimler*, 134 S. Ct. at 759). The *Daimler AG* court only rejected the Ninth Circuit's
7 overbroad formulation. *Id.*; see also 4A CHARLES ALAN WRIGHT & ARTHUR R.
8 MILLER, FEDERAL PRACTICE AND PROCEDURE § 1069.4 (3d ed. updated 2015).

9 Indeed, following *Daimler AG*, this Court noted that the activities of agents in
10 the forum may still be a proper consideration for general jurisdiction analysis. In
11 *Viega GmbH*, this Court cited a California case, *Sonora Diamond Corporation*, and
12 acknowledged that it "supports a finding of general jurisdiction" based upon agency
13 principles. 130 Nev. Adv. Op. 40, 328 P.3d at 1163 n.3 (discussing *Sonora Diamond*
14 *Corp., v. Superior Court*, 83 Cal. App. 4th 523 (2000) and *Daimler AG*). This Court
15 noted that "the [United States] Supreme Court has recognized that agency *typically*
16 is *more useful* to a specific jurisdiction analysis." *Id.* (emphasis added). This Court
17 did not indicate that the agency principals are no longer relevant. *Id.*

18 Thus, if one corporation is acting as the agent of another in the forum or if the
19 parents' control over the subsidiary is so complete that it treats the subsidiary as really
20 a "department" of the parent, then the entity is at home in the forum because that is
21 where actual governance and control resides. See *Schenck v. Walt Disney Co.*, 742
22 F. Supp. 838, 842 (S.D.N.Y. 1990) (parent "does not perform services for WDW in
23 New York or supervise the day-to-day activities of WDW" from New York and thus
24 evidence was insufficient to show that subsidiary was treated as a "department" of
25 the parent); 4A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE
26 AND PROCEDURE § 1069.4 (3d ed. updated 2015) (explaining exercise of personal

27 _____
28 an injunction to freeze the defendants' assets, a related subpoena, and a contempt
order for not complying.

1 jurisdiction over subsidiary by attributing parent's contacts based upon "the amount
2 of the subsidiary's stock owned by the parent corporation, the existence of separate
3 headquarters, the observance of corporate formalities, and the degree of the parent's
4 control over the general policy and administration of the subsidiary.").

5 That is why the *Sonora Diamond* court – cited in *Viega GmbH* – explained that
6 "[w]here the nature and extent of the control exercised over the subsidiary by the
7 parent is so pervasive and continual that the subsidiary may be considered but an
8 agent or instrumentality of the parent, notwithstanding the maintenance of separate
9 corporate formalities" the contacts of one may be imputed to the other. *Sonora*
10 *Diamond*, 83 Cal. App. 4th at 541. (If the subsidiary is treated as "an incorporated
11 department of the parent" then the subsidiary is the parent's agent).

12 Here, the District Court's conclusion – that this is not an ordinary
13 parent/subsidiary relationship – is amply supported by the evidence and the
14 inferences that the District Court may draw. Recall, there is no denying that
15 Las Vegas constituted the corporate "home" of the Macau operations while Jacobs
16 worked in Macau before the IPO, even though VML is a Macau entity with its own
17 board. The District Court heard how that board did not actually govern and simply
18 served to approve Las Vegas' decisions. *See Sonora Diamond* 83 Cal. App. 4th at
19 541 ("an incorporated department of the parent").

20 Whether that home actually changed with the formation of Sands China – as a
21 financing tool to execute a partial IPO of the VML assets – is a question left to the
22 finder of fact based upon the evidence. And, that evidence very reasonably permits
23 the District Court's conclusion that in actuality the true management, control and
24 direction remained in Las Vegas post-IPO, just as it was pre-IPO. As set forth above
25 and in the District Court's findings, from Nevada, day-to-day decisions were made
26 by Adelson, Leven, and other LVSC executives. Decisions made in Nevada extend
27 far beyond "big picture" corporate direction, down to miniscule details. Candid
28 internal emails confirm that the true "management" over Sands China's affairs rested

1 in Las Vegas in the hands of Leven, just as it had always been before the IPO. That
2 reality did not change.

3 As the District Court also heard, far ranging day-to-day activities were directed
4 and controlled out of Las Vegas – international marketing, gaming credit, FF&E, (to
5 name a few) – just as they were pre-IPO. Even Jacobs' Employment Agreement for
6 the CEO position was with the Las Vegas-based parent, as were those of others. As
7 the District Court fairly concluded from the actual evidence, as opposed to
8 Sands China's self-serving denials, the Macau operations under Sands China are
9 controlled and managed from Las Vegas as they were before the IPO. Creating a
10 holding company so as to access an alternate form of financing did not change
11 LVSC's corporate culture, which treats its other subsidiaries as incorporated
12 divisions. (15PA44283-84.)²⁵ It is very much in the fact-finder's purview to
13 conclude that "[d]espite the appointment of a Board, any change in the location of
14 ultimate decision-making, authority, direction, or control was not material after the
15 IPO." (28PA47305 ¶ 109.) In light of Leven's admission that Las Vegas was the
16 corporate "home" of the Macau operations pre-IPO, the evidence supports the finding
17 that the true "home" did not change.

18 **2. *Personal jurisdiction also exists because of the events giving rise***
19 ***to Jacobs' claims occurred in Nevada.***

20 "When general jurisdiction is lacking, the lens of judicial inquiry [then]
21 narrows to focus on specific jurisdiction." *Foster-Miller Inc.*, 46 F.3d at 144.
22 Cognizant that the evidence now confirms specific jurisdiction for Jacobs' claims,
23 Sands China attempts to side step that problem with a passing sentence, claiming that
24 Jacobs forever "waived" the existence of specific jurisdiction. (Pet. at 21.) It appears
25 that Sands China is attempting to invoke, without actually mentioning it, the mandate
26

27 ²⁵ Leven acknowledged that LVSC treated its other subsidiary entities as similar
28 "incorporated divisions." (15PA44283: VML was treated "just like the Venetian and
the Palazzo and Bethlehem and Singapore").

1 rule and/or law of the case. Sands China hypothesizes that despite originally
2 prevailing before the District Court on general jurisdiction, Jacobs was required to
3 also argue any possible lesser redundancy – specific jurisdiction – or he is forever
4 precluded from doing so. The law is, not surprisingly, otherwise.

5 The mandate rule is a corollary to the law of the case doctrine. *United States*
6 *v. Lasaga*, 136 F. App'x 428, 431 (2d Cir. 2005)("The mandate rule is a variant of
7 the 'law of the case' doctrine."); *see also* 18B CHARLES ALAN WRIGHT & ARTHUR R.
8 MILLER, FEDERAL PRACTICE AND PROCEDURE § 4478.3 (2d ed. updated Apr. 2014)
9 ("Law-of-the-case terminology is often employed to express the principle that an
10 inferior tribunal is bound to honor the mandate of a superior court within a single
11 judicial system."). "Under the law-of-the-case doctrine, when an appellate court
12 decides a rule of law, that decision governs the same issues in subsequent
13 proceedings." *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 266, 71 P.3d
14 1258, 1262 (2003).

15 However, "for the law-of-the-case doctrine to apply, the appellate court must
16 actually address and decide the issue explicitly or by necessary implication." *Dictor*
17 *v. Creative Mgmt. Servs., LLC*, 126 Nev. Adv. Op. 4, 223 P.3d 332, 334 (2010). The
18 doctrine does not apply to matters left open or unaddressed. *Beemon*, 119 Nev. at
19 266, 71 P.3d at 1262; *see Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 168 (1939)
20 ("While a mandate is controlling as to matters within its compass, on the remand a
21 lower court is free as to other issues."); *Recontrust Co. v. Zhang*, 130 Nev. Adv. Op. 1,
22 317 P.3d 814, 818 (2014) ("Subjects an appellate court does not discuss, because the
23 parties did not raise them, do not become the law of the case by default.") (quoting
24 *Bone v. City of Lafayette, Ind.*, 919 F.2d 64, 66 (7th Cir. 1990)).

25 Sands China confirmed its intended misapplication of this rule before the
26 District Court. Once jurisdictional discovery confirmed many of the facts giving rise
27 to jurisdiction, Jacobs sought to amend his complaint to expand his claims for relief
28

1 as well as for jurisdiction.²⁶ Tellingly, Sands China argued that this Court's Mandate
2 somehow precluded any amendments to the pleadings – despite the fact that no
3 discovery had previously occurred – to add additional claims or jurisdictional
4 grounds. (2SA0611-15; 4SA0982.)

5 The District Court rightly rejected that ploy. *See Nguyen v. United States*, 792
6 F.2d 1500, 1503 (9th Cir. 1986) (“[T]he mandate did not expressly address the
7 possibility of amendment, nor was there indication of a clear intent to deny
8 amendment seeking to raise new issues not decided by the prior [writ]. Absent a
9 mandate explicitly or impliedly precluding amendment, the decision whether to allow
10 leave to amend is within the trial court's discretion.”); *Rutherford v. United States*,
11 806 F.2d 1455, 1459-60 (10th Cir. 1986) (when appellate court reverses and remands,
12 the district court has discretion to allow plaintiff to amend complaint unless mandate
13 precludes amendment or amendment would run counter to mandate).

14 Sands China's attempt to avoid specific jurisdiction through a variant of the
15 mandate rule/law of the case must fail. This Court did not foreclose specific
16 jurisdiction. Jacobs had succeeded before the District Court on broader grounds,
17 general jurisdiction. The later possibility of evidence for specific jurisdiction was
18 not decided by this Court either expressly or impliedly. After the writ, the
19 District Court complied with the Mandate by issuing a thorough analysis on all
20 grounds revealed by jurisdictional discovery, and did so only preliminarily at
21 Sands China's urging.

22 Nor did Jacobs waive the right to employ jurisdictional discovery and any
23 evidence it yielded for any additional arguments about personal jurisdiction, if the
24 District Court later found general jurisdiction lacking. After all, Jacobs was not
25 aggrieved by the District Court's initial finding of general jurisdiction, contrary to the
26

27 ²⁶ This is precisely what Jacobs had asked the District Court to allow in his
28 original opposition if the District Court concluded that general jurisdiction was
lacking. Jacobs expressly reserved the right to undertake jurisdictional discovery.

1 one case Sands China cites. *See General Universal Sys. Inc. v. HAL, Inc.*, 500 F.3d
2 444, 453-54 (5th Cir. 2007) (failure of aggrieved party to raise issue in appeal brief
3 for reversal is waived); *see also Med. Ctr. Pharmacy v. Holder*, 634 F.3d 830, 834
4 (5th Cir. 2011) (party who is aggrieved, appeals and fails to raise grounds for reversal,
5 deemed to have waived later challenge to adverse ruling). Rather, Jacobs had already
6 prevailed under the *prima facie* standard for general jurisdiction, reserving his right
7 to discovery. Prevailing on the broadest jurisdictional basis does not mean that lesser
8 inclusions are somehow forfeited by the prevailing party. *See United States v.*
9 *Castellanos*, 608 F.3d 1010, 1019 (8th Cir. 2010) (doctrine of waiver does not compel
10 party "to brief and argue what, to any attorney, might have seemed an entirely
11 redundant point.") (quoting *Field v. Mans*, 157 F.3d 35, 41-42 (1st Cir. 1998)).

12 And of course, Sands China completely ignores that Jacobs properly amended
13 his complaint to augment the claims and jurisdictional grounds against Sands China.
14 This Court did not foreclose Jacobs' ability to amend nor did Jacobs waive the right
15 to do so, particularly before any discovery could occur.

16 **3. *Each of Jacobs' claims against Sands China stems from its***
17 ***Nevada Contacts.***

18 Sands China needs to avoid addressing specific jurisdiction because the
19 evidence now confirms that Jacobs' claims arise from Sands China's "purposeful
20 contacts with the forum state." *Baker*, 116 Nev. at 533, 999 P.2d at 1024. "A court
21 has specific jurisdiction over a defendant when the defendant has certain minimum
22 contacts with the forum state and an exercise of jurisdiction would not offend
23 traditional notions of fair play and substantial justice." *Catholic Diocese, Green Bay*,
24 131 Nev. Adv. Op. 29, 349 P.3d at 520 (citing *Daimler*, 134 S. Ct. at 754). This court
25 employs a three part test to assess specific jurisdiction:

26 (1) the defendant purposefully avails himself of the
27 privilege of serving the market in the forum **or** of enjoying
28 the protection of the laws of the forum, **or** where the
defendant purposefully establishes contacts with the
forum state and affirmatively directs conduct toward the

1 forum state, and (2) the cause of action arises from that
2 purposeful contact with the forum or conduct targeting the
forum.

3 *Arbella Mut. Ins. Co.*, 122 Nev. at 513, 134 P.3d at 712-13 (emphasis added) (quoting
4 *Trump*, 109 Nev. at 699-700, 857 P.2d at 748). The exercise of personal jurisdiction
5 over the defendant must also be reasonable. *Jarstad v. Nat'l Farmers Union Prop. &*
6 *Cas. Co.*, 92 Nev. 380, 387, 552 P.2d 49, 53 (1976).

7 Again, specific jurisdiction looks at the claims. *Action Embroidery Corp. v.*
8 *Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004).²⁷ Jacobs' Third Amended
9 Complaint asserts causes of action against Sands China for breach of contract, civil
10 conspiracy to commit tortious discharge in violation of public policy, aiding and
11 abetting tortious discharge, and defamation. (2PA2756A-U.) The evidence confirms
12 the District Court's conclusion that jurisdiction exists over each.

13 a. Breach of contract occurred in Nevada.

14 To begin, Jacobs' Fourth Amended Complaint – the operative pleading²⁸ – is
15 not even before this Court with this Petition. After the evidentiary hearing, Jacobs
16 moved to amend his Complaint to expand his breach of contract claims based upon
17 the admissions that Sands China had assumed the employment agreements'
18 obligations. With the District Court's approval, Jacobs filed his Fourth Amended
19 Complaint on June 22, 2015.²⁹

20
21 ²⁷ "However, if the court determines that there has been a sufficient showing of
22 personal jurisdiction to reach trial with regard to one claim, but not the other, it may
23 or may not be appropriate to assume jurisdiction over the other claim under principles
analogous to the doctrine of pendent jurisdiction." *Data Disc, Inc. v. Sys. Tech.*
Associates, Inc., 557 F.2d 1280, 1289 (9th Cir. 1977).

24 ²⁸ *See Randon v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984) (The
25 filing of an amended complaint is a distinct pleading which supersedes the original).

26 ²⁹ Sands China has convinced the District Court that this Court's stay of the
27 May 28 Order relieves Sands China of its obligations to respond to the Fourth
28 Amended Complaint. Thus, there has been no response whatsoever from Sands
China as to the allegations of Jacobs' fourth amended complaint, including the
additional claims augmenting Jacobs assertions of personal jurisdiction.

1 Nonetheless, the District Court's present findings detail how Sands China is
2 subject to personal jurisdiction for breach of contract, including for the employment
3 agreement and the intertwined option award issued under it. As this Court knows,
4 contracts made in the forum are one of the most common examples of purposeful
5 availment. After all, by making a contract in the forum "a defendant 'purposefully
6 avails itself of the privilege of conducting activities within the forum State, thus
7 invoking the benefits and protections of its laws.'" *Schwarzenegger*, 374 F.3d at 802
8 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

9 The mere use of correspondence and telephone calls to forum-based offices
10 during contract negotiations "are classic examples of the sort of contact that can give
11 rise to *in personam* jurisdiction." *Peterson v. Highland Music Inc.*, 140 F.3d 1313,
12 1320 (9th Cir. 1998) (where defendants "probably wrote letters and made telephone
13 calls to the California offices of these companies in conducting their negotiations,
14 that they quite possibly traveled to California as a part of these negotiations, and that
15 the licenses may actually have been granted (*i.e.* the contracts formed) in California
16 Contract negotiations are classic examples of the sort of contact that can give
17 rise to *in personam* jurisdiction.").

18 Thus, a party purposefully avails itself of jurisdiction even if it only employs
19 correspondence and telephone calls in and out of the forum to make a contract. *See*
20 *Peccole v. Eighth Judicial Dist. Court In & For Cnty. of Clark*, 111 Nev. 968, 971,
21 899 P.2d 568, 570 (1995) ("It is not necessary for a defendant to physically enter the
22 forum; use of the telephone can be sufficient for 'purposeful availment'"); *Trump*, 109
23 Nev. at 702, 857 P.2d at 750 (defendant purposefully availed himself where
24 employment contract was negotiated from Las Vegas and "[t]he negotiations
25 included many telephone calls . . . as well as the delivery of many documents,
26 including the offending document, into Nevada.").

27 As the District Court recognized, Jacobs' Employment Agreement was
28 negotiated and made in Nevada with LVSC. Subsequently, upon the effectuation of

1 the IPO, Sands China says that "Jacobs' employment pursuant to the Term Sheet was
2 transferred to [Sands China] and assumed by it." (28PA4791 ¶ 39.) Indeed, it was
3 understood by Sands China that "Jacobs was serving as CEO pursuant to the terms
4 and conditions of the Term Sheet that had been negotiated and approved in Nevada
5 with the Nevada parent." (*Id.*)

6 These findings alone preclude Sands China from suggesting that it did not avail
7 itself of the protections and benefits of Nevada law. *See Jet Wine & Spirits, Inc. v.*
8 *Bacardi & Co., Ltd.*, 298 F.3d 1, 10 (1st Cir. 2002) (reversing district court's dismissal
9 for lack of personal jurisdiction because court held that foreign corporation's
10 assumption of a contract that had been made in New Hampshire rendered it subject
11 to suit in New Hampshire for dispute relating to that agreement.); *Jeffrey v. Rapid*
12 *American Corp.*, 529 N.W.2d 644, 655 (Mich. 1995) (when out-of-state corporation
13 assumes liability for obligations that had been made in Michigan, that "amounts to
14 purposeful availment of Michigan opportunities" and thus subject to personal
15 jurisdiction there); *Bruns v. DeSoto Operating Co., Inc.*, 251 Cal. Rptr. 462, 464-65
16 (Cal. App. 1989) (foreign corporation's assumption of agreements from California
17 entity that had been made in California subjected it to personal jurisdiction in
18 California).

19 As other courts recognize, accepting the benefits on an employee's services
20 pursuant to an employment agreement subjects a party to personal jurisdiction over
21 any employment dispute arising thereunder. *See Woods v. Jorgensen*, 522 So. 2d 935
22 (Fla. Dist. Ct. App. 1988) (Florida had personal jurisdiction over California trust for
23 breach of employment agreement where plaintiff provided services to Florida
24 subsidiary at the request of California trust under an employment agreement with
25 another Delaware subsidiary); *see also Thornton v. Interstate Sec. Co.*, 666 P.2d 370,
26 374 (Wash. App. 1983) (a Kansas company, ISCK, "has availed itself, however, of
27 the knowledge and services of Mr. Thornton to collect accounts receivable [in
28 Washington]. It has thus carried on activity which touched the matter in issue – use

1 of Mr. Thornton's services under the employment contract with ISCD."). If separate
2 entities do not maintain "corporate purity" related to an employee, they cannot avoid
3 the contractual duty created by one entity when they both have had the benefit of the
4 employment contract. *Thornton*, 666 P.2d at 375.

5 Indeed, even if LVSC attempted to claim that it made the agreement only for
6 the benefit of its newly-formed subsidiary (Sands China) and not for itself – which
7 the admissions of Leven and Adelson contradict – jurisdiction still lies in Nevada. A
8 corporate promoter's pre-formation contracts made in the forum subject it to
9 jurisdiction. *See Rees v. Mosaic Technologies, Inc.*, 742 F.2d 765, 768-69 (3rd Cir.
10 1984) (reversing trial court's personal jurisdiction dismissal because the foreign
11 corporation personally availed itself of the privilege of acting in Pennsylvania when
12 its incorporator entered into a contract in the forum that the newly-formed entity later
13 ratified and accepted.); *Ritter Disposables, Inc. v. Protner Nuev Tecnicas, S.L.*,
14 No. 3:11-cv-00201-SWW, 2012 WL 3860598 at *8 (E.D. Ark. 2012) (same).

15 And, as the District Court found from the evidence, the same is true for the
16 subsequent stock option grant of 2.5 million shares awarded to Jacobs as noted in the
17 Share Option Agreement. Again, this award came under Section 7 of Jacobs'
18 Employment Agreement being "tied to and intertwined with the terms and conditions
19 of the Term Sheet that the parties negotiated and agreed to in Nevada." (28PA47294
20 ¶ 56.) In fact, as Leven acknowledged, those Sands China options were granted to
21 Jacobs "as one of the plans to which Jacobs was eligible" pursuant to the terms of the
22 Nevada agreement. (28PA47293 at ¶ 52.) And, the vesting of those stock options is
23 controlled and determined by Jacobs' Employment Agreement: "As Leven
24 confirmed, the vesting of those 2.5 million options in SCL were expressly accelerated
25 under the terms of the Term Sheet should Adelson and/or his wife lose control of
26 LVS or should Jacobs be terminated without proper cause." (28PA47294 at ¶ 57.)

27 Sands China cannot seriously dispute that it is subject to jurisdiction for not
28 honoring the vesting where it is "controlled by the Term Sheet with [LVSC] and that

1 SCL, according to Leven, assumed." (*Id.*) Courts recognize that parties are subject
2 to jurisdiction in the forum where intertwined contracts are involved. Further, where
3 the Court has personal jurisdiction over one contract, jurisdiction exists over
4 intimately related contracts even where separate parties are involved, which is hardly
5 the case here. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn.
6 1992); *see also Manley v. Air Canada*, 753 F. Supp. 2d 551, 560 (E.D.N.C. 2010)
7 (finding court could consider nature of relationships and contacts developed
8 regarding first contract to support specific jurisdiction in suit over second contract
9 since relationships in second contract grew out of relationships developed in first
10 contract even if the first contract was a separate legal matter).

11 Finally, the events giving rise to the actual breach of the contractual obligations
12 owed to Jacobs all occurred in Nevada. As Leven acknowledged and the District
13 Court found, Jacobs' fate had been determined in Nevada and that is why and where
14 the contractual obligations were not honored. (28PA47298 ¶ 67, 70.) As Leven
15 acknowledged, the so-called "exorcism strategy" which gives rise to the claims was
16 carried out in Nevada.

17 b. The conspiracy and aiding and abetting occurred in
18 Nevada.

19 The events giving rise to Jacobs' conspiracy and aiding and abetting claims
20 also occurred in Nevada. The jurisdictional analysis for aiding and abetting is
21 "functionally equivalent" to the jurisdictional assessment for conspiracy claims.
22 *Carsanaro v. Bloodhound Technologies, Inc.*, 65 A.3d 618, 642 (Del. Ch. 2013)
23 ("The aiding and abetting theory parallels the plaintiffs' grounds for asserting
24 personal jurisdiction over the Fund Defendants under the conspiracy theory of
25 jurisdiction. Although there are perhaps some finely nuanced differences between
26 aiding and abetting a breach of fiduciary duty and conspiracy to commit a breach of
27 fiduciary duty, the two are functionally equivalent for present purposes.").³⁰

28 ³⁰ Sands China also relied upon *Carsanaro* in the District Court. (4SA1006-07.)

1 This Court held in *Davis v. Eighth Judicial District Court of State of Nevada,*
2 *In & For County of Clark*, 97 Nev. 332, 338-39, 629 P.2d 1209, 1213-14 (1981)³¹
3 that it was reasonable and constitutionally permissible to exercise jurisdiction over
4 out of state conspirators under Nevada's long arm statute. *See also Remmes v. Int'l*
5 *Flavors & Fragrances, Inc.*, 389 F. Supp. 2d 1080, 1094-95 (N.D. Iowa 2005)
6 (surveying case law and stating "This issue has been previously addressed by a
7 number of federal courts, the majority of which have concluded that jurisdiction
8 based on the conspiracy theory does not violate due process."); *Aluminum Bahrain*
9 *B.S.C. v. Alcoa Inc.*, 866 F. Supp. 2d 525, 528 (W.D. Pa. 2012) (explaining absent
10 co-conspirator doctrine); *accord First Capital Asset Mgmt., Inc. v. Brickellbush, Inc.*,
11 218 F. Supp. 2d 369, 394 (S.D.N.Y. 2002); *United Technologies Corp. v. Mazer*, 556
12 F.3d 1260, 1281 (11th Cir. 2009).

13 *Carsanaro* also recognizes that a "complaint satisfies due process by properly
14 invoking the conspiracy theory of jurisdiction." *Id.* at 635. The court explained "[t]his
15 theory is based on the legal principle that one conspirator's acts are attributable to the
16 other conspirators. . . [I]f the purposeful act or acts of one conspirator are of a nature
17 and quality that would subject the actor to the jurisdiction of the court, all of the
18 conspirators are subject to the jurisdiction of the court." *Id.* at 635-36 (internal
19 citations and quotations omitted).

20 Under *Carsanaro*, the elements of conspiracy and aiding and abetting
21 jurisdiction are:

- 22 (1) a conspiracy . . . existed; (2) the defendant was a
23 member of that conspiracy; (3) a substantial act or
24 substantial effect in furtherance of the conspiracy occurred
25 in the forum state; (4) the defendant knew or had reason to
26 know of the act in the forum state or that acts outside the
27 forum state would have an effect in the forum state; and
28 (5) the act in, or effect on, the forum state was a direct and

31 *Superseded on other grounds by rule as stated in Hansen v. Eighth Jud. Dist.*
Ct., 116 Nev. 650, 6 P.3d 982 (2000).

foreseeable result of the conduct in furtherance of the conspiracy.

65 A.3d at 636.

The District Court's findings easily satisfies each of these elements. Purporting to act for Sands China, Adelson and Leven formulated the "exorcism strategy" to terminate Jacobs and took actions within Nevada in furtherance of that plan. (28PA47297 ¶ 67.) They were assisted by numerous LVSC employees, including Gayle Hyman and Ron Reese to draft the termination notice, requisite filings, and press releases. (*Id.*) Substantial steps – indeed, all the steps – were taken in Nevada to get the "ducks in a row." Sands China knew of and ratified this wrongful activity in Nevada. (28PA47298 at ¶¶ 68-71.) And, Jacobs' wrongful termination claim arises from these nefarious actions within Nevada. As such, personal jurisdiction also exists for Jacobs' conspiracy and aiding and abetting claims against Sands China.

c. Sands China defamed Jacobs in Nevada.

Sands China's attempt to dispute personal jurisdiction for Jacobs' defamation claim fails for two reasons. First, Sands China is precluded from raising this defense. When Jacobs amended his complaint to first assert his defamation claim, Sands China moved to dismiss only pursuant to NRCP 12(b)(5) for failure to state a claim. Sands China did not claim a lack of personal jurisdiction over this additional claim. (1SA0172-89.) The defense of lack of personal jurisdiction is permanently waived if it is omitted from the first response to the claim. NRCP 12(h).

This rule applies to newly asserted claims in an amended complaint even if a motion to dismiss for lack of personal jurisdiction was previously made to the original complaint. *See Preferred RX, Inc. v. American Prescription Plan, Inc.*, 46 F.3d 535, 551 (6th Cir. 1995) ("where, as here, the amended complaint adds a new cause of action, jurisdiction as to which reasonably may be premised on different contacts or conduct, a defendant wishing to make a jurisdictional challenge to the new claim must assert the defense as required by Fed. R. Civ. P. 12(h). Failure to do so results in waiver.") (footnote omitted); *see also Plunkett v. Valhalla Investment Serv.*, 409

1 F. Supp. 2d.39, 41 (D. Mass. 2006) (Failure to raise in the initial response "results in
2 a permanent waiver of the defense").

3 Second, there is more than substantial evidence supporting personal
4 jurisdiction over Sands China for defamation. A corporation is liable for the
5 defamatory statements of its officers and executives acting within the scope of their
6 authority and employment. *See, e.g., Unker v. Joseph Markovits, Inc.*, 643 F. Supp.
7 1043, 1049 (S.D.N.Y. 1986) (corporation liable for defamatory statements made by
8 the president and chairman within the scope of his authority); RESTATEMENT
9 (SECOND) OF AGENCY § 215 cmt. c (1958).

10 Sands China does not dispute that it can be subject to personal jurisdiction in
11 Nevada based upon Adelson's statements if the statement was made in his capacity
12 as Sands China's Chairman. (*See* Pet. at 26-27.) Instead, it argues that Adelson made
13 the statement either in his sole personal capacity or, simultaneously as Chairman of
14 Sands China and himself personally, which somehow supposedly insulates
15 Sands China. (Pet. at 27.)

16 That is not the law. It is irrelevant that Adelson may have made the statement
17 on his own behalf as well as for the company. The RESTATEMENT (SECOND) OF
18 AGENCY § 219(2) specifically notes that "primarily situations in which the principal's
19 liability is based upon conduct which is within the apparent authority of a servant, *as*
20 *where one purports to speak for his employer in defaming another.*" *Id.* at cmt. e
21 (emphasis added).

22 The singular case cited by Sands China is wholly inapposite. *Lego A/S v. Best-*
23 *Lock Construction Toys, Inc.*, 886 F. Supp. 2d 65 (D. Conn. 2012) involved a motion
24 to amend the complaint to add a CEO as an individual defendant for defamation. The
25 court denied the motion to amend for lack of personal jurisdiction over the CEO
26 because the Connecticut long-arm statute does not extend to claims of defamation by
27 a nonresident. *Id.* at 76. After finding that Connecticut's long-arm statute did not
28 confer jurisdiction, the court noted that the defamation claim against the CEO

1 personally was "redundan[t] as a practical matter" because the plaintiff asserted the
2 same claim against the CEO's company. *Id.* at 81. The court thought that asserting
3 the defamation against the CEO and the company, under those circumstances, would
4 somehow result in claim splitting. *Id.*

5 By contrast, Adelson himself testified that he made the statement on behalf of
6 not just himself, but also Sands China. (21PA45584-88.) Indeed, one of the
7 defamatory statements is that Sands China claims to have had cause to terminate
8 Jacobs. Each individual or entity that participates in defamation is liable and this
9 does not result in claim splitting. It is horn-book law that "[a]ll who take part in the
10 publication of libel or who procure or command libelous matter to be published may
11 be sued either jointly or severally by the person defamed. . . . [A]n employer is liable
12 under the doctrine of respondeat superior for a slander uttered by an agent or servant,
13 in which case the parties are jointly liable." 50 AM. JUR. 2D *Libel and Slander* § 341
14 (updated 2015); *see also Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1098,
15 901 P.2d 684, 689 (1995) (corporation is liable for officer's torts).

16 The fact that Adelson is personally liable for the tort in no way relieves
17 Sands China of the responsibility for its wrongdoing in Nevada. Sands China's
18 issuance of a defamatory statement in Nevada is the commission of a tort in the forum
19 which again subjects it to personal jurisdiction.

20 **4. *Exercising personal jurisdiction over Sands China is***
21 ***reasonable.***

22 Since the first two prongs of the specific jurisdiction analysis have been
23 established, "the forum's exercise of jurisdiction is *presumptively reasonable*. To
24 rebut that presumption, a defendant 'must present a *compelling case*' that the exercise
25 of jurisdiction would, in fact, be unreasonable." *Roth v. Garcia Marquez*, 942 F.2d
26 617, 625 (9th Cir. 1991) (quotations omitted); *Trump*, 109 Nev. at 702, 857 P.2d
27 at 750 ("Trump could still defeat personal jurisdiction in Nevada if he could make a
28

1 compelling case that the exercise of jurisdiction over him in Nevada would be
2 unreasonable.").

3 This Court looks at a number of factors:

4 (1) "the burden on the defendant" of defending an action
5 in the foreign forum, (2) "the forum state's interest in
6 adjudicating the dispute," (3) "the plaintiff's interest in
7 obtaining convenient and effective relief," (4) "the
8 interstate judicial system's interest in obtaining the most
9 efficient resolution of controversies," and (5) the "shared
10 interest of the several States in furthering fundamental
11 substantive social policies."

12 *Emeterio v. Clint Hurt & Associates, Inc.*, 114 Nev. 1031, 1036-37, 967 P.2d 432,
13 436 (1998)(quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292
14 (1980)); *cf. Roth*, 942 F.2d at 623.

15 Substantial evidence supports the District Court's findings that exercising
16 personal jurisdiction over Sands China is constitutionally reasonable. And, despite
17 having its own executives on the witness stand, Sands China presented *no evidence*
18 demonstrating that the exercise of personal jurisdiction over it would be
19 unreasonable. The evidence confirms that Sands China has knowingly accepted CEO
20 services of various Nevada executives pursuant to Nevada employment agreements.
21 Numerous executives purporting to act for Sands China live in Nevada. Key
22 day-to-day decisions for Sands China are made in Las Vegas and it will not suffer
23 any burdens by being forced to litigate here. Even though Sands China claims that
24 the MPDPA imposes a hardship upon it, as shown at the sanction hearing, any
25 hardship of its own making. "[U]nless such inconvenience is so great as to constitute
26 a deprivation of due process, it will not overcome clear justifications for the exercise
27 of jurisdiction." *Roth*, 942 F.2d at 623 (quotations omitted).

28 And, Nevada unquestionably has an interest in enforcing contracts that are
made here and in resolving disputes associated with Nevada contracts. *See Hansen*
v. Edwards, 83 Nev. 189, 192, 426 P.2d 792, 793 (1967) ("The public has an
interest . . . in protecting the freedom of persons to contract, and in enforcing

1 contractual rights and obligations."). Nevada also has an interest in providing redress
2 for tortious discharge in violation of public policy. *D'Angelo v. Gardner*, 107 Nev.
3 704, 718, 819 P.2d 206, 216 (1991) (tortious discharge is "deemed to be contrary to
4 the public policy of this state."). While Jacobs may not live in Nevada, he has an
5 interest in obtaining convenient and expedient relief for his Nevada-made agreement.
6 *Roth*, 942 F.2d at 624 ("Appellees dare not argue that it would be more convenient
7 for Roth to litigate outside the United States.") Nevada is unquestionably the most
8 appropriate judicial forum for this dispute.

9 In light of the long tortured history of this litigation, and the District Court's
10 familiarity with these proceedings, the District Court rightly noted that "[t]he
11 interstate – and global – judicial systems' interest in effective resolution weighs in
12 favor of exercising jurisdiction." (28PA47362.) As the District Court recognizes, this
13 case has been pending for almost five years. Enormous amounts of time and judicial
14 resources have been consumed. There is no compelling case against retaining
15 jurisdiction.

16 **5. *Transient jurisdiction also exists here.***

17 On the facts of this case, the District Court also concluded that transient
18 jurisdiction over Sands China is available even though it is a legal entity and not a
19 individual. In *Cariaga v. District Court*, 104 Nev. 544, 762 P.2d 886 (1988), this
20 Court held that "[i]t is well-settled that personal jurisdiction may be asserted over an
21 individual who is served with process while present within the forum state." 104 Nev.
22 544, 762 P.2d at 887(citing *Pennoyer v. Neff*, 95 U.S. 714, 718 (1877)). The Court
23 noted that "[t]he doctrine of 'minimum contacts' evolved to extend the personal
24 jurisdiction of state courts over non-resident defendants; it was never intended to limit
25 the jurisdiction of state courts over persons found within the borders of the forum
26 state." *Id.*

27 The United States Supreme Court reaffirmed this principle in *Burnham v.*
28 *Superior Court of California*, 495 U.S. 604, 619 (1990). There, citing *Cariaga* as an

1 example, the Supreme Court stated that "jurisdiction based on physical presence
2 alone constitutes due process" and that it is "fair" for a forum to exercise jurisdiction
3 over anyone who is properly served within the state. *Id.* at 616, 619.

4 Sands China does not contest the validity of transient jurisdiction generally.
5 Rather, it argues that it only applies to individuals, not corporations. (Pet. at 20-21.)
6 However, neither the United States Supreme Court nor this Court have ever held that
7 transient jurisdiction only applies to natural persons. "*Burnham's* reassertion of the
8 general validity of transient jurisdiction provides no indication that it should only
9 apply to natural persons." *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F. Supp. 2d
10 713, 720 (E.D. La. 2003) (citing *Snyder v. Eastern Auto Distributors, Inc.*, 357 F.2d
11 552, 556 (4th Cir. 1966) (holding that the fact that the agent only was temporarily
12 within the jurisdiction did not prevent service of process on the corporation through
13 him)); *contrast, Martinez v. Aero Caribbean*, 764 F.3d 1062 (9th Cir. 2014) (transient
14 does not apply to entities).³² And while corporations may be afforded the same
15 constitutional protections as individuals, *Citizens United v. Fed. Election Comm'n*,
16 558 U.S. 310, 365-66, (2010), there is no logic to providing *greater* constitutional
17 protections.

18 Here, the case for transient jurisdiction over an entity is particularly strong.
19 Sands China knew that its then-CEO (Leven) was living in Nevada and fulfilling the
20 CEO duties from Nevada at the time of service of process. Leven did not just chose
21 Nevada as his personal residence, such that his location is not attributable to the
22 company. Nevada is where Leven is headquartered and performed his CEO duties
23 for Sands China with its knowledge and approval. *See Perkins*, 342 U.S. at 447-48
24 (noting in context of general jurisdiction that president was served with the summons

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26 ³² *Freeman v. Second Jud. Dist. Ct.*, 116 Nev. 550, 1 P.3d 963 (2000) and *Wenche*
27 *Siemer v. LearJet Acquisition Corp.*, 996 F.2d 179 (5th Cir. 1992) are inapposite.
28 Those cases dealt only with the question of whether the appointment of a registered
agent for service of process subjects a corporation to general jurisdiction. They did
not involve a question of transient jurisdiction.

1 in the forum at the very time in which he was headquartered in Ohio directing
2 Philippine company's affairs).

3 **D. The Evidentiary Sanctions were Proper but are Presently Moot.**

4 Sands China confirms its lack of faithfulness to the record when it tells this
5 Court that the District Court's evidentiary sanctions were central to its finding of
6 personal jurisdiction. (Pet. at 29.)³³ But of course, the District Court confirmed the
7 exact opposite. As it explained, the evidentiary sanctions in actuality had no bearing
8 on the ultimate decision. (28PA47308 ¶¶ 123, 125; 28PA47317 ¶¶ 172-73.) The
9 record contains substantial evidence of jurisdiction over Sands China and Jacobs'
10 entitlement to proceed to trial. The District Court merely observed that if it
11 considered the evidentiary sanctions, those would only find further support to the
12 other findings. (2847354-54 ¶ 125; 28PA47363 ¶¶ 172-73.)

13 Sands China previously sought writ relief concerning those evidentiary
14 sanctions. This Court denied that request. Jacobs thoroughly briefed the propriety
15 of those sanctions in Case No. 67576, and to the extent Sands China tries to relitigate
16 them now, Jacobs incorporates his opposition to that petition herein in the interest of
17 judicial economy. In short, as the District Court there found – again based upon
18 actual evidence – Sands China not only deceived the District Court as to its access to
19 evidence in jurisdictional discovery, it consciously chose not to comply with the very
20 provisions of the MPDPA concerning the production of documents from Macau.
21 (14PA43802-03 ¶¶ 46-49.) As the District Court found, this is not a case where
22 Sands China could not comply. Sands China preferred not to comply and made
23 conscious efforts at noncompliance. (14PA43823 ¶¶ 135-137.) But of course, since
24 the District Court has presently determined that it cannot issue a final and binding
25 decision as to the jurisdictional facts – as Sands China urged – those evidentiary
26

27 ³³ Indeed, nearly half of Sands China's Petition is but a regurgitation of its
28 previously-denied writ challenging those sanctions. (Pet. at 29-48.)

1 sanctions have been rendered moot, at least for now. The District Court has not been
2 called upon to decide if those sanctions will apply at the time of trial.³⁴

3 **E. Sands China's Request for Reassignment (Again) is Improper.**

4 As with the evidentiary sanctions, Jacobs thoroughly briefed the impropriety
5 of Sands China's serial attempts to disqualify the District Court in Case No. 67576.
6 Sands China continues to insist that any judicial officer who dares to confront its
7 misconduct and who does not accept its arguments – no matter how untethered to the
8 truth – should be removed in favor of someone who will. Respectfully, it is time for
9 this Court to put an end to Sands China's smear campaign. Sands China has filed no
10 motion to challenge the District Court for cause, with the accompanying
11 consequences for litigants and their counsel who do so for improper purposes.
12 Instead, its preferred tactic is to take cheap shots in briefs, after getting confronted
13 for misrepresenting the facts (yet again). This conduct should be seen for what it is
14 and dealt with accordingly. *See In re Giguere*, 183 B.R. 27, 29 (Bankr. D.R.I. 1995)
15 ("[T]he Debtor has not alleged any personal bias or prejudice by the Court which was
16 obtained extra-judicially. Overall, this pleading is unsupported and frivolous, and
17 qualifies for the imposition of sanctions") (internal citation omitted).

18 **IV. CONCLUSION**

19 The evidentiary hearing held by the District Court highlights why Sands China
20 thought it best to conceal evidence and delay at every possible turn. Its denials as to
21 this lawsuit's overwhelming connection to Nevada and the facts of Jacobs' claims
22 have been exposed. There is no basis for Sands China to avoid trial in Nevada.
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24
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27 _____
28 ³⁴ Jacobs reserves his right to seek to enforce that sanction at trial based upon the
record.

1 For all the reasons stated above, Petitioners' request for a writ of prohibition
2 should be denied.

3 DATED this 21st day of July, 2015.

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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that this brief complies with the formatting requirements of
3 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because this brief has been prepared in a
5 proportionally spaced typeface using Office Word 2013 in size 14 font in
6 double-spaced Times New Roman. I further certify that I have read this brief and that
7 it complies with NRAP 21(d).

8 Finally, I hereby certify that to the best of my knowledge, information and
9 belief, it is not frivolous or interposed for any improper purpose. I further certify that
10 this brief complies with all applicable Nevada Rules of Appellate Procedure, in
11 particular NRAP 28(e)(1), which requires that every assertion in this brief regarding
12 matters in the record to be supported by appropriate references to the record on
13 appeal. I understand that I may be subject to sanctions in the event that the
14 accompanying brief is not in conformity with the requirements of the Nevada Rules
15 of Appellate Procedure.

16 DATED this 21st day of July, 2015.

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