

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 *****

3 SANDS CHINA LTD., A Cayman
4 Islands corporation,

5 Petitioner,

6 v.

7 CLARK COUNTY DISTRICT
8 COURT, THE HONORABLE
9 ELIZABETH GONZALEZ,
10 DISTRICT JUDGE, DEPT. 11,

11 Respondents,

12 and

13 STEVEN C. JACOBS,

14 Real Party in Interest.

Case No.: 68265
Electronically Filed
Jul 23 2015 03:19 p.m.
(Consolidated with Case Numbers
68275 and 68305)
Tracie K. Lindeman
Clerk of Supreme Court

**REAL PARTY IN INTEREST
STEVEN C. JACOBS'
SUPPLEMENTAL APPENDIX**

VOLUME III OF XI

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 21st day of July 2015, I electronically filed and served a true and correct copy of the above and foregoing **REAL PARTY IN INTEREST STEVEN C. JACOBS' SUPPLEMENTAL APPENDIX VOLUME III OF XI** properly addressed to the following:

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/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

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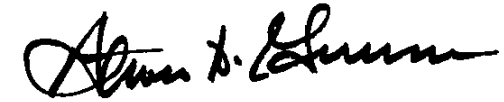
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| Plaintiff's Jurisdictional Ex. 584, admitted on 4/21/2015 | VI | SA1403 |
| Plaintiff's Jurisdictional Ex. 586, admitted on 4/21/2015 | VI | SA1404 |
| Plaintiff's Jurisdictional Ex. 587, admitted on 4/21/2015 | VI | SA1405 |
| Plaintiff's Jurisdictional Ex. 589, admitted on 4/21/2015 | VI | SA1406 |
| Plaintiff's Jurisdictional Ex. 607, admitted on 4/21/2015 | VI | SA1409 – SA1411 |
| Plaintiff's Jurisdictional Ex. 612, admitted on 4/21/2015 | VI | SA1439A |
| Plaintiff's Jurisdictional Ex. 621, admitted on 4/20/2015 | VI | SA1266 – SA1269 |

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| 1 | Plaintiff's Jurisdictional Ex. 624, admitted on 4/20/2015 | VI | SA1288 – SA1360 |
| 2 | Plaintiff's Jurisdictional Ex. 627, admitted on 4/22/2015 | VII | SA1461 – SA1462 |
| 3 | Plaintiff's Jurisdictional Ex. 628, admitted on 4/22/2015 | VII | SA1459 – SA1460 |
| 4 | Plaintiff's Jurisdictional Ex. 638, admitted on 4/22/2015 | VII | SA1489 – SA1490 |
| 5 | Plaintiff's Jurisdictional Ex. 661, admitted on 4/21/2015 | VI | SA1412 |
| 6 | Plaintiff's Jurisdictional Ex. 665, admitted on 4/20/2015 | VI | SA1283 – SA1287 |
| 7 | Plaintiff's Jurisdictional Ex. 667, admitted on 4/22/2015 | VII | SA1491 – SA1493 |
| 8 | Plaintiff's Jurisdictional Ex. 668, admitted on 4/20/2015 | VI | SA1270 – SA1277 |
| 9 | Plaintiff's Jurisdictional Ex. 669, admitted on 4/21/2015 | VI | SA1413 |
| 10 | Plaintiff's Jurisdictional Ex. 670, admitted on 4/22/2015 | VII | SA1494 – SA1496 |
| 11 | Plaintiff's Jurisdictional Ex. 686, admitted on 4/22/2015 | VII | SA1453 – SA1456 |
| 12 | Plaintiff's Jurisdictional Ex. 690, admitted on 4/21/2015 | VI | SA1414 – SA1415 |
| 13 | Plaintiff's Jurisdictional Ex. 692, admitted on 4/20/2015 | VI | SA1278 |
| 14 | Plaintiff's Jurisdictional Ex. 694, admitted on 4/22/2015 | VII | SA1448 – SA1452 |
| 15 | Plaintiff's Jurisdictional Ex. 702, admitted on 4/20/2015 | VI | SA1279 – SA1282 |
| 16 | Plaintiff's Jurisdictional Ex. 722, admitted on 4/22/2015 | VII | SA1496F |
| 17 | Plaintiff's Jurisdictional Ex. 744, admitted on 4/22/2015 | VII | SA1496G-SA1496I |
| 18 | Plaintiff's Jurisdictional Ex. 748, admitted on 5/4/2015 | VII | SA1640 – SA1641 |
| 19 | Plaintiff's Jurisdictional Ex. 752, admitted on 4/22/2015 | VII | SA1457 – SA1458 |
| 20 | Plaintiff's Jurisdictional Ex. 782, admitted on 4/30/2015 | VII | SA1635 – SA1636 |
| 21 | Plaintiff's Jurisdictional Ex. 804, admitted on 4/30/2015 | VI | SA1417 |

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|----|--|-----|------------------|
| 1 | admitted on 4/21/2015 | | |
| 2 | Plaintiff's Jurisdictional Ex. 91, admitted on 4/30/2015 | VII | SA1590 |
| 3 | Plaintiff's Jurisdictional Ex. 955, admitted on 4/28/2015 | VII | SA1497 |
| 4 | Plaintiff's Jurisdictional Ex. 970, admitted on 5/5/2015 | VII | SA1642 – SA1643 |
| 5 | Plaintiff's Motion on Deficient Privilege Log on Order Shortening Time, dated 9/16/2014 | IV | SA0855 – SA0897 |
| 6 | Plaintiff's Motion to Conduct Jurisdictional Discovery, dated 9/21/2011 | II | SA0283 – SA0291 |
| 7 | Plaintiff's Omnibus Response in Opposition to the Defendants' Respective Motions to Dismiss The Fifth Cause of Action Alleging Defamation Per Se, dated 5/23/2011 | I | SA0231 – SA0246 |
| 8 | Plaintiff's Opposition to Sands China LTD's Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Failure to Join an Indispensable Party, dated 2/9/2011 | I | SA0017 – SA0151 |
| 9 | Plaintiff's Opposition to Sands China LTD's Motion to Dismiss his Second Cause of Action (Breach of Contract), dated 5/23/2011 | II | SA00247 – SA0261 |
| 10 | Plaintiff's Reply in Support of Plaintiff's Motion on Deficient Privilege Log on Order Shortening Time, dated 10/3/2014 | IV | SA0925 – SA0933 |
| 11 | Real Party in Interest, Steven C. Jacobs' Reply in Support of Countermotion regarding Recall of Mandate, dated 3/28/2014 | II | SA0314 – SA0318 |
| 12 | Real Party in Interest, Steven C. Jacobs' Response to Motion to Recall Mandate and Countermotion regarding same, dated 2/7/2014 | II | SA0292 – SA0303 |
| 13 | Renewed Objection to Purported Evidence Offered in Support of Defendant Sands China LTD's Motion for Summary Judgment on Personal | II | SA0667 – SA0670 |

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| 1 | Jurisdiction, dated 7/24/2014 | | |
| 2 | Reply in Support of Countermotion for Summary Judgment, dated 7/24/2014 | III | SA0671 – SA0764 |
| 3 | Reply in Support of Motion to Recall Mandate and Opposition to Countermotion to Lift Stay, dated 3/28/2014 | II | SA0305 – SA0313 |
| 4 | | | |
| 5 | Sands China's Closing Argument Power Point in Jurisdictional Hearing, dated 5/7/2015 | IX | SA1783 – SA1853 |
| 6 | | | |
| 7 | SCL's Memorandum regarding Plaintiff's Renewed Motion for Sanctions, dated 2/6/2015 | IV | SA1049 – SA1077 |
| 8 | | | |
| 9 | Transcript of Hearing on Motions, dated 3/19/2015 | V | SA1140 – SA1215 |
| 10 | | | |
| 11 | Transcript of Hearing regarding Defendant Sands China LTD's Motion to Stay Court's 3/6/2015 Decision and Order and to Continue the Evidentiary Hearing on Jurisdiction scheduled for 4/20/2015; Defendants' Petition for Writ of Prohibition or Mandamus, dated 3/16/2015 | V | SA1106 – SA1139 |
| 12 | | | |
| 13 | Transcript of Hearing regarding Mandatory Rule 16 Conference, dated 4/27/2011 | I | SA0190 – SA0225 |
| 14 | | | |
| 15 | Transcript of Hearing regarding Motions on 8/14/2014 | III | SA0771 – SA0816 |
| 16 | | | |
| 17 | Transcript of Hearing regarding Plaintiff's Motion for Release of Documents from Advanced Discovery on the Grounds of Waiver and Plaintiff's Motion on Deficient Privilege Log on OST, dated 10/09/2014 | IV | SA0934 – SA0980 |
| 18 | | | |
| 19 | Transcript of Telephone Conference on 9/10/2014 | III | SA0840 – SA0854 |
| 20 | | | |
| 21 | Transcript of Telephone Conference on 9/9/2014 | III | SA0823 – SA0839 |
| 22 | | | |
| 23 | Writ of Mandamus, dated 8/26/2011 | II | SA0281 – SA0282 |
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**REPLY IN SUPPORT OF
COUNTERMOTION FOR
SUMMARY JUDGMENT**

Hearing Date: July 29, 2014

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

I. SANDS CHINA'S SUMMARY JUDGMENT INVITATION IS BINDING.

Sands China attempts to rewrite Jacobs' position so as to set up a false straw man from which to argue against Jacobs' countermotion. Jacobs does not claim that any time a party seeks summary judgment they forever concede the absence of disputed material facts. Jacobs' point – one Sands China cannot be genuinely confused about – is different.

In moving for summary judgment for itself, Sands China necessarily makes a binding concession that neither the stay nor writ of mandate issued by the Nevada Supreme Court precludes the ordinary operation of Nevada Rule of Civil Procedure 56 on Sands China's defense of personal jurisdiction. The point is simple: "A defendant may not request to proceed in one manner and then

1 later contend on appeal that the course of action was in error." *People v. Harding*, 966 N.E.2d 437,
2 441 (Ill. Ct. App. 2012); *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345-46 (1994)
3 ("Since Young, on behalf of his client, filed the form requesting submission of the matter to the
4 court for decision, Lawrence may not be heard to complain of the decision which resulted from her
5 own attorney's request.").

6 Sands China's Motion under Rule 56 precludes it from disputing that summary judgment is
7 not a proper mechanism, provided that the material facts are undisputed, for resolving its claimed
8 defense. And, applying Rule 56 here, it is Jacobs, not Sands China, who is entitled to summary
9 judgment because:

10 (1) General jurisdiction exists. The facts are uncontroverted that the true headquarters
11 (*i.e.*, nerve center) of Sands China – where ownership is exercised, policy is set and substantive
12 decisions are controlled – is Nevada. Sands China presents no admissible evidence showing
13 otherwise. And, its failure cannot be simply ignored.

14 (2) Sands China is also subject to specific jurisdiction. Jacobs' claims directly result
15 from Sands China's activities in Nevada. Jacobs' services as Sands China's CEO were provided
16 pursuant to a Nevada employment agreement with Sands China's parent, LVSC. That Nevada
17 contract was negotiated in Nevada and is governed by Nevada law. It provides for various forms
18 of compensation that Jacobs would receive, including stock options in Sands China. There is no
19 dispute that but for Jacobs' Nevada contract, pursuant to which he served as Sands China's CEO, he
20 would receive stock options. The substantive events depriving Jacobs of the stock options and other
21 compensation to which he is entitled – his wrongful termination – occurred in Nevada, with conduct
22 that Sands China specifically undertook in Nevada. Again, Sands China fails to present any contrary
23 evidence, instead choosing to argue the legal consequences of those facts, about which it is
24 mistaken.

25 (3) Transient jurisdiction also exists even though Sands China is a legal entity as
26 opposed to a natural person. Sands China authorized its CEO to conduct the company's affairs from
27 Nevada. It was in that capacity – acting as Chief Executive Officer and thus responsible for
28 controlling and overseeing the company's affairs – that Jacobs served Sands China's Nevada-based

1 CEO. Courts recognize that there is nothing unfair about exercising transient jurisdiction over an
2 organization that purposefully sets up its CEO to operate its affairs from the forum.

3 **II. JACOBS IS ENTITLED TO SUMMARY JUDGMENT ON GENERAL**
4 **JURISDICTION.**

5 Jacobs is not pursuing a "brand-new theory" of general jurisdiction, as Sands China oddly
6 claims. Jacobs has always noted that one of his theories is "general jurisdiction based upon what
7 Sands China does here [in Nevada]." (Ex. 1, Hr'g Tr. dated Sep. 27, 2011, 30:11-18; Ex. 2,
8 Sands China's Mot. for Prot. Order dated Nov. 26, 2012, 16:2-3 ("Plaintiff argued in the Nevada
9 Supreme Court that Nevada should be deemed SCL's 'de facto executive headquarters' because SCL
10 was supposedly managed from Las Vegas.")) In fact, almost two years ago, Sands China filed a
11 Motion for Protective Order – that reads almost identical to its instant Motion for Summary
12 Judgment – arguing that Jacobs' "theory that Las Vegas was the '*de facto* executive headquarters' of
13 SCL fails as a matter of law."¹ Specifically, Sands China objected to discovery related to general
14 jurisdiction given that "it is only where a corporation can be viewed as being 'at home' in a particular
15 forum that it is appropriate to subject it to general jurisdiction there," and its view that "neither
16 SCL's place of incorporation nor its principal place of business is in Nevada."² (*Id.*, 15:20-22,
17 16:1-2.) Of course, the Court rejected the argument and allowed Jacobs to proceed with
18 jurisdictional discovery related to activities performed by and on behalf of Sands China in Nevada.

19 The reason why Sands China wanted so desperately to avoid discovery related to jurisdiction
20 is now obvious. The evidence shows that despite what Sands China wishes to pretend – so as to
21 escape United States' jurisdiction and be subject to its laws – its true principal place of business is
22 in Nevada, where the principal decisions are made, direction is given and control is exercised by
23

24 ¹ This also dispels Sands China's latest spin that *Daimler* was a "sea change." It is the same
25 argument Sands China made nearly two years ago.

26 ² Just as it did two years ago, in its Motion for Summary Judgment on Personal Jurisdiction
27 Sands China cites to Paragraph 3 of Jacobs' First Amended Complaint for the notion that "Plaintiff
28 does not dispute that SCL is a Cayman Islands corporation with its principal place of business in
Macau." Of course, Jacobs *does* dispute the location of Sands China's principal place of business,
which is referenced nowhere in Paragraph 3 or anywhere else for that matter. Sands China's
mischaracterization of the facts and Jacobs' pleading does not create a genuine issue of material
fact.

1 executives acting for Sands China. *See Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 103 S.Ct. 1181
2 (2010) (a corporation's principal place of business is determined by its "nerve center," which is the
3 "place where the corporation's officers direct, control and coordinate the corporation's activities.");
4 *see also* Ex. 6 to Countermot., LVS00216741, Leven e-mail dated May 27, 2010 (Leven advising
5 Sands China executives that "input from anyone [in Macau] is expected and listened to but final
6 design decisions are made by sga and las vegas[.]"); Ex. 7 to Countermot., Adelson Dep. Tr., Vol. II,
7 87:24-88:7 (Adelson testifying that "[p]art of the problem was that Jacobs [as Sands China's CEO]
8 tried to insert himself into all these decisions."); Ex. 8 to Countermot., Leven Dep. Tr., Vol. II,
9 377:21-378:2 (Leven telling LVSC executives that the real reason for Jacobs' termination was that
10 "he believe[d] he report[ed] to the board, not the chair [Adelson]."). In fact, even the decision to
11 terminate Jacobs from Sands China – which is the basis for this entire lawsuit – was made by "the
12 Chairman and senior leadership of LVS" in Las Vegas. (Ex. 9 to Countermot., LVS00142281,
13 Draft Ltr.)

14 Of course, Sands China offers no evidence to dispute the facts showing that its actual nerve
15 center is in Nevada, as required to avoid summary judgment.³ *See Cuzze v. Univ. & Cmty. Coll.*
16 *Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007) ("[I]n order to defeat summary judgment,
17 the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence,
18 introduce specific facts that show a genuine issue of material fact."). Instead, Sands China claims
19 that all of the facts can simply be brushed aside based on its legal "argument" that for a holding
20 company, "the proper question is where SCL's Board met," which it claims was in China.⁴
21 (Opp'n, 9:11-12.)

22
23 ³ Sands China also attempts to distinguish between a corporation's principal place of business
24 for purposes of personal jurisdiction from that of diversity jurisdiction. They are not different. *See*
25 *Topp v. CompAir Inc.*, 814 F.2d 830, 836 (1st Cir. 1987) ("[T]he method for deciding whether a
26 parent is doing business in a state for the purpose of finding personal jurisdiction can be applied to
the analogous issue of determining the principal place of business for diversity jurisdiction."). In
fact, the fact that Sands China is seeking to now evade the nerve center test only proves Jacobs'
point.

27 ⁴ Nor can Sands China hide behind its board meeting notices, claiming that the meetings were
28 "held in China." Tellingly, Sands China presents no evidence that anyone really attended those
meetings "in China" as opposed to simply being on a conference line. That omission is fatal because
Sands China is well aware that Adelson and Leven testified that they generally participated in those
meeting telephonically from their offices in Las Vegas and Adelson actually chaired the meetings

1 Unfortunately for Sands China, its attempted use of labels (in name only) does not save it.
2 Courts "consider substance over form in determining the nerve center" for purposes of a
3 corporation's principal place of business. *J.A. Olson Co. v. City of Winona, Miss.*, 818 F.2d 401,
4 412 (5th Cir. 1987). Thus, while the principal place of business for a true holding company – one
5 that "exists solely to own and manage its investments in other companies, and does not engage in
6 its subsidiaries' operations" – may sometimes be where its board meetings are held, the same is not
7 true for a company like Sands China, which claims it "operates the largest collection of integrated
8 resorts in Macao." *Johnson v. SmithKline Beecham Corp.*, 853 F. Supp. 2d 487, 491 (E.D. Pa. 2012)
9 *aff'd*, 724 F.3d 337 (3d Cir. 2013); Ex. C to Sands China's Motion for Summ. J., 2011 Annual
10 Report, 4.)

11 Ultimately, the test to determine any "corporation's principal place of business – including
12 that of a holding company – is the state in which the corporation's activities are 'directed, controlled,
13 and coordinated.'" *Johnson*, 853 F. Supp. 2d at 495 (citing *Hertz*, 130 S.Ct. at 1192). As another
14 court has aptly recognized, the nerve center test concerns itself with the substance of where real
15 direction and control is being exercised, not self-serving labels:

16 *Johnson* confirms that *Hertz* is not as formalistic as the plaintiffs
17 contend. When 'the facts . . . suggest that [a] particular corporation
18 did not vest the relevant decision making in its officers,' those officers
19 do not compromise the corporation's nerve center. This Court's
conclusion that executives of a related entity may constitute a
corporation's nerve center fits comfortably with the third circuit's
reasoning and holding in *Johnson*.

20 *Moore v. Johnson & Johnson*, No. 12-490, 2013 WL 5298573 *7 (E.D. Penn. Sept. 20, 2013)
21 (citations omitted).

22 And Sands China has failed to produce any evidence contradicting its own internal records
23 and the testimony of its executives who admitted that its activities are directed, controlled, and
24 coordinated from Nevada. Thus, its principal place of business is in Nevada. Because Sands China
25

26 from Las Vegas. (See Ex. 3, Adelson Dep. Tr., Vol. 1, 130:5-25 ("Q. Where do the board meetings
27 of SCL take place? A. Usually at – there is a combination of telephone meetings, so wherever
28 people are. . . . We have had -- I have telephone -- telephonic meetings in any of my eight or ten
offices, either in the air or on the ground, outside in commercial office buildings or my home offices,
but we have never had an SCL meeting in Las Vegas.")).

1 recognized that it could not present any evidence contradicting its own internal records and those
2 of LVSC, as well as the testimony of its own witnesses, the evidence is uncontroverted and Jacobs
3 is entitled to summary judgment against Sands China's personal jurisdiction defense on grounds of
4 general jurisdiction.

5 **III. JACOBS IS ALSO ENTITLED TO SUMMARY JUDGMENT ON SPECIFIC**
6 **JURISDICTION.**

7 But jurisdictional discovery revealed much more. It also confirmed the following
8 undisputed facts that subject Sands China to specific jurisdiction as well:

9 • Jacobs served as Sands China's CEO pursuant to an employment contract with Sands
10 China's controlling parent, LVSC, which was negotiated in Nevada, signed by Leven and approved
11 by Adelson in Nevada, and is governed by Nevada law. (Ex. 4, Leven Dep. Tr., Vol. II,
12 285:7-286:24; Ex. 5, Exhibit 10.1 to LVSC Form 10-Q dated May 10, 2010, Jacobs Term Sheet.⁵)

13 • That Nevada contract entitled Jacobs to various forms of compensation, including
14 stock options in the yet-to-be-formed spinoff that would subsequently become Sands China. (*Id.*)

15 • The Stock Option Agreement which Sands China breached is a direct product of
16 Jacobs' role as CEO, duties which he provided under the Nevada employment contract. Indeed, the
17 Stock Option Agreement specifies that it is in recognition of those services. (Ex. K to Sands China's
18 Mot. for Summ. J.)

19 • Sands China makes no efforts (because it cannot) to deny that "but for" Jacobs' CEO
20 services – those provided pursuant to the Nevada employment contract – that he would not have
21 been issued stock options, including in Sands China.

22 • The material events of breach of the Nevada employment agreement as well as the
23 Stock Option Agreement – Jacobs' wrongful termination – occurred in Nevada. (*See Jacobs*
24 *Countermot.*, 6:20-8:13, 14:20-16:18.)

25
26
27 ⁵ The Court may take judicial notice of filings with the Securities and Exchange
28 Commission. *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir.
2008) (citing *Dreiling v. Am. Exp. Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006)).

1 Because Sands China presents no evidence disputing those facts, and instead simply
2 attempts to argue the legal consequences of them, summary judgment is again appropriate. To
3 determine whether a court has specific jurisdiction over a defendant, the court looks at the following
4 three-prong test:

- 5 (1) The non-resident defendant must purposefully direct his
6 activities or consummate some transaction with the forum or
7 resident thereof; or *perform some act by which he*
8 *purposefully avails himself of the privilege of conducting*
9 *activities in the forum*, thereby invoking the benefits and
10 protections of its laws;
- 11 (2) The claim must be one which *arises out of or relates to the*
12 *defendant's forum-related activities*; and
- 13 (3) The exercise of jurisdiction must comport with fair play and
14 substantial justice, *i.e.*, must be reasonable.

15 *Yahoo, Inc. v. La Ligue Contre Le Racisme Et L'antisemitisme*, 433 F.3d 1199, 205-206 (9th Cir.
16 2006) (emphasis added). Once the first two prongs are satisfied, there is a presumption of
17 reasonableness and the burden shifts to Sands China to establish a "compelling case" that the court's
18 exercise of the jurisdiction is unreasonable. *Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995).

19 The facts are uncontroverted that Sands China purposefully undertook activities in Nevada
20 – falsely orchestrating Jacobs' termination – so as to deprive him of his contractual rights. (See
21 Jacobs Countermot., 6:20-8:13, 14:20-16:18.) There is similarly no dispute that Jacobs' claims
22 "arise out of or relate to" those Nevada-based activities. And tellingly, Sands China makes no case,
23 let alone a compelling one, that a court's exercise of specific jurisdiction would somehow be
24 unreasonable. Indeed, in examining specific jurisdiction for breach of contract claims, courts hold
25 that jurisdiction is appropriate in the forum if the defendant's contacts there "were instrumental in
26 either the formation of the contract or its breach." *General Electric Co. v. Deutz AG*, 270 F.3d 144,
27 150 (3rd Cir. 2001); *see also Adelson v. Hananel*, 652 F.3d 75, 81 (1st Cir. 2011) (Sheldon Adelson
28 successfully claimed that an Israeli citizen was subject to specific jurisdiction in Massachusetts

1 because courts look at whether the defendant's activities were "instrumental either in the formation
2 of the contract or its breach.") (citations omitted).⁶

3 Again, there can be no serious suggestion that Jacobs' claim would not have arisen "but for"
4 Sands China's activities purposefully undertaken in Nevada. Nevada is where executives acting on
5 Sands China's behalf undertook the scheme to terminate Jacobs. All steps concerning the conduct
6 occurred in Nevada, and Sands China presents no evidence to the contrary. Because Jacobs' claims
7 arise out of and relate to Sands China's Nevada-based activities – wrongfully terminating him so as
8 to deprive him of his contractual rights – specific jurisdiction exists. *See Buckman v. Quantum*
9 *Energy Partners IV, L.P.*, No. 07-CV-1471-BR, 2008 WL 2235234, *6-7 (D. Or. May 29, 2008)
10 (specific jurisdiction exists because claim for breach of contract grew out of defendant's activities
11 in Oregon.)⁷

12 **IV. JACOBS IS ALSO ENTITLED TO SUMMARY JUDGMENT ON TRANSIENT**
13 **JURISDICTION.**

14 Unable to dispute the authorities rejecting its contention that transient jurisdiction only
15 applies to natural persons, Sands China now hangs its hat on one wholly-dissimilar case: *Freeman*
16 *v. Second Jud. Dist. Ct.*, 116 Nev. 550, 1 P.3d 963 (2000). There, the court merely explained, as
17 had other courts, that simply serving a resident agent – someone who merely contracts to accept
18 legal documents – does not (by itself) subject a legal entity to jurisdiction.

19 But as this Court knows, that is not remotely comparable to service upon a legal entity's
20 CEO who the company specifically authorized to conduct its affairs in the forum. *See Nutri-West*
21 *v. Gibson*, 764 P.2d 693, 695 (Wyo. 1988) (applying transient jurisdiction to subject partnership to

22
23 ⁶ The court specifically noted that it was irrelevant to which jurisdiction the laws governed
24 the contract, because that is a choice of law question, not a question for personal jurisdiction.
Id. at 81 n.2.

25 ⁷ Unable to shake its Nevada activities giving rise to specific jurisdiction, Sands China again
26 repeats its erroneous contention that Jacobs somehow waived specific jurisdiction. Jacobs has now
27 lost count of the number of times this Court has rejected this convenient theory – one built around
28 Sands China's misrepresentations to both this Court and the Nevada Supreme Court – as to its real
Nevada activities. (*See Ex. 6, Order on Jacobs' Mot. to Compel Depo. Testimony dated May 8,*
2013, 2:3-5 ("As previously ordered, Jacobs may question deponents . . . as to the decision making
and implementation of the decision to terminate Jacobs from Sands China, which is the 'who, what,
where, when, and how' behind the decision." (emphasis added).)

1 personal jurisdiction because the managing partner was personally served in the jurisdiction and her
2 "presence in the jurisdiction is related to partnership activity.") Again, Sands China tellingly cites
3 no case disputing the propriety of transient jurisdiction when a legal entity purposefully engages its
4 chief executive officer to operate the company's affairs from the forum.

5 DATED this 24th day of July, 2014.

6 PISANELLI BICE PLLC

7
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 24th day of July, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **REPLY IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT** properly addressed to the following:

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EXHIBIT 1

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

| | | |
|--------------------------------------|---|----------------------|
| STEVEN JACOBS | . | |
| | . | |
| Plaintiffs | . | CASE NO. A-627691 |
| | . | |
| vs. | . | |
| | . | |
| LAS VEGAS SANDS CORP., et al.. | . | DEPT. NO. XI |
| | . | |
| Defendants | . | Transcript of |
| | . | Proceedings |
| <u>And related cases and parties</u> | . | |

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON PLAINTIFF'S MOTION TO CONDUCT
JURISDICTIONAL DISCOVERY**

TUESDAY, SEPTEMBER 27, 2011

APPEARANCES:

| | |
|---------------------|--|
| FOR THE PLAINTIFFS: | JAMES J. PISANELLI, ESQ. DEBRA SPINELLI, ESQ. |
|---------------------|--|

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| FOR THE DEFENDANTS: | J. STEPHEN PEEK, ESQ. PATRICIA GLASER, ESQ. STEPHEN MA, ESQ. |
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| COURT RECORDER: | TRANSCRIPTION BY: |
| JILL HAWKINS District Court | FLORENCE HOYT Las Vegas, Nevada 89146 |

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produced by transcription service.

1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 27, 2011, 4:07 P.M.

2 (Court was called to order)

3 THE COURT: All right. Can everybody please
4 identify themselves who's participating in the argument on
5 Jacobs versus Sands.

6 MR. PISANELLI: Good afternoon, Your Honor. James
7 Pisanelli on behalf of the plaintiff.

8 MS. GLASER: Good afternoon, Your Honor. Patricia
9 Glaser for Sands China, here only on the issues involving the
10 evidentiary hearing.

11 MR. PEEK: And good afternoon, Your Honor. Stephen
12 Peek on behalf of Las Vegas Sands Corp.

13 THE COURT: Okay. I think I have four agenda items,
14 some of which you don't know about. One is each of you has
15 submitted order shortening times, or at least side has
16 submitted order shortening times. One is in the Las Vegas
17 Sands versus Jacobs case, which I haven't signed, and one is
18 in the Jacobs versus Las Vegas Sands case. One's by Ms.
19 Glaser, one's by Mr. Peek. Does anybody want to discuss with
20 me the briefing schedule that we should have before I have to
21 have a conference call like I just did with Mr. Backus and his
22 adverse counsel?

23 MR. PEEK: Well, Your Honor, I sort of fall in the
24 same trap that you did with Mr. Pisanelli's motion that we're
25 here today on the jurisdictional discovery which, I think was

1 set on about three days' notice. We're happy with three days'
2 notice.

3 MR. PISANELLI: Three days' notice on an issue that
4 has no relevancy until November? I'd ask Your Honor to give
5 us the appropriate amount of time to respond to what appears
6 to be --

7 THE COURT: The motion in limine.

8 MR. PEEK: I was just talking about my motion.

9 THE COURT: See, I've got a motion for sanctions,
10 and I've got a motion in limine.

11 MR. PEEK: Yeah. I --

12 THE COURT: I've got two different kinds of motions.

13 MS. GLASER: Actually, the --

14 MR. PISANELLI: This is all news to me. I haven't
15 seen them.

16 THE COURT: Oh. Okay.

17 MS. GLASER: Your Honor, with respect to the motion
18 in limine, which I -- is the only one that I can address, we
19 would like it as quickly as humanly possible. Mr. Pisanelli
20 has been served with a motion in limine. We are asking for --
21 that the -- no documents stolen by Mr. Jacobs be utilized in
22 connection with anything having to do with the evidentiary
23 hearing. And I think that issue needs to be resolved as soon
24 as possible by Your Honor.

25 THE COURT: Okay.

1 to the question it was posing, "We express no views on these
2 matters, and for simplicity's sake, until reference to the
3 aspect of contacts-based jurisdiction in our discussion," a
4 decision where the Supreme Court expressly stated no views,
5 Ms. Glaser tells us clearly establishes that transient
6 jurisdiction doesn't apply to corporations. Well, the
7 decision that the Supreme Court was relying upon in that very
8 footnote, Perkins decision, Your Honor, which is as telling as
9 anything we can point to, said, "Today if an authorized
10 representative of a foreign corporation be physically present
11 in the state of the forum and be there engaged in activities
12 appropriate to accepting service or receiving notice on its
13 behalf, we recognize that there is no unfairness in subjecting
14 that corporation to the jurisdiction of the courts of that
15 state through such service of process upon that
16 representative."

17 In other words, if Mr. Leven goes to the beach in
18 California, not in his capacity as president of Sands China,
19 and he's served there, would that be fair to say that he's
20 subject to jurisdiction -- or the company is subject to the
21 jurisdiction of California? Probably not. He wasn't serving
22 in his function as the officer of that company. But when a
23 process server comes to Las Vegas Boulevard and hands Mr.
24 Leven service of process in his capacity as the president of
25 Sands China, we know that there is nothing unfair about saying

1 that Sands China now is subject to transient jurisdiction, an
2 issue settled by Footnote 1 in Burnham, I think not, Your
3 Honor. And the point is this. Discovery as to Mr. Leven and
4 his roles and what he does on Las Vegas Boulevard, the
5 function he was serving when he was served is all relevant for
6 transient jurisdiction. Contrary to what Ms. Glaser tells us,
7 transient jurisdiction is very much alive in this case and
8 something that Your Honor is going to be asked to resolve.

9 THE COURT: And for the record, something I haven't
10 ruled on to this point.

11 MR. PISANELLI: Right. Understood. So what we
12 have, then, for debate in November general jurisdiction based
13 upon what Sands China does here, general jurisdiction based
14 upon the agency role of Las Vegas Sands and what it performs
15 here on behalf of Sands China, specific jurisdiction of what
16 Sands China did here in relation to the causes of action that
17 was presented to you, and, of course, transient jurisdiction
18 of Sands China. All of these issues will be debated. All of
19 the evidence that we have asked goes directly to these four
20 issues. Sands China can not stand up through Ms. Glaser,
21 through Mr. Adelson, through Mr. Leven, through any of them
22 with a straight face and look you in the eye and say, in light
23 of everything we already know that this type of jurisdiction
24 -- in light of the law governing jurisdiction would be clearly
25 frivolous. They cannot do that with a straight face. And

1 because they can't do that with a straight face, we are
2 entitled to the discovery that is so regularly given to
3 parties who find themselves, like Mr. Jacobs does, in trying
4 to defend against a challenge of personal jurisdiction.

5 THE COURT: Thank you.

6 Ms. Glaser.

7 MS. GLASER: Your Honor, I'm coming to you with a
8 straight face. In our view in no uncertain terms we think
9 that the Nevada Supreme Court order filed August 26th, 2011,
10 speaks volumes. And what is attempting to be done here is to
11 relitigate issues that have already been determined by the
12 Nevada Supreme Court. And by that I mean -- and I'm looking
13 specifically, starting on page 2, when it discusses the MGM
14 Grand decision and it discusses the Goodyear decision. We
15 came to Your Honor and we made a motion to dismiss for lack of
16 personal jurisdiction. What was presented were facts. The
17 Court, in our view erroneously, but nonetheless, the Court
18 determined that you had enough to rule on, you made a
19 determination, and we took that to the Nevada Supreme Court.
20 When we went to the Nevada Supreme Court, the Nevada Supreme
21 Court said, look, based on the MGM case, and more importantly,
22 I think, Your Honor, the Goodyear case, which is a U.S.
23 Supreme Court 2011 case, considered whether jurisdiction over
24 foreign subsidiaries of a U.S. parent corporation was proper
25 by looking only to the subsidiary's conduct.

1 THE COURT: I didn't say yes or no. I said I need
2 more information.

3 MS. GLASER: Glad to provide it.

4 THE COURT: So how am I going to get that more
5 information?

6 MS. GLASER: We'll provide you -- let me do this.
7 First of all, I don't think the disclosures have been provided
8 to Your Honor because I think we were just supposed to
9 exchange them.

10 THE COURT: I don't want the disclosures.

11 MS. GLASER: But that's more information.

12 THE COURT: All right. So, Mr. Pisanelli, you have
13 two options. You can tell me you're going to file a motion to
14 exclude the expert that Ms. Glaser thinks she wants to use, or
15 alternatively to let you do stuff related to the expert. And
16 I think that's probably the best, if Ms. Spinelli can spend a
17 few minutes doing that.

18 MR. PISANELLI: Can I pick both?

19 THE COURT: I usually make -- I usually make you
20 pick one or the other.

21 MR. PISANELLI: If I depose them, then that means
22 they get to take the stand?

23 THE COURT: That doesn't mean I'm going to think
24 they're credible or I think they're important, but I will
25 listen to them.

1 MS. GLASER: Thank you, Your Honor.

2 THE COURT: And sometimes even though you think

3 you're winning on the not getting him to testify, I'll say,

4 you know what, you're right, but I'm still going to make you

5 take a depo and listen to him.

6 MR. PEEK: Your Honor --

7 MR. PISANELLI: Does this mean if I want

8 information, Your Honor, I'm getting a report as we would

9 normally, and I'll depose him?

10 THE COURT: There is a requirement in Nevada on how

11 you are going to disclose expert information. It can either

12 be by report or by the other method that the rule dictates.

13 MR. PEEK: Your Honor --

14 MR. PISANELLI: Thank you, Your Honor.

15 THE COURT: Mr. Peek, it's so nice to see you.

16 Mr. Pisanelli, I did not get a competing order from

17 you on the interim order. Will you have it to me tomorrow so

18 I can sign one way or the other.

19 MR. PISANELLI: Yes. Yes, we will. Thank you.

20 THE COURT: By noon.

21 MR. PISANELLI: Yes.

22 MR. PEEK: And we --

23 THE COURT: Mr. Peek.

24 MR. PEEK: You know, I've been in trial, so I

25 haven't had a chance to even look at what he wants, because he

1 did send me something to take a look at.
2 THE COURT: I don't know.
3 MR. PEEK: So I'll take a look at it and get back to
4 Jim.
5 THE COURT: I know that my former law clerk, Brian
6 Anderson, sent me a letter saying that he wanted me to sign
7 this, but Pisanelli had a different version and I haven't seen
8 it.
9 MR. PEEK: I haven't, either.
10 Your Honor, just a quick question. I know everybody
11 wants to leave here. But the hearing Tuesday is at 9:00,
12 9:30, 10:00, 10:30, 1:00 o'clock?
13 THE COURT: What hearing Tuesday?
14 MR. PEEK: On my motion for sanctions of the interim
15 -- the interim order.
16 THE COURT: That's on 9:00 o'clock, Steve.
17 MR. PEEK: 9:00 o'clock.
18 MS. GLASER: Thank you.
19 THE COURT: And I signed the OST. You need to file
20 and serve.
21 MR. PEEK: It got brought out without me knowing it.
22 THE COURT: I took care of it all. I'm on the ball.
23 (Off-record colloquy)
24 THE COURT: Have a nice evening, everyone.
25 THE PROCEEDINGS CONCLUDED AT 5:10 P.M.

CERTIFICATION

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

AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**

10/4/11

FLORENCE HOYT, TRANSCRIBER

DATE

EXHIBIT 2

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

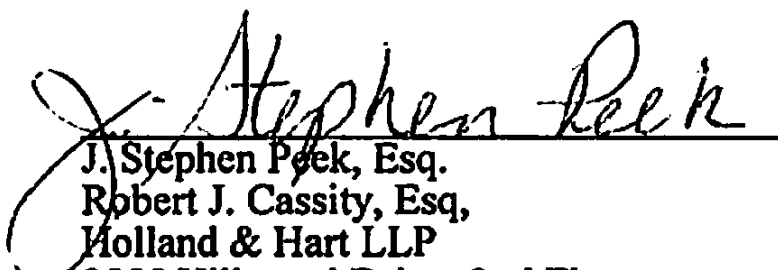
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Time: n/a

**DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER ON ORDER
SHORTENING TIME**

Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("SCL") move this
Court pursuant to Rule 26(c), this Court's March 8, 2012 Order, and the Nevada Supreme Court's

1 Order Granting SCL's Petition for Writ of Mandamus, for a protective order with respect to the
2 depositions of Sheldon G. Adelson and Robert G. Goldstein.

3 DATED November 26, 2012.

4 
5 J. Stephen Peek, Esq.
6 Robert J. Cassity, Esq.,
7 Holland & Hart LLP
8 9555 Hillwood Drive, 2nd Floor
9 Las Vegas, Nevada 89134
10 Attorneys for Las Vegas Sands Corp. and Sands
11 China Ltd.

12 -and-
13 J. Randall Jones, Esq.
14 Mark M. Jones, Esq.
15 Kemp Jones & Coulthard, LLP
16 3800 Howard Hughes Parkway, 17th Floor
17 Las Vegas, Nevada 89169
18 Attorneys for Sands China, Ltd.

12 **EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

13
14 As set forth in the Affidavit of J. Stephen Peek, Esq. below, good cause exists to hear
15 Defendants' Motion for a Protective Order on an order shortening time. Plaintiff has taken an
16 extremely broad view of his entitlement to discovery under this Court's March 8 Order. In the
17 two depositions that have been taken to date, of Sheldon G. Adelson and Robert G. Goldstein,
18 Plaintiff has consistently attempted to obtain discovery into the merits of his claims, even though
19 the Court has limited discovery to jurisdictional issues. Furthermore, Plaintiff appears to be
20 pursuing jurisdictional theories that either have no viable legal basis or that Plaintiff himself
21 disclaimed a year ago, when the Court granted him the right to take limited jurisdictional
22 discovery. Two more depositions are scheduled in December, and Plaintiffs have made clear that
23 they intend to demand more deposition time with Messrs. Adelson and Goldstein in the near
24 future. Defendants seek an Order Shortening Time so that the discovery issues raised by their
25 Motion for Protective Order can be resolved expeditiously, discovery can be completed, and the
26 Court can hold a hearing on the issue of jurisdiction, as the Nevada Supreme Court directed.

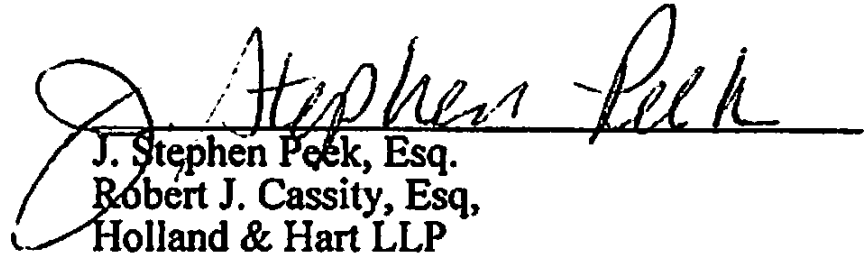
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Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

1 Defendants' request for an order shortening time is made in good faith and is not made for any
2 improper purpose, and accordingly Defendants request that this Motion be heard on an order
3 shortening time.

4 DATED November 26, 2012.

5
6 
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8 Robert J. Cassity, Esq.,
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20 Attorneys for Sands China, Ltd.

21
22
23 **DECLARATION OF J. STEPHEN PEEK, ESQ.**

24 I, J. STEPHEN PEEK, ESQ., being duly sworn, state as follows:

25 1. I am one of the attorneys for Defendant Las Vegas Sands Corporation ("LVSC")
26 and Sands China Ltd. ("SCL") in this action. I make this Declaration in support of Defendants'
27 Motion for a Protective Order in accordance with EDCR 2.34 and in support of their Ex Parte
28 Application for an Order Shortening Time. I have personal knowledge of the facts stated herein,
except those facts stated upon information and belief, and as to those facts, I believe them to be
true. I am competent to testify to the matters stated herein.

2. During the depositions of Mr. Sheldon Adelson and Mr. Robert Goldstein,
Plaintiff's counsel was ranging far beyond the limited scope of discovery the Court had allowed
and was asking questions relating to the merits, instead of the narrow issue of jurisdiction.

3. I objected to Plaintiff's counsel's lines of questioning during these depositions that
I believed to be beyond the limited scope of discovery on the issue of personal jurisdiction.

4. Although I met and conferred with counsel for Jacobs in accordance with EDCR

1 2.34 during the depositions of Messrs. Adelson and Goldstein, we were unable to satisfactorily
2 resolve the discovery dispute and agreed that the discovery dispute would need to be resolved by
3 the Court.

4 5. Rather than immediately terminate the depositions, the parties agreed that I would
5 instruct the witnesses not to answer those questions that I believed to be outside the scope of
6 permitted discovery, and that Defendants would later proceed with filing a motion for protective
7 order on the discovery issues in dispute.

8 6. Plaintiff has now requested additional dates for continuing Mr. Adelson's
9 deposition. At the conclusion of Mr. Goldstein's deposition, Plaintiff's counsel indicated that he
10 would seek more deposition time with Mr. Goldstein as well.

11 7. I have also discussed with Plaintiff's counsel that these same discovery issues
12 would arise with regard to other witnesses Jacobs has already scheduled for deposition. The same
13 issues are likely to be raised in the deposition of Michael A. Leven, which is scheduled for
14 December 4 and of Kenneth Kay, which is scheduled for December 18. In order to allow all
15 parties an opportunity to present and argue a fully briefed Motion for Protective Order to be heard
16 by the Court, I believe that it would be in the best interests of both parties to resolve these issues
17 before Mr. Kay's deposition on December 18. I recognize that the Court's schedule may not
18 permit it to hear Defendants' Motion before the upcoming Leven deposition on December 4.
19 Accordingly, during the Leven deposition defense counsel will adopt the same procedure used at
20 the Adelson and Goldstein depositions, making objections as appropriate and instructing the
21 witness not to answer where counsel believes that Plaintiff's questions go beyond the bounds of
22 the limited jurisdictional discovery this Court has permitted. We will provide supplemental
23 briefing, as necessary, on the specific questions objected to in the Leven deposition.

24 8. Defendants' request for an order shortening time is made in good faith and is not
25 made for any improper purpose, and Defendants specifically request that the Court hear this
26 Motion on an order shortening time.

27 ///

28 ///

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


J. Stephen Peek, Esq.

ORDER SHORTENING TIME

The Court having reviewed the Ex Parte Application for Order Shortening Time, and good cause appearing,

IT IS HEREBY ORDERED that the foregoing DEFENDANTS' MOTION FOR A PROTECTIVE ORDER shall be heard on shortened time on the ____ day of _____, 2012, at the hour of ____ : ____ a.m./p.m. in Department XI of the Eighth Judicial District Court.

DATED this ____ day of _____, 2012.

DISTRICT COURT JUDGE

Submitted by:



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **DEFENDANTS' MOTION FOR A PROTECTIVE ORDER**

3 **I.**

4 **INTRODUCTION**

5 There were a number of disputes during both the Adelson and Goldstein depositions about
6 the scope of the questions Plaintiff's counsel asked. Defense counsel objected at various points
7 that Plaintiff's counsel was ranging far beyond the limited scope of discovery the Court had
8 allowed and was asking questions relating to the merits, instead of to the narrow issue of
9 jurisdiction. Rather than terminating the depositions and seeking immediate relief from the Court,
10 defense counsel instructed the witnesses not to answer certain questions, with the understanding
11 that Defendants would take their objections up with the Court at the appropriate time. Plaintiff
12 has now asked to schedule another deposition day for Mr. Adelson, both to return to the questions
13 that Mr. Adelson declined to answer and to ask additional questions. We assume that a similar
14 request will be forthcoming in the wake of the Goldstein deposition. Accordingly, Defendants
15 now seek a protective order sustaining their objections in both the Adelson and Goldstein
16 depositions, precluding Plaintiff from seeking any further deposition time with either witness, and
17 setting clear ground rules for the discovery that remains to be completed.

18 During Mr. Adelson's deposition, Plaintiff's counsel sought to support Jacobs' position on
19 general jurisdiction by asking Mr. Adelson whether, in his capacity as Chairman of SCL, he had
20 "directed" that certain actions be taken in Macau. Plaintiff's counsel then asked where Mr.
21 Adelson was when he gave such "directions." *See, e.g.,* Adelson Dep. at 86:1-6, 87:5-8, 131:11-
22 25. Defense counsel did not object to these questions. But he did object (and instructed Mr.
23 Adelson not to answer) when Plaintiff sought to delve more deeply into the details of a number of
24 events, including Jacobs' own termination. Similarly, Plaintiff's counsel asked Mr. Goldstein,
25 who acted solely as an officer of LVSC, whether he had "directed" Jacobs or other SCL
26 employees in Macau to take specific actions. *See, e.g.,* Goldstein Dep. at 6:24-25, 11:1-6, 74:11-
27 14, 185:13-17, 222:6-10. Again, Defendants' counsel did not object to these questions. He
28 objected and instructed the witness not to answer only when Plaintiff's counsel sought specific

1 details about the events in question — including Jacobs’ termination — that have no conceivable
2 relevance to the jurisdictional issue.

3 Defendants’ objections were well-founded. Plaintiff has the right under this Court’s
4 March 8, 2012 Order to ask questions *only* about “activities that were done for or on behalf of”
5 SCL in Nevada during the relevant time frame (January 1, 2009 to October 20, 2010). *See* Ex. A
6 hereto. Defendants did not object when Plaintiff asked what directions or advice Messrs. Adelson
7 or Goldstein gave to Jacobs and other SCL employees in Macau about specific issues or what
8 involvement (if any) they had in helping SCL book entertainment or recruit executives for its
9 casino operations in Macau. But questions about the *details* of various events that occurred
10 during Jacobs’ employment as SCL’s CEO, including Jacobs’ allegations of wrongdoing by Mr.
11 Adelson and the reasons for Jacobs’ termination, are merits issues that are beyond the bounds of
12 the limited discovery the Court allowed.

13 More fundamentally, however, the Adelson and Goldstein depositions expose the fatal
14 flaws in Plaintiff’s general jurisdiction theories. Even if Plaintiff can prove that, during the
15 relevant period of time, Mr. Adelson (in his capacity as SCL’s Chairman) and Michael Leven (as
16 a special adviser to the SCL Board and later SCL’s acting CEO) routinely gave “directions” to
17 SCL personnel in Macau from their offices in Las Vegas, that would not provide a basis for
18 finding that SCL was “present” in Nevada and therefore subject to general jurisdiction here. As
19 demonstrated below, Plaintiff’s theory that SCL is subject to general jurisdiction in Nevada
20 because Las Vegas was SCL’s “de facto” executive headquarters fails as a matter of law.

21 Similarly, even if Plaintiff could show that certain LVSC officers, including Mr.
22 Goldstein, gave direction to SCL employees in Macau on a variety of issues, such a showing
23 would not provide a basis for finding general jurisdiction over SCL in Nevada. Indeed, Plaintiff
24 has already conceded this point by disclaiming any attempt to treat SCL as LVSC’s “alter ego”
25 for purposes of the jurisdictional analysis. In seeking jurisdictional discovery, Plaintiff argued
26 that he was not trying to prove that LVSC so controlled SCL that their separate corporate
27 identities should be disregarded; instead, Plaintiff argued that LVSC acted as SCL’s agent and
28 provided SCL with services in Nevada. Under Plaintiff’s own agency theory, it is irrelevant

1 whether any LVSC officer ever directed an SCL employee to do anything in Macau. Rather, the
2 question is whether SCL retained LVSC to act as its agent in Nevada and whether LVSC's
3 activities in Nevada on its behalf were sufficient to subject SCL to general jurisdiction here. As
4 we will explain at the appropriate time, the answer to that question is "no." But for purposes of
5 the present motion, the critical fact is that there is *no* theory under which Plaintiff should be
6 asking Mr. Goldstein or Kenneth Kay (who is scheduled to be deposed on December 18) about
7 whether, in their capacities as LVSC officers, they directed or controlled any SCL activities in
8 Macau. Instead, under Plaintiff's own "agency" theory, the only relevant questions relate to what
9 services (if any) LVSC provided to SCL in Nevada, pursuant to SCL's direction and control.

10 For the reasons outlined above below, Defendants seek an order from this Court that:

11 (1) To the extent that Defendants objected to Plaintiff's questions in the Adelson and
12 Goldstein depositions and instructed the witnesses not to answer, those objections are sustained;

13 (2) The Adelson and Goldstein depositions are concluded and no further jurisdictional
14 discovery may be taken from either witness;

15 (3) In the remaining depositions, in accordance with the Court's March 8 Order,
16 Plaintiff may only inquire into the facts regarding activities undertaken for or on behalf of SCL
17 that are relevant to jurisdiction — such as who did what, when and where — and may not inquire
18 into merits issues such as the reasons for Jacobs' termination; and

19 (4) Mr. Kay's deposition shall be limited to an inquiry into his activities for or on
20 behalf of SCL in Nevada, in accordance with the March 8 Order, and shall not seek information
21 about any purported "directions" Mr. Kay or any other LVSC executive may have given in his
22 capacity as such to SCL personnel in Macau about activities in Macau.

23 **II.**

24 **BACKGROUND FACTS AND PROCEDURAL HISTORY**

25 SCL is a Cayman Islands corporation. Through its wholly-owned subsidiary, Venetian
26 Macau Limited ("VML"), and other Macau subsidiaries, SCL owns and operates hotels, casinos,
27 and other facilities in Macau. See First Am. Compl. ¶ 3 on file herein with this Court; 12/21/10
28 Aff. of Anne Salt ("Salt Aff."), attached hereto as Ex. B, ¶¶ 3, 4 and 7. Approximately 70% of its

1 stock is indirectly owned by LVSC; the rest is publicly owned and traded on the Hong Kong
2 Stock Exchange. *Id.* ¶¶ 4-5. SCL is not licensed to do business in Nevada and has no operations
3 here. Indeed, under a Non-Competition Deed that SCL entered into with LVSC, SCL is
4 prohibited from conducting its casino business in or directing its marketing efforts to Nevada. *Id.*
5 ¶¶ 8-9. Nevertheless, in opposing SCL's motion to dismiss for lack of personal jurisdiction,
6 Plaintiff argued that, at the time the lawsuit was filed, there was general (or "doing business")
7 jurisdiction over SCL in Nevada. Plaintiff also invoked the concept of "transient jurisdiction,"
8 arguing that there was jurisdiction over SCL in Nevada because Plaintiff served the complaint on
9 Michael Leven, who was acting CEO of SCL at the time, at his office in Las Vegas. *See* Pl. Opp.
10 filed on 2/28/11, at 10, 14.

11 As the Nevada Supreme Court observed in granting SCL's Petition for Writ of
12 Mandamus, Plaintiff argued that SCL could be found to be "present" in Nevada and therefore
13 subject to general jurisdiction "based on the acts taken in Nevada to manage petitioner's
14 operations in Macau." Nevada Supreme Court Order, Ex. C hereto, at 1. But Plaintiff did not
15 distinguish between the actions of LVSC as SCL's parent corporation and the actions of SCL
16 itself. The Court noted that in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846
17 (2011), the U.S. Supreme Court had "considered whether jurisdiction over foreign subsidiaries of
18 a U.S. parent corporation was proper by looking only to the subsidiaries' conduct; the Court
19 suggested that including the parent's contacts with the forum would be, in effect, the same as
20 piercing the corporate veil." Order at 2. The Nevada Supreme Court then noted that it was
21 "impossible to determine if the district court in fact relied on the Nevada parent corporation's
22 contacts in this state in exercising jurisdiction over" SCL and remanded for an evidentiary hearing
23 and findings and conclusions on the issue of general jurisdiction. *Id.*¹

24 The Nevada Supreme Court's Order makes clear that whatever officers of LVSC may
25 have done (if anything) to "manage" SCL's business in Macau cannot provide a basis for
26

27 ¹ The Court directed this Court to consider Plaintiff's transient jurisdiction argument only if it determined that
28 general jurisdiction was lacking. Order at 3.

1 asserting general jurisdiction over SCL unless Plaintiff can show that LVSC's control was so
2 pervasive and complete that SCL's corporate veil should be pierced. On remand, Plaintiff
3 conceded that he could not meet the stringent standard for veil-piercing. Instead, Plaintiff offered
4 two new theories of general jurisdiction. First, he argued that the actions of SCL directors and
5 officers, including Messrs. Adelson and Leven, in supposedly managing SCL's Macau affairs in
6 Nevada could provide a basis for general jurisdiction, apparently under the theory that SCL's "de
7 facto" executive headquarters is located in Nevada. Second, Plaintiff argued that LVSC acted as
8 SCL's agent for some purposes and that LVSC's activities in Nevada as SCL's purported agent
9 could provide a basis for general jurisdiction. *See* 9/27/11 Hr'g Tr. at 21:3-10; 26.

10 The Court allowed Plaintiff to take discovery on these two general jurisdiction theories. It
11 permitted Plaintiff to take the depositions of Messrs. Adelson and Leven, who were identified as
12 serving simultaneously as both LVSC and SCL officers and/or directors, concerning the work
13 they performed directly for SCL and any work they performed on behalf of or for SCL in their
14 capacities as LVSC officers and directors. Plaintiff was also allowed to take Mr. Goldstein's
15 deposition even though Mr. Goldstein has never been employed by SCL in any capacity, because
16 Plaintiff claimed that he had actively participated in international marketing and development for
17 SCL while serving as an LVSC officer. *See* March 8 Order ¶ 4; 9/27/11 Hr'g Tr. at 26:22-25.
18 Similarly, Plaintiff was allowed to take the deposition of Mr. Kay, who also was employed only
19 by LVSC, based on Plaintiff's assertion that he had participated in funding efforts for SCL. March
20 8 Order ¶ 3; 9/27/11 Hr'g Tr. at 27:1-4. Given Plaintiff's agency theory — and his concession that
21 he was not pursuing an "alter ego" theory — we can only assume that Plaintiff's theory is that
22 Messrs. Goldstein and Kay were acting as SCL's agents in providing marketing and development
23 and financial services to SCL.

24 The document requests the Court granted were also in line with Plaintiff's two theories.
25 The Court allowed Plaintiff to request documents establishing the location of SCL Board
26 meetings, as well as documents related to Mr. Leven's service as acting CEO and Executive
27 Director of SCL during the period in question — document requests that apparently relate to
28 Plaintiff's first theory. *See* March 8 Order, ¶¶ 6, 9. Most of the other document requests appear to

1 be linked to Plaintiff's agency theory, seeking documents reflecting any work performed by
2 LVSC in Nevada on SCL's behalf with respect to a variety of different issues. *See, e.g., id.*, ¶¶
3 10, 12, 15, and 18.

4 After SCL moved for clarification of the Court's ruling on the scope of discovery, the
5 Court added that "[t]he parties are only permitted to conduct discovery related to activities that
6 were done for or on behalf of Sands China" and that this "is an overriding limitation on all of the
7 specific items" the Court had allowed. March 8 Order. By its terms, this clarification eliminated
8 any discovery into the theory that Plaintiff himself has disclaimed — namely, that LVSC
9 executives, acting for the benefit of LVSC, directed and controlled SCL's operations in Macau.
10 Instead, discovery was limited, as the Nevada Supreme Court's Order dictates, to the activities of
11 SCL in Nevada. That includes whatever activities Messrs. Adelson and Leven undertook in
12 Nevada in their capacities as directors or (in Mr. Leven's case) as an officer of SCL and whatever
13 activities any LVSC executive could be deemed to have undertaken in Nevada for or on behalf of
14 SCL, such as negotiating agreements with entertainment companies or arranging funding on
15 SCL's behalf.²

16 A second overriding limitation on discovery is provided by the Nevada Supreme Court's
17 Order, which directed this Court to "stay the underlying action, except for matters relating to a
18 determination of personal jurisdiction, until a decision on that issue has been entered." Order at 3.
19 Pursuant to that Order, this Court has allowed only jurisdictional discovery. Thus, any discovery
20 into the merits of the case is necessarily prohibited.

21 ///

22 ///

23 ///

24 ///

25 ² SCL disputes Plaintiff's argument that LVSC acted as SCL's agent when it provided certain products and
26 services to SCL. Those products and services were provided pursuant to a Shared Services Agreement between
27 LVSC and SCL. That Agreement did not purport to create an agency relationship, nor did it give SCL the right to
28 control the manner in which LVSC performed the services in question. Without control, there is no principal-agent
relationship. However, for discovery purposes Defendants have assumed that any services LVSC provided to SCL in
Nevada pursuant to the Shared Services Agreement would be deemed to have been provided "for or on behalf of
SCL."

III.

LEGAL ANALYSIS

A. **DEFENDANTS' OBJECTIONS AT MR. ADELSON'S DEPOSITION SHOULD BE SUSTAINED**

Most of the objections and instructions not to answer at the Adelson deposition related to questions concerning Jacobs' termination. As the Court may recall, at one point in the deposition, the parties called the Court for guidance as to whether Plaintiff could ask questions to support a theory of specific jurisdiction — a theory that Plaintiff did not raise until long after the Nevada Supreme Court issued its order, which he therefore waived. The Court did not expressly rule on that issue, but did allow Plaintiff to inquire into Mr. Adelson's actions on behalf of SCL in terminating Jacobs. Adelson Dep. (Ex. D hereto). at 195-97. Mr. Adelson then answered a series of questions on this issue; defense counsel cut off the questioning only when Plaintiff insisted on inquiring not only into *what* Mr. Adelson did, but also *why* he did it — on the ground that these questions addressed the merits, rather than the narrow issue of jurisdiction.³

Defense counsel also objected to Plaintiff's attempt to discover the content of daily and other periodic reports supplied by SCL to Mr. Adelson in his capacity as Chairman (Adelson Dep. at 121:11-25, 146:5-17, 160:20-161:4); to questions about the content of Mr. Adelson's input into the Shared Services Agreement with LVSC (*id.* at 169:14-24); to the content of certain directions Mr. Adelson allegedly gave to Jacobs with respect to a particular individual (*id.* at 279:5-14); and to questions about the automatic transfer of customer funds in the event that SCL customers from Macau visited Las Vegas (*id.* at 162:22-163:5).

All of these objections should be sustained. Plaintiff was able to depose Mr. Adelson at length about the basic facts concerning his termination — who did what, when and where. But

³ Many of the questions that Mr. Adelson declined to answer on advice of counsel revolved around Mr. Adelson's conversation with Mr. Leven at the SCL roadshow in London in January 2010. Mr. Adelson testified that he had discussed his dissatisfaction with Jacobs' performance as SCL's CEO during that conversation. Dep. at 201-07. On advice of counsel he refused to elaborate further on the details of the conversation. *See, e.g., id.*, at 203:12-15, 216:5-25, 220:12-18. He also declined to testify about how long before his termination the list of twelve reasons for Jacobs' termination was developed (Dep. at 206:6-25, 207:22-25, 208:1-6), about the details of Mr. Leven's authority to negotiate a settlement with Jacobs, or about discussions concerning the reasons for his termination (Dep. at 234:3-10, 235:14-23, 247:5-24, 249:1-12, 253:15-254:21, 279:20-25, 280:1-9).

1 his attempt to discover the details relating to his termination, including why he was terminated,
2 the extent to which Mr. Leven could have negotiated with him, etc., are plainly merits issues that
3 have no relevance to the issue of jurisdiction.⁴ For the same reason, Plaintiff was not entitled to
4 discovery into the specific contents of the reports that flowed to Mr. Adelson in his capacity as
5 SCL Chairman in Las Vegas or into any specific directions that Mr. Adelson might have given
6 Jacobs. The *fact* of such directions and information flow could conceivably be relevant to
7 Plaintiff's theory that Las Vegas is SCL's "de facto executive headquarters." But the *content* of
8 the directions and the information are wholly beside the point even under Plaintiff's theory.

9 Finally, because the Court has already rejected Plaintiff's attempt to obtain document
10 discovery into the so-called "automatic transfers" of funds in its March 8 Order, Plaintiff should
11 be precluded from asking questions about those transfers in the depositions the Court has
12 permitted.

13 Because Defendants' objections were appropriate, there is no reason to bring Mr. Adelson
14 back to answer questions that he declined to answer the first time around. Furthermore, giving
15 Plaintiff additional deposition time with Mr. Adelson to ask new questions would not yield any
16 benefit. Plaintiff inquired at length about the role Mr. Adelson plays as SCL's Chairman. *See*,
17 *e.g.* Adelson Dep. at 53-66; 77. It is apparent from Mr. Adelson's testimony that, in his capacity
18 as Chairman of SCL, Mr. Adelson participates in important corporate decisions, including the
19 hiring and firing of SCL executives.⁵ It is also clear that, as an experienced entrepreneur in the
20 gaming industry and in his position as Chairman of both LVSC and SCL, he was never shy about
21 expressing his views to Jacobs and others about a variety of SCL issues. Because he spent
22 approximately 50% of his time in Las Vegas, it is likely that he participated in telephonic Board
23

24 ⁴ Although Defendants continue to believe that Plaintiff waived any specific jurisdiction argument and that such an
25 argument fails on the merits as well, the Court need not decide that issue in order to rule on the instant Motion for
26 Protective Order. Even if Plaintiff could pursue his specific jurisdiction theory, discovery into the reasons for his
termination would be irrelevant to the jurisdictional issue and thus outside the bounds of discovery allowed by the
Court.

27 ⁵ Mr. Adelson testified repeatedly that virtually every decision or piece of advice he gave with respect to SCL
28 was made wearing his "hat" as SCL's Chairman. *See* Adelson Dep. at 155:16-156:7, 165:14-25, 176:5-177:25. As
he explained, he owes a fiduciary duty to SCL and its shareholders to ensure that whatever he does as Chairman is in
the best interests of SCL.

1 meetings from Las Vegas and made decisions, participated in discussions, or provided advice to
2 SCL from Las Vegas.⁶ To the extent any of that is relevant — which it is not for the reasons
3 outlined below — Plaintiff has all of the evidence he needs from Mr. Adelson's deposition
4 concerning his involvement with SCL's affairs.

5 Furthermore, if Plaintiff has more questions regarding jurisdiction to ask of Mr. Adelson,
6 he has no one but himself to blame for not asking them during the deposition in September.
7 Plaintiff spent an inordinate amount of time on the issue of his termination. While Plaintiff is
8 understandably interested in that issue from a merits perspective, it has very little to do with the
9 issue of jurisdiction. Having chosen to waste a great deal of time on that issue, Plaintiff should
10 not be able to force Mr. Adelson to sit for yet another deposition to ask questions that could have
11 been asked the first time around.

12 **B. PLAINTIFF'S THEORY THAT LAS VEGAS WAS THE "DE FACTO"**
13 **EXECUTIVE HEADQUARTERS OF SCL FAILS AS A MATTER OF LAW**

14 Defendants also seek a protective order against any further deposition of Mr. Adelson,
15 because no matter what facts Plaintiff may develop about what Mr. Adelson did in Las Vegas in
16 his capacity as SCL's Chairman, Plaintiff still will not be able to sustain his theory that this Court
17 has general jurisdiction over SCL because its "de facto" executive headquarters is supposedly
18 located in Las Vegas.

19 "The standard for general jurisdiction is an exacting standard, as it should be, because a
20 finding of general jurisdiction permits a defendant to be haled into court in the forum state to
21 answer for any of its activities anywhere in the world." *CollegeSource, Inc. v. AcademyOne, Inc.*,
22 653 F.3d 1066, 1074 (9th Cir. 2011) (internal quotations omitted); *Budget Rent-A-Car v. Eighth*
23 *Judicial Dist.*, 108 Nev. 483, 835 P.2d 17, 19 (1992) ("[t]he level of contact with the forum state
24 necessary to establish general jurisdiction is high"). This standard is met only by "continuous
25

26 ⁶ Defendants offered in March 2012 to stipulate that Messrs. Adelson and Leven attended all telephonic SCL
27 Board meetings from Las Vegas and that offer still stands. As Mr. Adelson's deposition shows, he generally could
28 not recall where he happened to be when he had specific conversations relating to SCL, although he noted that he
spent 50% of his time in Las Vegas. Dep. at 131:21-25, 248:4-11. Further inquiry to pin down his location would
not only be futile but wholly irrelevant to the jurisdictional analysis, which focuses on where SCL's principal place of
business was — not on where the company's Chairman happened to be at particular points in time.

1 corporate operations within a state [that are] thought so substantial and of such a nature as to
2 justify suit against [the defendant] on causes of action arising from dealings entirely distinct from
3 those activities.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). *See also Helicopteros*
4 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (1984) (the defendant’s contacts with
5 the forum state must be “continuous and systematic” to warrant the exercise of general
6 jurisdiction); 4 *Federal Practice and Procedure* § 1067.5, at 507 (“the defendant must be engaged
7 in longstanding business in the forum state, such as marketing or shipping products, or
8 performing services or maintaining one or more offices there; activities that are less extensive
9 than that will not qualify for general in personam jurisdiction”).

10 The fact that the defendant purchases goods and services in the forum for use elsewhere is
11 not the type of contact that will give rise to general jurisdiction. As the Court explained in
12 *Helicopteros*, “mere purchases [made in the forum state], even if occurring at regular intervals,
13 are not enough to warrant a State’s assertion of [general] jurisdiction over a nonresident
14 corporation in a cause of action not related to those purchase transactions.” *Id.* at 418. Thus, the
15 fact that SCL purchases goods or services from Nevada entities for use in Macau cannot provide a
16 basis for asserting general jurisdiction over SCL in a dispute that is unrelated to those good or
17 services.

18 In the recent *Goodyear* case, the Supreme Court also held that “even regularly occurring
19 sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to
20 those sales.” 131 S. Ct. at 2857 n.6; *see also id.* at 2856. Instead, it is only where a corporation
21 can be viewed as being “at home” in a particular forum that it is appropriate to subject it to
22 general jurisdiction there. *Id.* at 2851. *Goodyear* explains that “[f]or an individual, the paradigm
23 forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is
24 an equivalent place, one in which the corporation is fairly regarded as at home.” *Id.* at 2853-54.
25 The citation the Court provided for that proposition identifies a corporation’s place of
26 incorporation and principal place of business as the “‘paradig[m]’ bases for the exercise of
27 general jurisdiction.” *Id.*

28 ///

1 Here, of course, neither SCL's place of incorporation nor its principal place of business is
2 in Nevada. Plaintiff argued in the Nevada Supreme Court that Nevada should be deemed SCL's
3 "de facto executive headquarters" because SCL was supposedly managed from Las Vegas. After
4 the Nevada Supreme Court's ruling, however, it is clear that (absent veil-piercing) Plaintiff cannot
5 rely on whatever "directions" LVSC executives may have given to SCL to sustain their claim that
6 Las Vegas is SCL's "de facto executive headquarters." Instead, Plaintiff can look only to the
7 actions of SCL's *own* directors and officers in Nevada. Only two individuals who resided in
8 Nevada served on SCL's Board or held a post as an SCL officer during the relevant period — Mr.
9 Adelson, who was and is SCL's non-executive Chairman, and Mr. Leven, who was a Special
10 Advisor to the SCL Board until Jacobs was terminated, when he assumed the role of acting CEO
11 for a period of time. *See* 2/25/11 Aff. of Anne Salt, Ex. E hereto, ¶¶ 3,4. Both Mr. Adelson and
12 Mr. Leven traveled frequently to Macau, Hong Kong and other places outside Nevada to
13 discharge their obligations to SCL.⁷ But even if we assume that both gentlemen attended all
14 telephonic SCL Board meetings in Nevada and frequently carried out their SCL duties in Nevada,
15 that is not nearly enough to subject SCL to general jurisdiction here.

16 Plaintiff's "de facto executive headquarters" theory appears to be based on a sixty-year old
17 U.S. Supreme Court decision, *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).
18 That case involved a mining company that was incorporated under Philippine law and owned
19 mining properties in the Philippines. During World War II, its operations were "completely
20 halted" when the Philippine Islands were occupied by the Japanese. *Id.* at 447. During that
21 period, the president of the company, who was also the general manager and principal
22 stockholder, returned home to Ohio, where he conducted all of the company's (limited) business
23 operations. *Id.* at 448. The U.S. Supreme Court held that there was general jurisdiction over the
24 company in Ohio under these unusual circumstances. But nothing in the decision suggests that

25 ⁷ In March 2012, Defendants offered to stipulate that in 2009, Mr. Adelson made six trips to Macau, three to Hong
26 Kong and one to mainland China. In 2010, through October 20, he made five trips to Macau, one to Hong Kong and
27 one to mainland China. Similarly, they offered to stipulate that in 2009, Mr. Leven made five trips to Macau and two
28 to Hong Kong, while from January 1-October 20, 2012, he made four trips to Macau and two to Hong Kong. *See also*
Adelson Dep. at 35; 26 ("I do an awful lot of traveling, quite an unusually large number of hours, and — I conduct
my business from wherever I'm located"). Mr. Adelson also testified that he and Mr. Leven were in London for
SCL's "roadshow" when it made its initial public offering. Dep. at 199.

1 the Court would have found general jurisdiction over the company in Ohio had the Philippine
2 mines remained in operation merely because the company's president and principal stockholder
3 spent some or even all of his time in Ohio.

4 To the extent there is any ambiguity in the *Perkins* decision itself, the current Court's
5 discussion of *Perkins* in *Goodyear* eliminates it. As noted above, in *Goodyear* the Supreme
6 Court equated general jurisdiction for a corporation with the corporation's place of incorporation
7 or principal place of business — a place where the company is "at home." The Court concluded
8 that *Perkins* fit within this construct because "Ohio's exercise of general jurisdiction was
9 permissible in *Perkins* because 'Ohio was the corporation's principal, if temporary, place of
10 business.'" *Id.* at 2856 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779-80 n.11
11 (1984)). The Court distinguished the case before it from the situation in *Perkins* because "[u]nlike
12 the defendant in *Perkins*, whose *sole* wartime activity was conducted in Ohio, petitioners are in no
13 sense at home in North Carolina." *Id.* at 2857 (emphasis added).

14 In this case, all of SCL's casino and hotel operations are overseas, as are all of the officers
15 and employees who are responsible for carrying on SCL's day-to-day business. See 7/23/11 Salt
16 Aff. ¶¶ 5, 7. Under these circumstances, SCL cannot be deemed to be "at home" in Nevada
17 simply because, during the relevant time period, two of its directors and/or officers were also
18 directors or officers of SCL's parent company and were based in Las Vegas, where the parent
19 company has its headquarters. In *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 650 (Tenn.
20 2009), the Tennessee Supreme Court rejected a similar argument, noting that "[i]n this age of
21 electronic communications, telecommuting, and distributed management, the fact that [the
22 subsidiary's] officers and directors maintain offices in Tennessee [where the parent company was
23 headquartered] does not, by itself, lead to the conclusion that the corporation has continuous and
24 systematic contact with Tennessee or that the corporation is conducting business within the state."
25 *Accord Mattel, Inc. v. MGA Enter., Inc.*, 782 F. Supp. 2d 911, 1015 (C.D. Cal. 2011) (no general
26 jurisdiction over a Mexican subsidiary in California because the CEO, who served both the parent
27 and subsidiary, resided in California).

28 ///

1 Indeed, that has been the law for nearly a century. In *Riverside & Dan River Cotton Mills*
2 *v. Menefee*, 237 U.S. 189, 195 (1915), the Supreme Court held that “the mere fact that an officer
3 of a corporation may temporarily be in the state or even permanently reside therein, if not there
4 for the purpose of transacting business for the corporation, or vested with authority by the
5 corporation to transact business in such state, affords no basis for acquiring jurisdiction.” See
6 also *Joseph Walker & Sons v. Lehigh Coal & Nav. Co.*, 167 N.Y.S.2d 632, 634 (N.Y. Sup. Ct.
7 1957) (“It is settled that if a corporation is not doing business here the mere fact that its officers
8 may be found in this State, and even reside here, does not bring the corporation within the State’s
9 jurisdiction.”) (citing *Menefee*). Recently, in *Kuvedina, LLC v. Pai*, 2011 WL 5403717 at *4
10 (N.D. Ill. Nov. 8, 2011), the court applied the basic principle set forth in *Menefee* to the
11 hypothetical situation where the president of a small business based in Illinois lives just across the
12 border in northern Indiana. The court noted that “[u]nless the company *itself* has sufficient
13 contacts in the Northern District of Indiana, it would not be subject to personal jurisdiction there
14 even though its president resides there.”

15 So too, in this case, the fact that Messrs. Adelson and Leven lived in Las Vegas during the
16 period in question and therefore sometimes carried out their duties with respect to SCL in Las
17 Vegas does not provide a basis for the assertion of general jurisdiction over SCL. Neither Mr.
18 Adelson nor Mr. Leven was in Las Vegas at the behest of SCL to transact business on SCL’s
19 behalf in this State. Accordingly, the mere fact that they may have been here from time to time
20 when they carried out their duties for SCL cannot possibly provide a basis for asserting general
21 jurisdiction over SCL.

22 **C. DEFENDANTS’ OBJECTIONS AT MR. GOLDSTEIN’S DEPOSITION SHOULD**
23 **BE SUSTAINED**

24 As in Mr. Adelson’s deposition, the majority of the objections and instructions not to
25 answer in Mr. Goldstein’s deposition were in response to questions about Jacobs’ termination.
26 See, e.g., Goldstein Dep. (Ex. F hereto) at 41:15-24, 104:3-13, 107:8-109:4, 142:10-15, 173:25-
27 177:1, 197:5-13, 198:5-13, 198:1-7, 203:12-16, 228:9-17, and 251:20-23. Defense counsel also
28 objected and instructed Mr. Goldstein not to answer when Plaintiff’s counsel asked a variety of

1 questions about Mr. Goldstein's knowledge or actions with respect to specific SCL customers and
2 with respect to SCL's recruitment of Ed Tracy, who replaced Jacobs as CEO. *See, e.g., id.* at
3 80:19-81:1, 88:18-89:1, 119:5-20, 215:17-316:9, 217:3-6, 177:5-19, 250:11-21. At one point,
4 Plaintiff's counsel explained that these questions were designed to "demonstrat[e] who was really
5 calling the shots. . . which goes to the jurisdictional point." *Id.* at 111:13-16. In fact, throughout
6 the deposition, Plaintiff repeatedly asked Mr. Goldstein whether he (or other LVSC executives)
7 had directed or controlled SCL's actions in Macau with respect to certain customers or issues.

8 Defendants' objections relating to questions concerning Jacobs' termination should be
9 sustained for the reasons outlined above: discussions between Mr. Goldstein and Jacobs about
10 their respective employment agreements (Goldstein Dep. at 142:10-17 and 144:6-10), about what
11 tensions there may have been between Messrs. Leven and Jacobs (104:4-13), about why Jacobs
12 was leaving (107:8-10) all go to the merits of Jacobs' claims, rather than the jurisdictional issue.

13 Defendants' other objections should be sustained because Plaintiff's whole approach to
14 Mr. Goldstein's deposition was fundamentally flawed. Mr. Goldstein was never employed in any
15 capacity by SCL.⁸ Plaintiff's old theory, before the Nevada Supreme Court's ruling, was that
16 LVSC executives, including Mr. Goldstein, directed and controlled SCL's operations from Las
17 Vegas to such an extent that Las Vegas should be deemed SCL's "de facto executive
18 headquarters." But, for the reasons outlined above, after the Supreme Court's ruling, Plaintiff can
19 no longer rely on that theory unless he is prepared to argue that SCL is LVSC's alter ego — a
20 burden Plaintiff has specifically disclaimed. *See* 9/27/11 Hr'g Tr. at 26:1-5 ("And so we are not
21 saying alter ego. We don't care about alter ego yet, but we do care of whether the people in Las
22 Vegas Sands Corp. are acting as an agent and performing functions" for SCL).

23 Instead, Plaintiff's theory is that LVSC acted as an agent of SCL, which would require
24 proof that (contrary to the ordinary relationship between a parent and its subsidiary) LVSC acted
25 subject to the direction and control of SCL. *See Hunter Mining Labs., Inc. v. Management*
26 *Assistance, Inc.*, 763 P.2d 350, 352 (Nev. 1988) ("In an agency relationship, the principal

27
28 ⁸ Mr. Goldstein did serve as a director of VML during the period in question. *See* 10/4/11 Affidavit of John Morland, ¶ 4 (noting that Mr. Goldstein has been a director of VML since 2002).

1 possesses the right to control the agent's conduct. Restatement (Second) of Agency § 14
2 (1958)"). In fact, when Plaintiff persuaded the Court to allow him to take Mr. Goldstein's
3 deposition, he did so on the basis that Mr. Goldstein performed services on behalf of SCL in
4 Nevada as SCL's agent. See 9/27/11 Hr'g Tr. at 26:23-25; Jacobs' Opp. to Sands China Ltd.'s
5 Motion for Clarification of Jurisdictional Discovery Order, filed on October 12, 2011, at 5-6 & n.
6 5 (arguing that LVSC employees acting on behalf of SCL did so as subagents of LVSC, which
7 presumably acted as SCL's agent).

8 Based on Plaintiff's arguments and his representations to the Court, Defendants expected
9 that Plaintiff's deposition of Mr. Goldstein (and of Mr. Kay) would focus on determining what, if
10 anything, Mr. Goldstein did on behalf of SCL *in Nevada* and whether whatever he did in Nevada
11 was done pursuant to SCL's direction and control. Thus, Defendants were surprised, to say the
12 least, when virtually all of the questions Plaintiff asked Mr. Goldstein were focused on whether
13 he, in his capacity as a senior LVSC officer, directed or controlled SCL's actions *in Macau*.

14 Plaintiff should not be able, at this late stage, to resurrect a theory he abandoned (for good
15 reason) more than a year ago. Having spent a great deal of Mr. Goldstein's deposition on that
16 abandoned theory and on Jacobs' termination, Plaintiff should not be able to compel Mr.
17 Goldstein to sit for any additional deposition time.

18 **D. THE COURT SHOULD ENTER A PROTECTIVE ORDER WITH RESPECT TO**
19 **THE REMAINING DEPOSITIONS**

20 We recognize that the Court's schedule may not permit it to hear Defendants' Motion
21 before the upcoming Leven deposition on December 4. Accordingly, defense counsel will adopt
22 the same procedure used at the Adelson and Goldstein depositions, making objections as
23 appropriate and instructing the witness not to answer where counsel believes that Plaintiff's
24 questions go beyond the bounds of the limited jurisdictional discovery this Court has permitted.
25 We also recognize that the Court may not be able to rule on specific questions that are yet to be
26 asked and that, if objections are made during the Leven deposition, we will address those specific
27 objections in supplemental briefing; however, for the reasons outlined above, Plaintiff should not
28 be permitted to question Mr. Leven about the details of specific events that occurred during

1 Jacobs' tenure as SCL's CEO or about the reasons why Jacobs was terminated. At most, Plaintiff
2 should be allowed to ask Mr. Leven about the scope of his duties as Special Advisor to the SCL
3 Board and then acting CEO — about who did what, when and where. Plaintiff should not be
4 permitted to turn what should be a relatively simple jurisdictional deposition into a lengthy
5 exploration into the merits of his claims. Furthermore, for the reasons outlined in Part III-B
6 above, Plaintiff cannot show general jurisdiction over SCL simply by pointing to the fact that Mr.
7 Leven performed some or even *all* of his duties for SCL while he happened to be in Las Vegas.⁹
8 Thus, Plaintiff has no need to go through the same exercise with Mr. Leven that he did with Mr.
9 Adelson — attempting to dissect various actions taken for or on behalf of SCL and then asking
10 where the witness happened to be when those actions were discussed or decided upon.

11 With respect to Mr. Kay, Plaintiff should be limited to asking what (if anything) Mr. Kay
12 did in Nevada under the direction and control of SCL to assist SCL in obtaining financing.
13 Plaintiff should not be able to ask if Mr. Kay gave direction to SCL, since that would be contrary
14 to Plaintiff's own theory that LVSC and its employees acted as "agents" for SCL in Nevada

15 IV.

16 CONCLUSION

17 For the foregoing reasons, Defendants urge the Court to enter an order providing that:

18 (1) To the extent that Defendants objected to Plaintiff's questions in the Adelson and
19 Goldstein depositions and instructed the witnesses not to answer, those objections are sustained;

20 (2) The Adelson and Goldstein depositions are concluded and no further jurisdictional
21 discovery may be taken from either witness;

22 (3) In the remaining depositions, and in accordance with the March 8 Order, Plaintiff
23 may only inquire into the facts regarding activities undertaken for or on behalf of SCL that are
24 relevant to jurisdiction — such as who did what, when and where — and may not inquire into
25 merits issues such as the reasons for Jacobs' termination; and

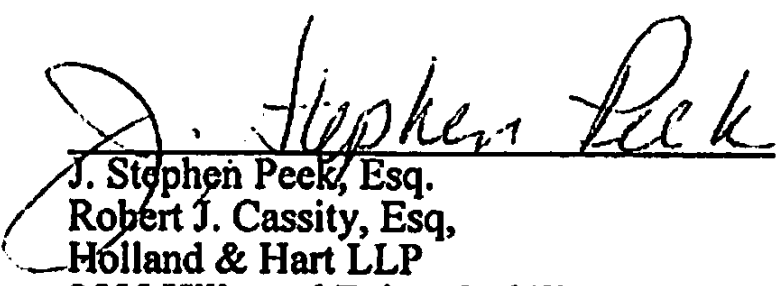
26 (4) Mr. Kay's deposition shall be limited to an inquiry into his activities for or on

27 ⁹ Defendants offered to stipulate that Mr. Leven carried out the duties normally associated with a CEO during
28 the period in which he was SCL's acting CEO and that he conducted some of these activities while physically located
in Nevada, although he also traveled frequently to Macau during his tenure.

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1 behalf of SCL in Nevada, in accordance with the March 8 Order, and shall not seek information
2 about any purported "directions" Mr. Kay or any other LVSC executive may have given in his
3 capacity as such to SCL personnel in Macau about activities in Macau.

4 DATED November 26, 2012.


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Las Vegas, Nevada 89169
Attorneys for Sands China, Ltd.

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on November 26, 2012, I served a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR a PROTECTIVE ORDER** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James J. Pisanelli, Esq.
Debra L. Spinelli, Esq.
Todd L. Bice, Esq.
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kap@pisanellibice.com – staff
see@pisanellibice.com – staff

Attorney for Plaintiff


An Employee of Holland & Hart LLP

EXHIBIT 3

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

vs.

CASE NO. A-10-627691

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

Defendants.

AND RELATED CLAIMS

VIDEOTAPE AND ORAL DEPOSITION OF SHELDON ADELSON
LAS VEGAS, NEVADA
THURSDAY, SEPTEMBER 6, 2012

HIGHLY CONFIDENTIAL

REPORTED BY: CARRE LEWIS, CCR NO. 497

JOB NO. 165201

1 DEPOSITION OF SHELDON ADELSON,
2 taken at 3883 Howard Hughes Parkway, Suite 800,
3 Las Vegas, Nevada, on Thursday, September 6, 2012,
4 at 10:26 a.m., before Carre Lewis, Certified Court
5 Reporter, in and for the State of Nevada.
6

7 APPEARANCES:

8 For the Plaintiff:

9 PISANELLI BICE, PLLC

BY: JAMES PISANELLI, ESQ.

10 BY: TODD BICE, ESQ.

BY: DEBRA SPINELLI, ESQ.

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16 HOLLAND & HART LLP

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1 APPEARANCES (continued):

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3 LAS VEGAS SANDS CORP.

4 BY: IRA H. RAPHAELSON, ESQ.

GLOBAL GENERAL COUNSEL

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jsanders@reedsmith.com

11 Telephonic appearance:

12 JUDGE ELIZABETH GONZALEZ

13 The Videographer:

14 Litigation Services

15 By: Dustin Kittleson

3770 Howard Hughes Parkway, Suite 300

16 Las Vegas, Nevada 89169

(702) 314-7200

17 Also Present:

18 Steven Jacobs

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I N D E X

WITNESS: SHELDON ADELSON

EXAMINATION

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By Mr. Pisanelli

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Sheldon Adelson
Jacobs vs. Las Vegas Sands
Thursday, September 6, 2012
Carre Lewis, CCR No. 497
E X H I B I T S
NUMBER PAGE
Exhibit 1 Shared Services Agreement 171
Exhibit 2 Termination Letter 239
Exhibit 3 Notification of Termination 254
with Cause

* CONFIDENTIAL *

1 LAS VEGAS, NEVADA; THURSDAY, SEPTEMBER 6, 2012;

2 10:26 A.M.

3 -oOo-

4 THE VIDEOGRAPHER: This is the beginning of
5 Videotape No. 1 in the deposition of Sheldon Adelson
6 in the matter of Jacobs versus Las Vegas Sands
7 Corporation, held at Pisanelli Bice on September 6,
8 2012, at 10:26 a.m.

9 The court reporter is Carre Lewis. I'm
10 Dustin Kittleson, the videographer, an employee of 10:27
11 Litigation Services. This deposition is being
12 videotaped at all times unless specified to go off
13 the video record.

14 Would all present please identify
15 themselves beginning with the witness.

16 THE WITNESS: Sheldon Adelson.

17 MR. PEEK: Stephen Peek, with Holland &
18 Hart, representing Las Vegas Sands Corp. and Sands
19 China Limited. And also with me here today is
20 Mr. Adelson's general counsel, for -- 10:27

21 THE WITNESS: LVS's general counsel.

22 MR. PEEK: -- for Las Vegas Sands Corp.

23 MR. WEISSMANN: I'm Henry Weissmann, for
24 Sands China.

25 MR. SANDERS: I'm Jim Sanders from Reed

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1 Smith. I'm Mr. Adelson's personal attorney, though
2 I'm not appearing in this litigation.

3 MR. RAPHAELSON: I'm Ira Raphaelson. I'm
4 the corporate general counsel for Las Vegas Sands
5 Corp.

6 MS. ELSDEN: Sarah Elsdén, Pisanelli Bice,
7 litigation paralegal.

8 MR. BICE: Todd Bice on behalf of
9 plaintiff.

10 MR. JACOBS: Steve Jacobs, plaintiff. 10:28

11 MS. SPINELLI: Debra Spinelli.

12 MR. PISANELLI: James Pisanelli on behalf
13 of Steven Jacobs.

14 THE VIDEOGRAPHER: Will the court reporter
15 please swear in the witness.

16 Whereupon --

17 SHELDON ADELSON
18 having been first duly sworn to testify to the
19 truth, was examined and testified as follows:

20 MR. BICE: Before we begin any examination, 10:28
21 Mr. Peek, you and I had a conversation, actually a
22 couple of conversations this morning about the
23 possibility of Mr. Adelson showing up with
24 bodyguards today. I informed you that I would not
25 have any objection to one or more bodyguards being

* CONFIDENTIAL *

1 present in the room, but I did object if those
2 gentlemen are armed. I understand today that there
3 are two armed security guards in my lobby. I have
4 asked you to ask them to leave the premises or at
5 least go down to the downstairs lobby and wait,
6 assuming they do not want to get rid of their
7 firearms. I've understood from you that they refuse
8 to do that and they refuse to leave.

9 Is that an inaccurate recital of anything
10 we've discussed or the state of events as we sit 10:29
11 here now?

12 MR. PEEK: Well, a couple of things. One
13 is I asked if they could stay in the elevator lobby
14 here in the entrance to your suite, and you said, of
15 course, "No." We didn't discuss the downstairs
16 lobby, but I don't think that would change things,
17 and they have no place to deposit their weapons.
18 Mr. Adelson travels with security wherever he goes,
19 whatever he does.

20 THE WITNESS: Twenty-four hours a day. 10:29

21 MR. PEEK: And he does that because he is
22 probably one of the highest profile Jews in the
23 United States and there is a concern about that. He
24 is also a very wealthy individual and there are
25 concerns about that. So he always travels with

* CONFIDENTIAL *

1 security and has not left them.

2 MR. PISANELLI: I'm appreciative --

3 THE WITNESS: What are your concerns,
4 Mr. Pisanelli?

5 MR. PISANELLI: Mr. Adelson, I don't --
6 Mr. Bice and I do not permit firearms inside of the
7 premises of the place where we employ people --

8 THE WITNESS: How often do you get somebody
9 that really requires it?

10 MR. PISANELLI: -- and I'm not comfortable 10:30
11 allowing anyone to have firearms in our place of
12 business.

13 THE WITNESS: Are you afraid they are going
14 to shoot at you or something?

15 MR. PISANELLI: Do you want to get the
16 Court on the phone?

17 MR. PEEK: Sure.

18 THE WITNESS: I would like to put something
19 on the record.

20 MR. PISANELLI: Okay. 10:30

21 THE WITNESS: First of all, I apologize for
22 being late, because I had an operation a couple days
23 ago on my eyes, not cosmetic, but a required
24 operation, and the -- part of it broke apart, it
25 appears, so I had to take pictures. My wife, who is

* CONFIDENTIAL *

1 also a physician, had to take pictures and transfer
2 them to the doctor, the surgeon who did it in
3 Los Angeles. I should be going there today, but
4 because of this commitment I will be here today. So
5 I want it to be known that my wearing glasses is not
6 for cosmetic purposes, but because the glare of both
7 interior lights and the exterior light irritates an
8 already --

9 MR. PEEK: Inflamed eye.

10 THE WITNESS: -- inflamed eyes. 10:31

11 MR. PISANELLI: Thank you for that
12 explanation.

13 As you sit here --

14 THE WITNESS: And I would ask that -- I
15 know that since your plaintiff has a reputation of
16 disclosing everything to the public, I ask that the
17 explanation as to why my sunglasses are on accompany
18 any whole or partial release of this videotape.

19 MR. PISANELLI: I will tell you that I'm
20 not going to engage in a debate of any hyperbole or 10:32
21 insults, true or false, about Mr. Jacobs. I think
22 you are ill-informed about releasing information to
23 the press, but I understand your position and I
24 appreciate you sharing it with me.

25 From a physical perspective, Mr. Adelson,

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1 travel east to Europe and Israel and I travel to the
2 Far East or like to other potential locations with
3 different time zones, in the Far East and in
4 different parts of Asia.

5 Q. Where do the board meetings of SCL take
6 place?

7 A. Usually at -- there is a combination of
8 telephone meetings, so wherever people are. The
9 in-person meetings typically take place at the
10 Venetian Macau, and I think once in a great while in 03:11
11 either Hong Kong or Singapore.

12 Q. You told us earlier that as chairman you
13 have run these meetings; is that right?

14 A. That's correct.

15 Q. Where are you during these meetings?

16 A. Sitting in the room in which the board
17 meeting is held.

18 Q. Here in Las Vegas?

19 A. No, no, no. We never had an SCL board
20 meeting in Las Vegas. We have had -- I have 03:12
21 telephone -- telephonic meetings in any of my eight
22 or ten offices, either in the air or on the ground,
23 outside in commercial office buildings or my home
24 offices, but we have never had an SCL meeting in
25 Las Vegas.

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1 examination.

2 MR. PEEK: I understand.

3 THE WITNESS: I take that from your
4 predecessor, who religiously had a limit from 9:00
5 or 10:00 till 5:00, even with an hour, an
6 hour-and-a-half lunch.

7 BY MR. PISANELLI:

8 Q. Talking about Mr. Campbell?

9 A. Yes.

10 MR. PEEK: I will talk to you about it, 07:33
11 Jim.

12 MR. PISANELLI: All right. Go off the
13 record.

14 THE VIDEOGRAPHER: Off the record at 7:32.
15 (Deposition concluded at 7:32 p.m.)

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CERTIFICATE OF DEPONENT

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* * * * *

I, Sheldon Adelson, deponent herein, do hereby
certify and declare the within and foregoing
transcription to be my deposition in said action;
under penalty of perjury; that I have read,
corrected and do hereby affix my signature to said
deposition.

| | |
|---------------------------|------|
| Sheldon Adelson, Deponent | Date |
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CERTIFICATE OF REPORTER

STATE OF NEVADA)
)SS:
COUNTY OF CLARK)

I, Carre Lewis, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, Sheldon Adelson, commencing on Thursday, September 6, 2012, at 10:26 a.m.

That prior to being examined, the witness was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS HEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 17th day of September 2012.

Carre Lewis

CARRE LEWIS, CCR NO. 497

* CONFIDENTIAL *

EXHIBIT 4

DISTRICT COURT
CLARK COUNTY, NEVADA

| | | |
|------------------------------|---|----------------------|
| STEVEN C. JACOBS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | CASE NO. A-10-627691 |
| |) | |
| LAS VEGAS SANDS CORP., a |) | |
| Nevada corporation; SANDS |) | |
| CHINA LTD., a Cayman Islands |) | |
| corporation; DOES I through |) | |
| X; and ROE CORPORATIONS I |) | |
| through X, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| <hr/> | | |
| AND RELATED CLAIMS |) | |
| |) | |
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VIDEOTAPE AND ORAL DEPOSITION OF MICHAEL LEVEN
VOLUME II
PAGES 268-456
LAS VEGAS, NEVADA
FRIDAY, FEBRUARY 1, 2013

REPORTED BY: CARRE LEWIS, CCR NO. 497

JOB NO. 173048

1 DEPOSITION OF MICHAEL LEVEN,
2 taken at 3883 Howard Hughes Parkway, Suite 800,
3 Las Vegas, Nevada, on Friday, February 1, 2013, at
4 11:24 a.m., before Carre Lewis, Certified Court
5 Reporter, in and for the State of Nevada.
6

7 APPEARANCES:

8 For the Plaintiff:

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16 see@pisanellibice.com
17 eta@pisanellibice.com

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23 (702) 669-4600
24 speak@hollandandhart.com
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For Sands China Limited:

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4 BY: IRA H. RAPHAELSON, ESQ.

5 GLOBAL GENERAL COUNSEL

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9 ira.raphaelson2lasvegassands.com

10 The Videographer:

11 Litigation Services

12 By: Benjamin Russell

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14 Las Vegas, Nevada 89169

15 (702) 314-7200

16 Also Present:

17 Steven Jacobs

18 LITIGATION SERVICES & TECHNOLOGIES - (702) 648-2595

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I N D E X

WITNESS: MICHAEL LEVEN

EXAMINATION

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By Mr. Bice

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| 1 | Michael Leven | | |
| 2 | Jacobs vs. Sands | | |
| 3 | Friday, February 1, 2013 | | |
| 4 | Carre Lewis, CCR No. 497 | | |
| 5 | E X H I B I T S | | |
| 6 | NUMBER | | PAGE |
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| 8 | Exhibit 12 | Steve Jacobs Offer Terms and Conditions; LVS00133027 | 285 |
| 9 | Exhibit 13 | E-Mail String; LVS00127168 | 286 |
| 10 | Exhibit 14 | E-Mail String; LVS00127504 | 291 |
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| 12 | Exhibit 15 | E-Mail String; LVS0012429 | 297 |
| 13 | Exhibit 16 | E-Mail String; LVS00141709 | 299 |
| 14 | | - 711 | |
| 15 | Exhibit 17 | E-Mail; LVS00122895 | 308 |
| 16 | Exhibit 18 | E-Mail String; LVS00131020 | 309 |
| 17 | Exhibit 19 | E-Mail and Attachment; LVS00117282 - 283 | 314 |
| 18 | Exhibit 20 | E-Mail String; LVS00113708 | 322 |
| 19 | Exhibit 21 | E-Mail String; LVS00112863 | 327 |
| 20 | Exhibit 22 | E-Mail; LVS00123649 | 328 |
| 21 | Exhibit 23 | E-Mail String; LVS00117303 | 330 |
| 22 | Exhibit 24 | E-Mail String; LVS00112588 | 331 |
| 23 | Exhibit 25 | E-Mail String; LVS00104216 | 336 |
| 24 | Exhibit 26 | E-Mail String; LVS00117292 - 293 | 340 |
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| 1 | Michael Leven | | |
| 2 | Jacobs vs. Sands | | |
| 3 | Friday, February 1, 2013 | | |
| 4 | Carre Lewis, CCR No. 497 | | |
| 5 | E X H I B I T S | | |
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| 7 | Exhibit 27 | E-Mail String; LVS00117305 - 307 | 347 |
| 8 | Exhibit 28 | E-Mail String; LVS00233650 - 651 | 350 |
| 9 | Exhibit 29 | E-Mail String; LVS00112688 - 689 | 353 |
| 10 | Exhibit 30 | E-Mail String; LVS00113076 | 356 |
| 11 | Exhibit 31 | E-Mail String; LVS00122024 | 357 |
| 12 | Exhibit 32 | E-Mail String; LVS00233682 - 683 | 368 |
| 13 | Exhibit 33 | E-Mail String; LVS00131402 - 403 | 370 |
| 14 | Exhibit 34 | E-Mail; LVS00117328 - 330 | 374 |
| 15 | Exhibit 35 | E-Mail String; LVS00122018 - 020 | 375 |
| 16 | Exhibit 36 | E-Mail String; LVS00121248 | 378 |
| 17 | Exhibit 37 | E-Mail String; LVS00110311- 312 | 381 |
| 18 | Exhibit 38 | E-Mail; LVS00113093 | 386 |
| 19 | Exhibit 39 | E-Mail String; LVS00121990 - 995 | 389 |
| 20 | Exhibit 40 | E-Mail; LVS00133987 - 990 | 394 |
| 21 | Exhibit 41 | E-Mail; LVS00117331 - 332 | 396 |

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| 1 | Michael Leven | | |
| 2 | Jacobs vs. Sands | | |
| 3 | Friday, February 1, 2013 | | |
| 4 | Carre Lewis, CCR No. 497 | | |
| 5 | E X H I B I T S | | |
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| 7 | Exhibit 42 | E-Mail; LVS00131378 | 398 |
| 8 | Exhibit 43 | Announcement; LVS00144362 | 399 |
| 9 | Exhibit 44 | E-Mail String; LVS00131362 | 400 |
| 10 | Exhibit 45 | E-Mail; LVS00130400 | 403 |
| 11 | Exhibit 46 | E-Mail and Attachment; LVS00132344 - 348 | 404 |
| 12 | Exhibit 47 | E-Mail; LVS00145383 - 386 | 405 |
| 13 | Exhibit 48 | E-Mail String; LVS00131358 | 408 |
| 14 | Exhibit 49 | E-Mail String; LVS00121270 - 271 | 410 |
| 15 | Exhibit 50 | E-Mail String; LVS00117344 - 345 | 413 |
| 16 | Exhibit 51 | Notification of Termination with Cause | 415 |
| 17 | Exhibit 52 | E-Mail; LVS00121378 | 423 |
| 18 | Exhibit 53 | E-Mail String; LVS00235406 - 407 | 425 |
| 19 | Exhibit 54 | E-Mail String; LVS00122441 | 430 |
| 20 | Exhibit 55 | E-Mail String; LVS00110709 | 431 |
| 21 | Exhibit 56 | E-Mail; LVS00153682 | 434 |
| 22 | Exhibit 57 | E-Mail String; SCL00114508 - 509 | 440 |

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|----|--------------------------|--|------|
| 1 | Michael Leven | | |
| 2 | Jacobs vs. Sands | | |
| 3 | Friday, February 1, 2013 | | |
| 4 | Carre Lewis, CCR No. 497 | | |
| 5 | E X H I B I T S | | |
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| 7 | Exhibit 58 | E-Mail; SCO00114515 | 440 |
| 8 | Exhibit 59 | E-Mail; SCO00117227 | 441 |
| 9 | Exhibit 60 | E-Mail String; SCL00120910 - 911 | 441 |
| 10 | Exhibit 61 | 8/24/10 Letter from Campbell & Williams | 441 |
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| 12 | Exhibit 62 | E-Mail String; SCL00118633 - 634 | 448 |
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INSTRUCTIONS NOT TO ANSWER

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| 447 | 5 |

1 LAS VEGAS, NEVADA; FRIDAY, FEBRUARY 1, 2013;

2 11:24 A.M.

3 -oOo-

4 THE VIDEOGRAPHER: This is the beginning of
5 Videotape Number 1 in the deposition of Michael 11:24:10
6 Leven in the matter of Jacobs versus Las Vegas Sands
7 Corporation, held at Pisanelli Bice at 3883 Howard
8 Hughes Parkway, Suite 800, Las Vegas, Nevada 89169
9 on the 1st of February, 2013 at approximately
10 11:28 a.m. 11:24:33

11 The court reporter is Carre Lewis. I am
12 Benjamin Russell, the videographer, an employee of
13 Litigation Services.

14 This deposition is being videotaped at all
15 times unless specified to go off the record. 11:24:45

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

18 THE WITNESS: Michael Leven.

19 MR. PEEK: Stephen Peek representing Sands
20 China Limited and Las Vegas Sands Corp. 11:25:00

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

23 MR. RAFAELSON: Ira Rafaelson on behalf of
24 Las Vegas Sands Corp.

25 MR. ALDRIAN: Eric Aldrian on behalf of 11:25:05

1 Steve Jacobs

2 MR. JACOBS: Steve Jacobs.

3 MR. BICE: Todd Bice on behalf of the
4 plaintiff.

5 THE VIDEOGRAPHER: Would the court reporter 11:25:14
6 please swear in the witness.

7 Whereupon --

8 MICHAEL LEVEN
9 having been first duly sworn to testify to the
10 truth, was examined and testified as follows:

11 EXAMINATION

12 BY MR. BICE:

13 Q. Good morning, Mr. Leven. You understand
14 that this is a continuation of your deposition?

15 A. Yes. 11:25:29

16 Q. All right. Since the last installment of
17 your deposition, have you spoken with anyone other
18 than legal counsel about your deposition?

19 A. No.

20 Q. Did you review any documents? 11:25:35

21 A. No.

22 Q. Did you review the transcript of the first
23 installment of your deposition?

24 A. No

25 Q. Has anything changed in terms of your 11:25:50

1 employment status with either Las Vegas Sands or
2 Sands China Limited since the last installment of
3 your deposition?

4 A. No.

5 (Discussion held off the record.) 11:26:35

6 (Exhibit 11 marked.)

7 BY MR. BICE:

8 Q. Show you what's been marked as Exhibit 11,
9 Mr. Leven, and give you a moment to read it.

10 A. Okay. 11:27:55

11 Q. All right. First of all, can you tell me
12 who Patrick Dumont is?

13 A. He's the vice president of strategy for the
14 company.

15 Q. For which company? 11:28:02

16 A. Las Vegas Sands.

17 Q. Does Mr. Dumont have any role for Sands
18 China Limited?

19 A. No.

20 Q. In this communication that you are having 11:28:14
21 with Mr. Dumont in June of 2010, in what capacity
22 were you acting?

23 A. I was acting in my regular capacity.

24 Q. And what would you describe as your regular
25 capacity? 11:28:35

1 A. I'm the chief operating officer of
2 Las Vegas Sands Corporation and a board member of
3 Sands China.

4 Q. Okay. So would it be your position that on
5 this -- in this e-mail string, you're acting in both 11:28:46
6 capacities simultaneously?

7 MR. PEEK: Mike, I think you may have
8 misspoke. You -- look at the date as to whether you
9 were a Sands China board member.

10 THE WITNESS: I don't remember, Steve, what 11:29:02
11 dates I was the Sands China board member or not
12 because being special advisor and a board member
13 changed from time to time. So I don't remember the
14 exact dates.

15 BY MR. BICE: 11:29:16

16 Q. Okay. Well --

17 A. I would either be acting as a board member
18 or an advisor to the board, I mean, whatever.

19 Q. Understood.

20 My question was -- I appreciate the 11:29:23
21 clarification.

22 At this time -- point in time, end of June
23 of 2010, in this e-mail exchange, you're acting in
24 both capacities?

25 A. Yes. 11:29:39

1 Q. Let's start at the bottom. This is an
2 e-mail from Mr. Dumont to yourself dated 6/29/2010
3 at 9:45 p.m., and then you respond. It says:
4 "Typical, I am canceling a leadership team meeting
5 on July 19 and 20. I don't want Jacobs there. I 11:30:03
6 will meet with others individually to discuss
7 organizational staffing needs during that time.
8 Goldstein and" -- is that Arasi, Arasi?

9 A. Arasi.

10 Q. Arasi. I apologize. 11:30:13

11 Can you tell me, who is Arasi?

12 A. Arasi was, at the time, the -- I believe
13 his title is president of the Marina Bay Sands or
14 CEO of Marina Bay Sands.

15 Q. Okay. Then going up, Mr. Dumont responds 11:30:34
16 and then you send a response to him saying: "I
17 don't disagree as long as we hire the COO."

18 Do you see that?

19 A. Which one are you going up to?

20 Q. I apologize. It's the e-mail from you to 11:30:57
21 him sent at --

22 A. It says: "I don't disagree as long as we
23 hire the COO"?

24 Q. Yes, sir.

25 A. Uh-huh. 11:31:06

1 Q. Who's the "we" that you're referencing
2 there?

3 A. I don't remember.

4 Q. Is it Sands China or Las Vegas Sands?

5 A. In this case, it would be Sands China, I 11:31:22
6 assume.

7 Q. Okay. And then the statement goes on. It
8 says: "The latest Jacobs headlines about airlines
9 growth predictions, et cetera, as well as his
10 selling of stock without informing us as a courtesy 11:31:38
11 simply verified decision made."

12 Do you see that?

13 A. Uh-huh.

14 Q. What is the decision made that is
15 referenced there? 11:31:47

16 A. The decision made was to terminate
17 Mr. Jacobs.

18 Q. Okay. So at least prior to June 29 of
19 2010, the decision had been made already?

20 A. Can you repeat that? 11:32:00

21 Q. Sure.

22 At least as of -- prior to June 29 of 2010,
23 the decision had been made already?

24 A. Yes.

25 Q. Okay. This then goes on to say: "We will 11:32:11

1 talk later when you get back about exorcism
2 strategy."

3 A. Yes.

4 Q. What do you mean by "exorcism strategy"?

5 A. The strategy of how the termination would 11:32:25
6 take place and what the relationships would be and
7 what the discussions and negotiations would be.

8 Q. Okay. And why was Mr. Dumont involved in
9 that?

10 A. Mr. Dumont was -- worked very closely with 11:32:39
11 me, particularly on HR matters, and I used him as a
12 resource and advisor in those capacities.

13 Q. All right. But Mr. Dumont -- did he have
14 any role on behalf of Sands China in this, or was he
15 acting for Las Vegas Sands in this? 11:33:03

16 A. His role was an advisor to me.

17 Q. All right.

18 A. In whatever capacity I was in.

19 Q. So he would also provide you advice in your
20 role as either a board member for Sands China or 11:33:11
21 special advisor to the board of Sands China?

22 A. Yes.

23 Q. Were his services something within the
24 scope, at least in your mind, of the shared services
25 agreement? 11:33:26

1 A. I didn't think of it -- didn't think of his
2 role involved in the shared services agreement. I
3 suppose. I mean, if you looked at the definition of
4 the shared services agreement, he would probably
5 come under it, but I never really thought of it that 11:33:47
6 way when I was -- I just used him as an advisor to
7 me.

8 Q. Did he provide advisory services to anyone
9 else on behalf of Sands China Limited, to your
10 knowledge? 11:34:02

11 A. I don't remember.

12 Q. Do you recall whether or not you did talk
13 with Mr. Dumont about the exorcism strategy?

14 A. I don't remember.

15 Q. And Mr. Dumont is based in Las Vegas? 11:34:26

16 A. Correct.

17 Q. And were these communications that you were
18 having with Mr. Dumont about this exorcism strategy,
19 were they occurring in Las Vegas?

20 A. I don't remember. Mr. Dumont was in 11:34:37
21 Las Vegas.

22 Q. Okay. Do you recall having any meetings
23 with Mr. Dumont about this exorcism strategy in
24 Las Vegas?

25 A. No. 11:35:00

1 Q. Do you recall whether Mr. Dumont -- other
2 than advising you, did he play any other role in the
3 exorcism strategy that you reference in the e-mail?

4 A. I don't think so.

5 (Exhibit 12 marked.) 11:35:49

6 BY MR. BICE:

7 Q. Show you what's been marked as Exhibit 12,
8 give you a moment to look at it. Let me know when
9 you're done.

10 A. Okay. 11:35:59

11 Q. All right. Do you recognize the initials
12 on the bottom of this page --

13 A. Yes.

14 Q. -- or the handwriting?

15 A. Yes. 11:36:26

16 Q. Can you tell me what it says?

17 A. It says: "Okay. M. Leven, August 3,
18 2009."

19 Q. Is this -- is that something you wrote?

20 A. Yes. 11:36:34

21 Q. In what capacity were you acting when you
22 wrote that on 8/3 of '09?

23 A. I was acting in the capacity of president/
24 chief operating officer of Las Vegas Sands Corp.

25 Q. Was there anyone else involved on behalf of 11:36:58

1 Las Vegas Sands Corporation in approving this
2 document?

3 A. Yes.

4 Q. And who was that?

5 A. Mr. Adelson. 11:37:06

6 Q. Anyone else?

7 A. No.

8 Q. When you signed off on this document, did
9 you do so in Las Vegas?

10 A. I don't remember where I signed off on it. 11:37:26

11 Q. Okay. What about Mr. Adelson? Do you know
12 where he signed off on that?

13 A. Well, he didn't sign off on it.

14 Q. Okay.

15 A. He approved it. 11:37:37

16 Q. All right. When he approved it, do you
17 know where he was at?

18 A. He was in Las Vegas when he approved it.

19 Q. Do you know approximately the time frame in
20 which he approved it since yours is signed on 8/3 of 11:37:51
21 '09?

22 A. I -- I don't remember exactly.

23 Q. Did his approval predate yours?

24 A. Certainly.

25 (Exhibit 13 marked.) 11:38:38

1 BY MR. BICE:

2 Q. I will show you what's been marked as
3 Exhibit 13 and give you a moment to read it.

4 A. Okay.

5 Q. All right. Do you recall sending this 11:39:45
6 e-mail?

7 A. No.

8 Q. Do you recall what it is about?

9 A. No.

10 Q. Let's start at the bottom. When it says -- 11:39:58
11 this is an e-mail from you to Mr. Jacobs.

12 Do you have any reason to dispute that you
13 have sent this e-mail?

14 A. No.

15 Q. It says: "I will not see him if you bring 11:40:07
16 him. I never want to see him. I trust my people.
17 There is no trial. He is out."

18 Do you see that?

19 A. Yes.

20 Q. Okay. And you -- as you sit here today, 11:40:18
21 you don't have any recollection of what this is
22 about?

23 A. No. Could you remind me?

24 Q. No, I can't.

25 Were you involved in overseeing any hiring 11:40:29

1 litigation threats by Mr. Jacobs?

2 A. Well, there were board meetings that went
3 on during that period. They would have been an
4 August -- a July or August board meeting.

5 If, in fact -- if, in fact, there was a 05:03:08
6 litigation threat from Mr. Jacobs, it would have
7 been discussed at the Las Vegas Sands board
8 meeting --

9 Q. Okay.

10 A. -- if the timing happened to coincide with 05:03:16
11 the meeting.

12 Q. All right.

13 MR. BICE: Let's take two minutes.

14 THE VIDEOGRAPHER: Off the record at
15 5:07 p.m. 05:03:46

16 (Off the record.)

17 THE VIDEOGRAPHER: On the record at
18 5:14 p.m.

19 MR. BICE: Okay. We're back on the record.

20 As I informed Mr. Peek and Mr. Jones, we're 05:10:56
21 suspending. We have -- you know, there's a
22 possibility we have issues with the Court on the
23 instructions that we have taken up, but other than
24 that topic, we would be done.

25 MR. PEEK: Thank you very much. 05:11:10

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MR. JONES: Thank you.

THE VIDEOGRAPHER: Going off the record at
5:14 p.m.

(Deposition concluded at 5:14 p.m.)

-oOo-

CERTIFICATE OF DEPONENT

| PAGE | LINE | CHANGE | REASON |
|------|------|--------|--------|
|------|------|--------|--------|

* * * * *

I, Michael Leven, deponent herein, do hereby
certify and declare the within and foregoing
transcription to be my deposition in said action;
under penalty of perjury; that I have read,
corrected and do hereby affix my signature to said
deposition.

Michael Leven, Deponent

Date

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Carre Lewis, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, Michael Leven, commencing on Friday, February 1, 2013, at 11:24 a.m.

That prior to being examined, the witness was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS HEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 10th day of February 2013.


CARRE LEWIS, CCR NO. 497

EXHIBIT 5

EXHIBIT 10.1

Steve Jacobs
Offer Terms and Conditions

1. **Position: President and CEO Macau, listed company (ListCo)**
 - a. Reporting into President and COO LVS or CEO/Chairman LVS
 - b. All staff to be direct reports, including EVP/President, Asia Development
2. **Term: 3 years**
3. **Base Salary and Annual Bonus**
 - a. 1.3 M base (USD)
 - b. 50% bonus
 - i. 25% Achieving annual EBITDAR Performance as submitted and approved by the BOD for Macau
 - ii. 25% Individual Objectives to be mutually agreed on an annual basis
4. **Equity**
 - a. 500,000 options in LVS to be granted date of hire at FMV. Should there be an IPO of Macau, LVS options to be converted at IPO into sufficient numbers of ListCo options such that the aggregate FMV of ListCo at the IPO list price is equal to the aggregate FMV of the LVS stock being converted. Conversion to be tax free.
 - b. Vesting
 - i. 250,000 shares vest Jan 1, 2010
 - ii. 125,000 shares vest Jan 1, 2011
 - iii. 125,000 shares vest Jan 1, 2012
5. **Expat Package**
 - a. 10,000 one time fee to cover moving expenses from Atlanta to HK
 - b. Housing Allowance: 12,000 per month, company pays deposit (if required)
 - c. Repatriation: Business airfare for employee and dependents, one 20 foot container, company to pay termination fees (if any)
 - d. Employee agrees to apply for Full Time Resident Status.

6. Expense reimbursement/ Business Travel
 - a. Full reimbursement of expenses necessary to conduct business in keeping with company and IRS policy
 - b. Business travel: Business class or above subject to prevailing company policy
7. Employee Benefit Plan: Participation in any established plan(s) for senior executives
8. Vacation and Holidays: 4 weeks per annum, with right to carry over should business demands prevent use
9. Change of Control: Provision to accelerate vest and terminate not for cause should Sheldon or Miri not be in control of company
10. Termination:
 - a. For Cause — Standard Language
 - b. Not For Cause — 1 Year severance, accelerated vest. Right to exercise for 1 year post termination.

Agreed, August 3, 2009

EXHIBIT 6



CLERK OF THE COURT

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7 Attorneys for Plaintiff Steven C. Jacobs

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 STEVEN C. JACOBS,

11 Plaintiff,

12 v.

13 LAS VEGAS SANDS CORP., a Nevada
corporation; SANDS CHINA LTD., a
14 Cayman Islands corporation; DOES 1
through X; and ROE CORPORATIONS
1 through X,

15 Defendants.

16
17 AND RELATED CLAIMS
18

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

NOTICE OF ENTRY OF ORDER
REGARDING PLAINTIFF STEVEN C.
JACOBS' MOTION TO COMPEL
DEPOSITION TESTIMONY ON ORDER
SHORTENING TIME

Hearing Date: January 29, 2013

Hearing Time: 8:30 a.m.

19 PLEASE TAKE NOTICE that an *Order Regarding Plaintiff Steven C. Jacobs' Motion to*
20 *Compel Deposition Testimony on Order Shortening Time* was entered in the above-captioned
21 matter on May 8, 2013, a true and correct copy of which is attached hereto.

22 DATED this 8th day of May, 2013.

23 PISANELLI BICE PLLC

24 By:  #09826

25 James J. Pisanelli, Esq., Bar No. 4027
26 Todd L. Bice, Esq., Bar No. #4534
Debra L. Spinelli, Esq., Bar No. 9695
27 3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

28 Attorneys for Plaintiff Steven C. Jacobs

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 8th day of May, 2013, I caused to be sent via United States Mail, postage prepaid, a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFF STEVEN C. JACOBS' MOTION TO COMPEL DEPOSITION TESTIMONY ON ORDER SHORTENING TIME** properly addressed to the following:

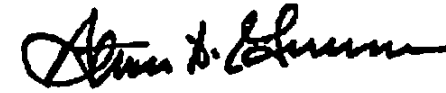
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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **STEVEN C. JACOBS,**
11 **Plaintiff,**

12 **v.**

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

16 **Defendants.**

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

**ORDER REGARDING PLAINTIFF
STEVEN C. JACOBS' MOTION TO
COMPEL DEPOSITION TESTIMONY
ON ORDER SHORTENING TIME**

Date: January 29, 2013

Time: 8:30 a.m.

17 **AND RELATED CLAIMS**

18
19 On January 29, 2013, the parties came before this Court on Steven C. Jacobs' Motion to
20 Compel Deposition Testimony on Order Shortening Time ("Motion to Compel"). Todd L. Bice,
21 Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Plaintiff Steven C. Jacobs
22 ("Jacobs"). J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on behalf of
23 Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China"). Mark M.
24 Jones, Esq., of the law firm Kemp Jones & Coulthard, LLP, and Michael B. Lackey, Jr., of the
25 law firm Mayer Brown LLP, appeared on behalf of Defendant Sands China. The Court
26 considered the papers filed on behalf of the parties and the oral argument of counsel, and good
27 cause appearing therefor:

04-25-13P12:12 RCVB

28 **///**

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1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 1. The Motion to Compel is GRANTED in part and DENIED in part;

3 2. As previously ordered, Jacobs may question deponents, excepting Ken Kay, as to
4 the decision making and implementation of the decision to terminate Jacobs from Sands China,
5 which is the "who, what, where, when and how" behind the decision. This questioning may
6 include the "who, what, where, when and how" of the decision-making process as well, but not
7 the basis for or the "why" behind the decision to terminate Jacobs; and,

8 3. The Motion to Compel is DENIED with respect to compelling the requested
9 deposition testimony of Mr. Kay, as Mr. Kay's deposition is limited to the work he performed for
10 Sands China, and work he performed on behalf of or directly for Sands China while acting as an
11 employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20,
12 2010.

13 DATED: May 7, 2013

14 
15 THE HONORABLE ELIZABETH GONZALEZ
16 EIGHTH JUDICIAL DISTRICT COURT

17 Respectfully submitted by:

18 PISANELLI BICE PLLC

19
20 By: 

21 James J. Pisanelli, Esq., Bar No. 4027
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1 Approved as to form by:

2 HOLLAND & HART

3 By: 

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9 and Sands China Ltd.

KEMP JONES & COULTHARD

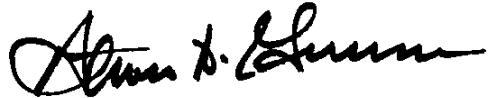
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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'
REPLY IN SUPPORT OF MOTION FOR
LEAVE TO FILE SECOND AMENDED
COMPLAINT**

Hearing Date: August 1, 2014

Hearing Time: In Chambers

AND RELATED CLAIMS

I. INTRODUCTION

Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China"), now oddly joined by Sheldon G. Adelson ("Adelson"),¹ claim sanctuary against Jacobs' proposed amendments in the Supreme Court's directive to stay this case "except for matters relating to the determination of personal jurisdiction" (Supreme Court Order, Aug. 26, 2011.) Yet, that directive does not foreclose Jacobs' addition of claims, particularly since such claims reinforce the

¹ We say oddly because Adelson simultaneously claims that this Court does not have jurisdiction over him because he has automatically delayed issuance of the remittitur by seeking reconsideration of the Supreme Court's adverse decision. One must wonder why, if the Court does not have jurisdiction over him, he is filing briefs.

1 grounds for this Court's jurisdiction over Sands China. Any jurisdictional analysis properly
2 considers the nature of the claims that Jacobs seeks to assert. At the same time, Adelson's delay
3 of the remittitur as to himself has no relevance here; Jacobs' proposed amendments do not involve
4 Adelson. LVSC and Sands China are presently before this Court and thus Adelson's petition
5 provides them no basis for delay. Under the law, Jacobs is entitled to amend his complaint as it is
6 in the interest of justice.

7 **II. DISCUSSION**

8 **A. The Merits Stay Cannot Bar the Amendments Jacobs Proposes.**

9 The Nevada Supreme Court's August 26, 2011 Order Granting Petition for Writ of
10 Mandamus instructed this Court to "stay the underlying action, except for matters relating to the
11 determination of personal jurisdiction" (Supreme Court Order, Aug. 26, 2011.) That Order
12 does not state that Jacobs cannot amend his complaint to add to, subtract, or augment his claims.
13 And that is hardly surprising since personal jurisdiction is judged by the claims asserted. Indeed,
14 Sands China has been quick to point out that this Court must evaluate the contacts relative to
15 Jacobs' specific causes of action against it. Thus, it cannot deny that amendments adding
16 additional claims that arise directly from Sands China's Nevada-based activities are "matters
17 related to the determination of personal jurisdiction."

18 As this Court knows, one factor considered in a personal jurisdiction analysis is "whether
19 'the cause of action arises from that purposeful contact with the forum or conduct targeting the
20 forum.'" *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 122 Nev. 509,
21 515, 134 P.3d 710, 714 (2006) (quoting *Trump v. District Court*, 109 Nev. 687, 700, 857 P.2d
22 740, 748 (1993)) (emphasis added). "A purposeful availment analysis" is most often used in suits
23 arising in contract while a "purposeful direction analysis" is most often used for tort claims.
24 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

25 In this case, Jacobs' proposed Second Amended Complaint asserts additional tort causes of
26 action against LVSC and Sands China for civil conspiracy and aiding and abetting tortious
27
28

1 discharge, claims stemming from their activities in Nevada.² The resulting personal jurisdiction
2 flowing from these tort claims necessarily are "matters related to the determination of personal
3 jurisdiction" (Supreme Court Order, Aug. 26, 2011.) *See also Schwarzenegger*, 374 F.3d
4 at 802-03 (explaining the difference between the purposeful availment and purposeful direction
5 analyses).

6 Again, the proper scope of the Supreme Court's directive permits Jacobs to assert
7 additional claims because the jurisdictional question will appropriately involve them. This is
8 particularly so, given that nothing in the Supreme Court's Order discusses, let alone forecloses,
9 potential amendments. *See Rutherford v. United States*, 806 F.2d 1455, 1459-60 (10th Cir. 1986)
10 (when appellate court reverses and remands, the district court has discretion to allow plaintiff to
11 amend complaint unless mandate precludes amendment or amendment would run counter to
12 mandate).

13 It is not Jacobs, but the Defendants that employ doublespeak about the appropriateness of
14 amendments to the pleadings. (Defs.' Opp. at 4.) Recall, on September 13, 2011, LVSC filed a
15 motion for leave to amend, taking the position that the stay did not prohibit amendments to the
16 pleadings. (LVSC Mot. Leave to File Am. Countercl. Sept. 13, 2011, on file.) But of course,
17 LVSC's proposed amendment did not pertain, in any way, to jurisdictional issues. Instead,
18 LVSC's proposed amendment sought to add claims as a springboard for seeking injunctive relief.
19 Jacobs never filed an opposition to LVSC's Motion. Rather, this Court expressed skepticism
20 about whether it could entertain such a request given the stay. (Court Minutes, Sept. 16, 2011, on
21 file.) ("Court noted somebody should ask the Supreme Court to clarify its Order regarding the
22 stay as the Court does not have jurisdiction to hear the 10/18/11 Motions.")
23

24 ² Jacobs' allegations are hardly "nonsensical" as the Defendants bluster. (Defs.' Opp. at 4
25 n.1.). The intracorporate conspiracy doctrine does not apply to subsidiaries that are not wholly
26 owned. *See Winnemucca Farms, Inc. v. Eckersell*, 3:05-CV-385-RAM, 2010 WL 1416881, at *5
27 (D. Nev. Mar. 31, 2010) (70% owned subsidiary can conspire with parent because it is not wholly
28 owned). Thus, Sands China (of which LVSC only owns approximately 70%) can conspire with
LVSC to tortiously discharge Jacobs in violation of public policy, which is precisely what
jurisdictional discovery has established they did. Jacobs looks forward to Sands China and LVSC
claiming that they are really one in the same as opposed to separate and distinct entities capable of
a conspiracy.

1 But rather than moving forward with the motion for leave so as to have a basis to seek
2 clarification, LVSC voluntarily withdrew its motion and initiated an entirely new action. (Notice
3 of Withdrawal of Mots., Sept. 9, 2011, on file). Hence, it is not Jacobs who conceded or
4 acquiesced that the stay prevents any amendment to the pleadings, particularly amendments that
5 further relate to this Court's jurisdiction over Sands China. Rather, Jacobs simply recognizes that
6 this Court had previously expressed that view/concern. As set forth herein, Jacobs maintains that
7 the law is otherwise, particularly for amendments that bear upon this Court's jurisdiction over
8 Sands China, and thus he brings this motion to both resolve and confirm that very point.

9 Likewise, Sands China's long-tried and long-rejected claim of specific jurisdiction waiver
10 continues to be wrong and is particularly nonsensical in this context. Even if there was a shred of
11 merit to it (which there is not), Defendants fail to explain how a purported waiver of specific
12 jurisdiction over a breach of contract claim applies to subsequently-added tort claims. It is not
13 conceptually, let alone legally, plausible.

14 Moreover, as jurisdictional discovery has exposed, the waiver story is simply one of
15 desperation because Sands China always knew, but falsely disclaimed, its Nevada contacts
16 surrounding Jacobs' wrongful termination. Recall, in response to Jacobs' complaint, Sands China
17 filed a motion to dismiss and on the point of specific jurisdiction affirmatively representing that it
18 "has not had any purposeful contact relating to Plaintiff in Nevada" (Def. Sands China Mot.
19 Dismiss of Lack of Personal Jurisdiction at 10, Dec. 22, 2010.)³ In the face of Sands China's
20 representation, Jacobs further requested leave to conduct jurisdictional discovery. (Pl.'s Opp.
21 at 21) ("In The Event The Court Does Not Deny SCL's Motion Outright, It Should Permit
22 Jurisdictional Discovery . . . Jacobs respectfully requests the opportunity to conduct jurisdictional
23 discovery.").

24 Having prevailed with a finding of general jurisdiction in the District Court, Jacobs had no
25 obligation to advance an alternative theory even before obtaining the jurisdictional discovery that
26 he had requested. As this Court has repeatedly had to remind Sands China, the Supreme Court's
27

28 ³ As this Court also knows, that representation has been thoroughly discredited.

Order did not limit this Court's inquiry into all legally-permissible bases for personal jurisdiction. The fact that Sands China knows that Jacobs' proposed amendments further foreclose its manufactured jurisdiction defense only reinforces Jacobs' entitlement to amend.

B. Adelson's Petition for Rehearing Does Not Delay Jacobs' Second Amended Complaint.

Despite insisting that this Court does not have jurisdiction over him, Adelson interjects himself to decree that this Court should not entertain any amendments until his petition for rehearing is resolved. As Jacobs' proposed amendments pertain only to Sands China and LVSC, Adelson's interjection is not one based in law or substance. LVSC and Sands China are not parties to Adelson's appeal and they are presently before this Court in this action. Adelson's appeal has absolutely no bearing or relation to the proposed amendments.

Adelson's selective participation is not in furtherance of judicial economy, and no such interest is served by further delay. Jacobs has filed his motion, it has been briefed, and this Court can decide it. Adelson voluntarily chose to delay his return to this case through his petition for rehearing. Neither Jacobs nor this Court is obligated to accommodate Adelson's strategy. Jacobs is entitled to have this amendment issue resolved now so that he can take appropriate action based on the outcome.

III. CONCLUSION

Jacobs respectfully requests that he be granted leave to file a Second Amended Complaint. The proposed amendments concern "matters relating to the determination of personal jurisdiction." Accordingly, the motion should be granted.

DATED this 25th day of July, 2014.

PISANELLI BICE PLLC

By: 

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CERTIFICATE OF SERVICE

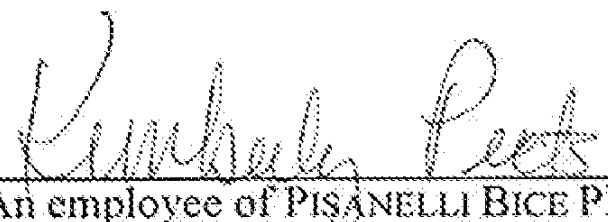
I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 29th day of July, 2014, I caused to be served via the Court's E-Filing system true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** to the following:

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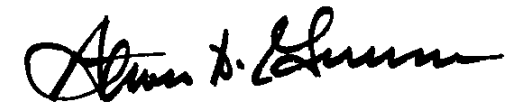
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, AUGUST 14, 2014

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.
DEBRA SPINELLI, ESQ.
JORDAN SMITH, ESQ.

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 14, 2014, 8:40 A.M.

2 (Court was called to order)

3 THE COURT: Jacobs versus Sands. Good morning.

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

5 MR. MORRIS: Good morning, Your Honor.

6 MR. PEEK: Good morning, Your Honor.

7 THE COURT: Does everybody have a copy of the Nevada
8 Supreme Court's order denying a rehearing dated August 7th?

9 MR. BICE: We do.

10 MR. PEEK: Yes, Your Honor, I do.

11 THE COURT: Okay. So that slightly impacts some of
12 the things we're going to talk about today. And I appreciate
13 your supplemental brief after the orders.

14 Okay. Does everybody want to identify themselves
15 for purposes of the record, since Tina is not my usual clerk.

16 MR. BICE: Yes. Good morning, Your Honor. Todd
17 Bice on behalf of plaintiff Steven Jacobs.

18 MR. PISANELLI: Good morning, Your Honor. James
19 Pisanelli on behalf of Steven Jacobs.

20 MR. SMITH: Good morning, Your Honor. Jordan Smith
21 on behalf of Steven Jacobs.

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

24 MR. RANDALL JONES: Good morning, Your Honor.
25 Randall Jones and Mark Jones on behalf of Sands China Limited.

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

3 MR. PEEK: And good morning, Your Honor. Stephen
4 Peek on behalf of the Las Vegas Sands and Sands China Limited.

5 THE COURT: All right. Which motion would you like
6 to start with, the motion to amend the complaint?

7 MR. BICE: I leave it to the Court's pleasure.

8 THE COURT: Let's go to the motion to amend the
9 complaint first.

10 MR. BICE: Okay. Your Honor, as you are aware, at
11 this juncture, notwithstanding the fact of the age of this
12 case --

13 (Pause in the proceedings)

14 THE COURT: All right. Let's go.

15 MR. BICE: Your Honor, notwithstanding the age of
16 this case, as Your Honor is very familiar with it, Sands China
17 has not filed an answer in this action, and we have sought to
18 amend the complaint. And we would submit, Your Honor, that
19 Sands China as the basis for its opposition to this amendment
20 is in fact contrary to its arguments about jurisdiction. What
21 it is insisting to this Court is that it has to look at each
22 particular cause of action now in order to assess particularly
23 with respect to specific jurisdiction. And to do that the
24 Court obviously needs to then have before it all potential
25 claims that are being asserted or are going to be asserted in

1 order to assess that specific jurisdiction issue.

2 But now they come to you and they say, well, you
3 shouldn't, because the stay precludes you from allowing Mr.
4 Jacobs to amend his complaint. And our position on that, Your
5 Honor, as we put forth in our pleadings, is I think very
6 straightforward, is the merits stay does not in any way
7 preclude these types of amendments, because these types of
8 amendments directly relate to, to use the Supreme Court's
9 words, matters relating to the determination of personal
10 jurisdiction. We have learned through the jurisdictional
11 discovery of a lot of facts concerning the activities that
12 Sands China was undertaking in cooperating with LVSC in Las
13 Vegas and undertaking those actions that give rise to the
14 claims. And so therefore we are seeking to amendment to
15 assert those causes of action to have them before the Court,
16 because that necessarily with respect to specific jurisdiction
17 plays a role in this Court's ultimate determination on the
18 jurisdictional question. And the Supreme Court's order, Your
19 Honor, does not say -- and we cite caselaw for you for this
20 proposition -- does not say anything that precludes Mr. Jacobs
21 from making an amendment, either expressly or even implicitly.
22 We would submit to the contrary by necessary implication of
23 its directive that the Court entertain matters that are
24 relating to the determination of personal jurisdiction an
25 amendment that adds causes of action specifically predicated

1 upon Sands China's Nevada activities are appropriate. I thank
2 the Court.

3 THE COURT: Thank you.

4 Who wants to speak relative to opposition to the
5 motion?

6 MR. RANDALL JONES: Well, I will speak on behalf of
7 Sands China, Your Honor.

8 MR. RANDALL JONES: Well, I noted -- good morning,
9 Your Honor.

10 THE COURT: Good morning, Mr. Jones. How are you
11 today?

12 MR. RANDALL JONES: Well, thank you.

13 I would note that Mr. Bice said that -- very
14 unequivocally that merits stay does not stay these types of
15 amendments. And as we noted in our opposition on page 4, and
16 I'm quoting here, Mr. Bice said that, "At this point the
17 merits stay precludes Jacobs from amending his complaint," end
18 quote. He went on to say, "But when that is gone he will be
19 -- we will be amending his complaint to assert, among other
20 things, claims for abuse of process against both Sands China
21 and LVSC," end quote. And at the Supreme Court argument he
22 repeated this point by saying, quote, "Presently the District
23 Court views the merits stay as prohibiting Jacobs from
24 amending his complaint even to augment his claims which would
25 reinforce his theories for jurisdiction," end quote. That's

1 Exhibit B at page 21, note 11.

2 So Mr. Bice has acknowledged to this Court and the
3 Supreme Court that the stay does include amending the
4 complaint, including augmenting his theories of jurisdiction.
5 It cannot get any more clear than that. And I don't know how
6 he can come in here and say the exact opposite is a
7 justification for his attempts to now amend the complaint.

8 And there are other issues implicated by this, as
9 well, Your Honor, but the Daimler case tells us, as you know,
10 we have issues about -- we have to consider the issues about
11 where the defendant was at home.

12 THE COURT: And have fun defining "at home."

13 MR. RANDALL JONES: Well, that's going to be an
14 interesting discussion, Your Honor. We think it's pretty
15 straightforward. We obviously have a disagreement with Mr.
16 Bice about that subject. But with respect to specific
17 jurisdiction, which appears to be what he is trying to do now
18 with his amendment with these new claims, at least that's what
19 he appears to be saying in his motion, first of all, we
20 believe they have waived any arguments about specific
21 jurisdiction. And that I think is something the Court needs
22 to consider in making a decision with respect to this motion
23 in addition to the fact that Mr. Bice has acknowledged that he
24 can't do what he's now trying to do and should be judicially
25 estopped from trying to do it, but even if he was allowed to

1 assert these new claims against Sands China related to
2 specific jurisdiction, as the Court knows, you still have to
3 make an independent decision with respect to specific
4 jurisdiction on a case-by-case basis, which would take us back
5 to his original breach of contract claim and specific
6 jurisdiction.

7 So his new claims do nothing -- that was one of his
8 arguments, these new claims reinforce his existing arguments
9 for jurisdiction. And they don't. Because they have to be
10 looked at independently. So they don't do anything to
11 reinforce his original claims for specific jurisdiction,
12 assuming he actually had made those claims.

13 But, Your Honor, that also raises another issue,
14 that if he was allowed to amend at this late point in time --
15 and he started out his discussion by saying, we're way far
16 into this, it's been years and years. We all know the
17 history. It certainly has been a long time. So --

18 THE COURT: And you missed part of it.

19 MR. RANDALL JONES: I did miss part of it. He wants
20 to now amend the complaint to add two new claims, and we would
21 then have a right, obviously, to respond to those claims,
22 assuming the Court allowed them. And I can assure the Court
23 that we would be looking very carefully at a motion to
24 dismiss, which would further delay what Mr. Bice says he wants
25 to do right away, which is have a hearing on jurisdiction.

1 So, you know, Mr. Bice loves to get up here and make
2 pejorative statements about my client and the other parties in
3 this case at every opportunity. And one of the things he
4 loves to harp on is that he claims we've continued to cause
5 delay. What he's doing now is an attempt to delay this
6 process further. And so we would like to get to the
7 jurisdictional hearing as soon as possible, because we think
8 there is no jurisdiction against Sands China. So this attempt
9 at this late date will simply further delay this process, and
10 we think it is not justified or appropriate. And Mr. Bice, up
11 until this recent motion, had said it was not only not
12 appropriate, but he couldn't do it and that you have said he
13 couldn't do it before. So we would believe that the stay does
14 prohibit that and that there's no justification for it
15 otherwise. Thank you, Your Honor.

16 MR. PEEK: Your Honor, I have nothing to add on
17 behalf of Las Vegas Sands --

18 THE COURT: Thank you.

19 MR. PEEK: -- other than what has been argued by Mr.
20 Jones.

21 THE COURT: And, Mr. Morris, this issue doesn't
22 impact you, does it?

23 MR. MORRIS: Well, when we started -- opened this
24 hearing you remarked about denial of rehearing on August the
25 7th. I think it does have some relationship, but I'll --

1 we're now addressing the second amended complaint or the
2 proposed --

3 THE COURT: Yes. I'm not at the motion for
4 reconsideration of the defamation issues yet, which is a
5 different motion.

6 MR. MORRIS: Well, I'll speak in response to that.
7 But I still -- what I have to say does pertain to --

8 THE COURT: I'm happy to listen.

9 MR. MORRIS: Well, okay. If you're happy to
10 listen --

11 THE COURT: And I know that all these other people
12 in the audience are happy to listen, too.

13 MR. MORRIS: I'm happy to speak.

14 MR. PEEK: We might get some CLE from it, Your
15 Honor.

16 MR. MORRIS: Your Honor, with respect to the
17 defamation, that claim in the second amended complaint -- or
18 the proposed second amended complaint not only adds -- puts
19 Mr. Adelson back in the case, but it makes claims against Las
20 Vegas Sands and Sands China. I point this out because you
21 have raised it at the outset, and I think it's of
22 significance.

23 With respect to reinstatement of this defamation
24 claim this is premature. The remittitur from the Supreme
25 Court has not issued. There's 25 days from August the 7th.

1 So until that occurs, Your Honor, there isn't any occasion
2 with respect to the jurisdiction of this Court to entertain a
3 motion to dismiss.

4 But, having said that, I was not here, and I'm sorry
5 that I wasn't now, in the meeting before last when a point
6 came up that I think is of some consequence. We wish to file
7 a motion to -- against the proposed second amended complaint
8 when it is appropriate to do so, and that is when remittitur
9 has run.

10 THE COURT: So you're saying it's not appropriate to
11 do that until September.

12 MR. MORRIS: Yes, that's my point. And we would
13 like to -- and that motion, of course, because it is against
14 the defamation claim and it brings up and we'll bring before
15 you a point that the Supreme Court addressed in its decision,
16 it's four-three decision reversing dismissal of the defamation
17 claim in 2012, it brings up the Anzelone case and conditional
18 privilege, and we would like the opportunity, since you are
19 the person who in the first instance will consider the
20 applicability of that privilege, we would like the opportunity
21 to move against the filing of this second amended complaint on
22 the ground that the conditional privilege applies, which is a
23 point that the Supreme Court said you did not address, and it
24 is among those things that the Court said --

25 THE COURT: That's what happens when I decide it's

1 an absolute privilege. I don't look at the conditional
2 privilege.

3 MR. MORRIS: Of course. And I'm not quarrelling
4 with that. But we made alternative arguments before you and
5 before the Supreme Court, and the Supreme Court said -- in
6 substance what the Supreme Court said is, take it to Judge
7 Gonzalez first.

8 THE COURT: They said that in three opinions. So
9 we're going to talk about some of those others in a minute.

10 So your position, Mr. Morris, is because the second
11 amended complaint attempts to resolve the defamation issue
12 which was on appeal and which is now the subject of soon-to-be
13 remitted, we should delay consideration of this because of the
14 fifth cause of action?

15 MR. MORRIS: Yes.

16 THE COURT: Thank you.

17 Mr. Bice.

18 MR. BICE: Your Honor, the second amended complaint
19 does not alter a single word of the defamation claim that's
20 already before the Court. So I'm not quite sure where Mr.
21 Morris is coming from, because that's just simply not
22 accurate. That defamation issue and the issuance of the
23 remittitur has nothing to do with this motion to amend with
24 respect to Las Vegas Sands and Sands China.

25 What Mr. Morris is really trying to do, I guess, is

1 argue that the stay only applies to Mr. Jacobs but it doesn't
2 apply to the defendants, because he says, well, we want to
3 brief a bunch of merits motions against -- and that's true
4 regardless of whether the second amended complaint is filed or
5 not, apparently, because the defamation claim is completely
6 untouched by it. So that is a complete red herring and an
7 attempt to simply delay what we believe, Your Honor, is
8 inevitable under the law.

9 Now, Mr. Jones says that we are the parties here in
10 engaged in double speak about what's the proper scope of the
11 stay. And we certainly disagree with that, Your Honor. As we
12 point out in our reply brief, this is an issue that they took
13 the position. This Court expressed some concern about that in
14 the past. We think that that is wrong. We have acknowledged
15 that that's what the Court's view was, and if we
16 misinterpreted the Court, then so be it. But the fact of the
17 matter is we're bringing this motion. And you'll notice they
18 don't address the point we make about the caselaw that we cite
19 that specifically says that the stay cannot impact our ability
20 to amend on this particular issue, because it relates to the
21 Court's personal jurisdiction determination. And, as which,
22 the Supreme Court's stay order cannot and should not be
23 interpreted as somehow precluding it.

24 Now, if the Court is of the view that it did in the
25 past, well, we think that that is mistaken, and we are asking

1 the Court to rectify that. If we misinterpreted what your
2 view was in the past, well, then, that was our mistake. But,
3 nonetheless, with all due respect, an absurd argument of
4 judicial estoppel? We're not the parties who obtained any
5 benefit from this position. The party here who's trying to
6 engage in flip-flopping is the party who was here before
7 telling you that the stay didn't apply to their proposed
8 amendments. So --

9 THE COURT: My concern, though, Mr. Bice, is a
10 little different. I have thought that with respect to merits
11 issues I should not be doing additional work given the
12 language of the writ that was issued to me. When I am looking
13 at many of the allegations that you've included in the second
14 amended complaint it reinforces those concerns, although they
15 do in some ways relate to the jurisdictional issues, which is
16 why we're having this discussion this morning.

17 And so my concern whether we're opening a can of
18 worms that can be opened a little bit later, after I've
19 clarified some of the jurisdictional issues.

20 MR. BICE: I don't -- you know, the problem that
21 that presents for us is we're going to hear Sands China claim
22 that, well, you know, specific jurisdiction has to be
23 addressed on a claim-specific basis. That's exactly what
24 their argument has been. And now they're saying, well, that
25 claim isn't currently before the Court because you haven't

1 allowed them to amend, so you can't use that as one of the
2 bases for determining specific jurisdiction over Sands China.
3 And we think that that, of course, exactly reverses the
4 position that the Court is supposed to be in when it's making
5 the determination. The Court has to look at what are the
6 claims that are being asserted, do those claims arise out of
7 contacts that were performed in the state of Nevada. And on
8 these claims the answer to that is yes. And that's why an
9 amendment of this is appropriate.

10 I understand the Court's concerns about, well, we
11 can't get into the merits. And we agree with that issue,
12 because that's ultimately what the Supreme Court has said.
13 But the Supreme Court's stay should not be interpreted to say
14 that Jacobs can't amend his claims to add additional causes of
15 action which further reinforce this personal jurisdiction over
16 Sands China. Because if that's the ruling, Your Honor, then,
17 of course, we're now in a catch-22; the Court says, well, you
18 can't bring in these claims that enhance the jurisdictional
19 debate that directly relate to it but I'm going to take up
20 whether or not Sands China is subject to personal jurisdiction
21 before the Court.

22 THE COURT: I understand what you're saying, Mr.
23 Bice. It's a very difficult issue, but I understand what
24 you're saying. And the difficulty relates to the nature of
25 the stay that was issued in conjunction with the writ. But

1 that's a different issue. Anything else?

2 MR. BICE: Your Honor, that's why we cite, I believe
3 -- I don't remember exactly, I can look them up -- the case we
4 cited that specifically address this is that unless the remand
5 mandate from the Supreme Court or the Court of Appeals, in
6 this case because these are federal cases, specifically
7 dictate otherwise, parties are free to amend their complaint
8 and amend their pleadings. And here there is nothing in that
9 order that can be interpreted or should be interpreted as
10 saying that Jacobs can't amend his complaint specifically as
11 to additional claims that were gleaned out of jurisdictional
12 discovery that go directly to the issue that the Supreme Court
13 told this Court to address, which is what contacts did Sands
14 China have in the state of Nevada.

15 THE COURT: Thank you.

16 MR. BICE: Thank you, Your Honor.

17 THE COURT: I'm going to grant the motion, with the
18 exception to the fifth claim for relief against Adelson. I
19 agree that it is premature at this time for that claim to be
20 addressed. You can address that after the remittitur is
21 received.

22 With respect to the new claims, because they appear
23 to relate to jurisdictional issues that I am supposed to be
24 determining, while they may also deal with merits issues, I'm
25 going to allow the amendment, because we have to address the

1 jurisdictional issues.

2 MR. PEEK: Your Honor, I have a question from Las
3 Vegas Sands' standpoint. Am I then permitted to file motions
4 to dismiss?

5 THE COURT: Absolutely.

6 MR. PEEK: Thank you.

7 MR. RANDALL JONES: Your Honor, I just -- a point of
8 clarification, because it didn't really come up until after
9 rebuttal. But the one question I have, and it kind of relates
10 to this issue of the defamation against Mr. Adelson, is these
11 all -- these new claims relate to defamation. That's what
12 they're all grounded on. And it seems to me that until -- and
13 this goes to another motion we have this morning, and I just
14 thought I'd bring it up now, but I would like to --

15 THE COURT: I'm not to that one yet.

16 MR. RANDALL JONES: I understand. But it implicates
17 that motion and whether or not -- what relief or what ruling
18 the Court makes with respect to that motion. So I just want
19 to at least make the Court aware I think that there are issues
20 there that relate to that that I would like to at least --

21 THE COURT: I know there are issues there.

22 MR. RANDALL JONES: -- be able to revisit this
23 ruling with the Court when we get to that point, that's all.

24 THE COURT: Well, I anticipate that after the new
25 complaint is filed I'm going to see a plethora of motions to

1 dismiss on numerous issues, including the defamation issues as
2 amended and the issues that sort of pervade some of those
3 claims in the complaint.

4 MR. RANDALL JONES: Fine, Your Honor. Again, I just
5 at least wanted to raise this point with the Court.

6 THE COURT: I'm not to that motion. I'm going to
7 let you talk in a minute, but I'm not quite there.

8 MR. RANDALL JONES: Thank you.

9 THE COURT: Mr. Bice, if we could go to the motion
10 to reconsider the dismissal of the defamation claims against
11 defendants Sands and Sands China.

12 MR. BICE: Yes. Your Honor, this motion, according
13 to the defendants, is both simultaneously too late and
14 simultaneously too early is their position with respect to it,
15 and I think that pretty much proves our point, because that --
16 the motion is accurate. The Court had dismissed the
17 defamation claim on the litigation privilege, the Nevada
18 Supreme Court has overturned that ruling, and then their
19 position was, well, you've got to wait for the rehearing to be
20 decided. That was it. Now that that's been decided adverse
21 to them, now, well, now you shouldn't consider this for -- I
22 don't know what reason -- the remittitur hasn't issued. But,
23 again, that has nothing to do with Sands China or Las Vegas
24 Sands Corporation, Your Honor. The issue has been briefed, as
25 we point out, and a lot of caselaw on this point that Supreme

1 Court decisions are binding authority unless the opinion has
2 been withdrawn. Not only has the opinion not been withdrawn,
3 the petition for rehearing was denied.

4 With respect to Mr. Adelson, he doesn't have any dog
5 in this fight. He claims -- it's odd, because he's claiming
6 he's not before the Court right now because the remittitur
7 hasn't issued, but he wants to be heard on motions that don't
8 pertain to him. And so we do object to that practice.

9 But the point of the matter --

10 THE COURT: You know I'm always going to let
11 everybody wants to talk talk.

12 MR. BICE: I know, Your Honor.

13 THE COURT: You know, it's just the way I am.

14 MR. BICE: I know, Your Honor.

15 THE COURT: Sorry.

16 MR. BICE: But our point here is the basis for the
17 Court's dismissal of those claims against Sands China and
18 against Las Vegas Sands has been reversed by the Supreme
19 Court. Those claims now -- we are entitled to have them
20 reinstated. And now is an appropriate time to reinstate them,
21 because, again, they specifically tie back into the
22 jurisdictional debate with respect to Sands China.

23 Now, I've heard that we're going to hear some claim
24 that Mr. Adelson wasn't speaking on behalf of Sands China,
25 which we think will prove interesting if that's going to be

1 their position, since he's -- the defamatory statement was he
2 claimed that we have developed a number of reasons for Mr.
3 Jacobs's termination when they are simultaneously representing
4 to the Court that Mr. Jacobs was terminated by Sands China.
5 So that will prove interesting if that becomes their latest
6 story. But, again, that's a premature issue.

7 Right now the Supreme Court has ruled, the petition
8 for rehearing has been denied, and we are entitled to have the
9 defamation claims reinstated so that we can -- because, again,
10 it ties back to the jurisdictional issue, Your Honor, with
11 respect to Sands China.

12 THE COURT: Thank you.

13 MR. BICE: Thank you.

14 THE COURT: Mr. Jones, Mr. Peek.

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

16 I actually -- in one of those rare occasions I think
17 I actually agree with Mr. Bice about something. He says that
18 we argue that their motion is both too late and too early.
19 Well, in fact it is, both of those things. The claims were
20 dismissed, they did not move for reconsideration at the time,
21 and --

22 THE COURT: But don't we have a change in law of the
23 state of Nevada?

24 MR. RANDALL JONES: Well, we have a change in the
25 status of the case, I agree with that based on the Supreme

1 Court ruling. They had a right to make their motion. They
2 didn't make it, so that's undisputable. They talk about
3 inherent authority, and they talk about cases from other
4 jurisdictions that talk about what a summary judgment means.
5 We certainly think those cases are clearly distinguishable,
6 and I can go through that if the Court wants me to take the
7 time to do it. But all you have to do is look at them. Even
8 the cases they cite from the Nevada cases to talk about other
9 issues, not a reconsideration of interlocutory order. So they
10 don't have any case authority. They're basically relying on
11 this so-called inherent authority of you to do what they want
12 you to do.

13 But, Your Honor, I've been in this situation where
14 this very thing has happened. And they have to -- at least as
15 far as I've seen in other matters, they have to wait until the
16 case is over, and then they have a right to appeal that issue.
17 So that's why it's too early. That's why it's premature.
18 They have -- they lost the issue-

19 THE COURT: But I've I got the right not to get
20 reversed again when I know it's wrong, because they already
21 issued a written decision saying, Judge, you've got to
22 consider these other things.

23 MR. RANDALL JONES: Well, here's the problem with
24 that argument, Your Honor. We never addressed -- "we" being
25 Sands China. Sands China was never given the opportunity to

1 address the specific other issues that were raised. And we
2 would --

3 THE COURT: Well, absolutely you get to have that
4 right in the renewed motion to dismiss that you're going to
5 file when the second amended complaint is actually served.

6 MR. RANDALL JONES: Well, here's what I see as the
7 procedural problem with that. They didn't move pursuant to
8 54(b) to take that issue up.

9 THE COURT: Correct.

10 MR. RANDALL JONES: They picked their poison, Judge.
11 And from my perspective --

12 THE COURT: It wasn't final, so it's interlocutory,
13 and I can change it at any time if I want.

14 MR. RANDALL JONES: Well, ultimately I guess you're
15 the judge, so you can make your rulings however you want to
16 make them. But it would seem to me that if they wanted to
17 appeal that issue they could have done exactly what they did
18 with Mr. Adelson. They could have asked you to certify it
19 pursuant to 54(b), which presumably you would have done,
20 because you did it on the other issue. And they didn't do
21 that. And so there should be no, if you will, attempt for
22 them now to come back after the fact and say, well, we got
23 this one reversed, let's go back to where we were before with
24 these other matters that we did not either reconsider or move
25 to certify.

1 So, Your Honor, I -- well, I obviously understand
2 from the Court that -- put it another way. It's pretty
3 obvious you're going to grant this motion, but we want to make
4 sure we have a full opportunity --

5 THE COURT: Absolutely.

6 MR. RANDALL JONES: -- to brief these issues that
7 were never briefed and decided by the Court before.

8 THE COURT: Absolutely. I'm not precluding anybody
9 from filing anything in their motions to dismiss that I know
10 are going to be filed soon.

11 MR. RANDALL JONES: Understood, Your Honor.

12 THE COURT: All right. Mr. Peek.

13 MR. PEEK: I really have nothing to add, Your Honor.

14 THE COURT: All right. The motion's granted given
15 the Supreme Court's opinion with respect to the Adelson
16 defamation claim, because in my mind they made a clarification
17 of the law that affects my prior decision, and I'm going to
18 learn from that opinion.

19 If we could now --

20 MR. PEEK: Your Honor, just as sort of a procedural
21 issue, because we still have the issue of the motion to amend
22 and the fifth claim for relief and Adelson, and so I'm just
23 trying to kind of put all the pieces of that puzzle together.

24 THE COURT: I allowed them to amend the fifth claim
25 for relief, except as to Mr. Adelson. That means when it's

1 served on you you want to file your motion to dismiss.

2 MR. PEEK: Now that we have this motion to
3 reconsider so we still get that opportunity, then, once the --
4 if and when you allow an amendment on the fifth claim for
5 relief, that would then trigger the motion to dismiss on --

6 THE COURT: I did allow the amendment on the fifth
7 claim for relief, just not as against Mr. Adelson yet because
8 of the remittitur issue.

9 MR. PEEK: Okay.

10 THE COURT: Though you will file whatever fulsome
11 motion you think is appropriate, Mr. Peek and Mr. Jones and
12 Mr. Morris, and then I'll --

13 MR. PEEK: Want to just make sure I clarify, Your
14 Honor.

15 THE COURT: Yeah. All right. Do you want to talk
16 about the motion to extend the stay?

17 MR. RANDALL JONES: Yes, Your Honor. Your Honor, as
18 you've already noted, you have now received some direction
19 from the Supreme Court as to what you believe you're supposed
20 to do as we proceed with this matter. And one of the things
21 that we believe was instructive and is important and relevant
22 to this motion that we've filed is a determination of prior to
23 any jurisdictional discovery hearing -- or, excuse me, any
24 sanction hearing in particular some further briefing to
25 determine what documents, if any, that have been requested --

1 THE COURT: I thought was going to do an in-camera
2 review based upon their opinion. That's what I have written
3 down to discuss at the end of today's hearing.

4 MR. RANDALL JONES: Well, I do want to discuss that
5 issue, Your Honor. What I was first referring to is the Macau
6 documents.

7 THE COURT: Right.

8 MR. RANDALL JONES: And the Supreme Court has
9 essentially adopted the Internationale versus Rogers.

10 THE COURT: That's part of my balancing test when I
11 consider Rule 37 sanctions, which I said when you guys were
12 here the last time.

13 MR. RANDALL JONES: I understand. So I certainly
14 would ask this Court if we extend the stay as it relates to
15 the sanctions hearing to allow us to brief those issues,
16 because we think those issues need to be briefed before any
17 such hearing, any sanctions hearing. Those are obviously very
18 important issues to all concerned, including the Court, and
19 that we now have a test that this Court is directed to follow
20 that we need to address before we ever get to that hearing.
21 That is certainly our position. We think that's a necessary
22 prerequisite before we get to that point. And so we would ask
23 that the sanction hearing be stayed until we're allowed to do
24 that.

25 THE COURT: Well, I have to stay the sanctions

1 hearing. I was going to stay the sanctions hearing and not
2 schedule it until after I finish the in-camera review. So I
3 think the two things -- if you want to file more briefs on the
4 Macau stuff, I'm always happy to read your briefs. The
5 problem I have is I'm going to have what is going to be a very
6 difficult task before me. I'm doing an in-camera review given
7 the instructions by the Nevada Supreme Court that merely
8 having a cc on a document isn't enough for a claim of
9 attorney-client privilege, which means I have to make a very
10 careful review of the contents of each of the communications.

11 MR. RANDALL JONES: I was -- actually I did plan to
12 bring that up. That's, what, Footnote 17, I believe, of --

13 THE COURT: So, I mean, I've got some things on my
14 plate that I need to be handling, and I'm going to -- it's
15 going to take me a little while to do the in-camera review.
16 It will take me longer than it usually does, because I'm also
17 getting ready for the CityCenter trial at the same time. I
18 have 6,000 people who filled out ability to serve
19 questionnaires, and next week 300-and-some will fill out the
20 first batch of the longer questionnaires. So I've got some
21 things. So I think you have time to do some briefing, because
22 I'm not going to schedule the sanctions hearing or the
23 evidentiary hearing until I finish the in-camera review. So
24 if you want to do briefing, I'm always going to consider
25 briefing, Mr. Jones.

1 MR. RANDALL JONES: All right. Well --

2 THE COURT: So if you want to file a motion for
3 instructions or whatever you want to call it, I'm happy to
4 read it.

5 MR. RANDALL JONES: So that brings up the ultimate
6 issue. With the ruling of the Supreme Court we now have an
7 issue to produce these documents and whether we need to
8 produce them immediately. We would ask the stay be extended
9 with respect to production of the Macau documents until we've
10 had the opportunity to do this briefing based upon these five
11 factors, in particular factor number one, which essentially
12 goes to relevance, and we think that there are certainly some
13 significant issues that need to be addressed there with
14 respect to these Macau documents, especially in light of the
15 new nerve theory center -- nerve center theory, excuse me,
16 that the plaintiff now seems to be asserting.

17 So, Your Honor --

18 THE COURT: I think that's part of their at home
19 analysis. I think it's all wrapped up together, which is one
20 of the reasons I denied both the motions for summary judgment,
21 because there appear to be genuine issues of material fact as
22 to where Sands China is at home.

23 MR. RANDALL JONES: Understood. And so my point is
24 simply that, in other words, we have a ruling that was from
25 last -- well, the spring of 2013 with respect to the Macau

1 documents. We would simply ask that the Court extend that
2 stay until we finish this process out and we've been allowed
3 to do this briefing.

4 THE COURT: Let just ask you a question. How long
5 is it going to take you to do that briefing? Your part. Not
6 Mr. Bice's part, just your part.

7 MR. RANDALL JONES: I would say, Your Honor, we
8 would like at least two weeks, if not three weeks.

9 THE COURT: So you want to file a brief in three
10 weeks or so.

11 MR. RANDALL JONES: Yes.

12 THE COURT: And then Mr. Bice will have three or
13 four weeks to file a brief, and then you'll file another
14 brief, then I'll have a hearing. So if we're talking about
15 60 days or 75 days or even 90 days, I think it's going to fall
16 in the same realm as this in-camera review of the Jacobs drive
17 that I'm going to have to now do. So if you want to file a
18 motion, I'm happy to discuss it with you if that's what you
19 want to do --

20 MR. RANDALL JONES: That's what we're asking.

21 THE COURT: -- and allow you a little bit of time
22 before you produce those documents. I've already made a
23 determination you should produce them. You said you're not
24 going to. I said, okay, that's bad, I'm going to sanction
25 you. So if you still don't want to produce them, that's okay,

1 I understand, but it's part of the analysis I go through when
2 I get to the sanctions hearing. Like I said before, I've got
3 to balance those issues.

4 MR. RANDALL JONES: Understood, Your Honor. And so
5 with the time frame the Court's provided, certainly 60 to 90
6 days, I think that's certainly acceptable. We would ask that
7 the stay be extended for that time period. And we --

8 THE COURT: And the only thing you're asking to be
9 stayed is my holding the sanctions hearing.

10 MR. RANDALL JONES: Well, I'm asking the Court to
11 stay two things, to stay the sanctions hearing during that
12 time period -- we would actually like -- we think that the
13 appropriate order of discussion would be the jurisdictional
14 hearing first. Because if the Court is --

15 THE COURT: No. We're doing the sanctions hearing
16 first.

17 MR. RANDALL JONES: Well, Your Honor, at a minimum,
18 then, we would ask that if the Court is unwilling to consider
19 doing the sanctions hearing second, then we would ask that the
20 Court do these two hearings simultaneously.

21 THE COURT: That may happen. Or I may do them
22 seriatim --

23 MR. RANDALL JONES: And, Your Honor --

24 THE COURT: -- because they have overlapping issues.

25 MR. RANDALL JONES: -- there's a reason for that,

1 and the reason for that -- not, you know, just because we'd
2 like to do it that way, the sanctions analysis is going to be
3 driven, we believe, by a substantial -- in a substantial way
4 by the jurisdictional analysis. And in fact if we're correct
5 that jurisdiction against Sands China is not appropriate, that
6 will have a substantial impact, we would hope, on this Court's
7 decision as to whether or not any sanction is appropriate.
8 And so to do it otherwise would not be fair to Sands China
9 under the circumstances.

10 THE COURT: Okay. There's going to be a sanction,
11 because I already had a hearing and I made a determination
12 there is a sanction. The question is the level of the
13 sanction, which is what I'm doing the hearing, and that
14 relates to the balancing that I have to do under Rule 37,
15 because you guys decided not to comply with an order after you
16 had notice and an opportunity to have everything that I wanted
17 to consider related to those documents. And it's okay. I
18 issued an order, it was in writing, you guys decided not to
19 appeal it. In fact, some of the sanctions that were required
20 under it were paid. And then we had an issue that you just
21 didn't want to comply, and so you redacted additional stuff.
22 And that's okay. You can make that decision. But making
23 those decisions have consequences, and that's what my
24 sanctions hearing is about.

25 MR. RANDALL JONES: Your Honor, I understand. I

1 want to make sure it's clear for the record we just didn't
2 decide not to comply with that order. There were compelling
3 reasons which we hope this Court would take into account in
4 any sanctions hearing whenever it's decided.

5 THE COURT: Absolutely.

6 MR. RANDALL JONES: And so with respect to this
7 process we are simply saying that the jurisdictional issues
8 and analysis will certainly have implications on any sanction
9 this Court might consider. We think that that is the most
10 appropriate way. If not having the sanctions hearing second,
11 that at a minimum these should happen seriatim as you've said
12 you were willing to consider. We would ask the Court to do
13 that, and we would ask that the Court, since the Court hasn't
14 made a ruling on sanction -- it doesn't sound like the Court
15 is willing to do that until it's heard, have the actual
16 hearing.

17 THE COURT: I'm not going to choose the type of
18 sanctions until I have the hearing and have the opportunity to
19 have the evidence I need to make the balancing determination
20 that I always make under Rule 37.

21 MR. RANDALL JONES: So that is -- we're requesting
22 that the Court continue the stay with respect to the -- any
23 sanctions hearing whether or not any sanctions occur before
24 that time -- it sounds like the Court is going to do that --
25 and at a minimum that these hearings occur simultaneously or

1 seriatim -- in seriatim, as you say, and that -- I think
2 that's our position, Your Honor.

3 THE COURT: All right. Thanks.

4 Mr. Peek, you don't want to add anything?

5 MR. PEEK: No, Your Honor, because this really is a
6 Sands China issue.

7 THE COURT: Thank you.

8 Mr. Bice, anything you want to say?

9 MR. BICE: I apologize Your Honor.

10 THE COURT: Do you want to say anything?

11 MR. BICE: I do. I apologize.

12 Your Honor, if this argument sounds familiar to the
13 Court, it certainly sounds familiar to us, because it's --
14 basically it's a repeat of Ms. Glaser's position long ago
15 before we knew about the documents being in Las Vegas. As
16 you'll recall, she wanted -- please, we implore you, please
17 hold this evidentiary hearing before what we knew were
18 documents that hadn't been disclosed. And you're basically
19 getting the same pitch today. This motion, Your Honor, on a
20 stay is moot. The Supreme Court has rejected their contention
21 about the MPDPA as being a defense to their production. As
22 you accurately point out, they have made a choice to violate
23 the Court's order, and what they're saying is, well, we think
24 that we have a sufficient excuse. Well, that's not simply a
25 question about what's going to be the degree of sanction,

1 because we certainly dispute that. In fact, we're going to
2 show you as part of that evidentiary hearing the
3 representations that they made to the Supreme Court about what
4 your order meant completely neutered it. And so we don't
5 think that this was some, well, we had compelling reasons
6 under the MPDPA to do it; their position to the Supreme Court
7 was your order actually only applied to documents that were
8 already in the United States, the very same documents that
9 they previously told you the MPDPA doesn't even apply to once
10 they're in the United States.

11 That's why this issue about the sanctions is
12 appropriate and it's important and it goes to -- it has to
13 precede the evidentiary hearing, because one of the things
14 obviously we're going to be seeking are some evidentiary
15 sanctions as a result of that issue based upon the personal
16 jurisdiction debate.

17 And so the basis -- there is no basis to stay. This
18 Court is going to schedule the evidentiary hearing on this
19 issue when it has time to do that, and that's when it should
20 be addressed. Because we have an additional issue coming back
21 to this issue about the in-camera inspection. As the Court
22 knows, one of the issues in the other writ where the Supreme
23 Court disagreed with the Court and said that you have to look
24 at these things --

25 THE COURT: They agree with Mr. Peek.

1 MR. BICE: They agree with Mr. Peek.

2 THE COURT: For the record, they agreed with Mr.
3 Peek.

4 MR. BICE: They did. And will acknowledge that no
5 matter how badly it --

6 MR. PEEK: Does it really hurt, Todd?

7 MR. BICE: -- causes me pain in the throat, they did
8 agree with Mr. Peek's position on this. I acknowledge that,
9 Your Honor. But what they also said was -- because you'll --
10 as Her Honor will recall, our principal position on this was
11 that they had long ago waived any claim of privilege. And the
12 Supreme Court even made the point in it's Footnote Number 9
13 that the District Court is going to have to -- that being Her
14 Honor, is going to have to make findings of fact about that
15 very issue. So as part of the sanctions hearing -- and again,
16 we think that this may moot much of the in-camera review that
17 Her Honor is planning to undertake, but that's obviously up to
18 Her Honor. But, nonetheless, as part of that sanctions
19 hearing that the Court is planning we also think that we have
20 to have a hearing on our position, the very first position we
21 advanced on this issue, is that they long ago waived any
22 entitlement to claim privilege regardless of who was the
23 holder. The Supreme Court in its decision merely addresses
24 who can, quote, unquote, "waive the privilege" or who can use
25 these documents affirmatively assuming that there is a

1 privilege to assert. Our point, as the Court will recall, was
2 they don't even have the ability to assert that, because
3 they've acknowledged that they knew about these documents for
4 a long, long time, and in fact they've always insinuated, and
5 the Court's even made comment on it, that they somehow they
6 knew what he took with him at the time of his departure, and
7 did nothing about it for more than a year, which under
8 analogous federal caselaw the courts have consistently said
9 that is a complete and wholesale waiver of any claim of
10 privilege.

11 So we're going to be asking the Court as part of
12 that evidentiary hearing about the sanctions aspect to be
13 holding an evidentiary privilege also -- or an evidentiary
14 hearing also about the waiver that we maintain existed, which
15 we also think would moot much of the Court's need to conduct
16 that in-camera review. And that's why we would ask to do that
17 more promptly, rather than later, because it might streamline
18 the process and it might save the Court some time on it.
19 Because if the Court agrees with us on that waiver issue, the
20 question about in-camera review would not be necessary.

21 So at this point, Your Honor, this motion for stay
22 is moot and it just needs to be denied.

23 THE COURT: We're really talking about scheduling
24 now.

25 MR. BICE: Exactly. That's right. But I don't want

1 there to be -- I mean, the concern I have is that they try and
2 use -- get you to say, well, I'm going to grant a stay.
3 There's no basis for a stay. The Supreme Court rejected their
4 position, and now --

5 THE COURT: Well, I have a stay on merits discovery.

6 MR. BICE: What's that?

7 THE COURT: I still have a stay on merits discovery.

8 MR. BICE: That's true. I thank the Court for its
9 time.

10 THE COURT: Mr. Jones, anything else?

11 MR. RANDALL JONES: Just briefly, Your Honor. I'm
12 compelled to just disagree with most of what Mr. Bice said
13 about what we've done and what --

14 THE COURT: Except that Mr. Peek was right.

15 MR. RANDALL JONES: Except for Mr. Peek was right.
16 I would agree with that part of his discussion.

17 Your Honor, without wanting to argue the issues of
18 sanctions or not, that's not the issue today, although
19 certainly that's a subject of the issue today. We certainly
20 disagree that we have waived any rights to privilege, and --

21 THE COURT: Don't you think we should brief it? I
22 know we've briefed it a little before, but, instead of me
23 pulling those briefs out of the file again, don't you think
24 you'd rather brief it again?'

25 MR. RANDALL JONES: We certainly would, Your Honor.

1 And that's part of what we're asking and one of the
2 justifications for extending the stay before the Court does
3 anything with respect to sanctions.

4 And I have to just make the point that I completely
5 disagree with Mr. Bice about truncating the in-camera review
6 process. I think the Supreme Court was very clear about that.

7 THE COURT: I don't get to do that. I have been
8 told to do it, so I'm going to do it.

9 MR. RANDALL JONES: That's the way I understood it,
10 Your Honor.

11 THE COURT: Second time I've been told to do an in-
12 camera review, and the last time took me a month of working on
13 that only with the exception of everything else.

14 MR. RANDALL JONES: And I don't want to belabor the
15 point, but to suggest that we have waived that privilege when
16 the Supreme Court specifically said not only have we not
17 waived that privilege, that this Court needs to actually go
18 and look at those documents to see where the privilege was
19 properly asserted.

20 THE COURT: All right. So the motion is denied as
21 to stay.

22 But as to the scheduling issues that it relates to I
23 concur with Mr. Jones that it is important that the in-camera
24 review and additional briefing occur prior to the sanctions
25 hearing occurring.

1 I am going to conduct the sanctions hearing prior to
2 starting the jurisdictional hearing, but it may be right
3 before. I'm not planning to have a whole lot of time between
4 those, but part of that is going to be my schedule and the
5 status of the briefing that I get. I don't have the briefing
6 yet, so I'm not going to commit to how exactly I'm going to
7 schedule them, but my thought is to do it right before,
8 because I've got witness issues and I've got common issues,
9 and I want to have those people all here at one time, okay.
10 So that's my thought process.

11 So I'm going to be getting briefs related to the
12 issues on the sanctions, Mr. Jones, you said in about three
13 weeks, we're going to set a hearing there, and then you and
14 Mr. Bice will agree to whatever briefing schedule you do, and
15 then I will move the hearing to accommodate that briefing
16 schedule.

17 I'm going to get briefs, Mr. Bice, from you on the
18 waiver of the privilege issue. Then you and Mr. Jones are
19 going to agree on whatever schedule you agree to, and then
20 we'll set the hearing for that.

21 How am I going to get the documents to do the in-
22 camera review?

23 MR. BICE: I'm going to allow Ms. Spinelli to
24 address that, Your Honor.

25 THE COURT: They're on some -- they're in the cloud;

1 right?

2 MR. RANDALL JONES: Yes.

3 MS. SPINELLI: Your Honor, they're with the Court's
4 vendor, Advance Discovery, so I don't know if -- I notice you
5 do electronic document review for your exhibits, but we could
6 arrange, obviously, a connection with the Court, or --

7 THE COURT: I need access.

8 MS. SPINELLI: Yes.

9 MR. RANDALL JONES: Your Honor --

10 THE COURT: I need whatever the code is.

11 MS. SPINELLI: Absolutely.

12 MR. RANDALL JONES: May I just make a suggestion?
13 Why don't we get with counsel and try to figure out a protocol
14 that's acceptable to both sides about how we get those
15 documents to the Court. Does that make sense?

16 THE COURT: Well, but aren't they stored
17 electronically right now?

18 MR. RANDALL JONES: That's my understanding. They
19 are with Advance Discovery.

20 THE COURT: I can review them electronically.

21 MR. RANDALL JONES: Well, I'm just saying, because
22 we haven't talked to Advance Discovery to find out the best
23 way to do that. If we -- if we work together, I think that we
24 could come up with a protocol that's acceptable to both
25 parties, and we can talk to the Court and find out what your

1 tech people the best way to do this.

2 THE COURT: Well, it won't be that hard. I just
3 need the access code.

4 MR. RANDALL JONES: I don't think so, either, but --

5 THE COURT: Here's the other two things that I need
6 in conjunction with that. Because it's been so long since
7 this motion was originally brought, I need a new version of
8 the privilege log. I would prefer it in a Excel spreadsheet
9 format. If you give it to me in Word, I can live with it. I
10 will not take it in .pdf or paper, because I have to be able
11 to create my own column as I go through and do the in-camera
12 review to make a ruling on each of the documents as I review
13 them. So I need that privilege log in Excel or Word.

14 With respect to the player list, since there are
15 people that I do not know who are included in the documents, I
16 need an identification of who they are and what their
17 positions are, and if they are counsel, to have that
18 specifically identified and what the scope of their work was.
19 That player list needs to be exchanged so that both sides have
20 the opportunity to view it. I have in prior cases had
21 litigation or arguments about whether people on the players
22 list really were who they said they were. And I anticipate
23 that that may be an issue that we have to address.

24 MR. PEEK: May I have a moment, Your Honor?

25 THE COURT: Yes. You can have as many moments as

1 you want, Mr. Peek.

2 (Pause in the proceedings)

3 MR. RANDALL JONES: Mr. Peek raises a question I
4 guess of the breadth of the player list is that there are only
5 certain documents in which they objected to an assertion of
6 privilege that are at Advance Discovery. And so --

7 MR. BICE: That's not true. We gave some examples
8 of the -- when we filed the motion --

9 THE COURT: That was my recollection. That was why
10 I was relieved to be able to find a way to make a wholesale
11 decision, which the Supreme Court disagreed with. So I'm
12 going to go through and do an --

13 MR. PEEK: So they're objecting to all of those
14 documents upon which we claim a privilege --

15 THE COURT: That's what I've always understood.

16 MR. PEEK: -- as opposed to specific ones on the
17 log.

18 THE COURT: That's why I told you I thought this
19 would be a very difficult review for me, because I've always
20 thought I was reviewing it all.

21 MR. PEEK: Yeah. I thought that was just a smaller
22 subset of that, Your Honor. So --

23 THE COURT: Why do you think I tried to take the
24 easy way out, Mr. Peek?

25 MR. PEEK: What's that?

1 THE COURT: Never mind. I didn't say anything.

2 So, Mr. Jones, how long to get me that stuff and
3 come up with some sort of plan for us to figure out how I'm
4 going to perform my obligations of doing an in-camera review?

5 MR. RANDALL JONES: Your Honor, can we -- because
6 I'm not the tech person, can we have -- today's Thursday --
7 can we have -- is it acceptable to the Court to give us week
8 so we can get with our tech people and --

9 THE COURT: Why don't we give you two?

10 MR. RANDALL JONES: That would even be better.

11 THE COURT: Okay. So can I have a status check with
12 you on August 28th for us to talk about the followup to my in-
13 camera review. The one thing I would like exchanged at least
14 two days prior to that hearing is your player list, because I
15 think the player list, if there's going to be motion practice
16 related to the identity of those persons or their scope of
17 their work, I want to do it sooner, rather than later, and I
18 want to do it before I start the in-camera review.

19 MR. RANDALL JONES: At 8:30, Your Honor?

20 THE COURT: Yes, please. That's what time I try and
21 start my calendars.

22 MR. RANDALL JONES: Just wanted to verify.

23 THE COURT: And I apologize to Judge Earl's
24 calendar, which starts at 9:00, because I only had two things
25 this morning.

1 MR. PEEK: So 8:00 o'clock on the 28th?

2 THE COURT: 8:30, Mr. Peek.

3 MR. PEEK: 8:30 on the 28th.

4 MR. PISANELLI: Your Honor, I've got something at

5 10:00, but can --

6 THE COURT: You don't have to come.

7 MR. PISANELLI: 8:30 is fine. Any way that we could

8 know that we go first, since it's just a status conference?

9 THE COURT: I only have one or two things every

10 Thursday. It just seems --

11 MR. PISANELLI: Yeah. But if Mr. Peek is on that

12 one in front of us, that could push us way back into the

13 afternoon.

14 MR. PEEK: I'm here on the 29th, I think, Your

15 Honor.

16 THE COURT: Are you?

17 MR. PEEK: On Parametric.

18 THE COURT: Yeah, probably. Mr. Peek's very happy

19 with the decision on the privilege for that case, too.

20 Okay. Anything else? And the DISH Network case.

21 MR. RANDALL JONES: Your Honor, I take it at the

22 status check that we will have more discussion about

23 potentially scheduling some hearings in the future.

24 THE COURT: I'm going to have to get into the

25 in-camera review before I know when I'm going to be able to

1 schedule the hearing, because part of what I've been saying
2 the whole time is those documents that are part of the Jacobs
3 material, if they're going to be released, need to be released
4 prior to the jurisdictional hearing in time for the
5 plaintiff's counsel to be able to review those documents,
6 digest it, and determine if they're going to use them. If
7 they're protected by the privilege, they won't get them. But
8 if some of them aren't, they get them ahead of the hearing,
9 and then we're going to have to have a discussion. So until I
10 know how long it's going to take me to do that in-camera
11 review that I've been ordered to do -- and I cannot at this
12 point, given my CityCenter trial, just set a month aside like
13 I did the last time was ordered to do this and do it, so it's
14 going to take longer.

15 MR. RANDALL JONES: Your Honor, the only other issue
16 I had is we've submitted competing orders on the summary
17 judgment motion.

18 THE COURT: I'd love to see them in Word format.

19 MR. RANDALL JONES: Your Honor, we will provide
20 that.

21 THE COURT: We've only received one side. So if you
22 would both email them to us.

23 MR. RANDALL JONES: We submitted ours and provided a
24 copy to the --

25 MR. BICE: We will get ours to you today, Your

1 Honor.

2 THE COURT: If you would both email them to me in
3 Word format.

4 MR. BICE: We will.

5 MR. RANDALL JONES: Your Honor, there was also --

6 THE COURT: Because if I decide I don't like your
7 order, I cut and paste and change.

8 MR. RANDALL JONES: There was -- there was a motion
9 to seal, also, and also --

10 THE COURT: There is a motion to seal and a motion
11 to undesignate as confidential. I was holding that for last.

12 MR. RANDALL JONES: That's the only thing that I'm
13 aware of that still needs to be addressed.

14 THE COURT: The motion to seal is granted.

15 The motion to unseal is denied at this time without
16 prejudice to renew it at a later point in time after I finish
17 the jurisdictional hearing. At this point I'm going to leave
18 it sealed.

19 MR. RANDALL JONES: Your Honor, my question would be
20 is the protocol -- we presume the protocol is still in place,
21 and we would --

22 THE COURT: Absolutely.

23 MR. RANDALL JONES: We simply -- if they would sit
24 down with us and have a meet and confer, it may make that
25 motion moot. So we would --

1 THE COURT: It may.

2 MR. BICE: Yeah, we agree that the protocol is in
3 place, but, unfortunately, every document is designated as
4 confidential in disregard of the order.

5 THE COURT: I know, Mr. Bice. I know. And I have
6 not at this point gone through and parsed which ones should or
7 should not. At some time, unfortunately, I'm going to
8 probably have to do that if you don't reach an agreement.

9 MR. RANDALL JONES: And, Your Honor, I don't
10 appreciate Mr. Bice's comment "in disregard of the order." We
11 disagree with that statement, as you can imagine.

12 THE COURT: All right. So some day we're all going
13 to get together and have a nice discussion and work this out.
14 In the meantime, I look forward to seeing you in two weeks at
15 a status check. Have a nice day.

16 If we receive the remittitur before then, Mr.
17 Morris, then I will address on fairly short notice the issue
18 related to the fifth claim for relief in the current second
19 amended complaint as against Mr. Adelson.

20 MR. MORRIS: Very good. Thank you, Your Honor.

21 MR. BICE: Thank you, Your Honor.

22 THE PROCEEDINGS CONCLUDED AT 9:34 A.M.

23 * * * * *

24

25

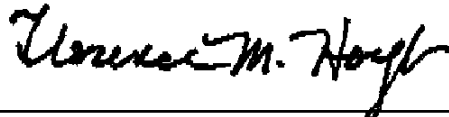
CERTIFICATION

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

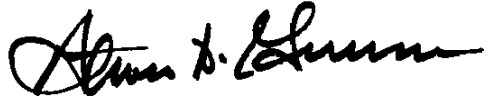
AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER



CLERK OF THE COURT

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Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**NOTICE OF ENTRY OF ORDER ON
DEFENDANT SANDS CHINA, LTD'S
MOTION FOR SUMMARY JUDGMENT
ON PERSONAL JURISDICTION AND
PLAINTIFF'S COUNTERMOTION FOR
SUMMARY JUDGMENT**

Hearing Date: July 29, 2014

Hearing Time: 8:30 a.m.

PLEASE TAKE NOTICE that an "Order on Defendant Sands China, Ltd.'s Motion for Summary Judgment on Personal Jurisdiction and Plaintiff's Countermotion for Summary Judgment" was entered in the above-captioned matter on August 15, 2014, a true and correct copy of which is attached hereto.

DATED this 15th day of August, 2014.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice

James J. Pisanelli, Esq., Bar No. 4027

Todd L. Bice, Esq., Bar No. #4534

Debra L. Spinelli, Esq., Bar No. 9695

3883 Howard Hughes Parkway, Suite 800

Las Vegas, Nevada 89169

Attorneys for Plaintiff Steven C. Jacobs

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 15th day of August, 2014, I caused to be served via the Court's E-Filing system a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER** to the following:

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

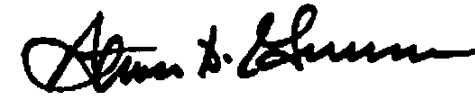
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/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

EXHIBIT 1



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**ORDER ON DEFENDANT SANDS
CHINA, LTD.'S MOTION FOR
SUMMARY JUDGMENT ON
PERSONAL JURISDICTION AND
PLAINTIFF'S COUNTERMOTION FOR
SUMMARY JUDGMENT**

Hearing Date: July 29, 2014

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

Before the Court is Defendant Sands China, Ltd.'s ("SCL") Motion for Summary Judgment on Personal Jurisdiction (the "Motion") and Plaintiff Steven C. Jacob's Countermotion for Summary Judgment (the "Countermotion"). Each side agrees that the stay directed by the Nevada Supreme Court does not preclude this Court from resolving the jurisdictional issue by way of summary judgment. Accordingly, on July 29, 2014, the Court heard oral argument and considered all briefing on the Motion and Countermotion and now, being fully informed, and good cause appearing therefor:

THE COURT RULES as follows:

1. Because the Court believes there are genuine issues of material fact, the Court needs to conduct an evidentiary hearing and to make findings of fact on the issues of general, specific, and transient jurisdiction with respect to SCL as has been directed by the Nevada Supreme Court.

2. For the purposes of general jurisdiction, issues of fact remain including, nonexclusively, the location of the SCL board meetings, where the officers were conducting their business, and where the oversight of day-to-day activities was occurring to make a determination as to where SCL was at home.

3. For the purposes of specific jurisdiction, issues of fact remain including, nonexclusively, where SCL's decision-making process occurred, the delivery of that decision-making process, and the impact of the delivery of that decision-making process in Nevada.

4. For the purposes of transient jurisdiction, issues of fact remain including, nonexclusively, the extent and nature of Michael Leven's responsibilities and day-to-day activities on behalf of SCL, as he is the individual that was served with Summons and Complaint in this matter.

THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

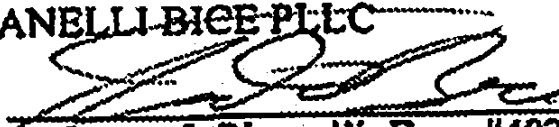
- Defendants' Motion is DENIED without prejudice; and
- Plaintiff's Countermotion is DENIED without prejudice.

DATED: 08/15/14

THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

PISANELLI BICE PLLC

By: 
James J. Pisanelli, Esq., #4027
Todd L. Bice, Esq., #4534
Debra L. Spinelli, Esq., #9695
Jordan T. Smith, Esq., #12097
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

A-10-627691-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

September 09, 2014

| | |
|---------------|------------------------------------|
| A-10-627691-B | Steven Jacobs, Plaintiff(s) |
| | vs. |
| | Las Vegas Sands Corp, Defendant(s) |

September 09, 2014 8:00 AM Minute Order: In Camera Review

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

PARTIES None. Minute order only – no hearing held.

PRESENT:

JOURNAL ENTRIES

- Court commenced in camera review. Players List MARKED as Court's Exhibit 1 and Privilege Log MARKED as Court's Exhibit 2. (See worksheet.)

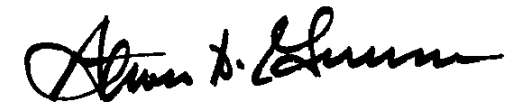
CLERK'S NOTE: A copy of the above minute order was distributed via electronic mail to Todd Bice, Esq.; James Pisanelli, Esq.; Debra Spinelli, Esq.; Jordan Smith, Esq.; Jon Randall Jones, Esq.; Mark Merrill Jones, Esq.; Steve Morris, Esq.; J. Stephen Peek, Esq.

PRINT DATE: 09/09/2014

Page 1 of 1

Minutes Date: September 09,
2014

SA0822



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

TELEPHONE CONFERENCE

TUESDAY, SEPTEMBER 9, 2014

APPEARANCES:

FOR THE PLAINTIFF:

DEBRA SPINELLI, ESQ.
JORDAN SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
SPENCER GUNNERSON, ESQ.
IAN MCGINN, eSQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 9, 2014, 2:43 P.M.

2 (Court was called to order)

3 THE COURT: Good afternoon, counsel. Can I do a
4 roll call, please.

5 MS. SPINELLI: Yes, Your Honor. Debra Spinelli and
6 Jordan Smith on behalf of plaintiff Mr. Jacobs.

7 MR. RANDALL JONES: Good afternoon, Your Honor.
8 Randall Jones, Mark Jones, Spencer Gunnerson, and Ian McGinn
9 on behalf of Sands China.

10 THE COURT: Is there anybody else on the phone?

11 Okay. This morning, I had marked as Court's
12 exhibits the drives that the privilege log came on as Court's
13 Exhibit 1, and the drive that the party list, which is called
14 a capacity chart, as Court's Exhibit 2. So far I've been
15 through about 150 documents, and my IT people and Advance
16 Discovery people have talked about what I call the blue ring
17 of death that I have been receiving on certain documents which
18 cause my computer to freeze. I think those issues have been
19 resolved. But I have a couple other issues, so let me ask
20 some questions.

21 Mr. Joneses, Messrs. Jones --

22 MR. RANDALL JONES: Yes, Your Honor.

23 THE COURT: -- because I don't know if this is a
24 Mark or a Randall question, who prepared the --

25 MR. RANDALL JONES: One of us will answer it, I

1 hope.

2 THE COURT: Who prepared the privilege log?

3 MR. RANDALL JONES: The original privilege log was
4 prepared by Munger Tolles. We -- unfortunately, neither our
5 firm or Mayer Brown had any input into that. I don't even
6 believe Steve Peek had any input into that when it was filed
7 way back when.

8 THE COURT: I've got to say, guys, it's a really
9 awful privilege log, and some of the decision-making process
10 that seems to relate to whether a document was privileged or
11 not seems to be missing. So let me ask a couple other
12 questions.

13 In reviewing documents in association with the
14 privilege log I have been relying upon what I've marked as
15 Court's Exhibit 2, the Advance Discovery capacity chart, which
16 in some locations has the words "counsel," and in some
17 locations has the word "attorney." Is it your positions,
18 Messrs. Jones, that that is the extent of those individuals
19 for whom you are relying on the fact they are attorneys?

20 MR. RANDALL JONES: Well, Your Honor, based on our
21 understanding of the log prepared by Munger Tolles, that would
22 be an indication that they were -- there were attorney-client
23 privilege in those communications.

24 THE COURT: Well, yeah. But part of what I have to
25 do as someone who doesn't know all the people who were

1 involved in the communications is I have to rely on you to
2 tell me who the attorney is or the counsel is. And usually I
3 use that by looking at this thing called a party list.

4 MR. RANDALL JONES: Right.

5 THE COURT: So is there someplace else that you
6 would like me to look at to determine if there are people who
7 are parties or counsel besides the document entitled Advance
8 Discovery Capacity Chart, dated August 26, 2014?

9 MR. RANDALL JONES: Well, are you -- well, I think
10 we're talking about the same thing, but the players list is
11 the other document we got to the Court, the so-called players
12 list.

13 THE COURT: It doesn't have the words "players list"
14 on it.

15 MR. RANDALL JONES: Well, I think it's called, yeah,
16 the capacity -- we use the "players list" as kind of a
17 shorthand reference to it.

18 THE COURT: That's the words I usually use. But
19 since this has the title of Advance Discovery Capacity Chart,
20 that's the one I'm using, even though I've marked it as
21 Court's Exhibit -- Dulce says it's Court's Exhibit 1.

22 MR. RANDALL JONES: Yeah. I think that's 2. I
23 can't remember whether it's 1 or 2, but --

24 THE COURT: She says it's Court's Exhibit 1. I may
25 have misspoken.

1 So in determining whether an attorney is involved in
2 a communication are you believing that I can look at the
3 privilege log and the Advance Discovery Capacity Chart to make
4 that determination, or do you expect me to go to some other
5 place beyond the privilege log, the party list, and the
6 document I'm reviewing?

7 MR. RANDALL JONES: Well, Your Honor, again, this is
8 Randall Jones. It is our understanding that you would look at
9 both of the places you referenced. And just to clarify, one
10 of the reasons -- and that's why we're trying to do this log,
11 to make it more clear and make it easier for the Court to do
12 -- go through the process you just described, because when we
13 looked at those things -- I think they're even referenced in
14 the protocol we gave to the Court, using the "attorney" and
15 "counsel" reference as an example, where we could make that
16 more clear to the Court to make this process more efficient
17 for the Court. And all I could tell you is in hindsight we
18 apologize and we wish -- and part of this we understand,
19 having not been involved at the time, that it was due to some
20 of the -- the way the protocol was set up that Munger Tolles
21 wasn't able to provide all that information at the time they
22 created the log. But I understand that doesn't help you now.

23 THE COURT: Well, the log's pretty awful. So let me
24 ask another question. Is Robert Goldstein an attorney?

25 MS. SPINELLI: No, Your Honor.

1 MR. PEEK: He is not, Your Honor.

2 THE COURT: He's not. Okay. All right. Because --

3 MR. RANDALL JONES: There's a Robert -- a Robert

4 Rubenstein that is a -- or Rubenstein, I'm sorry, that is a

5 lawyer for the company, but not --

6 THE COURT: Right. No. I understand. But in

7 reading a couple of the entries I was concerned about were

8 there was an attorney that was involved there whose name

9 didn't appear as attorney or counsel on any lists, and some of

10 the attorney-client claims don't involve an attorney on any of

11 the document that's anywhere from what I can read.

12 So anything else? I was just trying to find out if

13 there was a third place I needed to look that I was missing.

14 MR. RANDALL JONES: I don't believe so. This is

15 again Randall Jones for the record. I don't believe so.

16 THE COURT: Okay. So then I'm going to --

17 MR. RANDALL JONES: Other than stuff we could

18 clarify that again in a rolling production to the Court to try

19 to keep ahead of the Court, we intended to try to do that.

20 THE COURT: All right. So let's talk about that,

21 which is why Laura started the conference call earlier today.

22 How do you intend to give me something that tells me you've

23 reviewed some additional documents and changed your mind on

24 how to describe them?

25 MR. GUNNERSON: Your Honor, this is Spencer

1 Gunnerson. I've been working to try and get this worked out
2 here, working with Mayer Brown on this. What we're putting
3 together right now is we're putting together as we provide you
4 with these rolling sections of the privilege log to get some
5 highlights -- we're adding two additional columns and some
6 highlights to hopefully explain a little bit better exactly
7 what it is that's going on as we're doing these rolling
8 productions, for example, providing --

9 THE COURT: Well, wait. No. What I need to know is
10 when are you going to give them to me. Because you gave me
11 one today, but the problem with the one you gave me today is
12 it's for the entire privilege log. And I'm already moving way
13 past that, because I've been working.

14 MR. GUNNERSON: Right. Well, we're getting -- all I
15 know is that we're getting them to you as quickly as they're
16 coming back from the reviewers, the attorneys at Mayer Brown
17 who's looking at them. We'd love to get ahead of you on it,
18 and if we're not ahead of you, I guess we're not ahead of you.
19 But we're getting them to you as quickly as they're getting
20 reviewed.

21 THE COURT: No. Wait. Let me see if I can ask this
22 question again. So when you give me something please only
23 give me that stuff that has been changed, rather than giving
24 me the whole thing, because otherwise I won't be able to tell
25 what you changed.

1 MR. GUNNERSON: Understood. So what you're looking
2 for is only the entries -- okay, only the entries that have
3 additions made to them, not -- you don't want to see any
4 entries that are as exactly as they're provided in the
5 original privilege log?

6 THE COURT: Yes. Because I won't be able to
7 identify what's been changed if you give me things that
8 haven't been changed.

9 MR. GUNNERSON: Okay. Understood. We were going
10 about it a different way in that we were going to provide, you
11 know, a highlight and a system to allow you to understand what
12 changes had been made. But I understand where you're coming
13 from, and we can do that.

14 MR. RANDALL JONES: Well, Your Honor, this is
15 Randall Jones. Would it be helpful in addition to -- since
16 we're already trying to do this other, as well, would it be
17 helpful to the Court to not only give you the -- only the
18 items that have been changed or the lines that have been
19 changed, but also have a code to show you how they've been
20 changed so you would be able to direct your attention -- for
21 example, if we have an attorney that had been identified only
22 in the previous log as attorney and we have been able to
23 change that to show who the attorney is, would that be helpful
24 to you?

25 THE COURT: No. Because when you have an attorney I

1 can generally -- if it says on the players list they're an
2 attorney, I can then look at the document to see if it relates
3 to rendition or providing of some sort of legal advice. And
4 it's fairly easy once that occurs, as long as I know they're
5 an attorney.

6 MR. RANDALL JONES: Understood, Your Honor. So we
7 understand the primary goal here is to get you only the log as
8 it relates to changes and not have anything else included on
9 the new log so you don't get confused in what you're looking
10 at.

11 THE COURT: Well, and let me give an example for you
12 guys to look at. Hold on. I'm trying to page over from on my
13 log that -- see, I have a log that I'm working on that has
14 rulings on it, which is why I really don't want a whole new
15 log from you. 24125 is one of a number of examples of what I
16 would call as computerized outlook meeting notice or meeting
17 requests. For some reason somebody, I have no idea who,
18 thought every time a meeting was requested if an attorney was
19 involved in the request of those people who might attend the
20 meeting the simple email that says from person requesting a
21 meeting in X room at this time on this day is a privileged
22 document. Now, I certainly understand why if there were
23 communications at the meeting there might be privileges or if
24 there were attachments to that they might be privileges, but
25 that's the kind of problems that I'm dealing with in this

1 rodeo, counsel, and, you know, hopefully the change that
2 Advance Discovery has recommended to me will help me get past
3 the blue ring of death that I've been dealing with most of the
4 day, but part of my frustration has to do with what I would
5 call overreaching in the designation.

6 MR. RANDALL JONES: I -- this is Randall Jones for
7 the record. I understood the example you gave, Your Honor,
8 and we will -- to the extent that that's not something that
9 Mayer Brown is already looking at, we will make sure to pass
10 that along to them immediately.

11 THE COURT: All right. Well, if you send me changes
12 that you make and only changes that you have made to the
13 privilege log, I will then rereview those if I've already
14 reviewed them or incorporate them as I go.

15 Anything else?

16 MR. RANDALL JONES: Your Honor, what if -- what if
17 we remove documents from the privilege log? One of the ideas
18 was to --

19 THE COURT: Yes. If you've made a decision that
20 you're not going to claim privilege anymore, just let me know,
21 and I will try and cross them off my list, which is different
22 than the privilege log that you've sent me, and then I can
23 delete them from my list or have Dan or Laura do it.

24 MR. RANDALL JONES: All right. We'll then include
25 -- whatever we roll out to you will include a reference to any

1 documents that have been deleted just as a separate item.

2 THE COURT: All right. Okay. Anything else?

3 MS. SPINELLI: Your Honor, this is Debra Spinelli.

4 I just have a question. When we were talking before at the
5 last conference call and at the last status hearing about
6 Sands China revising its privilege log our understanding was
7 that while you were reviewing the documents that were totally
8 withheld that they were going to be looking at the redacted
9 documents and adjusting their privilege log. I didn't
10 anticipate that there would be this much confusion with the
11 withheld documents. But can I get clarification about whether
12 or not the Sands China is at the same time right now reviewing
13 the redacted privilege log so that Your Honor's review of that
14 second group of documents isn't this complicated?

15 THE COURT: I was told not to --

16 MR. RANDALL JONES: Yes, Your Honor. This is
17 Randall Jones. There's a separate team that is doing the
18 redactions, and they are -- that has been ongoing since I
19 understand last week, so --

20 MR. MARK JONES: And I think they have a little more
21 training to do -- this is Mark Jones -- but that's going to
22 happen I think in the morning. But that is in the process,
23 and that is being done separately, correct.

24 THE COURT: Okay. We've got to put you on hold for
25 a second, guys. Hold on.

1 (Pause in the proceedings)

2 THE COURT: Are you guys back?

3 MR. RANDALL JONES: We're here.

4 THE COURT: All right. So I was understanding that

5 I was not to start on the documents where there were

6 redactions needed yet until you guys finished whatever you

7 were working on, so I have been skipping those on my list.

8 MS. SPINELLI: Yes, Your Honor. That's right. That

9 was the parties' agreement.

10 THE COURT: All right. Well, if and when I finish

11 the first part, because, as I said, I didn't make as much

12 progress today as I had hoped to make because of the blue ring

13 of death -- and, by the way, I'm going to trademark that and

14 sell T-shirts -- I just have not made as much progress as I

15 had hoped because of the technical issues.

16 MS. SPINELLI: Sure. And, Your Honor, my only

17 question -- I only questioned that because we didn't

18 understand that there would be revised privilege logs based

19 upon the statements that Sands China was standing by its log

20 at the last hearing.

21 THE COURT: Well, one would hope that somebody would

22 look at the log and realize it had significant problems.

23 MS. SPINELLI: We did that, Your Honor.

24 THE COURT: No, not just you.

25 All right. Anything else?

1 MR. PEEK: Your Honor, we had discussed this --

2 MR. RANDALL JONES: When we had the opportunity --
3 this is Randall Jones for the record. We had the opportunity
4 we obviously did with hindsight we'd have had the opportunity
5 to do that sooner. But we appreciate the Court working with
6 us to try to get this fixed as quickly as possible.

7 THE COURT: All right.

8 MR. PEEK: Your Honor --

9 MR. RANDALL JONES: And I think Mr. Peek joined us
10 after you had asked for appearances, so he is on the phone, I
11 believe.

12 THE COURT: Anybody else on the phone?

13 MR. PEEK: I joined, Your Honor, but a little late,
14 because I didn't see the invite until late. But I did join
15 about three minutes in.

16 Just a comment. We had discussed at least 10 days
17 ago in our meet and confer with Debbie and Todd that we were
18 giving serious consideration to reviewing the log for those
19 purposes that Randall has already described, which is to make
20 corrections, as well as to remove documents, if need be.

21 THE COURT: Well, are you guys going to remove a
22 significant number? Because, if so, I'm going to stop.
23 Because it's waste of my time if you're going to remove a
24 significant number.

25 MS. SPINELLI: And, Your Honor, that's the very

1 reason why you asked the question to Mr. Jones whether or not
2 Sands China was choosing to stand by their privilege log. And
3 he said that they were. So that's our confusion today, as
4 well. We've always said the privilege log was deficient. So
5 -- and this will be an argument that you'll get in our brief
6 on Friday with regard to waiver.

7 THE COURT: I'm not worried about deficiency of the
8 privilege log in this discussion, Ms. Spinelli. I'm only
9 worried about whether Sands China is going to voluntarily
10 decide that certain of the documents maybe somebody was
11 overzealous in making the claim of attorney-client privilege.
12 Because if you think there's going to be a lot of documents,
13 I'll stop.

14 MR. RANDALL JONES: What I could tell you, Your
15 Honor, is that that's precisely why we did actually want to
16 review it. And it has appeared that we are deleting -- when I
17 say we, our co-counsel is deleting a number of documents.
18 They have already.

19 THE COURT: Well, how much percentagewise, Mr.
20 Jones?

21 MR. GUNNERSON: We don't know that.

22 MR. RANDALL JONES: Oh. I'm sorry. I thought there
23 was some that had been deleted this morning.

24 MR. GUNNERSON: They may. We do not know that.

25 MR. RANDALL JONES: All right. Well, what we will

1 do, Your Honor, is we will endeavor after we get off this line
2 to get a hold of the people at Mayer Brown that are actually
3 doing this and try to get some indication from them on a
4 percentage basis even of the amount that they've gone through
5 thus far what percentage they found that would be appropriate
6 to delete, and we will -- if it's appropriate with everybody
7 on the phone, we can convey that by an email to everybody and
8 just try to save -- assuming we can get that information, just
9 say, so far they've looked at this many documents and this
10 percentage appears to be overinclusive, and that may give the
11 Court some indication of what we could expect out of the
12 whole. I think that's the best I can tell the Court right
13 now.

14 THE COURT: How about this? I wait and see if we
15 get such an email from you, and then after I review that
16 email, if it's copied on all counsel, I may have a further
17 discussion with you about whether I will continue given some
18 of the issues that I've seen with the privilege log. And I'm
19 -- as I said, I'm only up to about 150 documents of 2500 in
20 those that do not need information about redactions.

21 MR. RANDALL JONES: Very well, Your Honor. We'll
22 get right on the phone and see if we can get that information
23 to the Court so you'll have a better idea of what to expect.

24 THE COURT: All right. Thank you. Have a nice
25 afternoon.

1 MR. PEEK: Hey, Randall, are you in the office?
2 MR. RANDALL JONES: I am.
3 MR. PEEK: I'll call you.
4 MR. RANDALL JONES: Thank you, Your Honor.
5 THE PROCEEDINGS CONCLUDED AT 3:00 P.M.
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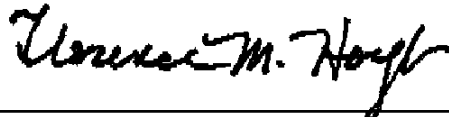
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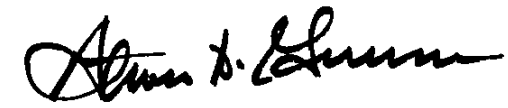
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

TELEPHONE CONFERENCE

WEDNESDAY, SEPTEMBER 10, 2014

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.
DEBRA SPINELLI, ESQ.
JORDAN SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
SPENCER GUNNERSON, ESQ.
IAN MCGINN, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 10, 2014, 1:27 P.M.

2 (Court was called to order)

3 MR. PEEK: Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 Can I do a roll call, please.

6 MR. PEEK: Stephen Peek on behalf of Las Vegas Sands
7 and Sands China Limited.

8 MR. MARK JONES: Your Honor, good afternoon. Mark
9 Jones and Spencer Gunnerson and Ian McGinn on behalf of Sands
10 China Limited.

11 MS. SPINELLI: Good afternoon, Your Honor. Debra
12 Spinelli, Todd Bice, and Jordan Smith on behalf of Mr. Jacobs.

13 THE COURT: Mr. Jones, I have to --

14 MR. PEEK: I feel naked, Your Honor. I don't have
15 enough people in my --

16 THE COURT: Yeah. Thanks, Mr. Peek.

17 THE COURT: Mr. Jones, I have to tell you that your
18 name was taken in vain during an argument this morning on a
19 preliminary injunction. For some reason they thought you must
20 own a Cadillac dealership. And those of us who were here from
21 Las Vegas corrected them.

22 MR. MARK JONES: Well, Your Honor, lots of Mark
23 Joneses. Believe me, that's not the first time my name's been
24 wrongfully said in vain. Yes, it's interesting. But, no, not
25 me.

1 THE COURT: All right. Well, I have received
2 information that there's about a 25 percent medication rate it
3 looks like. Is that right?

4 MR. MARK JONES: Your Honor, yes. We've been in
5 touch with the people that are doing this, and that is --
6 based upon the review that has been done to date that is the
7 estimate.

8 THE COURT: I'm inclined to wait for the revised
9 privilege log, then.

10 MR. BICE: Your Honor, this is Todd Bice. And I
11 apologize I wasn't on the call the other day with the Court.
12 I understand the Court's inclination to wait for a revised
13 privilege log. I guess the question -- or my concern about
14 that is we were told, obviously, that the privilege log --
15 that they were standing on the privilege log, and now they say
16 that they're going to withdraw 25 percent of it and they're
17 going to wait for a revised -- or they're asking you to wait
18 for a revised log.

19 THE COURT: No. I'm saying I'm going to wait for a
20 revised log.

21 MR. BICE: And we don't understand why the party
22 that didn't do the log the first time and didn't correct it
23 for the last two years is getting the benefit of doing that.
24 I understand that that's a burden on the Court, but I would
25 think that -- you know, the purpose of a log is to establish a

1 prima facie claim of privilege. The log plainly doesn't do
2 that on -- I haven't gone through and counted how many
3 documents, but it is a vast number of them, perhaps even a
4 majority of them on this log. And so, you know, our
5 frustration is, Your Honor, is that this seems to be a reward
6 for not doing the log the first time and then not fixing it
7 for the last two years.

8 THE COURT: I understand, Mr. Bice.

9 So, Mr. Jones, when do you think the final revisions
10 to the current privilege log are going to be available so that
11 Advance Discovery can modify the buckets I'm looking at?

12 MR. MARK JONES: Your Honor, I anticipated that you
13 might ask this question. We did, and I have made numerous
14 calls and sent out numerous emails. I have not heard back yet
15 from the people that are on the front line of that. I know
16 there are many, many people involved in the process in
17 addition to another team that is working on the redactions log
18 separately. I know that -- you know, and maybe -- I just
19 thought about it. Maybe we can address that at the same time.
20 I recall that we represented to the Court based upon my
21 understanding that the redactions log would be finished within
22 -- I think we were thinking about seven to ten days from the
23 time of --

24 THE COURT: I guessed two weeks.

25 MR. MARK JONES: -- you know, when there was

1 availability for them. I can check on that. I don't know,
2 but we anticipated changing the bucket out, and that's
3 probably within about another week.

4 With regard to your specific question, Your Honor, I
5 do not know. I would hope to know within the next couple of
6 hours, and I will certainly get the information as fast as I
7 have it. I just do not know for this call.

8 THE COURT: Okay. Well, I was told that the
9 redactions would probably be done two weeks from
10 September 2nd, which makes it next Tuesday or Wednesday.

11 MR. MARK JONES: Yes, Your Honor.

12 THE COURT: So if I get those, then I can start o
13 the redactions next week when I get them. But I do need an
14 update on the privilege log, because I'm, you know, rapidly
15 running out of time, as I keep telling you guys, to do this.

16 MR. MARK JONES: I understand, Your Honor. And --
17 well, I very much understand, and we're doing everything that
18 we can to expedite this process. I can only -- otherwise I
19 would like to add, if I may, Your Honor, that a couple of
20 hours ago we lodged with the Court and delivered to your
21 chambers what we're calling this first group of additions to
22 the entries on the privilege log, and we believe that those --
23 and there are 318 entries there. On the bucket we're talking
24 about we think that they might -- we think, of course, that
25 they address what you wanted yesterday, and if you might

1 otherwise be inclined to look at those to get started and
2 that's not exactly what you're looking for, then, of course,
3 please let us know, and we will do it exactly the way you want
4 it.

5 THE COURT: Well, because I was in a preliminary
6 injunction hearing this morning, I didn't get to look at it
7 yet. So as soon as we get off this call I'll see if we can
8 load my drive that I have for my in-camera review.

9 MR. MARK JONES: And, Your Honor, one last thing in
10 anticipation so hopefully we can shorten the number of calls
11 that we might have, if the answer that comes back is that the
12 entire log will be revised and all of the documents taken out
13 that need to be taken out in a date that's -- our thought was
14 -- I mean, we will continue in the meantime to do this,
15 because I guess we've got to do that anyways, we will continue
16 to do these new rolling updates, and maybe that will be of
17 some efficient benefit to you.

18 THE COURT: Well, if you guys do a rolling update
19 and you have changed your revisions, then I will start from
20 the first rolling update so that I am wasting 25 percent of my
21 time.

22 MR. MARK JONES: Yes, Your Honor. And we'll --

23 THE COURT: See what I'm saying?

24 MR. MARK JONES: We're also working on a separate
25 document that will list those documents that are being taken

1 off the log, as well, and that will be on a rolling basis.

2 MR. PEEK: Your Honor, I understand, though, that
3 what you're really saying is that you'd rather wait until we
4 complete our review of all of the documents and give you a
5 brand-new, updated with documents removed, information correct
6 in the log for you to start really on that review. Am I -- as
7 opposed to this rolling that Mr. Jones is talking about?

8 THE COURT: No. You're wrong, Mr. Peek.

9 MR. PEEK: Okay. So you still want the rolling.
10 Okay.

11 THE COURT: If I get the rolling which deletes
12 documents that are not on it but starts from the beginning and
13 then, you know, is sequential, then I can look at that segment
14 of those in the bucket by number, because I have the control
15 number and I'm looking at what has been provided to me. It
16 only has two things on this document that I'm looking at, Mr.
17 Jones. It has a column called "Control Number," and then it
18 has a "Privilege Log Description."

19 MR. MARK JONES: Yes, Your Honor.

20 THE COURT: That's all it has. It doesn't have
21 anything else.

22 MR. MARK JONES: And that is right. Those are the
23 only changes for those numbers because we understood that's
24 what you wanted from yesterday.

25 THE COURT: So here's the problem with what you've

1 given me, which is called First Group of Additions to Entries
2 on the AD Privilege Log, is it doesn't identify all the things
3 necessary for the privilege log which were in the prior
4 columns.

5 MR. MARK JONES: And we were -- we were not -- and,
6 Your Honor, in good faith, from yesterday all we understood --
7 this is what we thought that you wanted based upon -- that you
8 didn't want any additional information. So if we
9 misunderstood that, we're sorry. You would like that column,
10 as well?

11 THE COURT: Well, here's the reason -- what I would
12 like you to do, and I guess I'm not saying this very clearly,
13 since clearly you and Mr. Peek both misunderstand me, I would
14 like the privilege log format that was previously used, but
15 only with the numbers that you intend to continue to make the
16 claim of privilege on. So if you're giving me a rolling
17 addition, this first group of additions to entries on the AD
18 privilege log should mirror the format that was previously
19 given to me, i.e., it has the date, it has the recipient, it
20 has the sender, it has the cc-s, and it has anyone else who
21 may have had access to the document, as well as the privilege
22 log description, which is now much more thorough than what it
23 was before. Because right now I have essentially -- the first
24 column and the last column of the privilege log is what's on
25 the first group of additions that you've given me. I don't

1 have any of the middle. So I can't use just the first group
2 of additions without going back to the old privilege log and
3 trying to follow it.

4 MR. MARK JONES: Understood, Your Honor. And we
5 cannot have that out to you -- and, again, there's a three-
6 hour lag with back east, but if we cannot have that to you
7 this afternoon, we will have that to you tomorrow morning.

8 THE COURT: Okay.

9 MR. PEEK: Your Honor, just -- because I don't want
10 to misunderstand, I just want to add something for
11 clarification. There were two tasks that we said we were
12 going to perform. One was to the extent that the log has
13 deficiencies in it we would be updating it for -- to correct
14 whatever deficiencies it has. That was one.

15 THE COURT: The log has deficiencies, Mr. Peek.
16 There's no doubt about that. The log is a mess.

17 MR. PEEK: I understand that, Your Honor. So let
18 me, if may, just finish. So that was at least one task. The
19 second, of course, was the removal of documents from the log
20 because they were mistakenly claimed to be attorney-client
21 privileged. As to each of those, if I understand you
22 correctly, where we change the language or we update and
23 correct the deficiencies you will want at least, what, a
24 redline of that?

25 THE COURT: I don't want a redline. I want a new

1 one.

2 MR. PEEK: You just want a new one. Okay.

3 THE COURT: Because if you're taking 25 percent of
4 the documents off the privilege log, which is what based on
5 your current review you're telling me, I'm not going to use
6 the current privilege log anymore; I'm going to throw my
7 working copy away, because it's a waste of my time.

8 MR. PEEK: Okay. So, again, getting back, then,
9 since you are throwing that away, that's why I raised the
10 question of sort of a new log. And if we're starting from
11 the beginning of the log, page 1, if you will, or Control
12 Number 1, whatever that is --

13 THE COURT: It's Control Number 411.

14 MR. PEEK: Okay. That's the first entry?

15 THE COURT: It is.

16 MR. PEEK: Okay. So Control Number 411. We would
17 start at Control Number 411 and present to you in this rolling
18 manner a privilege log that contains all of the adequate
19 information, and we don't have to redline, we're just going to
20 give you adequate information, correct the deficiencies as we
21 see fit, that's one; and, two, we will remove -- let's say we
22 remove Control Number 413. That now is removed from the log.

23 THE COURT: Correct.

24 MR. PEEK: Okay.

25 MR. MARK JONES: Okay, Your Honor.

1 MR. PEEK: So it would say on that line item
2 "removed," so we wouldn't have to say anything --

3 THE COURT: Or it wouldn't -- it wouldn't even be
4 there.

5 MR. PEEK: -- on let's say 411, where we're updating
6 -- correcting deficiencies, we just would give you 411 with
7 new information on it.

8 THE COURT: Correct. And then you don't even need
9 to tell me 413 is removed. It's just not there.

10 MR. PEEK: It's just not there. Okay.

11 THE COURT: It goes to 538 next.

12 MR. PEEK: We'd skip from 412 to 414, then, for
13 example?

14 THE COURT: Whatever. Yeah.

15 MR. PEEK: Okay.

16 MR. GUNNERSON: Your Honor, this is Spencer
17 Gunnerson. Real quick. Do you want us to do any kind of
18 highlighting to highlight the additional information?

19 THE COURT: No, I do not.

20 MR. GUNNERSON: Okay. And also, with the redactions
21 we're doing, when we come across a document that says "needs
22 redactions" and they're still in the process of doing that, do
23 you want us to leave those on and just leave that notation and
24 then go back and fix that later, or do you want us to put
25 those in a different list?

1 THE COURT: Doesn't matter to me.

2 MR. MARK JONES: Thank you, Your Honor. Mark Jones.
3 Finally, Your Honor, just letting you know I'm also in the
4 process and shortly will give something to Ms. Spinelli to ask
5 -- you know, to talk to her about a potential way to make it
6 even more efficient for you, one little thing that we might
7 do. So I will get that off to her. And if we can even make
8 it a little bit more efficient, we will do that, as well.

9 THE COURT: All right.

10 MR. MARK JONES: And easier for your review.

11 THE COURT: Can I ask a question of you guys. And
12 this is simply because I don't remember because of the age of
13 your case and its procedural hurdles that we've had
14 throughout. Is there a protective order in place for the
15 protection of confidential information?

16 MR. PEEK: Yes, Your Honor, there is.

17 THE COURT: Okay. Thank you. Anything else?

18 MR. MARK JONES: No, Your Honor.

19 MR. PEEK: No, Your Honor.

20 THE COURT: I will plan on seeing the redaction
21 information on the Advance Discovery Website next week.

22 MR. PEEK: You will, Your Honor.

23 THE COURT: Will somebody email my law clerk when
24 it's ready.

25 MR. MARK JONES: Yes, Your Honor.

1 THE COURT: So then I will not try and kill the
2 Advance Discovery Website anymore until next week.

3 MR. PEEK: Understood.

4 MR. MARK JONES: And I will -- as soon as I find out
5 how long the entire log in addition to these rolling updates
6 -- as soon as I find out the answer to your question about the
7 entire log and when that will be completed, I will -- I send
8 you an email? Is that -- would you like an email?

9 THE COURT: Let my law clerk know. If you can send
10 her an email, copy it on everybody, it will be most helpful.
11 And then I will concentrate doing those in the redaction
12 bucket starting next week, and then hopefully after I finish
13 those I can start with the rolling privilege log updates.

14 MR. MARK JONES: Thank you, Your Honor.

15 MR. PEEK: Thank you, Your Honor.

16 THE COURT: Are you going to direct Advance
17 Discovery to take items out of the bucket if you're removing
18 them from the privilege log, or do you want me to just skip
19 them?

20 MS. SPINELLI: Your Honor --

21 MR. MARK JONES: I would imagine so, Your Honor.
22 I'm not sure about the details, but yes --

23 MS. SPINELLI: Your Honor, that's -- this is Debra
24 Spinelli. That's been the process before when documents --
25 when Sands China released documents they just send Advance

1 Discovery an email listing all the control numbers, and they
2 allow them to be released to us.

3 THE COURT: Okay.

4 MR. PEEK: And Ms. Spinelli's correct on that, Your
5 Honor.

6 THE COURT: All right. I'm glad. 'Bye. Have a
7 nice day. Thank you for putting up with my frustration with
8 this, counsel.

9 MS. SPINELLI: We appreciate it.

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

11 THE COURT: 'Bye.

12 THE PROCEEDINGS CONCLUDE AT 1:43 P.M.

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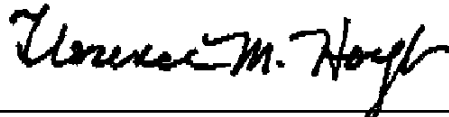
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