supposedly made the agreement on SCL's behalf know?[4] SCL can be held liable only if its own agent, acting on its (rather than LVSC's) behalf, entered into an agreement with another individual, acting as the agent of LVSC, to terminate Jacobs, *knowing* that Jacobs had refused to participate in alleged illegal conduct and with the *intent* of harming him for refusing to comply with allegedly "illegal and unethical demands." TAC ¶ 80. The TAC not only fails to allege such an agreement, but affirmatively alleges facts that, if assumed to be true (as they must be on a motion to dismiss), demonstrate that no such agreement existed. As a result, Plaintiff has pleaded himself out of court on his conspiracy claim.

The TAC suggests two different potential conspiracy theories. One is that a conspiracy was somehow formed when Mr. Adelson, as the "common chairman," made the decision to terminate Jacobs. *See* TAC ¶ 93 ("LVSC and Sands China intended to harm Jacobs for refusing to follow the illegal and improper demands of their common-chairman, Adelson"). But that theory is a non-starter. A basic requirement of a conspiracy is the meeting of at least two distinct minds. *Union Pac. Coal Co. v. United States*, 173 F. 737 (8th Cir. 1909). One person wearing two corporate hats cannot create a conspiratorial agreement between two corporations. *See Lockwood Grader Corp. v. Bockhaus*, 270 P.2d 193, 196-97 (Colo. 1954); *United States v. Santa Rita Store Co.*, 16 N.M. 3, 9-10, 113 P. 620, 620-21 (1911). Thus, while SCL and LVSC are distinct legal entities, a conspiracy is not created simply because their common chairman decides to take allegedly unlawful action on behalf of one of the companies (here, LVSC).

Nor does the fact that other *LVSC* employees or directors assisted in the purported plan to terminate Jacobs from LVSC's employment in violation of public policy create a conspiracy between LVSC and SCL. Jacobs alleges that the "exorcism strategy" was executed "ostensibly by agents acting for both LVSC and Sands China." TAC ¶ 38; *see also* TAC ¶ 44. But his own use of the word "ostensibly" shows that he himself views these individuals as agents of only LVSC. In fact, including unnamed in-house LVSC attorneys, *all* of the individuals Jacobs

[4] Because they are artificial persons, corporations can act only through their agents. *Braswell v. United States*, 487 U.S. 99, 110, 108 S.Ct. 2284, 2291 (1988).

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identifies as being involved in carrying out the alleged plan to terminate him as an LVSC employee held positions with LVSC, and seven of them—Kay, Hyman, Briggs, Reese, Nagel, Dumont, and Hendler—held no position whatsoever with SCL. TAC ¶ 40.

Multiple agents acting on behalf of the same corporation cannot form a conspiracy. A corollary to the rule that a corporation cannot conspire with itself is that it also cannot conspire with agents acting on its behalf; instead, the actions of these agents are attributed to the corporation. *See Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (Nev. 1983); *Nelson Radio*, 200 F.2d at 914 ("A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation"). When the individuals involved all work for the same corporation, a conspiracy among them can occur only in the unusual situation where the agents act outside of their corporate authority and for their own personal advantage. *Collins*, 99 Nev. at 303, 662 P.2d at 622; *Nelson Radio*, 200 F.2d at 914; *Am. Chiropractic v. Trigon Healthcare*, 367 F.3d 212, 224 (4th Cir. 2004).

Jacobs does not claim that any of the LVSC employees and directors who carried out the purported plan to terminate him from LVSC's employment were acting outside the scope of their authority. Thus, to the extent it alleges a conspiracy, the TAC asserts only an intracorporate conspiracy among LVSC officers and employees—which is no conspiracy at all. *See Collins*, 99 Nev. at 303, 662 P.2d at 622. In any event, those allegations do nothing to support a conspiracy claim against SCL. Significantly, the TAC does not identify a single independent SCL director, officer, or employee who was allegedly involved in the decision to terminate Jacobs, much less allege that such a person knew that Jacobs' firing would violate public policy. Consequently, Jacobs provides no plausible allegation to show that anyone acting on SCL's behalf (as opposed to LVSC's behalf) entered into a conspiracy with LVSC to carry out the allegedly unlawful termination. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 556 (2007) (holding that a complaint must have "enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal agreement" and "a bare assertion of conspiracy will not suffice").

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The TAC could also be read as alleging that Mr. Adelson acted independently for his own personal advantage, using SCL and LVSC as his alter egos. *See, e.g.*, TAC ¶ 81 ("Adelson terminated Jacobs' employment for his own personal benefit, and not for the benefit of Sands China, LVSC or their shareholders, to whom Adelson owes a fiduciary duty of loyalty"). But that theory too would fail to allege a conspiracy because Mr. Adelson cannot enter into a conspiracy with his alter egos.

In *Copperweld Corp. v. Independence Tube Corp.*, the Supreme Court held that a parent company cannot conspire with its wholly owned subsidiary for purposes of the Sherman Antitrust Act. As the Court explained, "[a] parent and its wholly owned subsidiary have a complete unity of interest." 467 U.S. at 771. Consequently, a parent could not conspire with its subsidiary any more than the parent could conspire with itself. Many lower courts, including a federal district court applying Nevada law, have extended *Copperweld*'s intracorporate immunity to bar civil conspiracy claims between parents and wholly owned subsidiaries. *See Laxalt v. McClatchy*, 622 F. Supp. 737, 745 (D. Nev. 1985) (holding that because several newspapers were wholly owned subsidiaries, "[i]t was . . . impossible for a civil conspiracy to have occurred, in that all of the actors were part of the same legal body").

SCL, of course, is not a wholly owned subsidiary of LVSC and thus *could* conspire with LVSC. But Jacobs himself alleges that Mr. Adelson was in complete control of SCL and, like a parent and wholly owned subsidiary, had a "complete unity of interest." *Copperweld*, 467 U.S. at 771. Absent factual allegations showing that SCL's independent directors were aware of the alleged unlawful acts and agreed with LVSC to fire Jacobs in order to punish him for attempting to blow the whistle, there is no basis for claiming that SCL participated in any conspiracy to terminate his employment in violation of public policy. *See Fogie v. Thorn Ams., Inc.*, 190 F.3d 889, 899 (8th Cir. 1999) ("when two entities are under common control and there is no distinctiveness or independence of action, an agreement or understanding between them" cannot provide a basis for a RICO conspiracy claim); *Shared Comm. Servs. Of 1800-80 JFK Blvd., Inc. v. Bell Atl. Props.*, 692 A.2d 570, 574 (Pa. Super. 1996). Far from making such allegations, Plaintiff here claims the opposite—affirmatively alleging that the SCL Board was kept in the

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dark about the reasons for Jacobs' termination. Under those circumstances, SCL cannot possibly be liable for conspiracy.

3. Jacobs's Allegations Do Not Support Aiding and Abetting Liability.

Jacobs' aiding and abetting claim fails for similar reasons. Nevada recognizes a cause of action for aiding and abetting when "the defendant substantially assists or encourages another's conduct in breaching a duty to a third person." *Mahlum*, 114 Nev. at 1490, 970 P.2d at 112 (citing Restatement (Second) of Torts § 876(b)). Unlike conspiracy, which requires an agreement, aiding and abetting requires only "*knowing action* that substantially aids in tortious conduct." *Halberstam v. Welch*, 705 F.3d 472, 478 (D.C. Cir. 1983).

To sustain a cause of action for aiding and abetting, a plaintiff must show (1) the underlying tort, (2) that the defendant knew of its role in promoting the tort when it provided assistance, and (3) that the defendant knowingly and substantially assisted the principal. *See Mahlum*, 114 Nev. at 1490, 970 P.2d at 112. Five factors are generally considered in deciding whether the assistance was "substantial': "the nature of the act encouraged, the amount of assistance given by the defendant, his presence or absence at the time of the tort, his relation to the other [tortfeasor] and his state of mind." *Halberstam*, 705 F.2d at 478 (quoting Restatement (Second) of Torts § 876 cmt. d) (alteration in original).

> Jacobs' entire aiding and abetting claim against SCL is as follows:
> Sands China, through its agents, substantially assisted LVSC's tortious discharge of Jacobs by, among other things, making agreements with LVSC, carrying out overt acts to effectuate the termination and ratifying the termination for the benefit of Adelson and LVSC, and not for the benefit of Sands China's shareholders, to whom they owed a fiduciary duty of loyalty.

TAC ¶ 87. None of the facts alleged support this conclusory assertion. Jacobs does not allege, for example, that any independent agent of SCL knew of its role in the claimed tort when it provided assistance. *See Mahlum*, 114 Nev. at 1490, 970 P.2d at 112; *Dube v. Likins*, 167 P.3d 93, 100 (Ariz. Ct. App. 2007) (requiring a "common design" and "knowingly 'substantially aid[ing]' [the tort], or agree[ing] to do so"). While the SCL Board undoubtedly cooperated in terminating Jacobs, Jacobs himself alleges that the directors did not know *why* he was being terminated. TAC ¶ 39. Without knowledge that LVSC was committing a tort, SCL could not

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have aided and abetted it. *See Mahlum*, 114 Nev. at 1490, 970 P.2d at 112; *Dawson v. Withycombe*, 163 P.3d 1034, 1052-53 (Ariz. Ct. App. 2007) (holding that, as a matter of law, no aiding and abetting liability could be found where defendants were unaware of a loan's fraudulent nature and, at most, had generalized knowledge of company's poor financial condition and the loan seeker's dishonest character); *Temporomandibular Joint (TMJ) Implant Recipients v. Dow Chem. Co.*, 113 F.3d 1484 (8th Cir. 1997) ("There is no indication that [the defendant's] actions were knowingly done for the purpose of assisting the [tort-related conduct], much less that [the defendant] was 'one in spirit with' the alleged tortfeasor").

Jacobs' complaint seeks to have it both ways, arguing that Mr. Adelson kept SCL in the dark while pleading that SCL knowingly provided assistance and encouragement. But without any factual allegations to suggest that SCL was "one in spirit" with Mr. Adelson's alleged wrongdoing, Jacobs' complaint does not state a coherent theory of aiding and abetting.

D. The Court Lacks Personal Jurisdiction over Plaintiff's Civil Conspiracy and Aiding and Abetting Causes of Action.

Plaintiff's conspiracy and aiding and abetting claims should also be dismissed because there is no personal jurisdiction over those claims in Nevada. "Nevada may exercise personal jurisdiction over a nonresident defendant only if doing so does not offend due process." *Dogra v. Liles*, 129 Nev. Adv. Rep. 100, 314 P.3d 952, 955 (2013). For the reasons SCL has already outlined at length in its submissions on personal jurisdiction, there is no general jurisdiction over SCL in Nevada. And "specific jurisdiction is proper only where 'the cause of action arises from the defendant's contacts with the forum.'" *Id.* "Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant 'purposefully avails' himself or herself of the protections of Nevada's laws, or purposefully directs her conduct towards Nevada, and the plaintiffs claim actually arises from that purposeful conduct." *Id.* In addition, "whether general or specific, the exercise of personal jurisdiction must also be reasonable." *Id.* at 955-56 (internal quotation marks omitted).

Plaintiff likely will argue that there is specific jurisdiction in Nevada over his conspiracy and aiding and abetting claims because Mr. Adelson and other LVSC employees were acting as

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SCL's "agents" in Nevada and engaged in certain conduct here in preparation for terminating Jacobs in Macau. *See Viega GmbH v. Eighth Judicial Circuit*, 130 Nev. Adv. Rep. 40, 328 P.3d 1152, 1158 (2014) (a "corporation can purposefully avail itself of a forum by directing its agents . . . to take action there") (internal quotation makes omitted). But for all of the reasons outlined in Part C above, there is no basis for a conspiracy or aiding and abetting claim under Nevada law if Plaintiff's claim is that Mr. Adelson and the other LVSC employees allegedly involved in the purported plan to terminate Jacobs were acting on behalf of *both* LVSC and SCL because a person cannot conspire with or aid and abet himself. Similarly, any claim that SCL was so dominated and controlled by Mr. Adelson that it should be viewed as his or LVSC's alter ego—and therefore should be subject to jurisdiction in Nevada—would preclude Plaintiff from pursuing his conspiracy claim on the merits; two entities that are controlled by the same person and have a complete identity of interest as a matter of law cannot conspire with each other. Thus, any jurisdictional theory Plaintiff might float based on the conduct of LVSC's agents in Nevada would be at war with his conspiracy claim and require dismissal of that claim on the merits.

For the reasons outlined in Part C, the only way Plaintiff might be able to show that a conspiracy was formed would be by identifying independent SCL employees or directors who knowingly entered into an agreement with LVSC to terminate Jacobs in violation of public policy. But Plaintiff has not identified any such individual in the TAC; in any event, as Jacobs well knows, none of SCL's independent directors was ever located in Nevada and none is alleged to have traveled here in connection with Jacobs' termination. That is fatal to any theory of specific jurisdiction: Jacobs cannot sue SCL in Nevada for actions it supposedly took in *Macau* to form a conspiracy to terminate Jacobs in *Macau*.

That SCL's purported co-conspirator (LVSC) allegedly engaged in preparatory conduct in Nevada does not alter the analysis. Plaintiffs sometimes argue that because, as a matter of substantive law, each conspirator is deemed to have acted as the agent of the other, the presence of one co-conspirator in the forum is enough to subject all co-conspirators to personal jurisdiction. But most courts have roundly rejected that argument. *See Melea, Ltd. v. Jawer SA,*

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511 F.3d 1060, 1070 (10th Cir. 2007) ("[T]o hold that one co-conspirator's presence in the forum creates jurisdiction over other co-conspirators threatens to confuse the standards applicable to personal jurisdiction and those applicable to liability"); *Leasco Data Processing Equip. Corp. v. Maxwell*, 468 F.2d 1326, 1343 (2d Cir. 1972); *Kipperman c. McCone*, 422 F. Supp. 860, 873 n.14 (N.D. Cal. 1976) ("The Supreme Court has labeled 'frivolous albeit ingenious,' and the vast majority of lower federal courts have rejected, the theory of vicarious venue for alleged conspirators. That much more frivolous is the contention that personal jurisdiction, the exercise of which is governed by strict constitutional standards, may depend upon the imputed conduct of a co-conspirator") (internal citations omitted). *See also* Ann Althouse, *The Use of Conspiracy Theory To Establish In Personam Jurisdiction: A Due Process Analysis*, 52 Fordham L. Rev. 234, 235 & n.7 (1983) (collecting cases).

That is particularly true because Jacobs did not suffer any claimed injury in Nevada, but rather suffered injury (if at all) in Macau where he was terminated. Unlike criminal conspiracy, civil conspiracy does not make the agreement itself a distinct harm that is independently actionable; instead, civil conspiracy is simply a method of imposing vicarious liability for the underlying tort. *See Beck v. Prupis*, 529 U.S. 494, 501-03 (2000). The harm here was suffered in Macau when Jacobs was terminated, not in Nevada where the agreement was allegedly hatched and some preparatory conduct may have occurred. *See* Althouse, *supra*, at 255 ("If the co-conspirator actor merely performs some preparatory act that in itself causes no injury to the plaintiff, jurisdiction should fail"). Jacobs did not suffer any legally cognizable harm until he was actually terminated in Macau. Consequently, Jacobs has not shown that SCL had the requisite minimum contacts necessary to establish personal jurisdiction over his civil conspiracy claim.

The jurisdictional analysis for the aiding and abetting claim is "functionally equivalent." *See Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618, 642 (Del. Ch. 2013). Jacobs has not alleged, except in a conclusory fashion, that SCL provided knowing assistance to LVSC's alleged misconduct, let alone that that assistance had some connection to Nevada. Indeed, the only substantial assistance SCL supposedly provided was the Board's agreement to terminate

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Jacobs. Plaintiff does not allege, nor could he allege, that the Board decision was made in Nevada and he affirmatively alleges that it was carried out in Macau. Nothing that SCL's independent directors or employees supposedly did in furtherance of LVSC's purported scheme was done in Nevada, nor was any conduct aimed at Nevada. Accordingly, there is no basis for concluding that this Court has specific jurisdiction over SCL on Plaintiff's aiding and abetting claim.

E. The Defamation Claim Should Also Be Dismissed.

The defamation claim set forth in the TAC against SCL should also be dismissed. SCL adopts the arguments made in Mr. Adelson's motion to dismiss showing that the defamation claim fails as a matter of law because (i) Mr. Adelson's statement was a privileged reply to Jacobs' defamatory assertions of misconduct, (ii) Jacobs invited Mr. Adelson's statement, and (iii) the statement was, in any event, non-actionable opinion.

Plaintiff's defamation claim against SCL also fails because Plaintiff has not alleged any factual basis for his conclusory assertion that Mr. Adelson was speaking on behalf of himself personally, LVSC *and* SCL when he made the statement Jacobs challenges. Plaintiff claims that SCL "ratified or endorsed these statements either explicitly or implicitly." TAC ¶ 74. But nowhere are any facts alleged to support this conclusion by explaining when or how the purported ratification or endorsement occurred.

Even if Mr. Adelson's statements could be imputed to SCL, there is no personal jurisdiction over SCL on Jacobs' defamation claim. The TAC does not allege that Mr. Adelson's comments were made in Nevada. Nor does Jacobs live or work in Nevada, such that he could argue that the Defendants targeted him in the state. In *Calder v. Jones*, 465 U.S. 783, 788 (1984), the Supreme Court found specific jurisdiction in California over Florida employees of the *National Enquirer* based on an allegedly defamatory article that was published nationwide even though the Florida employees had not set foot in California. The Court noted that the "brunt of [plaintiff's] harm" was suffered in California, which was "the focal point both of the story and of the harm suffered." *Id.* at 789. The *National Enquirer*'s actions "were expressly aimed" at the state, where the plaintiff lived and worked and where the newspaper had

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its largest circulation. *Id.* at 789. And the article itself was based on information provided by California sources. *Id.* at 788; *see also Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780-81 (1984) (allowing a New York resident to sue a California-based magazine in New Hampshire, a state in which the magazine sold 10,000-15,000 copies per month).

Based on *Calder*'s analysis, the Ninth Circuit has developed a three-part effects test, requiring the defendant to have "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (quoting *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)). Even if the first element is satisfied here, the other two are not. Express aiming requires more than the commission of "a foreign act with foreseeable consequences" in the forum. *Schwarzenegger*, 374 F.3d at 804. That "more" is generally the deliberate targeting of the person in the forum state. *See id.* at 804-05; *Critical Care Diagnostics*, 2014 U.S. Dist. LEXIS 28329, at *13-15; *see also English Sports Betting, Inc. v. Tostigan*, 2002 U.S. Dist. LEXIS 4985 (E.D. Pa. Mar. 15, 2002) ("There is an important distinction between intentional activity which foreseeably causes injury in the forum and intentional acts specifically targeted at the forum.") (quoting *Narco Avionics, Inc. v. Sportsman's Market, Inc.*, 792 F. Supp. 398, 408 (E.D. Pa. 1992)).

Express aiming has been found where the "wrongful conduct is (1) targeted at a plaintiff (2) whom the defendant knows to be a resident of the forum state, and (3) is directed at residents of the forum state." *Critical Care Diagnostics, Inc. v. American Ass'n for Clinical Chemistry, Inc.*, 2014 U.S. Dist. LEXIS 28329, at *13 (S.D. Cal. March 4, 2014); *see also Gordy v. Daily News, L.P.*, 95 F.3d 829, 834 (9th Cir. 1996); *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1487 (9th Cir. 1993); *Cas. Assur. Risk Ins. Brokerage Co. v. Dillon*, 976 F.2d 596, 599 (9th Cir. 1992) (holding that the lack of circulation in the forum state precluded personal jurisdiction); *Chaiken v. VV Publ. Corp.*, 119 F.3d 1018, 1029 (2d Cir. 1997) (no express aiming where plaintiffs were not residents and circulation in forum state was extremely minimal). But Jacobs is not a resident of Nevada, nor does he allege any other facts to suggest that he suffered any harm in Nevada—let alone facts suggesting that SCL knew such harm was

likely to be suffered here. Jacobs does not allege, nor could he allege, that he works in Nevada. Nor does he claim that Nevada has some peculiar connection to his business pursuits that resulted in the statement to the *Wall Street Journal* causing him particular harm here. *See Chaiken*, 119 F.3d at 1029 (finding no jurisdiction where there was minimal circulation plus no other apparent connection to the forum state); *Remick v. Manfredy*, 238 F.3d 248, 259 (3d Cir. 2001). In fact, Jacobs does not even allege that the publication of the defamation took place in Nevada. Based on Mr. Adelson's statement to the press, there is virtually nothing in the complaint to suggest either that Mr. Adelson—while acting on behalf of SCL—targeted Jacobs in Nevada or that Jacobs suffered a legally sufficient amount of harm in this state.

F. Plaintiff's Claims For Punitive Damages Against SCL Should Be Stricken.

Plaintiff seeks punitive damages against SCL in his defamation claim. But, as Mr. Adelson demonstrates in his motion to dismiss, Plaintiff has not alleged with particularity the kinds of facts necessary to support a claim for punitive damages with respect to his defamation claim. *See Rush v. Nev. Indus. Comm'n*, 94 Nev. 403, 407, 590 P.2d 952, 954 (1978) (dismissing request for punitive damages because allegations that defendants' behavior was "characterized by fraud, malice, and oppression" did not meet Rule 9(b)'s particularity standard). Accordingly, at the very least, his request for punitive damages should be stricken from his Fifth Cause of Action.

For the same reasons, Jacobs' claims for punitive damages against SCL in his new aiding and abetting and conspiracy claims (TAC ¶¶ 89, 95) should also be stricken. Plaintiff himself alleges that SCL's Board was unaware of Mr. Adelson's supposedly illegal and unethical demands and did not understand why Jacobs was being terminated. Nowhere in the TAC does Plaintiff even attempt to explain how SCL could be deemed to have knowingly participated in the alleged tort—let alone how its behavior was so egregious that it could warrant the imposition of punitive damages.

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IV. CONCLUSION

In the wake of the U.S. Supreme Court's decision in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), it is clear that Plaintiff cannot hope to establish general jurisdiction over SCL in Nevada. So instead he has belatedly tried to find a way to hold SCL liable for his alleged tortious discharge by LVSC. For all of the reasons outline above, that attempt fails on multiple grounds. Accordingly, SCL respectfully requests that the Court dismiss Plaintiff's claims against it for want of personal jurisdiction or, in the alternative, for failure to state a claim.

DATED this 12th day of January, 2015.

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CERTIFICATE OF SERVICE

I certify that on January 12, 2015, the foregoing **DEFENDANT SANDS CHINA LTD.'S MOTION TO DISMISS THIRD AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND FAILURE TO STATE A CLAIM** was served on the following parties through the Court's electronic filing system:

ALL PARTIES ON THE E-SERVICE LIST

An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE,
Respondents,
and
STEVEN C. JACOBS,
Real Party in Interest.

No. 58294

FILED

AUG 26 2011

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss for lack of personal jurisdiction.

Petitioner asserts that the district court improperly based its exercise of personal jurisdiction on petitioner's status as a subsidiary of a Nevada corporation with common officers and directors. Real party in interest contends that the district court properly determined that he had established a prima facie basis for personal jurisdiction based on the acts taken in Nevada to manage petitioner's operations in Macau.

The district court's order, however, does not state that it has reviewed the matter on a limited basis to determine whether prima facie grounds for personal jurisdiction exist; it simply denies petitioner's motion to dismiss, with no mention of a later determination after consideration of evidence, whether at a hearing before trial or at trial. While the order refers to the district court's comments at oral argument on the motion, the

transcript reflects only that the district court concluded there were "pervasive contacts" between petitioner and Nevada, without specifying any of those contacts. We have therefore found it impossible to determine the basis for the district court's order or whether the district court intended its order to be its final decision regarding jurisdiction or if it intended to consider the matter further after the admission of evidence at trial (or an evidentiary hearing before trial).

In MGM Grand, Inc. v. District Court, 107 Nev. 65, 807 P.2d 201 (1991), we held that jurisdiction over a nonresident corporation could not be premised upon that corporation's status as parent to a Nevada corporation. Similarly, the United States Supreme Court in Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), considered whether jurisdiction over foreign subsidiaries of a U.S. parent corporation was proper by looking only to the subsidiaries' conduct; the Court suggested that including the parent's contacts with the forum would be, in effect, the same as piercing the corporate veil. Based on the record before us, it is impossible to determine if the district court in fact relied on the Nevada parent corporation's contacts in this state in exercising jurisdiction over the foreign subsidiary.

Accordingly, having reviewed the petition, answer, reply, and other documents before this court,[1] we conclude that, based on the summary nature of the district court's order and the holdings of the cases

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[1]Petitioner's motion for leave to file a reply in support of its stay motion is granted, and we direct the clerk of this court to detach and file the reply attached to the August 10, 2011, motion. We note that NRAP 27(a)(4) was amended in 2009 to permit a reply in support of a motion without specific leave of this court; thus, no such motion was necessary.

cited above, the petition should be granted, in part. We therefore direct the district court to revisit the issue of personal jurisdiction over petitioner by holding an evidentiary hearing and issuing findings regarding general jurisdiction. If the district court determines that general jurisdiction is lacking, it shall consider whether the doctrine of transient jurisdiction, as set forth in Cariaga v. District Court, 104 Nev. 544, 762 P.2d 886 (1988), permits the exercise of personal jurisdiction over a corporate defendant when a corporate officer is served within the state. We further direct that the district court shall stay the underlying action, except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered. We therefore

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to hold an evidentiary hearing on personal jurisdiction, to issue findings of fact and conclusions of law stating the basis for its decision following that hearing, and to stay the action as set forth in this order until after entry of the district court's personal jurisdiction decision.[2]

Saitta, J.

Hardesty, J.

Parraguirre, J.

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[2]Petitioner's motion for a stay is denied as moot in light of this order.

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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, an individual; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

AND RELATED CLAIMS

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

OPPOSITION TO DEFENDANT SHELDON ADELSON'S MOTION TO DISMISS THIRD AMENDED COMPLAINT

Hearing Date: February 26, 2015

Hearing Time: 8:30 a.m.

I. INTRODUCTION

Defendant Sheldon Adelson ("Adelson") seeks dismissal based upon affirmative defenses, for which he bears the burden of proof and which are well beyond the face of Jacobs' Third Amended Complaint. Not one of Adelson's substantive defenses has merit, let alone permitting Adelson's desired early exit from litigation that stems from his own misconduct.

Adelson's claimed privileges are unavailable here because he acted with actual malice to spread known falsehoods about Jacobs in an attempt to smear Jacobs through the media. Indeed, this Court has already explained that Adelson's qualified privileged defense fails upon the facts and is not the proper subject of a Motion to Dismiss. And, contrary to Adelson's hopes and wants,

filing of a lawsuit detailing improper conduct does not "invite" a public relations smear campaign in the media. Jacobs has pled a plethora of facts showing Adelson's malice which forecloses these privileges.

Similarly, Adelson's attempt to recast his statements as "opinion" or "rhetorical hyperbole" only proves Adelson's consciousness of guilt. Unwilling to stand behind his actual statements – because he knows them to be false – Adelson exposes his lack of integrity in failing to stand behind what he says. Contrary to his attempted rewrite now, Adelson made false statements of *fact*, representing (falsely) that Jacobs was fired for cause and used "outright" lies to explain his termination. That Adelson attempts to flee his own words is beyond telling.

Adelson's attempt at avoiding personal liability on Jacobs' tortious discharge claim is equally unavailing. Nevada law is in accord with that of other jurisdictions in recognizing that corporate officers are personally liable for torts that they commit. The Nevada Supreme Court has never ruled that tortious discharge is unavailable against individual tortfeasors, particularly on the facts that have thus far been uncovered with the limited discovery allowed. Nor does Adelson's proffered statute of limitations defense have merit. Adelson proves the point when he claims that Jacobs should have added Adelson to the original tortious discharge claims. His own argument is a confession of the relation back doctrine under NRCP 15.

II. BACKGROUND

A. Jacobs is Wrongfully Terminated.

Jacobs' Third Amended Complaint lays out the real basis for his termination, Adelson's malice, and why Adelson needs to resort to a public smear campaign hoping to undermine Jacobs and the public's interest in Jacobs' claims.[1] To paraphrase, Adelson's early hostility against Jacobs grows directly out of the success Jacobs achieved while affiliated with the companies Adelson controls -- Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China"). As detailed in Jacobs' Third Amended Complaint, LVSC was in financial peril prior to Jacobs agreeing to assist in effectuating a corporate turnaround. Adelson's infighting with his then-

[1] Obviously, for purposes of a motion to dismiss, all of Jacobs' factual allegations, and all reasonable inferences, are taken as true and Jacobs incorporates each and every one of his allegations in opposing Adelson's present Motion.

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President and COO, William Weidner, had paralyzed LVSC. Adelson's dysfunction had become so problematic that Weidner sought Adelson's ouster as Chairman and CEO. The company was in such dire straits that its own auditors had issued a going concern warning to shareholders.

Jacobs was brought in by Weidner's replacement, Mike Levin, to assist in attempting to save the company, and thereby save Adelson's empire and fortune. And it is the very success that Jacobs achieved that would serve as the genesis of Adelson's personal animus. A recurring cause of dispute between Adelson and other executives is the fact that Adelson bristles at any credit others receive for success, as opposed to him being the recipient of credit. That is why, when Levin openly acknowledged that Jacobs had saved the titanic – the sinking LVSC ship – that placed a target on Jacobs' back as far as Adelson was concerned. And now, with the benefit of the very limited discovery that has occurred, the fact that Adelson personally undertook and oversaw a campaign to undermine and terminate Jacobs are undeniable.

B. Adelson Defames Jacobs When He Cannot Get His Way.

Jacobs filed his initial Complaint on October 20, 2010, naming both LVSC and Sands China. When his companies could not secure dismissal of Jacobs' claims, Adelson went on one of his legendary diatribes. Following a March 15, 2011, hearing, the Wall Street Journal published an article in its online edition entitled "Setback for Sands in Macau Suit." The article contained a statement authored by Adelson and emailed to reporters within hours of the adverse ruling against LVSC and Sands China. Because he could not obtain a summary victory in the courts, Adelson went on the offensive, hoping to score points elsewhere by maligning Jacobs with the following assertions that he knew to be false:

> While I have largely stayed silent on the matter to this point, the recycling of his allegations must be addressed. We have a substantial list of reasons why Steve Jacobs was fired for cause and interestingly he has not refuted a single one of them. Instead, he has attempted to explain his termination by using outright lies and fabrications which seem to have their origins in delusion.

Typical of Adelson: when he does not get his way, he lashes out and does not care about the consequences, arrogantly thinking that his extravagant wealth can buy him out of any problems he creates. Adelson knew he was not telling the truth and was aware (indeed hoped) that his falsehoods would be republished in Nevada and elsewhere.

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C. The Court Confirms Adelson's Qualified Privileges Are Premature.

In response to Adelson's fabrications, Jacobs filed a First Amended Complaint, adding a claim for defamation against Adelson, LVSC, and Sands China. Thus, Adelson became a party less than one year after Jacobs' July 2010 termination. As the Court will recall, all three defendants moved to dismiss the defamation claim, asserting the absolute privilege for statements made in the course of a judicial proceeding and, alternatively, a conditional privilege applicable to statements made in "reply."

Citing *Clark County School District v. Virtual Education Software, Inc.*, 125 Nev. 374, 213 P.3d 496 (2009), this Court found Adelson's media statement absolutely privileged. At the same time, it noted that the qualified or conditional privilege applicable to statements made in "reply" is a factual issue inappropriate for a motion under Rule 12(b)(5). (Hr'g Tr. at 26:9-10, June 9, 2011, on file ("I agree. Conditional privilege is fact driven.").) In an ensuing appeal, the Nevada Supreme Court found that Adelson's public relations statements were not protected by the litigation privilege and likewise refused to sustain the dismissals of Adelson's alternative "reply" privilege. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282 (2014).

Following Adelson's petitioning for rehearing and the Supreme Court's September 15, 2014, remittitur, Jacobs sought and obtained leave to file his Third Amended Complaint, maintaining that Adelson is personally liable for the tortious discharge. Although this Court has already recognized that "[c]onditional privilege is fact driven," Adelson now renews this failed 12(b)(5) attack on Jacobs' defamation claim and lodges an unsupported defense against Jacobs' tortious discharge claim.

III. ARGUMENT

In considering Adelson's Motion, this Court liberally construes the pleadings and accepts all factual allegations by Jacobs as true. *Buzz Stew, LLC v. City of N. Las Vegas*, 181 P.3d 670, 672 (Nev. 2008); *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). Likewise, all inferences from the plead facts are drawn in favor of Jacobs. *Buzz Stew, LLC*, 181 P.3d at 672. Hence, dismissal is only appropriate if it appears

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"beyond a doubt" that Jacobs can prove no set of facts entitling him to relief. *Id.* (citing *Blackjack Bonding*).

A. Qualified Privilege Is A Question Of Fact.

1. Adelson cannot seek dismissal under the qualified privilege for "Reply."

As he tried unsuccessfully before, Adelson reargues that his false statements are protected under the qualified privilege reserved for statements of "reply." The central flaw in Adelson's position is obvious: his proposed qualified privilege is a defense that turns on facts that are beyond the scope of the Complaint. *See, e.g., Fariello v. Gavin*, 873 So.2d 1243, 1245 (Fla. App. Ct. 2004) ("[T]he affirmative defense of qualified immunity presents a fact intensive issue that should ordinarily not be resolved by a motion to dismiss."); *Pelegatti v. Cohen*, 536 A.2d 1337, 1343 (Super. Ct. Penn. 1987) ("[I]t is a question of fact for the jury as to whether a qualified privilege has been abused."); *Gordon v. Dalrymple*, 2008 WL 2782914, at *6 (D. Nev. July 8, 2008) ("Though the letter facially falls under the common-interest and intracorporate qualified privileges, an issue of fact remains as to Dalrymple's actual malice.").

Indeed, a qualified or conditional privilege "differs from the defense of absolute privilege in that the interest which the defendant is seeking to vindicate is regarded as having an intermediate degree of importance, so that the immunity conferred is not absolute, but is conditioned upon publication in a reasonable manner and for a proper purpose." *Green Acres Trust v. London*, 688 P.2d 617, 624 (Ariz. 1984) (citation omitted). "Absent a proper purpose or reasonable manner of publication, the defense fails." *Id.* Like other jurisdictions, Nevada applies a two-part analysis: First, Adelson must show that the "communication is conditionally privileged by being published on a 'privileged occasion.'" *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 62, 657 P.2d 101, 105 (1983) (citations omitted). Only then does the burden shift "to the plaintiff to prove to the jury's satisfaction that the defendant abused the privilege by publishing the communication with malice in fact." *Id.*; *Green Acres Trust*, 688 P.2d at 624 ("Whether a privileged occasion arose is a question of law for the court, and whether the occasion for the privilege was abused is a question of fact for the jury."); s*ee also Miller v.*

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Jones, 114 Nev. 1291, 970 P.2d 571 (1998) (holding that genuine issues of material fact regarding falsity of statement and defendant's actual malice precluded summary judgment).

In the context of "reply" defamation, a court must first determine whether a privileged occasion actually exists. Thereafter, as Adelson concedes, any claim to the privilege is lost if the reply: "(1) includes substantial defamatory matter that is irrelevant or non-responsive to the initial statement; (2) includes substantial defamatory material that is disproportionate to the initial statement; (3) is excessively publicized; ***or*** (4) is made with malice in the sense of actual spite or ill will." *State v. County of Clark*, 118 Nev. 140, 149-50, 42 P.3d 233, 239 (2002) (emphasis added).

Of course, Adelson bears the burden of proof on his defense and he cannot present evidence outside of the Third Amended Complaint itself. At this stage, Jacobs' allegations and the inferences of Adelson's malicious and purposeful intent to harm Jacobs' reputation and good name are deemed true and foreclose any qualified privilege defense. (3d Am. Compl. ¶ 74 ("Adelson's malicious defamation of Jacobs ...."). Thus, Adelson's attempt to escape liability with a Motion to Dismiss fails. *See Lubin v. Kunin*, 117 Nev. 107, 115, 17 P.3d 422, 428 (2001) ("At the NRCP 12(b)(5) stage . . . the [defendants] have not alleged the privilege by answer, let alone established facts to show that the privilege applies. If the district court determines that the privilege is applicable, the action for defamation will be presented 'to the jury only if there is sufficient evidence for the jury reasonably to infer that the publication was made with malice in fact.'") (quoting *Circus Circus Hotels*, 99 Nev. at 62, 657 P.2d at 105).

2. Adelson fabricated and published actionable statements of fact.

Cognizant that Jacobs has established Adelson's actual malice, Adelson next attempts to rewrite his statements so as to recast them as supposed expressions of opinions. Hardly. Adelson's press statement made false statements of fact concerning the reasons for Jacobs' termination and branded Jacobs a liar. Court after court holds that these are actionable statements of fact.

Adelson's "words must be reviewed in their entirety and in the context to determine whether they are susceptible of a defamatory meaning." *Chowdhry v. NLVH, Inc.*, 109 Nev. 478,

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484, 851 P.2d 459, 463 (1993). Indeed, even if this case were one "where a statement is susceptible of different constructions, one of which is defamatory, resolution of the ambiguity is a question of fact for the jury." *Lubin*, 117 Nev. at 111, 17 P.3d at 425-26 (citation omitted); *see also Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993) (summary judgment on defamation claim was error because the statement "is capable of a defamatory construction").

Again, Jacobs' allegations are accepted as true, including that Adelson made false statements of fact by claiming that he and his companies "have a substantial list of reasons why Jacobs was fired for cause and that Jacobs has failed to "refute[] a single one of them." (3d Am. Compl. ¶ 71.) Additionally, Adelson claimed that Jacobs had used "outright lies and fabrications" to "explain his termination." *Id.* Now called to answer for these falsehoods, Adelson cowardly tries to hide, claiming that he had merely engaged in "rhetorical hyperbole." (Mot. to Dismiss at 13.) Yet, there is nothing abstract or metaphoric about Adelson's false claim that Jacobs' was fired for cause or that Jacobs lacks a defense to his termination.

Courts recognize that false claims that a former employee was fired for "cause" is one of actionable fact. *See, e.g., Carney v. Mem'l Hosp. & Nursing Home of Greene Cnty.*, 475 N.E.2d 451, 453 (N.Y. 1985) ("It cannot be said as a matter of law that the average reader of the statement that plaintiff was discharged 'for cause' would not interpret it as meaning that plaintiff had actually been derelict in his professional duties."); *Linkage Corp. v. Trustees of Boston Univ.*, 679 N.E.2d 191, 206, n.30 (Mass. 1997) ("[T]he jury would have been warranted in finding that Westling's statements to Linage employees on the day of the termination, that the termination was 'for cause,' were defamatory . . . .").

Similarly, calling someone a "liar" in the press – as Adelson did – is a statement of actionable fact, not opinion. *See, e.g., Cook v. Winfrey*, 141 F.3d 322, 330 (reversing dismissal of defamation claim based upon defendant's statements to National Enquirer that plaintiff was "a liar" and characterizing lawsuit as "all a pack of lies."); *Vinson v. Linn-Mar Cmty. Sch. Dist.*, 360 N.W.2d 108, (Iowa 1984) (finding "no meaningful distinction between being called a liar and being accused of falsifying information"); *Pease v. Int'l Union of Operating Eng'rs Local*, 150, 567 N.E.2d 614, 619 (Ill. App. 1991) (statements "he simply lied" and "lied to us and lied to

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you" were not reasonably susceptible to an innocent construction and were therefore libelous per se); *see also Edwards v. Nat'l Audubon Soc'y, Inc.*, 556 F.2d 113, 121 (2d Cir. 1977) (no allegation could be better calculated to ruin academic reputations than to call university professors "paid liars").

B. The Defense of Invited Defamation Does Not Apply to Adelson's Statements.

Next, Adelson contends that "Jacobs invited and consented to Adelson's statement[s]" with his "scurrilous accusations." (Mot. to Dismiss at 12.) Yet, the fatal flaws in this purported defense are readily obvious.

The privilege for "invited" defamation requires someone to actually "invite" and consent to the defamation. As explained by courts, "[w]here a defendant, not in the presence or hearing of third persons, makes a slanderous statement about a plaintiff, and thereafter ***at the request of the plaintiff*** repeats the statement in the presence and hearing of third persons, such repetition cannot be made the basis of an action for slander." *Royer v. Steinberg*, 153 Cal.Rptr. 499, 503 (Cal. Ct. App. 1979) (emphasis added) (citation omitted). "This principle applies [a] fortori, where a statement made privately to the plaintiff is published ***solely*** through the actions and effort of the plaintiff himself." *Id.* (emphasis added). Application requires a three part analysis as to whether: "(1) there was either express or implied consent to the publication; (2) the statements were relevant to the purpose for which consent was given; and, (3) the publication of those statements was limited to those with a legitimate interest in their content." *Farrington v. Bureau of Nat. Affairs, Inc.*, 596 A.2d 58, 59 (D.C. Ct. App. 1991).

Adelson's public smear campaign does not remotely qualify, let alone as a matter of law. To begin Adelson has not, and cannot, explain how Jacobs consented, either expressly or implicitly, to Adelson's media attack. As even the case law cited by Adelson illustrates, Adelson's claim that Jacobs' "provoked" him with his Complaint falls far short of the definition for "invited" defamation. For example, in *Litman v. Massachusetts Mutual Life Insurance Company*, 739 F.2d 1549, the Eleventh Circuit ruled that statements by the plaintiff's former employer to a new prospective employer were not actionable as the undisputed testimony was that the plaintiff knew that he had been fired for being in a "financial mess" and granted his

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prospective employer "***a complete right to check on anything and everything [he] did in the past***." 739 F.2d at 1560 (emphasis added). Similar consent occurred in *Jones v. Clinton*, 974 F. Supp. 712, 732 (E.D. Ark. 1997) (statements were 'invited' by plaintiff's (Paula Jones) public demand for an apology from defendant (President Clinton)) and *Williams v. Springfield School District*, 447 S.W.2d 256 (Mo. 1969) (plaintiff teacher at school board meeting asked school district superintendent why she was not going to be reemployed).

Of course, Jacobs played no role in Adelson's communication with the media and obviously gave no advance consent, express or implied. Like his other defenses, this one too wholly lacks merit. *Contra Royer*, 153 Cal.Rptr. at 503 (plaintiff was not allowed to proceed with a libel action against a school board which took up his newspaper "challenge" to prove the veracity of its grounds for terminating him); *Zuniga v. Sears, Roebuck & Co.*, 671 P.2d 662, 666 (N.M. Ct. App. 1983) (plaintiff requested a second meeting with an employer with his wife present knowing the defamation would be reiterated); *Gengler v. Phelps*, 589 P.2d 1056, 1058 (N.M. Ct. App. 1978) (terminated employee signing job application authorized contact by the prospective employer with the terminating or former employer); *see also* Restatement (Second) of Torts § 583 (1977).

C. Jacobs' Alleges a Valid Claim for Tortious Discharge.

1. The law supports Adelson's individual liability.

As to Jacobs' claim that Adelson is personally liable for orchestrating the tortious termination, Adelson first wrongly contends that tortious discharge is only available against employers, and not individual executives. Adelson misstates the holding in *Shoen v. Amerco, Inc.*, 11 Nev. 735, 896 P.2d 469 (1995), where the district court granted summary judgment against the plaintiff's tortious discharge claim because the plaintiff was employed at-will. 11 Nev. at 745, 896 P.2d at 475. Reiterating its prior holding in *D'Angelo v. Gardner*, 107 Nev. 704, 718, 819 P.2d 206, 212 (1991), the Supreme Court overturned, stating that "[t]he essence of a tortious discharge is the wrongful, usually retaliatory, interruption of employment by means which are deemed to be contrary to the public policy of this state." *Id.* "[A]lthough 'a public policy tort cannot ordinarily be committed absent the employer-employee relationship, the tort,

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the wrong itself, is not dependent upon or directly related to a contract of continued employment ...." *Id.* (quoting *D'Angelo*, 107 Nev. at 718, 819 P.2d at 212) (additional citation omitted). Thus, despite Adelson's claim to the contrary, nowhere did the Court hold that "*only an employer* can be liable for tortious discharge." (Mot. to Dismiss at 14.) *Shoen* did not even address this issue much less cabin the cause of action as Adelson misrepresents.

Nevada, like most other states, recognizes that corporate agents and officers who commit torts, even if on behalf of the entity, are personal liable for their tortious conduct. *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1098, 901 P.2d 684, 689 (1995). Thus, it is not surprising that courts considering the actual issue hold that "[c]orporate officers are liable to those harmed by such officer[s]" when their "acts constitut[e] the wrongful termination" of an employee. *Higgins v. Assmann Elecs.*, Inc., 173 P.3d 453, 458 (Ariz. Ct. App.2007); *see also Kunkle v. Q-Mark, Inc.*, 3:13-CV-82, 2013 WL 3288398, at *5 (S.D. Ohio June 28, 2013) ("This Court's review of law in other jurisdictions reveals that a most courts recently considering the issue recognize claims against individual employees, such as supervisors, who violate public policy by participating in wrongful termination of an employee."); *Myers v. Alutiiq Int'l Solutions, LLC*, 811 F. Supp. 2d 261, 269 (D.D.C. 2011) ("D.C. Court of Appeals would allow claims against individual supervisors for wrongful discharge" because "individuals are liable for their own torts, even as agents acting on behalf of their employers"); *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 776 (Iowa 2009) (holding that an individual corporate officer can be held liable for wrongful discharge because the tort "does not impose liability for the discharge from employment, but the wrongful reasons motivating the discharge"); *Ballinger v. Delaware River Port Auth.*, 800 A.2d 97, 110 (N.J. 2002) ("An individual who personally participates in the tort of wrongful discharge may be held individually liable" because "[a]n agent who does an act otherwise a tort is not relieved from liability by the fact that he acted at the command of the principal or on account of the principal") (internal quotation marks and citation omitted).

2. Jacobs' claim is not dependent upon qualifying as a "whistleblower."

Adelson again takes liberties with the facts and tries to recast Jacobs' tortious discharge claim as being solely based upon his "whistleblowing." Although discovery will show that

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Jacobs did not limit his reporting to just "inside" LVSC and its board, Jacobs' claim is not so limited. Claims for tortious discharge arise when an employee is terminated "in retaliation for the employee's doing of acts that are consistent with or supportive of sound public policy and the common good." *D'Angelo*, 107 Nev. at 718, 819 P.2d at 216. "The rationale behind these kind of tort actions is that, although an employer is free to dismiss an at-will employee under almost any circumstances, an employer is not entitled to dismiss an employee for a reason that contravenes public policy." *Bigelow v. Bullard*, 111 Nev. 1178, 1181, 901 P.2d 630, 632 (1995).

Importantly, "[a] claim for tortious discharge should be available to an employee who was terminated for ***refusing to engage in conduct that he, in good faith, reasonably believed to be illegal [or against public policy.]***" *Allum v. Valley Bank of Nevada*, 114 Nev. 1313, 1324, 970 P.2d 1062, 1068 (1998) (emphasis added); *Bigelow*, 111 Nev. at 1185, 901 P.2d at 634 ("These cases involve employer-employee confrontations in which the employee, in opposition to the employer's directions or policies, does something or refuses to do something that public policy entitles or empowers the employee to do or not to do.").

As detailed in Jacobs' amended Complaint, his confrontations with Adelson, and eventual termination, stemmed largely from Jacobs' refusal to comply with Adelson's illegal and unethical demands. (*See e.g.*, 3d Am. Compl. ¶ 32 ("When Jacobs objected to and/or refused to carry out Adelson's illegal demands, Adelson repeatedly threatened to terminate Jacob's employment."); ¶ 37 ("When Jacobs refused, Adelson commenced carrying out a scheme to fire and discredit Jacobs for having the audacity to blow the whistle and confront Adelson."). Thus, Adelson's personal involvement in orchestrating of Jacobs' wrongful termination – the facts of which have emerged notwithstanding the Defendants wholesale discovery obstruction – gives rise to a tort claim tortious termination directly against Adelson. *See Allum*, 114 Nev. at 1324, 970 P.2d at 1068.

3. Adelson's statute of limitations defense also fails.

i. Jacobs' amendment "relates back" to his original complaint.

Adelson next attempts another factual defense – the statute of limitations. Yet, Adelson's own assertions expose the argument's flaws. Adelson concedes that Jacobs timely asserted his

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claim for tortious discharge. But, according to Adelson, since that claim was originally only against LVSC, even though Adelson was a then-existing defendant on other claims, Jacobs had an obligation to amend his Complaint within two years of his termination.[2] Yet again, Adelson is wrong on the law.

NRCP 15(c) provides that, "[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." *See Olech v. Village of Willowbrook*, 138 F. Supp. 2d 1036, 1040-41 (N.D. Ill. 2000) ("Rule 15(c) permits a plaintiff to amend the pleadings to add a claim involving an existing party that, if filed as an entirely new lawsuit, would be barred by the statute of limitations."). Thus, "[t]he relation back doctrine of Rule 15(c) is a bar to the statute of limitations." *Percy v. San Francisco Gen'l Hospital*, 841 F.2d 975, 979 (9th Cir. 1988).

Defining the applicability of Rule 15(c), the Nevada Supreme Court notes that, "[i]f the original pleadings give fair notice of the fact situation from which the new claim for liability arises, the amendment should relate back for limitations purposes." *Scott v. Dep't of Commerce*, 104 Nev. 580, 586, 763 P.2d 341, 345 (1988); *I.C. Deal v. 999 Lakeshore Ass'n*, 94 Nev. 301, 307, 579 P.2d 775, 779 (1978) ("If a party has notice of the institution of the action, and is not misled to his prejudice, amendment should relate back."); *see also Asarco, LLC v. Un. Pac. Railroad Co.*, 765 F.3d 999, 1006 (2014) ("So long as a party is notified of litigation concerning a particular transaction or occurrence, that party has been given all the notice that Rule 15(c) requires.").

Unremarkably, "NRCP 15(c) is to be liberally construed to allow relation back of the amended pleading where the opposing party will be put to no disadvantage." *Costello v. Casler*, 127 Nev. Adv. Op. 36, 254 P.3d 631, 634 (citing *E.W. French & Sons, Inc. v. General Portland Inc.*, 885 F.2d 1392, 1396 (9th Cir.1989)). "Modern rules of procedure are intended to allow the

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[2] Of course, Adelson makes this contention while he has simultaneously insists that Jacobs is not permitted to amend his complaint and while there was an ongoing appeal as to whether Adelson was even a party to this case. Once again, neither the facts nor the law seem to be an obstacle to Adelson's argument.

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court to reach the merits, as opposed to disposition on technical niceties." *Id.* (citing *Schmidt v. Sadri*, 95 Nev. 702, 705, 601 P.2d 713, 715 (1979) ("The [L]egislature envisioned that [the Nevada Rules of Civil Procedure] would serve to simplify existing judicial procedures and promote the speedy determination of litigation upon its merits.")).

Ignoring Rule 15, Adelson argues that Jacobs' claim "cannot be salvaged on the theory that it 'relate[s] back'" because Jacobs' original and First Amended Complaints "alleged the very same claim for tortious discharge … against LVSC that appears in the Third Amended Complaint." (Mot. to Dismiss at 17.)[3] Thus, Adelson contends Jacobs' amendment is time-barred simply because he already alleged his claim for tortious discharge against another party to the action.

In *Martell v. Trilogy Limited*, 872 F.2d 322 (9th Cir. 1989), the Ninth Circuit reversed a trial court for accepting the same untenable argument that Adelson proposes.[4] There, like Jacobs, the plaintiff in *Martell* sought to amend his complaint to add an existing defendant to causes of action previously asserted against other defendants. *See also Nite & Day Power Tech. v. Corp. Capital Resources, Inc.*, 1995 WL 7942, at *5 (N.D. Cal. Jan. 5, 1995) (describing *Martell*). And, like Adelson, the defendant argued that the amendment could not "relate back" because the "claims were [already] asserted against [the other defendant]." 872 F.2d at 324-326 ("Trilogy is not claiming that the causes of action arise from different facts; instead, it argues that while the new claims are based on facts set forth in the original pleading, it was not at that time charged with the wrong subsequently alleged.").

Rejecting the same flawed approach Adelson advances, the Ninth Circuit explained that "Rule 15(c) does not require this sort of notice." *Id.* at 326. The court noted that this is a straightforward and classic application of Rule 15(c) because the claim was already asserted in

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[3] Ignoring NRCP 15(c), Adelson relies on NRCP 10(a) and the Nevada Supreme Court's decision in *Sparks v. The Alpha Tau Omega Fraternity, Inc.*, 127 Nev. Adv. Op. 23, 255 P.3d 238 (2011), instead. However, as shown NRCP 15(c) applies to Jacobs' amendment – not NRCP 10(a).

[4] The Nevada Supreme Court looks to federal decisions applying FRCP 15(c) for guidance on the interpretation of NRCP 15(c). *See Costello*, 127 Nev. Adv. Op. 36, 254 P.3d at 634 (adopting federal interpretation of Rule 15(c)).

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the original complaint and thus the defendant could not dispute that the cause of action arose out of the conduct, transaction or occurrence set forth in that complaint. *Id.* at 325 ("We consider whether the original and amended pleadings share a common core of operative facts so that the adverse party has fair notice of the transaction, occurrence, or conduct called into question.").

According to Adelson, Jacobs "could have (and should have) made the same claims against Adelson when he filed his original Complaint. After all, he commenced this lawsuit alleging that his termination was orchestrated by Adelson and other LVSC executives." (Mot. at 17.) But that is precisely why Adelson is so wrong about the relation back doctrine. *See also Frances v. Plaza Pac. Equities, Inc.*, 109 Nev. 91, 97, 847 P.2d 722, 727 (1993) ("The facts eventuating the death of Michael and the subsequent claim for wrongful death were identical to the facts alleged in the original complaint.").

Adelson misstates the standard for "relation back." The question of what Jacobs "could have" or "should have" done does not affect his right to bring additional causes of action against Adelson. "Relation back" under Rule 15(c) "depends on what the party to be added knew or should have known, ***not*** on the amending party's knowledge or its timeliness in seeking to amend the pleading." *Krupski v. Costa Crociere*, 560 U.S. 538, 541 (2010) (emphasis added); *I.C. Deal*, 94 Nev. at 307, 579 P.2d at 779 ("If a party has notice of the institution of the action, and is not misled to his prejudice, amendment should relate back.").

ii. Adelson has not and cannot provide irrefutable proof that Jacobs' claim is time-barred.

Even if this were a case where Jacobs' original Complaint – filed within just months of his wrongful firing – did not include a claim for tortious termination and Adelson were not made a party less than a year later, Adelson's proffered defense would still not provide a basis for dismissal. To begin with, the statute of limitations defense is one that turns on the facts and is disfavored under the law. As the Nevada Supreme Court holds, "the plea of the statute of limitations is not. . . such a meritorious defense that either the law or the fact should be strained in aid of it, nor should this court indulge in any presumptions in its favor." *Howard v. Waale-Camplan & Tiberti*, 67 Nev. 304, 312, 217 P.2d 872, 876 (1950) (citation omitted); *see also Union Oil Co. of California v. Terrible Herbst, Inc.*, 331 F.3d 735, 740 (9th Cir. 2003)

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("[W]e should not make unwarranted assumptions in favor of the statute-of-limitations defense."); *Loeffler v. The Ritz-Carlton Hotel Co.*, No. 2:06CV 0333 ECR LRL, 2006 WL 1796008, at *3 (D. Nev. June 28, 2006) (noting that statute of limitations is disfavored defense on a motion to dismiss because it is fact intensive and only the face of the complaint is before the court).

Thus, "[d]ismissal on statute of limitations grounds is only appropriate when uncontroverted evidence ***irrefutably demonstrates*** plaintiff discovered or should have discovered the facts giving rise to the cause of action." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998) (quoting *Nevada Power Co. v. Monsanto Co.*, 955 F.2d 1304, 1307 (9th Cir. 1992)) (emphasis added).

The rationale behind this rule "is that the policies served by statutes of limitation do not outweigh the equities reflected in the proposition that plaintiffs should not be foreclosed from judicial remedies before they know that they have been injured and can discover the cause of their injuries." *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990)). Thus, knowledge of the running of the statute of limitations must "***be determined by the jury or trial court after a full hearing where ... the facts are susceptible to opposing inferences***." *Millspaugh v. Millspaugh*, 96 Nev. 446, 448–49, 611 P.2d 201, 202 (1980) (emphasis added) (internal quotation omitted)); *Nevada State Bank v. Jamison Partnership*, 106 Nev. 792, 801, 799, 801 P.2d 1377, 1382 (1990) ("A determination of when the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of his cause of action is a question of fact for the trier of fact.") (internal quotation omitted).

Again, even if this were a case where Jacobs' original complaint did not arise out of the conduct giving rise to his tortious termination (as it plainly does), Adelson would still be light-years from the "irrefutable proof" he needs to demonstrate that any claim is time-barred. As the Court is aware, minimal discovery has occurred to date and Adelson has yet to even answered the claims against him. Self-serving rhetoric as to what Jacobs purportedly "could have" and "should have" done fails to carry his burden. This is particularly so considering the very limited discovery to date and the Defendants' wholesale obstruction of determining the scope of

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Adelson's guiding hand in that termination. Indeed, Adelson's double speak is apparent. On the one hand he claims that individual corporate officers should not be potentially liable for tortious termination absent an extraordinary factual showing, while he simultaneously claims that Jacobs should have added Adelson to the wrongful termination claim without any discovery ever having occurred. Fortunately, the law does not embrace the contradiction that Adelson needs.[5]

D. Jacobs Alleges More Than Sufficient Detail To Support Punitive Damages.

Finally, Adelson underscores his lack of serious legal support when he contends that Jacobs does not allege sufficient detail in support of his tort claims to entitle him to punitive damages. Adelson advances this dubious contention while the company he controls, LVSC, simultaneously complains that Jacobs' Complaint includes too much detail and it asks this Court to strike many of the very facts highlighting the basis of Adelson's personal malice against Jacobs.

1. Jacobs alleges the details of his defamation.

To state a claim for defamation, all Jacobs must allege are facts showing: (1) a false and defamatory statement by defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages." *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483 (1993). As shown by his pleading, Jacobs alleges: (1) the substance of the defamatory statement (Jacobs was fired for cause and tries to excuse his termination with lies); (2) who made it (Adelson); (3) to whom (the media); and (4) when (March 15, 2011). (3d Am. Compl. ¶¶ 70-76.) Although Jacobs' pleading includes many additional details – including those establishing Adelson's actual malice – nothing more is required.

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[5] Adelson's assertion that Jacobs should have named him in his tortious discharge cause of action sooner is particularly odd considering Adelson's appeal. The Court certified the case against Adelson as final under NRCP 54(b) on June 20, 2011. Thereafter, the case remained on appeal until the September 15, 2014, remittitur. Adelson would have undoubtedly sought dismissal had Jacobs tried to reopen the case against him during the appeal. Thus, even if NRCP 15(c) did not exist and Adelson had proof to support his limitations defense, Jacobs is still entitled to move forward on the grounds that the statute of limitations would have been equitably tolled during Adelson's appeal. "Equitable tolling operates to suspend the running of a statute of limitations when the only bar to a timely filed claim is a procedural technicality." *State Dept. of Taxation v. Masco Builder Cabinet Group*, 127 Nev. Adv. Op. 67, 265 P.3d 666, 671 (2011) (citing *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983) ("We therefore adopt the doctrine of equitable tolling ...; procedural technicalities that would bar claims ... will be looked upon with disfavor.")); *Lantzy v. Centex Homes*, 31 Cal.4th 363, 2 Cal.Rptr.3d 655, 73 P.3d 517, 523 (2003) ("This court has applied equitable tolling in carefully considered situations to prevent the unjust technical forfeiture of causes of action....").

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2. Jacobs alleges the details of his tortious discharge.

Additionally, the basis and details of Jacobs' tortious discharge allegations are too numerous to even attempt to summarize here. Needless to say, Jacobs' pleading contains page after page of details setting forth the genesis and climax of his wrongful termination. (*See* 3d Am. Compl. ¶¶ 9-47.) Adelson's demand for more detail has no support and is simply a delay maneuver.

IV. CONCLUSION

Adelson's Motion to Dismiss lacks factual and legal support. His purported defenses are foreclosed by the allegations in Jacobs' Third Amended Complaint, all of which must be accepted as true. While Adelson is right to personally fear Jacobs' claims, even he cannot ignore the facts or rewrite the law to avoid liability. His motion fails.

DATED this 4th day of February, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 4th day of February, 2015, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **OPPOSITION TO DEFENDANT SHELDON ADELSON'S MOTION TO DISMISS THIRD AMENDED COMPLAINT** properly addressed to the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

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

OPPOSITION TO DEFENDANTS SANDS CHINA LTD.'S AND LAS VEGAS SANDS CORP.'S MOTIONS TO DISMISS THIRD AMENDED COMPLAINT

Hearing Date: February 26, 2015

Hearing Time: 8:30 a.m.

I. INTRODUCTION

Defendants Sands China Ltd. ("Sands China") and Las Vegas Sands Corp. ("LVSC") Motions to Dismiss rest upon disregarding the actual law and revising the actual allegations made by Plaintiff Steven C. Jacobs so as to set up false straw men in which to argue against. That any litigant must predicate a motion upon such untenable maneuvers, only underscores their lack of substance.

Even the limited discovery that has occurred to date confirms Sands China's active participation and cooperation in the unlawful scheme to terminate Jacobs in violation of public policy. As Jacobs has sufficiently stated in his Third Amended Complaint, Sands China was a

willing conspirator and accomplice in the scheme to remove Jacobs because he would not accede to Defendant Sheldon G. Adelson's ("Adelson") illegal demands. The actions of Sands China's co-conspirators in Nevada, as well as its own actions within the forum, reaffirm personal jurisdiction in Nevada.

The same is true of Jacobs' defamation claim. Sands China and LVSC are liable for the false and defamatory statements that they published through their bellicose Chairman. Adelson's injurious smear was published in Nevada, concerned a Nevada proceeding, and was aimed at this State in a thinly veiled attempt to influence opinions about Jacobs and this litigation.

Finally, LVSC makes a gratuitous Motion to Strike, claiming that Jacobs' Complaint contains too much detail, while at the same time its Chairman (Adelson) claims that Jacobs' Complaint is too sparse. Each proves the other wrong. LVSC's request is precisely what other courts have labeled as improper motions to strike for the purpose of wasting time.

II. BACKGROUND

The background of this action is well known to this Court and is set forth in Opposition to Adelson's Motion to Dismiss, which Jacobs incorporates herein by reference.[1] Since the initial round of pleadings and the very limited discovery that has occurred to date, Jacobs has amended his Complaint to add additional claims against Sands China based upon the facts and circumstances of Jacobs' tortious discharge: (1) civil conspiracy and (2) aiding and abetting Jacobs' tortious discharge. Similarly, Jacobs has added a claim for civil conspiracy against LVSC. Specifically, the new claims are based on the fact that Sands China entered into an unlawful conspiracy with LVSC and otherwise assisted LVSC in connection with its wrongful termination of Jacobs in violation of public policy. And those allegations give rise to actionable claims under Nevada law and only further expose the lack of substance to Sands China's ongoing attempts at avoiding this Court's jurisdiction over it.

[1] Jacobs also incorporates all of the allegations set forth in his Third Amended Complaint as though fully set forth herein.

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III. ARGUMENT

A. The Merits Stay Does Not Preclude Jacobs' Amendment.

To begin, Sands China and LVSC regurgitate the same rejected argument they made when Jacobs successfully moved to amend his complaint – that the Nevada Supreme Court's mandate precludes any amended complaint or consideration of an amended complaint. As Jacobs explained then, and as this Court agreed, the Nevada Supreme Court's August 26, 2011 Order did not prohibit Jacobs from amending his complaint, adding claims, or even adding new parties. "[T]he mandate did not expressly address the possibility of amendment, nor was there indication of a ***clear intent*** to deny amendment seeking to raise new issues not decided by the prior [writ]. Absent a mandate explicitly or impliedly precluding amendment, the decision whether to allow leave to amend is within the trial court's discretion." *Nguyen v. United States*, 792 F.2d 1500, 1503 (9th Cir. 1986) (emphasis added); *see also Rutherford v. United States*, 806 F.2d 1455, 1459-60 (10th Cir. 1986) (when appellate court reverses and remands, the district court has discretion to allow plaintiff to amend complaint unless mandate precludes amendment or amendment would run counter to mandate).

The Supreme Court's Order provides only that this Court is to "stay the underlying action, except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered." (Order Granting Petition for Writ of Mandamus, Aug. 26, 2011, at p. 3, on file.) But, jurisdiction is related to all the claims that are being asserted. *See Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 122 Nev. 509, 515, 134 P.3d 710, 714 (2006) (specific jurisdiction considers whether the claim arises from purposeful contact with the forum or conduct targeting the forum); *see also Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). And, even Sands China recognizes that Jacobs' additional claims provide a basis to assert specific jurisdiction over Sands China. (*See* Mot. at 3:3-4, 3:28-4:1.) The attempt to evade addressing the substance of Jacobs' amendment through more procedural maneuvering fails.

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B. Defendants Ignore the Actual Pleading Standard.

Nevada is a notice-pleading jurisdiction and its "courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (citing NRCP 8(a); *Chavez v. Robberson Steel Co.*, 94 Nev. 597, 599, 584 P.2d 159, 160 (1978)). All the complaint need do is contain a plain statement of the facts setting forth facts giving rise to a claim. *Id.* (citing *Johnson v. Travelers Ins. Co.*, 89 Nev. 467, 472, 515 P.2d 68, 71 (1973)). The court must accept Jacobs' factual allegations as true, as well as all reasonable inferences that can be drawn from those factual allegations. *Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. Adv. Op. 3, 293 P.3d 869, 872 (2013). A complaint can be dismissed under NRCP 12(b)(5) "only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

As set forth below, neither Sands China nor LVSC come close to the required showing. Indeed, they prove that point themselves in attempting to rewrite the terms of Jacobs' allegations so as to find something to argue about.

C. The Statute of Limitations Defense Fails.

Cognizant that Jacobs' additional tort claims against Sands China spell doom for its continued attempts to pretend that it is not subject to jurisdiction in Nevada, Sands China and LVSC contend that Jacobs' additional tort claims are time barred because Jacobs "could have (and should have) made the same claims" when he filed his original complaint in 2010. (Mot. at 7:20-21). But, if Jacobs could have asserted the conspiracy and aiding and abetting claims in 2010 – claims growing out of his tortious termination – that only serves as an admission that they arise from the same transaction and occurrence and thus relate back under NRCP 15. As Sands China and LVSC repeat the same misguided theory dispelled in Jacobs' Opposition to Adelson's Motion to Dismiss, Jacobs incorporates all of those arguments by reference so as to reduce this Court's workload.

Because the conspiracy and aiding and abetting claims grow out of the same transaction and occurrence set forth in Jacobs' original Complaint, those claims relate back the original filing

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date. *See, e.g., BBD Transp. Co. v. S. Pac. Transp. Co.*, 627 F.2d 170, 173 (9th Cir. 1980) (conspiracy claim related back because it arose out of the same conduct, transaction, or occurrence described in the original complaint); *Pierce v. Rossetta Corp.*, No. CIV. A. 88-5873, 1992 WL 165817, at *9 (E.D. Pa. June 12, 1992) (aiding and abetting claim related back to the filing of the original complaint because it arose from the same conduct, transaction, or occurrence).

And for the very same reasons set forth in Jacobs' Opposition to Adelson's identical motion, Sands China and LVSC fail to provide irrefutable proof that Jacobs' conspiracy and aiding and abetting claims are time barred, even if the Court were to suspend reality and assume that those claims did not grow out of the same occurrence stated in Jacobs' original Complaint. Once again, any purported statute of limitations defense provides no basis for a motion to dismiss at the pleading stage.

D. Jacobs Has Stated Claims for Conspiracy and Aiding and Abetting.

1. Jacobs has pled the underlying tort.

Through Adelson, Sands China and LVSC argue that Jacobs has not sufficiently pled the underlying tortious discharge in violation of public policy cause of action. (Mot. at 8:18-9:2.)[2] As explained in his Opposition to Adelson's Motion, Jacobs' tortious discharge claim is not entirely premised upon being a "whistleblower." Jacobs has alleged that he was tortiously discharged for attempting to comply with the law and refusing to obey unlawful demands. (*See e.g.*, 3d Am. Compl. ¶¶ 32, 37, 67, 79-80.) These allegations state a valid claim. *See, e.g., D'Angelo v. Gardner*, 107 Nev. 704, 718, 819 P.2d 206, 216 (1991); *Bigelow v. Bullard*, 111 Nev. 1178, 1181, 901 P.2d 630, 632 (1995); *Allum v. Valley Bank of Nevada*, 114 Nev. 1313, 1324, 970 P.2d 1062, 1068 (1998).

2. Sands China conspired with, and aided and abetted, LVSC

Sands China and LVSC attempt to rewrite Jacobs' Third Amended Complaint to state that he has no claim because LVSC supposedly conspired only with itself. (Mot. at 9:4-13:2.) But of

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[2] Tellingly, LVSC filed an answer to the underlying tort count in Jacobs' original Complaint. But now, by joining Sands China, it claims that Jacobs has not alleged enough facts to state a claim.

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course, that is not what Jacobs has alleged and the fact that they need to rewrite the Complaint only proves the merits of Jacobs' real allegations. "'An actionable conspiracy consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts.'" *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993) (quoting *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989)).

Contrary to Sands China's mischaracterization, Jacobs pled that Sands China and LVSC are separate legal entities that agreed, acted, and conspired to tortiously discharge Jacobs with the intent to cause him harm and did, in fact, cause damage to Jacobs. (3d Am. Compl. ¶¶ 91-94.) Jacobs does not premise his conspiracy claim upon Adelson conspiring with himself, and Jacobs does not limit his cause of action to the actions of LVSC employees. Even though Sands China is confused by the word "ostensibly,"[3] Jacobs alleged that agents of LVSC conspired with agents of Sands China to effectuate his wrongful termination. (*Id.* ¶¶ 38, 92.)

Jacobs identified Sands China's Board as a conspirator along with certain individuals including, but not limited to, Leven and Siegel. (*Id.* ¶¶ 39-42, 92-93.) The Board was informed of Jacobs' groundless termination approximately two days before it occurred. (*Id.* ¶ 39-41.) Sands China, through its agents, conspired with LVSC (including Kay, Hyman, Briggs, Reese, Nagel, Dumont, and Hendler) to effectuate Jacobs' tortious firing.[4]

Sands China concedes that it is capable of conspiring with LVSC because Sands China is not a wholly owned subsidiary. (Mot. at 12:17-18.). The intracorporate conspiracy doctrine does not apply to subsidiaries that are not wholly owned. *See Winnemucca Farms, Inc. v. Eckersell*, 3:05-CV-385-RAM, 2010 WL 1416881, at *5 (D. Nev. Mar. 31, 2010) (70% owned subsidiary can conspire with parent because it is not wholly owned). Hence, Jacobs' allegation of Sands China's conspiracy with LVSC to effectuate his tortious termination states a valid cause of action.

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[3] (Mot. at 10:23-25.)

[4] Jacobs is not required to identify every conspirator for each entity in his Complaint. *See United States v. LaFleur*, 669 F. Supp. 1029, 1035-36 (D. Nev. 1987) (no requirement to identify all co-conspirators to properly allege a conspiracy for purposes of a motion to dismiss).

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3. Jacobs has adequately alleged a claim for aiding and abetting

Similarly, Sands China's attack on Jacobs' aiding and abetting claim falls flat. "[L]iability attaches for civil aiding and abetting if the defendant substantially assists or encourages another's conduct in breaching a duty to a third person." *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1490, 970 P.2d 98, 112 (1998) *overruled in part on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 271, 21 P.3d 11, 15 (2001). A party must only pled an underlying tort, the defendant's awareness of its role in promoting the tort at the time it provided assistance to the tortfeasor, and that the defendant knowingly and substantially assisted the tortfeasor in committing the tort. *Id.* "To amount to substantial assistance, such encouragement must take the form of a direct communication, or conduct in close proximity, to the tortfeasor." *Id.* at 1491, 970 P.2d at 113.

The issues of "awareness" and "substantial assistance" are generally questions of fact for the jury. *See Jordan v. Paul Fin.*, LLC, 745 F. Supp. 2d 1084, 1097 (N.D. Cal. 2010) (actual knowledge is a question of fact and aiding and abetting claim was sufficiently stated by alleging substantial assistance); *S.E.C. v. Kovzan*, No. 11-2017-JWL, 2013 WL 5651401, at *9 (D. Kan. Oct. 15, 2013) ("The Court also concludes that the issue whether defendant provided substantial assistance, as required for an aiding-and-abetting violation, presents a question of fact for the jury.").

And, while Sands China seeks to impose additional pleading elements nowhere required, Jacobs has sufficiently stated a claim under Nevada law. Jacobs has asserted that LVSC wrongfully terminated Jacobs in violation of public policy and Sands China substantially assisted with LVSC's tort by making agreements with LVSC in furtherance of Jacobs' termination, ratifying Jacobs' termination for the benefit of Adelson and LVSC, and carry out other acts in furtherance of the scheme. (3d Am. Compl. ¶¶ 86-87.) Jacobs described direct communications between LVSC and the Sands China's Board, and the Board's awareness that there was no valid reason to terminate Jacobs at the time it executed the corporate documents. (*Id.* ¶ 39-41.) Sands China admits that "the SCL Board undoubtedly cooperated in terminating Jacobs. . . ." (Mot. at 13:27-26.) This concession alone defeats Sands China's Motion to Dismiss. *See In Re Amerco Derivative Litigation*, --- Nev. ---, 252 P.3d 681, 701 (2011) (Reversing the court's dismissal of

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aiding and abetting breach of fiduciary duty claim, noting that legal entities controlled by the tortfeasor can aid and abet him in completion of the underlying tort).

Moreover, certain directors were aware that Jacobs was being terminated solely because he would not acquiesce to Adelson's unlawful demands. (*See id.* ¶¶ 38-44.) Jacobs has pled sufficient facts indicating that Sands China was aware of the tort at the time that Sands China was rendering active assistance in pursuit of it. The degree of Sands China's awareness and the level of Sands China's assistance are questions to be resolved at trial, and are not a basis for a motion to dismiss. *See Jordan*, 745 F. Supp. 2d at 1097; *Kovzan*, 2013 WL 5651401, at *9.

E. The Court Can Exercise Personal Jurisdiction Over Sands China.

As Jacobs set forth in his Countermotion for Summary Judgment on personal jurisdiction, and the Reply in Support thereof, this Court can exercise general and specific personal jurisdiction over Sands China.[5] But there is no doubt that Jacobs' conspiracy, aiding and abetting, and defamation claims provide additional grounds for jurisdiction. Sands China does not address general jurisdiction and Jacobs will thus focus his analysis to the issue of specific jurisdiction. Nonetheless, much of this discussion is academic because the Court can properly exercise general jurisdiction over Sands China as it is controlled from Nevada, operated from Nevada, and is very much "at home" here.

In accordance with Due Process, a court may exercise specific jurisdiction over an out of state defendant if the defendant has certain minimum contacts with the forum, and the maintenance of the suit does not offend "'traditional notions of fair play and substantial justice.'" *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (2011) (quoting *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310 (1945)). The commission of certain 'single or occasional acts' in a State may be sufficient to render a corporation answerable in that State with respect to those acts. . . ." *Id.* The primary question for specific jurisdiction is whether the defendant purposefully availed itself of the privilege of

[5] Jacobs incorporates the arguments, points, and authorities set forth in that briefing as if set forth fully herein. Jacobs will present evidence in support of all of his general and specific jurisdiction theories at the forthcoming evidentiary hearing.

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conducting business in the state or purposefully directed acts at the forum. *See id.* at 2854 (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

Sands China acknowledges that specific jurisdiction can be exercised over an out of state defendant based upon the actions of its agents within the forum. (Mot. at 14:27-15:2.) As the Nevada Supreme Court has held, "a plaintiff may establish personal jurisdiction over a nonresident defendant 'by attributing the contacts of the defendant's agent with the forum to the defendant.'" *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1158 (2014) (quoting *Trump v. Eighth Judicial Dist. Court,* 109 Nev. 687, 694, 857 P.2d 740, 745 (1993)).

1. There is specific jurisdiction over Sands China in Nevada as a result of the acts of its LVSC Co-Conspirators and Sands China's aiding and abetting.

Sands China ignores *Davis v. Eighth Judicial District Court*, 97 Nev. 332, 338-39, 629 P.2d 1209, 1213-14 (1981),[6] wherein the Nevada Supreme Court held it reasonable and constitutionally permissible to exercise personal jurisdiction over out-of-state conspirators. Other jurisdictions agree that conspirators who participate in, or agree to join, a conspiracy and an act is taken in furtherance of the conspiracy within the state are subject to jurisdiction there. *See, e.g., Remmes v. Int'l Flavors & Fragrances, Inc., a New York corporation*, 389 F. Supp. 2d 1080, 1094-95 (N.D. Iowa 2005) (surveying case law and stating "This issue has been previously addressed by a number of federal courts, ***the majority of which have concluded that jurisdiction based on the conspiracy theory does not violate due process***.") (emphasis added); *Aluminum Bahrain B.S.C. v. Alcoa Inc.,* 866 F. Supp. 2d 525, 528 (W.D. Pa. 2012) (explaining absent co-conspirator doctrine); *First Capital Asset Mgmt., Inc. v. Brickellbush, Inc.*, 218 F. Supp. 2d 369, 394 (S.D.N.Y. 2002); *United Technologies Corp. v. Mazer*, 556 F.3d 1260, 1281 (11th Cir. 2009); *Chase Bank USA N.A. v. Hess Kennedy Chartered LLC*, 589 F. Supp. 2d 490, 499 (D. Del. 2008); *Olson v. Jenkens & Gilchrist*, 461 F. Supp. 2d 710, 724 (N.D. Ill. 2006); *Compass Mktg., Inc. v. Schering-Plough Corp.*, 438 F. Supp. 2d 592, 594 (D. Md. 2006).

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[6] *superseded on other grounds by rule as stated in Hansen v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 116 Nev. 650, 6 P.3d 982 (2000).

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Sands China's own authority supports Jacobs. It cites *Carsanaro v. Bloodhound Technologies, Inc.,* 65 A.3d 618, 642 (Del. Ch. 2013) for the proposition that "[t]he jurisdictional analysis for the aiding and abetting claim is 'functionally equivalent." (Mot. at 16:24-25.) *Carsanaro* also recognizes that a "complaint satisfies due process by properly invoking the conspiracy theory of jurisdiction." *Id*. at 635. The court explained "[t]his theory is based on the legal principle that one conspirator's acts are attributable to the other conspirators. . .[I]f the purposeful act or acts of one conspirator are of a nature and quality that would subject the actor to the jurisdiction of the court, all of the conspirators are subject to the jurisdiction of the court." *Id*. at 635-36 (internal citations and quotations omitted).

According to *Carsanaro*, the elements of conspiracy and aiding and abetting jurisdiction are:

> (1) a conspiracy. . .existed; (2) the defendant was a member of that conspiracy; (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state; (4) the defendant knew or had reason to know of the act in the forum state or that acts outside the forum state would have an effect in the forum state; and (5) the act in, or effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy.

Id. at 636.

Jacobs has alleged all required elements and facts to support personal jurisdiction over Sands China based upon the acts of its LVSC co-conspirators in Nevada as well as Sands China's aiding and abetting. Jacobs has alleged the existence of a conspiracy between Sands China and LVSC to "effectuate Jacobs' tortious discharge." (3d Am. Compl. ¶¶ 87, 92.) Sands China was a member of the conspiracy and substantial acts in furtherance of it occurred in Nevada, including the decision making, formulation of the "exorcism strategy," preparation of press releases, and the handling of other legal matters for the termination. (*Id*. ¶¶ 87, 92, 38-39.) Sands China knew of the acts in Nevada and these actions were a direct and foreseeable result of the conspiracy and its aiding and abetting. (*Id*. ¶¶ 87, 38-40. 93-94.) Indeed, several of the conspiratorial acts and aiding and abetting occurred in Nevada by Sands China's very own agents. (*Id*. ¶¶ 38-40, 87, 94.) While Jacobs did suffer harm in Nevada, it is sufficient that LVSC took actions as a conspirator in Nevada in conjunction with Sands China itself. *Carsanaro,* 65 A.3d at 636. Therefore, Jacobs has alleged sufficient minimum contacts to support the Court's exercise of specific jurisdiction

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over Jacobs' conspiracy and aiding and abetting claims. *Goodyear Dunlop Tires Operations, S.A.*, 131 S. Ct. at 2853.

2. There is also specific jurisdiction over Sands China based upon its defamatory statements in Nevada.

Initially, Sands China and LVSC pretend that Jacobs "has not alleged any factual basis for his conclusory assertion that Adelson was speaking on behalf of himself personally, LVSC *and* SCL when he made the statement Jacobs challenges." (Mot. at 17:13-15.)[7] Not so. Nevada law recognizes that corporate officers are individually liable for torts that they commit and that the entities for whom they act are likewise liable. *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1098, 901 P.2d 684, 689 (1995). Thus, a corporation is liable for the defamatory statements of its executives acting within the scope of their authority. *See, e.g., Unker v. Joseph Markovits, Inc.*, 643 F. Supp. 1043, 1049 (S.D.N.Y. 1986) (corporation liable for defamatory statements made by the president and chairman within the scope of his authority).

Jacobs has alleged verbatim Adelson's defamatory statement which demonstrates that it was said on behalf of himself, Sands China and LVSC. As Jacobs alleges, the three of them issued a press release falsely stating:

> "While I have largely stayed silent on the matter to this point, the recycling of his allegations must be addressed," he said "***We*** have a substantial list of reasons why Steve Jacobs was fired for cause and interestingly he has not refuted a single one of them. Instead, he has attempted to explain his termination by using outright lies and fabrications which seem to have their origins in delusion."

(3d Am. Compl. ¶ 71.) Adelson's use of the word "We" confirms that he was not speaking for just himself. Rather, he was clearly speaking for himself and for his companies. Adelson's tort renders Sands China and LVSC vicariously liable for his defamatory statements. *See, e.g., Unker*, 643 F. Supp. at 1049. Moreover, Sands China and LVSC have ratified and endorsed Adelson's false statements (3d Am. Compl. ¶ 74.)

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[7] Jacobs incorporates the points and authorities outlined in his Opposition to Adelson's Motion to Dismiss his Third Amended Complaint regarding the right to reply, invited defamation, statements of opinion, and Jacobs' entitlement to punitive damages.

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As Jacobs has argued elsewhere, and will show at the jurisdictional hearing, Sands China is "at home" in Nevada and can be sued in Nevada under the theory of general jurisdiction. (*Id.* ¶ 3); *Daimler AG*, 134 S. Ct. at 760. Consequently, Sands China can be sued in this jurisdiction for all of its wrongful acts anywhere in the world, including Adelson's defamatory remark. Regardless, the Court can also exercise specific jurisdiction over Sands China based upon publication of the defamation in Nevada.

Sands China mistakenly focuses on *Jacobs'* relationship to Nevada. (Mot. at 17:19-19:9.) But "[i]n judging minimum contacts, a court properly focuses on 'the relationship among the *defendant*, the forum, and the litigation.'" *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)) (emphasis added). There is no requirement that "a plaintiff . . . have 'minimum contacts' with the forum State before permitting that State to assert personal jurisdiction over a nonresident defendant." *Id.* at 779. The United States Supreme Court has upheld jurisdiction in cases where the plaintiff had no connection to the forum. *Id.* A plaintiff's lack of residence in the forum does not defeat jurisdiction. *Id.* at 780 (discussing case).

For example, in *Keeton v. Hustler Magazine, Inc.*, the plaintiff, a New York resident, sued an Ohio corporation with a California principle place of business, in New Hampshire based upon alleged libel in the corporation's magazine. *Id.* 465 U.S. at 773. The corporation's contacts with New Hampshire consisted of the sale of some 10 to 15,000 copies of the magazine each month. *Id.* The corporation moved to dismiss for lack of personal jurisdiction, but the United States Supreme Court determined that the exercise of jurisdiction was proper. *Id.* at 773-74.

The High Court did not restrict defamation actions to the plaintiff's home state. *Id.* at 780. The Court noted that states have an interest protecting their residents from reading false statements of fact. *Id.* at 776. It reasoned, "[t]he victim of a libel, like the victim of any other tort, may choose to bring suit in any forum with which the defendant has certain minimum contacts ... such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* at 780-81 (quotations omitted); *Daimler AG*, 134 S. Ct. at 755 n.7 (identifying *Keeton* as an example of specific jurisdiction).

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Similarly, in *Calder v. Jones,* 465 U.S. 783 (1984), a California resident brought a libel suit against Florida residents in California based upon an allegedly defamatory article written in Florida but circulated in California as part of a magazine. California was the focal point of the subject article because it concerned activities in California and was written based upon information from California. *Id*. at 788-89. The United States Supreme Court held that the exercise of personal jurisdiction over the defendants in California was proper. *Id*. at 789-90. Although not required, the plaintiff could have sought redress in Florida. *See id.* at 790

Here, Adelson's defamatory statement—made as the Chairman of Sands China and LVSC—was published in Nevada through the Wall Street Journal. (3d Am. Compl. ¶ 71.) Nevada was the focal point of the statement because the smear was prompted by activities within Nevada and concerned this ongoing Nevada litigation. *Id*. Jacobs' out of state residency is immaterial. He is not required to sue Adelson, Sands China, or LVSC *in his own home state*. Instead, Jacobs can sue Sands China were the statements were published. *Keeton*, 465 U.S. at 780-81; *see also Calder*, 465 U.S. at 790. There is specific jurisdiction over Sands China because its Chairman's statement was directed at the Nevada proceeding (if not directly aimed at this Court), and Jacobs' defamation claim arises from Adelson's conduct targeting the forum. *Arbella Mut. Ins. Co.*, 122 Nev. at 513, 134 P.3d at 713 (quoting *Trump,* 109 Nev. at 699-700, 857 P.2d at 748).

F. LVSC's Motion to Strike is Without Merit.

Finally, while its Chairman (Adelson) complains that Jacobs' Complaint does not contain enough details, LVSC simultaneously claims that the Complaint contains too many details. Many of those details set forth the background and basis for Adelson's personal animus and malice towards Jacobs giving rise to this entire dispute. And of course, that is precisely why LVSC does not like them. Those allegations reinforce why Jacobs will prevail on all of his causes of action.

LVSC skips over the real legal standard governing such motions to strike. NRCP 12(f) only authorizes a motion to strike an "insufficient defense or any redundant, immaterial, impertinent or scandalous matter" from a pleading. Courts consistently recognize that such motions are highly disfavored because "striking a portion of a pleading is a drastic remedy and because it is often sought by the movement simply as a dilatory tactic." *Nickens v. State*

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Employees Credit Union, Inc., 2014 WL 3846060, *4 (D. Md. Aug. 4, 2014) (Citations omitted). The pleading is viewed in the light most favorable to the plaintiff and the moving party bears the high burden of demonstrating that the "challenged allegations have no possible relation or logical connection to the subject matter of the controversy' or 'cause some form of significant prejudice to one or more of the parties to the action.'" *Moore v. Novo Nordisk, Inc.*, 2011 WL 085650, *8 (D.S.C. Feb. 10, 2011) (quoting 5C Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1382 (West 2009); *Cobell v. Morton*, 224 F.R.D. 266, 282 (D. D.C. 2004) (labeling such motions as disfavored "time wasters"); *Phoenix Properties, LLC v. Biggs*, 2007 WL 1340635, *2 (D. Neb. April 10, 2007) (noting that the standard for materiality is a broad one and that the movant bears the burden showing that any challenged allegation can have no possible bearing upon the case); *Lane v. Page*, 272 F.R.D. 581, 587 (D. N.M. 2011) (same).

LVSC has not remotely demonstrated that the allegations have no bearing on this case. The opposite is true. Jacobs' allegations highlight the entirely dysfunctional nature of LVSC at the time of his arrival. It is that very dysfunction and Jacobs' efforts to remedy it that gave rise to Adelson's poisonous venom against him, just as it had for others who questioned Adelson's actions. If LVSC and its board members find the truth about Adelson's behavior to be problematic, then they need to take that up with him and not waste Jacobs' or this Court's time.

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IV. CONCLUSION

Jacobs' amendments state valid causes of action against Sands China and LVSC. Those additional claims also confirm this Court's jurisdiction over Sands China. It engaged in a conspiracy to undertake specific tortious acts in Nevada from which Jacobs' claims arise. Thus, its motion to dismiss fails as does LVSC's non-substantive motion to strike.

DATED this 4th day of February, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 4th day of February, 2015, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **OPPOSITION TO DEFENDANTS SANDS CHINA LTD. AND LAS VEGAS SANDS CORP.'S MOTIONS TO DISMISS THIRD AMENDED COMPLAINT** properly addressed to the following:

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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

SCL's MEMORANDUM REGARDING PLAINTIFF'S RENEWED MOTION FOR SANCTIONS

Date: February 9, 2015
Time: 10:30 a.m.

Defendant Sands China Ltd. ("SCL") submits the following memorandum, which (i) sets forth the legal standards that apply to Plaintiff's Renewed Motion for Sanctions in light of the Nevada Supreme Court's August 7, 2014 decision on Defendants' Petition for Writ of

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Prohibition or Mandamus and (ii) discusses how those standards apply to the evidence SCL expects to present at the hearing on Plaintiff's Motion.[1]

I.

INTRODUCTION

In its August 7, 2014 Order, the Nevada Supreme Court outlined a number of factors this Court must consider in deciding "what sanctions, ***if any***, are appropriate" in light of SCL's redaction of personal information from documents it produced out of Macau in January 2013. August 7 Order at 10 (emphasis added). Those factors include: "(1) 'the importance to the investigation or litigation of the documents or other information requested'; (2) 'the degree of specificity of the request'; (3) 'whether the information originated in the United States'; (4) 'the availability of alternative means of securing the information'; and (5) 'the extent to which noncompliance with the request would undermine important interests of the United States or compliance with the request would undermine importance interests of the state where the information is located.'" *Id.* at 7-8 (quoting the Restatement (Third) of Foreign Relations Law § 442(1)(c) (1987)).

A review of these factors leads inevitably to the conclusion that sanctions are not appropriate in this case. First, SCL has not withheld information that is important to Plaintiff's attempt to prove that the Court has personal jurisdiction over it. That has become increasingly clear as Plaintiff's general jurisdiction theories have been winnowed down to a single claim—that in October 2010, when this lawsuit was filed, SCL's "nerve center" was located in Las Vegas. Most of the categories of documents Plaintiff sought are wholly irrelevant to that theory. To the extent that a small handful of Plaintiff's requests may remain relevant, the redacted documents produced from Macau are entirely cumulative of the hundreds of unredacted documents already produced—documents relating to such narrow topics as where SCL's Board meetings were held and who was traveling from Las Vegas to Macau and Hong Kong in 2009

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[1] SCL submitted an earlier version of this memorandum on September 4, 2014 and a revised version on October 17, 2014 to reflect certain subsequent events. For the Court's convenience, this memorandum incorporates all of SCL's arguments.

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and 2010. In any event, as a matter of common sense, the documents Plaintiff needs to support his claim that SCL's "nerve center" was located in Las Vegas are documents found in Las Vegas. Plaintiff has not even attempted to explain why he needs ***any*** documents located in Macau—let alone the personal data that was redacted from documents produced out of Macau.

Second, Plaintiff's requests were not specific, but rather sought broad categories of information. To the extent Plaintiff believed he needed more specific information about particular documents or particular redactions, SCL offered almost two years ago to conduct additional searches to determine whether near-duplicates could be located in the U.S. or to ask for consents that would be necessary to undo particular personal redactions. Plaintiff never took SCL up on its offer, thus confirming just how irrelevant the redacted information is. Nevertheless, as a show of good faith and in light of the recent narrowing of Plaintiff's general jurisdiction theories to a single "nerve center" theory, in October 2014 Defendants secured consents from the four individuals whose depositions Plaintiff took—Messrs. Adelson, Leven, Goldstein and Kay—to the transfer and disclosure of their personal data in documents responsive to jurisdictional discovery that were produced from Macau. Defendants also asked Plaintiff to provide his consent under the Macau Personal Data Protection Act (the "MPDPA") to have his name unredacted from documents produced from Macau, but he refused to do so.[2] Thereafter, Macau attorneys employed by SCL's subsidiary Venetian Macau Ltd. ("VML") re-reviewed all of the remaining redacted documents from the January 2013 production that contained references to the four deponents' names and other personal information to "unredact" all such information. Those documents were produced on November 14, 2014.

Third, the redacted documents all originated in Macau and were all found ***only*** in Macau. Defendants have not made redactions pursuant to the MPDPA in ***any*** documents that

[2] Plaintiff sought to defend his refusal to consent by claiming that this Court's prior orders somehow precluded SCL from seeking consents. That is nonsense. Nothing in this Court's orders precludes SCL from attempting to comply with ***both*** this Court's order to produce documents in unredacted form and Macau's data privacy laws by securing appropriate consents.

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either originated in the United States or were previously transferred to the United States from Macau.

Fourth, Plaintiff had alternative avenues for obtaining all of the discovery he sought and in fact was able to obtain all that he could possibly need. In addition, after SCL produced the documents in redacted form in early 2013, LVSC undertook an elaborate search of its own documents to find duplicates or near-duplicates in the United States, which could be produced in unredacted form. This process enabled Defendants to cut the number of redacted documents down to approximately 2600. And, as noted above, Defendants were willing to do even more, if Plaintiff had not refused to consent under the MPDPA to the unredaction of his own personal data or if Plaintiff had identified specific documents that warranted additional investigation (which he never did).

Finally, SCL's redaction of personal data does not undermine any important U.S. interest, but punishing SCL for complying with Macanese law would fly in the face of the Macanese government's strongly-held views about data privacy. As SCL's General Counsel previously explained in an affidavit, SCL's understanding of the MPDPA has evolved over time. By January 2013, however, there was no doubt that the only way that SCL and its operating subsidiary, Venetian Macau Ltd. ("VML"), could ***lawfully*** review and produce a large number of documents from Macau was by having all personal data redacted by Macanese lawyers before the documents were transferred to the United States. That the Office of Personal Data Protection ("OPDP") subsequently fined VML for allowing LVSC to transfer a copy of Jacobs' hard-drive to the United States in 2010 and separately fined Wynn's Macau subsidiary for transferring documents to its parent in the United States confirms how important compliance with the MPDPA is to the government of Macau.

The conclusion that SCL should not be sanctioned—or that any sanctions should be minimal—is reinforced by the standards Nevada courts ordinarily apply in deciding whether Rule 37 sanctions are warranted and, if so, what those sanctions should be. "Generally, sanctions may only be imposed where there had been willful noncompliance with a court order or where the adversary process has been halted by the actions of the unresponsive party." *GNLV*

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Corp. v. Service Control Corp., 111 Nev. 866, 869; 900 P.2d 323, 325 (1995). If the court concludes that sanctions are warranted, "[f]undamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue." *Id.* at 870; 900 P.2d at 325. In selecting the sanction to be imposed, the court must consider a number of factors, including "the degree of willfulness of the offending party" and "the extent to which the non-offending party will be prejudiced by a lesser sanction." *Young v. Johnny Ribiero Bldg, Inc.*, 106 Nev. 88, 93; 787 P.2d 777, 780 (1980). If a sanction is imposed, "the district judge must design the sanction to fit the violation." *City of Sparks v. Second Judicial Dist.*, 112 Nev. 952, 955; 920 P.2d 1014, 1016 (1996).

In this case, there was no willful noncompliance with this Court's order. The Court's September 14, 2012 Order did not clearly preclude MPDPA redactions, and the colloquy at the December 18, 2012 hearing suggested that such redactions were permissible. SCL's redactions also did not interrupt or delay the adversary process: had Plaintiff ***wanted*** to litigate his jurisdictional theories, rather than playing a game of discovery "gotcha," he had more than enough information to do so.

In any event, there is no conceivable justification for the sanctions Plaintiff seeks—an order striking SCL's defense of personal jurisdiction and the imposition of unidentified "substantive and adverse inferences." Pl. Renewed Motion for Sanctions at 16. Even if the Court were to find willful noncompliance on SCL's part, it is largely (if not entirely) excusable in light of the conditions OPDP imposed in giving VML permission to transfer documents outside of Macau. Moreover, plaintiff suffered no prejudice. Because SCL's compliance with the MPDPA has not hampered Plaintiff's ability to make his jurisdictional case, punishing SCL by deeming jurisdiction admitted would not "fit the violation." For the same reasons, an evidentiary sanction, such as deeming some facts to be admitted, would not be warranted.

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II.

ARGUMENT

A. No Sanctions Are Warranted Under The Balancing Test Mandated By The Nevada Supreme Court.

At a hearing held on August 14, 2014, this Court stated that "[t]here's going to be a sanction, because I already had a hearing and I made a determination there is a sanction," suggesting that the only issue left to be decided is "the level of the sanction" to be imposed on SCL. 8/14/14 Tr. at 29:10-13. With all due respect, limiting the issue to the "level of the sanction" would be contrary to the direction provided by the Nevada Supreme Court's August 7 Order.

The Supreme Court was well aware that this Court had held a sanctions hearing in the summer of 2012 and had issued an order on September 14, 2012 that precludes LVSC and SCL "for purposes of jurisdictional discovery" from "raising the MDPA as an objection or as a defense to admission, disclosure or production of any documents." *See* Aug. 7 Order at 4-5. The Supreme Court also understood that this Court had already concluded that SCL had disobeyed that order by redacting personal data from documents it produced from Macau. *Id.* at 5. Nevertheless, the Supreme Court did not treat that conclusion as dispositive of the question of ***whether*** sanctions should be imposed. On the contrary, the Court made it clear that even when an order compelling production is disobeyed, a district court must still balance the five Restatement factors listed above "in determining what sanctions, ***if any***, are appropriate." *Id.* at 10 (emphasis added). *See also id.* at 2 ("because the district court has not yet held the hearing to determine ***if***, and the extent to which, sanctions may be warranted, our intervention at this juncture would be inappropriate") (emphasis added); *id.* at 11 ("because the district court properly indicated that it intended to 'balance' Sands' desire to comply with the foreign privacy law in determining ***whether*** discovery sanctions are warranted, our intervention at this time would inappropriately preempt the district court's planned hearing") (emphasis added).

Thus, the question of whether any sanctions should be imposed on SCL remains open. The Court must analyze the five Restatement factors in deciding that issue and, if it decides

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sanctions are warranted, in deciding what type of sanction to impose. For the reasons outlined below, all of those factors militate against the imposition of any sanction.

1. The Redacted Information Is Not "Important" To The Issue Of Jurisdiction.

The first factor the Court must consider is whether the redacted information was "important" to Plaintiff's ability to prove his jurisdictional theories. Courts are more likely to impose sanctions where, as in *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 193 (E.D.N.Y. 2010), the information withheld is "essential" to the proof of the opposing parties' case. *See also id.* at 196 ("some sanction must be imposed if for no other reason than to restore the evidentiary balance that has been disturbed by the non-production of important evidence") (internal quotation marks omitted). On the other hand, courts are generally "unwilling to override foreign secrecy laws" in cases where "the outcome of the litigation does not stand or fall on the present discovery order, or where the evidence sought is cumulative of existing evidence." *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1475 (9th Cir. 1992) (internal quotation marks omitted). Here, the personal data that was redacted clearly falls within the category of "unimportant," if not wholly irrelevant, information. At most, the redacted documents are cumulative of evidence that Plaintiff already has, whether from the thousands of documents Defendants have produced in unredacted form or from the 95,000 documents Jacobs took with him when he left Macau as to which Defendants no longer claim any privilege.[3]

The analysis begins with the eleven categories of document discovery the Court permitted Plaintiff to take (over Defendants' objections). *See* March 8, 2012 Order. Plaintiff selected those categories to bolster three very different theories of general jurisdiction. Plaintiff's first theory—which bore some similarity to his current "nerve center" theory—was that SCL's "primary officers are directing the management and control of that company from the offices [of LVSC] here on Las Vegas Boulevard." 9/27/11 H'rng Tr. at 21:8-10. Based on

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[3] Jacobs and his lawyers have had full access to 84,000 of these documents since September 15, 2012 and to the other 3,000 documents since November 2012, after Defendants completed their privilege review. On October 1, 2014, Defendants instructed Advanced Discovery to release an additional 8,240 documents that were de-designated and another 2,071 documents that were redacted to remove privileged information.

that theory, the Court allowed Plaintiff to seek documents to determine where SCL Board meetings were held and where directors were located if they attended by phone (Request #6), and when and how often the four deponents (Messrs. Adelson. Leven, Goldstein and Kay) and other LVSC employees traveled to China on SCL-related business (Request #7).[4] Plaintiff also sought documents related to Mr. Leven's service as acting CEO of SCL and/or Executive Director of the SCL Board (Request #9).

Plaintiff's second theory was that SCL had sufficient contacts in Nevada to be deemed to be doing business here. 9/27/11 H'rng Tr. at 24:14. Based on that theory, the Court allowed Plaintiff to obtain copies of contracts that SCL had entered into with entities based in or doing business in Nevada, including the shared services and other agreements between SCL and LVSC, as well as documents reflecting work performed by or on behalf of SCL in Nevada. *See* Requests # 10, 11, 13, and 16. Plaintiff's third theory was that LVSC acted as SCL's agent and that LVSC's contacts with Nevada could therefore be attributed to SCL. In support of that theory, Plaintiff was allowed to seek documents reflecting services performed by LVSC or its executives on behalf of SCL, as well as documents reflecting amounts (if any) that SCL paid to LVSC executives to reimburse them for work performed for SCL. *See* Requests # 12, 15, and 18.[5]

In December 2011, Plaintiff issued Requests for Production of Documents ("RFPs") to SCL and LVSC based on the categories of documents the Court had permitted him to discover. Not counting the documents that were produced in response to the expanded search the Court ordered SCL to conduct in March 2013, Defendants produced nearly 30,000 documents in response to Plaintiff's 24 jurisdictional RFP's, consisting of almost 200,000 pages. LVSC produced about 24,000 documents (168,000 pages), while SCL produced close to 5,700

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[4] References are to the numbered paragraphs in the Court's March 8, 2012 Order.

[5] Notably absent from Plaintiff's requests for documents were ***any*** requests relating to his option agreement with SCL or his termination as SCL's CEO. Although Jacobs' termination has become the focal point of his specific jurisdiction argument, Plaintiff has ***never*** sought any jurisdictional document discovery on that issue.

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documents (totaling close to 32,000 pages).[6] Of the SCL documents, around 4700 were originally produced in early 2013 with personal data redacted; LVSC was subsequently able to find duplicates of more than 2100 of those documents in the United States, which were then produced in unredacted form. As a result, only about 2600 of the universe of documents produced in response to the Court's December 18, 2012 ruling still have personal data redacted—or less than 7% of the total number of documents produced prior to April 2013.[7]

Today, it is clear that many categories of documents that Plaintiff sought are entirely irrelevant to the jurisdictional issue. As Plaintiff appears to concede, two of his general jurisdiction theories are no longer viable in light of the U.S. Supreme Court's decision in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014). Under *Daimler AG*, general jurisdiction cannot be based on the fact that SCL bought goods and services from, or communicated with, companies that are headquartered in Nevada. *See also Martinez v. Aero Caribbean,* 764 F.3d 1062, 1070 (9th Cir. 2014) (*Daimler AG* established a "demanding . . . standard for general jurisdiction over a corporation"; evidence that the defendant (a French corporation) had signed contracts to sell airplanes worth $225-$450 million to a California company, had contracts to purchase components from 11 California companies, and sent representatives to California to attend conferences and promote its products was "plainly insufficient to subject [the defendant]

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[6] Certain documents produced by SCL and LVSC are identified in and attached to the Declaration of Mark M. Jones, which is included as Exhibit A in the Appendix to SCL's Memorandum Regarding Plaintiff's Renewed Motion for Sanctions filed contemporaneously herewith ("SCL's Appendix"). LVSC's and SCL's responses to Plaintiff's RFP's are included in Exhibit B to SCL's Appendix.

[7] In response to the Court's March 27, 2013 Order requiring SCL to expand both the custodians whose documents it searched and the search terms it applied to all custodians, SCL produced an additional 4,161 documents that were found outside of Macau between April and August 2013. Those documents were produced in unredacted form. The Court stayed its Order to the extent that it required SCL to produce documents found in Macau pending a ruling on SCL's petition for a writ of mandamus to the Nevada Supreme Court. After the Supreme Court ruled, SCL sought reconsideration of the Court's March 27, 2013 Order to the extent that it required SCL to produce documents from Macau without redacting personal data, pointing out that the vast majority of documents produced by the expanded search related to topics that are no longer even arguably relevant to any viable jurisdictional theory. *See* SCL Motion to Reconsider, filed 10/17/14. After the Court denied that motion on December 2, 2014, SCL produced another 7,626 documents, on which all personal information was redacted except for information concerning Messrs. Adelson, Goldstein, Leven and Kay, who consented to the disclosure of their personal data. LVSC then conducted another manual search for duplicates in the U.S. and was able to produce 563 of those documents in unredacted form.

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to general jurisdiction in California"). Thus, Plaintiff's RFP's ## 16-19, which sought all communications by SCL or LVSC, acting on its behalf, with Nevada-based companies, including BASE, Cirque de Soleil, Bally and Harrah's, are all irrelevant—as are the 500 or so redacted documents that SCL produced in early 2013 in response to these RFP's.[8]

Daimler also forecloses Plaintiff's "agency" theory of jurisdiction under which he argued that LVSC's presence in the forum could be attributed to SCL if LVSC was found to be acting as SCL's agent. *Daimler AG* holds that the presence of an agent doing the principal's business in the jurisdiction is ***not*** enough to give rise to general jurisdiction over the principal; the question is not whether an agency relationship exists or whether the agent is subject to general jurisdiction, but rather whether the principal itself is "at home" in the jurisdiction—either because it is incorporated or has its principal place of business there. 134 S.Ct. at 759-60. At least seven of Plaintiff's RFP's were aimed at gathering evidence to support his agency theory, asking for documents reflecting "services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China" with respect to particular issues, such as site development, marketing, recruiting and the like. *See* RFP's # 11-15, and 22; *see also* RFP # 23 (seeking documents relating to reimbursement of LVSC executives for work performed for or on behalf of SCL). These RFP's too are now irrelevant, as are the nearly 1500 redacted documents SCL produced in early 2013 in response to them.[9]

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[8] In any event, Defendants have produced in unredacted form (i) agreements and draft agreements between SCL and service providers such as BASE Entertainment (LVS00111192, LVS00111218) and Bally Technologies (LVS00115330, SCL00100033); (ii) communications with BASE Entertainment personnel, related primarily to locating, hiring, and managing talent to perform at SCL properties (LVS00111354, LVS00232578, and LVS00111962); (iii) communications with Cirque du Soleil related to the staging and managing of long-term performance arrangements (*e.g.*, LVS00111458, LVS00111409, and LVS00111410); (iv) communications between SCL and Bally Technologies related to the purchase of Bally equipment (*e.g.*, LVS00115297, LVS00213301); and (v) communications with Harrah's (*e.g.*, LVS00112736, LVS00118246). The redacted documents, most of which related to Cirque du Soleil, would have added nothing, even if SCL's interactions with Nevada companies were somehow relevant to jurisdiction (which they are not). The foregoing documents are all attached to Exhibit C to SCL's Appendix.

[9] LVSC produced over 7000 documents responsive to these requests and SCL produced approximately 2200 additional documents that did not contain any MPDPA redactions. The unredacted documents produced include the various agreements between LVSC and SCL that Plaintiff specifically requested in RFP #10, including the shared

A dozen RFP's remain when all of these wholly irrelevant requests are eliminated. No redacted documents were produced in response to four of these twelve.[10] And even if the other eight RFP's are all somehow relevant to Plaintiff's new theory that Las Vegas is SCL's "nerve center," the redacted documents produced in response to those RFP's are either cumulative or irrelevant.[11]

RFP #6, for example, sought all documents reflecting or relating to Michael Leven's service as Acting CEO and Executive Director of SCL after Jacobs' departure and his prior service as Special Adviser to the Board.[12] Before SCL produced any documents from Macau, LVSC had already produced almost 6,500 documents in response to this request. And since Plaintiff deposed Mr. Leven on two separate days, they had ample opportunity to determine the services that Mr. Leven had performed with respect to SCL. In any event, SCL obtained Mr.

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services agreement (SCL00100017), the trademark license agreement (LVS00100106), and the intellectual property license agreement (LVS00100058), as well as communications and documents reflecting LVSC's involvement in the development of Parcels 5 and 6 (LVS00100106, LVS00112442), the search for and interview of executive candidates (*e.g.,* LVS00235376, LVS00123776), and the marketing of SCL properties (*e.g.,* LVS00111282). Defendants also have produced documents reflecting meetings and communications with Harrah's (*e.g.*, LVS00118241) and reflecting summaries of options to enter into business arrangements with Mr. Ho and others (*e.g.*, LVS00236902) in response to Plaintiff's specific requests. Thus, even if these documents were relevant to Plaintiff's remaining "nerve center" theory (which they are not), Defendants' production of unredacted documents, along with the depositions Plaintiff was allowed to take of four LVSC executives, should provide Plaintiff with all of the information he needs about the services that LVSC rendered to SCL. The documents cited in this footnote are included in Exhbit C to SCL's Appendix.

[10] No redacted documents were produced in response to RFP # 8 (contracts with Nevada businesses), RFP #20 (SCL/LVSC communications with potential lenders for the underwriting of Parcels 5 and 6), RFP #21 (SCL/LVSC communications with site designers, developers, and specialists for Parcels 5 and 6), or RFP #24 (requesting any documents that SCL provided to Nevada gaming regulators). Thus, these RFP's are irrelevant to the analysis.

[11] SCL continues to believe that the "nerve center" theory does not apply in determining where a foreign corporation is subject to general jurisdiction. In *Martinez*, the Ninth Circuit observed that a French corporation that had no offices, staff or other physical presence in California and whose activities in California were "minor compared to its other worldwide contacts" was not subject to general jurisdiction in California. 764 F.3d at 1070. The court also affirmed the district court's denial of additional discovery, noting that it was "apparent that nothing plaintiffs could discover about [a subsidiary's] contacts with California would make [the French parent] 'essentially at home' in California." *Id.*

[12] It is worth noting that the *Martinez* case specifically rejects the "transient" jurisdiction argument Plaintiff has raised based on the fact that he served his complaint on Mr. Leven in Las Vegas. The Ninth Circuit explained at length why jurisdiction over a corporation can only be based on general or specific jurisdiction and cannot be predicated on where a corporate officer happened to be when he or she was served with the complaint. *See* 764 F.3d at 1067-69.

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Leven's consent to the transfer and disclosure of his personal data in all of the redacted documents produced from Macau and "unredacted" that information in all of the documents it produced from Macau in early 2013. Accordingly, Plaintiff has all of the documents necessary to determine what services Mr. Leven provided to SCL.

Similarly, RFP #9 sought all documents reflecting work that Robert Goldstein performed for or on behalf of SCL. LVSC has produced over 2700 documents in response to this request and Plaintiff also deposed Mr. Goldstein. After Mr. Goldstein consented to the transfer and disclosure of his personal data, SCL unredacted his personal information from the documents produced in early 2013. As a result, Plaintiff has all of the documents necessary to determine what work Mr. Goldstein did for or on behalf of SCL.

Approximately 600 of the redacted documents were produced in response to RFP #7, which seeks documents relating to the location of the negotiation and execution of agreements to provide funding for SCL, including funding through SCL's initial public offering ("IPO"), which was completed in November 2009. Together, defendants have produced over 7600 unredacted documents relating to SCL's initial public offering and the financing of Sites 5 & 6, including audit committee meeting memoranda (*e.g.,* LVS00203529), funding prospectuses (*e.g.*, LVS00129801), offering memoranda (*e.g.,* LVS00113776), and financing analyses for sites 5 and 6 (*e.g.,* SCL00113758). [13] The 600 additional redacted documents from Macau are simply more of the same.

None of these documents provides any insight into the question of where SCL's "nerve center" was located at the only time that counts—when Plaintiff filed his lawsuit in October 2010. SCL was not formed until July 2009 and had no significant assets until November 2009, when VML became an indirect subsidiary of SCL as a result of a reorganization undertaken in connection with SCL's IPO. Moreover, the fact that LVSC was heavily involved in the IPO says nothing about where SCL's principal place of business was located when this lawsuit was brought in October 2010. After all, one of LVSC's other subsidiaries was the selling

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[13] These documents are included in Exhibit C to SCL's Appendix.

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stockholder in the IPO. Given the size and scope of the transaction, it would have been extremely odd if LVSC had ***not*** been deeply involved in the planning for SCL's IPO. In *Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001), the Ninth Circuit observed that "[a] parent corporation may be directly involved in financing and macro-management of its subsidiaries. . . without exposing itself to a charge that each subsidiary is merely its alter ego." The same analysis applies to a "nerve center" analysis—a parent corporation may be directly involved in financing and macro-management of its subsidiary without exposing itself to a charge that it controls the subsidiary for purposes of locating the subsidiary's principal place of business.

The remaining redacted documents were produced in response to two categories of RFP's: (i) RFP's #2-5 sought information "reflect[ing] the travels to and from Macau/China/Hong Kong" by Messrs. Adelson, Leven and Goldstein, as well as other LVSC executives and employees, during the period January 1, 2009-October 20, 2010 and (ii) RFP #1 sought "all documents" reflecting the date, time and location of each SCL Board meeting during that period, the location of each Board member who participated, and the manner/method by which they participated. By their very nature, these are all objective questions, which can be definitively answered with a minimum of documentation. And since Plaintiff's counsel deposed Messrs. Adelson, Leven, Goldstein and Kay, they had the opportunity to ask them about both their travels to Macau and Hong Kong and their attendance at SCL Board meetings.

In fact, Plaintiff has numerous documents, including spreadsheets, itineraries and travel logs, that show when Messrs. Adelson, Leven and Goldstein, as well as other LVSC executives and employees, traveled to Macau, China or Hong Kong during the period in question. Because Plaintiff already knew the facts concerning these trips, he had no need for additional documents from SCL identifying when particular individuals arrived in or left Hong Kong or Macau. The 160 or so redacted documents that SCL produced in response to RFP's ##2-5 were entirely cumulative, dealing with such mundane issues as rearranging the time for a limo pick-up at the Hong Kong airport in light of an earlier arrival (SCL00108450), rescheduling a lunch meeting

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in Macau (SCL00108539), and requests for hotel reservations in Macau (SCL00108968).[14] These kinds of documents are of no importance to the issue of jurisdiction. In any event, with the consents obtained from Messrs. Adelson, Leven, Goldstein and Kay, Plaintiff now has these kinds of documents as well, without redactions of the four deponents' names and other personal information.

The final category of documents—the location of SCL Board meetings—is undoubtedly relevant to the "nerve center" analysis. Indeed, it is the ***only*** category of documents that Plaintiff sought that is relevant to his theory. But there too Plaintiff had no need for the redacted SCL documents to determine the location of those meetings. Defendants have produced almost 2500 unredacted documents in response to this request, including Board of Directors attendance records (SCL00100030, SCL00100032) and meeting notices, which show precisely where the meetings were held and who attended in person and by telephone.[15] Defendants also produced minutes of all of the SCL Board meetings within the period Plaintiff selected, which generally contain information about attendance and whether the meeting was in-person or via teleconference.[16] As these documents show, Jacobs himself was present at all of the meetings prior to his termination in July 2010 and thus has personal knowledge of when, where and how the meetings were conducted.

SCL produced another 230 redacted documents from Macau that were responsive to RFP #1. But again the redacted documents add nothing of significance and were not necessary to ensure that Plaintiff obtained the simple information he sought in RFP #1—the location of

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[14] SCL00108450 and 00108539 are included in Exhibit B to SCL's Appendix. SCL00108968 is included in Exhibit C.

[15] The meeting notices (LVS00123450, LVS00137693, LVS00137694, LVS00127435, LVS00220725, LVS00220328, LVS00220278, LVS00220243, LVS00240531, LVS00126799, LVS00234165) show that all in-person meetings were held either in Macau or in Hong Kong. These documents are included in Exhibit B to SCL's appendix.

[16] LVSC produced minutes for SCL Board meetings without any MPDPA redactions for the meetings held on October 14, 2009 (LVS00134180), November 8, 2009 (LVS00117204), February 9, 2010 (LVS00133993), March 1, 2010 (LVS00117228), April 14, 2010 (LVS00135122), April 30, 2010 (LVS00117248), May 10, 2010 (LVS00117269), July 23, 2010 (LVS00117233), July 27, 2010 (LVS00117236), and August 26, 2010 (LVS00265528). The foregoing are included in Exhibit C to SCL's Appendix.

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Board meetings and attendees. Many of the redacted documents involve emails between SCL personnel discussing the logistics of in-person Board meetings in Macau. *See, e.g,* SCL00101578 (noting that for the April 30, 2010 meeting, there would be 11 people for lunch); SCL00107765 (asking, in advance of the July 27, 2010 meeting, "[w]hat time is their lunch?").[17] Others are emails among SCL personnel preparing for Board meetings. *See, e.g.*, SCL00105336, SCL00106228, SCL00106260 (internal SCL emails exchanged regarding draft operating plan).[18] To the extent the documents have any even marginal significance, the redactions of personal data do not obscure any of the relevant facts surrounding either the location of the SCL Board meetings, the information provided to the Board, or the subjects that were discussed.

2. Plaintiff's Requests Were Not "Specific."

The second factor the Court must consider is whether the document requests were "specific." The *Linde* case is again instructive. In that case, the plaintiffs had requested "highly specific" account information from the defendant bank that was "essential" to prove their allegations that the bank had knowingly and intentionally aided and abetted terrorist activities. 269 F.R.D. at 193. Here, by contrast, Plaintiff's requests for documents were broad and generalized. Furthermore, Plaintiff insisted on obtaining documents from SCL in Macau in response to ***all*** of his RFP's even though he had already gotten the answers he sought from documents located in the U.S. that LVSC produced in unredacted form. Plaintiff's requests for documents regarding the travels of Messrs. Adelson, Leven, and other LVSC executives and the location of SCL Board meetings illustrate the point. Plaintiff already knew, before SCL produced documents from Macau, who traveled there and when; he also knew where and when the SCL Board meetings were held. Nevertheless, he insisted on discovery of "all documents" that related to those topics—despite the fact that the additional documents could not possibly provide him with any additional information.

3. All Of The Documents Originated In Macau.

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[17] These documents are included in Exhibit B to SCL's Appendix.

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This is not a case where a U.S. entity is attempting to hide behind foreign laws to shield documents that originated or are located in the United States. All of the documents that contain personal data redactions originated in Macau and were in the custody or control of SCL's operating subsidiary, VML, in Macau. To the extent that duplicates or near-duplicates could be located in the United States, they were produced without any MPDPA redactions. Similarly, to the extent that documents that had originated in Macau had already been transferred to the United States (such as the image of Plaintiff's hard-drive that was copied and transferred to the United States in 2010), they were searched and produced without any MPDPA redactions. Thus, the only documents SCL produced with MPDPA redactions were documents that originated in Macau and could be located only in Macau.

4. There Were Many Alternative Means For Plaintiff To Obtain The Information He Sought.

In the *Linde* case, the district court imposed evidentiary sanctions on the defendant bank not only because the information it withheld was essential to the plaintiffs' case, but also because the plaintiffs there had no other reasonable means of obtaining the information in question. 269 F.R.D. at 193. Here, by contrast, Plaintiff had already obtained all of the information he sought that is relevant to his current jurisdictional theory from the production of documents in the United States even before SCL produced any documents from Macau. Furthermore, after SCL produced documents with MPDPA redactions in January 2013, Defendants took additional steps to minimize the impact of those redactions.

First, SCL's contract lawyers in Macau created a 163-page redaction log, which identified for each redacted document the entity or entities that employed the persons whose personal data was redacted. That redaction log providers a reviewer with a number of important pieces of information.[19] A reviewer can use it to identify documents that were only circulated internally among SCL employees. For example, SCL00110538 is a January 22, 2010 email

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[18] These documents are included in Exhibit C to SCL's Appendix.
[19] Because the redactions were done by Macanese lawyers before the documents were transferred to the United States, SCL's U.S. lawyers know no more about the redacted documents than Plaintiff's lawyers do.

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from an SCL executive to various SCL employees noting that the next SCL Board meeting was scheduled for February 9, 2010 and that SCL's "Senior Management" needed to address certain points through documents and presentations to be circulated to the Board before the meeting.[20] The log also enables a reviewer to determine whether LVSC employees or SCL directors were involved in an exchange. One example is SCL00100529, which is an email string regarding the scheduling of a meeting of the SCL Board's Audit Committee in conjunction with the Board meeting in Macau on July 27, 2010.[21] The log explains that the top email (which notes a revised time for the meeting) was from one SCL employee to another. It also explains that the individuals whose names were redacted in the series of emails below worked for LVSC and SCL, as well as for the various entities that employ the outside directors who served on the Audit Committee. The log also allows a reviewer to see when there were communications with individuals employed by third parties. For example, SCL00100184 is an email chain between SCL employees and employees of Goldman Sachs concerning a planned tour and events scheduled for potential investors in Macau in March 2010.[22] In most cases the redaction log will provide a reviewer with all of the information necessary to analyze the document's relevance to the only general jurisdiction theory Plaintiff has left—where SCL's "nerve center" was located.

The second step SCL took was to request LVSC to search for duplicates and near-duplicates of the redacted documents in the United States. LVSC was able to locate some identical documents through an automated process using metadata, but it had to search for other documents using a more labor-intensive process.[23] When documents were found in the U.S., Defendants provided Plaintiff with unredacted replacement documents with the same SCL Bates numbers. This process resulted in the replacement of more than 2100 documents

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[20] SCL00110538 is included in Exhibit B to SCL's Appendix.

[21] SCL00100529 is included in Exhibit B to SCL's Appendix.

[22] This document was produced in response to RFP #7, which sought all documents reflecting the location of the negotiation and execution related to the funding of SCL. It is included in Exhibit C to SCL's Appendix.

[23] This is due to the fact that SCL's lawyers outside Macau do not have access to identifying information and thus had to search for individual documents by using search terms and then manually comparing the results to the redacted version of the document.

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produced in early 2013 with unredacted documents found in the U.S., in addition to the approximately 950 unredacted documents SCL had originally produced.[24]

Third, in its February 25, 2013 Opposition to Plaintiff's Renewed Motion for Sanctions (at 25-26), Defendants offered to take additional steps if Plaintiff identified specific redacted documents that were relevant to jurisdiction for which they needed more information. Specifically, Defendants offered either to conduct additional searches for a duplicate or near-duplicate of such documents in the U.S. or to have Macanese lawyers seek consent of the person or persons whose information was redacted. Plaintiff chose not to take Defendants up on this offer. That alone demonstrates that Plaintiff has no real interest in obtaining unredacted versions of relevant documents, but rather hopes to use the dispute over MPDPA redactions to gain an advantage in the litigation.

Finally, in light of the narrowing of Plaintiff's general jurisdiction theories to a "nerve center" theory and in a show of good faith, Defendants secured MPDPA consents from the four individuals Plaintiff chose to depose who, according to Plaintiff, were responsible for directing and controlling SCL from Las Vegas.[25] Thus, Plaintiff now has documents from Macau in which the personal data for these four individuals is unredacted. Plaintiff could have had the documents with his own personal data unredacted as well, but he ***refused to waive the protections of the MPDPA by consenting to having his personal data transferred to the U.S.***[26] That refusal once again shows that Plaintiff has no genuine interest in obtaining information

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[24] As the Court may recall, in his Renewed Motion for Sanctions, Plaintiff offered 15 documents in support of his assertion that the MPDPA redactions made SCL's production "unintelligible." But Plaintiff had ***eleven*** of those documents in unredacted form even before he filed his motion. The other four documents, while still redacted, provided sufficient information so that it was obvious that they were not relevant to any conceivable jurisdictional theory—even if they were technically responsive to Plaintiff's broad RFP's.

[25] These consents are included in Exhibit B to SCL's Appendix as are SCL's request for Plaintiff's consent and the letter from Plaintiff's counsel refusing to do so.

[26] It is still not practical to attempt to secure consents from all of the many individuals whose names and other personal information were redacted from the documents—particularly since the MPDPA requires each individual to "freely" give "specific" and "informed" consent to have his or her personal data processed. The OPDP specifically warned VML that "in the employment relation, it is particularly important to pay special attentions to whether the data subject is influenced by his or her employer and might not freely make choices." *See* OPDP August 8, 2012 Letter at 10-11. Under these circumstances, VML could not have sought a blanket consent to

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relevant to his "nerve center" theory, but instead seeks to manufacture a discovery tort in the transparent hope of avoiding having to litigate the merits of that theory. For if Plaintiff had not refused his consent, he would have documents that unredacted not only his own name everywhere it appeared, but also the names of Messrs. Adelson, Goldstein, Leven and Kay. Together, that information would have provided all of the facts necessary to prove—or disprove—his theory that SCL's "nerve center" was in Las Vegas, rather than Macau.

5. The Balance Of Interests Between The U.S. And Macau Weighs Heavily In Favor Of Respecting Macau's Interest In Protecting Personal Data.

SCL's MPDPA redactions do not undermine any important interest of the United States, but punishing SCL for making those redactions—and thus pressuring it to disobey Macanese law—would undermine important privacy interests that the Macanese government clearly feels very strongly about.

The U.S. interest in discovery disputes in civil cases is ordinarily relatively low. *See In re Westinghouse Elec. Corp. Uranium Contracts Litig.*, 563 F.2d 992, 999 (10th Cir. 1977).[27] That is particularly true in a case like this, where the party from whom discovery is sought is a foreign corporation that is disputing whether the court even has jurisdiction over it. Although there is case law allowing a plaintiff to obtain discovery over a foreign corporation on the issue of jurisdiction, basic principles of comity require a court to ensure that such discovery is undertaken with appropriate deference to the interests of a foreign sovereign. *Daimler AG* reinforces that conclusion, both by noting the "risks to international comity" posed by an "expansive view of general jurisdiction" and by indicating that an assertion of general jurisdiction ordinarily should not require "much in the way of discovery . . . to determine where a corporation is at home." 134 S.Ct. at 762.

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disclosure from employees of VML or SCL.

[27] Although *Linde* is also a civil case, the court there found that "important interests of the United States would be undermined by noncompliance with the discovery orders issued by the court. . . . [T]hose interests are articulated in statutes on which some of the claims in this litigation rest: Congress has expressly made criminal the providing of financial and other services to terrorist organizations and expressly created a civil tort remedy for American victims of international terrorism." *Linde v. Arab Bank PLC*, 463 F.Supp.2d 310, 315 (E.D.N.Y. 2006) (internal quotation marks omitted) (magistrate's reasoning adopted by the district court in *Linde,* 269 F.R.D. at 193.

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By contrast, sanctioning SCL would significantly undermine important policies adopted by the government of Macau to protect personal data from disclosure. In *Societe Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522, 546 (1987), the U.S. Supreme Court observed that American courts should "take care to demonstrate due respect for any special problem confronted by [a] foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state."

In briefing in the Nevada Supreme Court, Plaintiff argued for the first time that SCL had not proven that the redactions were actually required or that it faced any real punishment if it violated the MPDP's restrictions. But by refusing to consent to the transfer of his personal data, Plaintiff himself invoked the protections of the MPDPA. Furthermore, Plaintiff's own counsel has recognized that businesses that operate in Macau must follow the requirements of the MPDPA, by interposing the MPDPA as an objection to discovery on behalf of Wynn Resorts in *Wynn Resorts, Ltd. v. Okada*, No. A-12-656710-B, which is pending before this Court. *See* Ex. B to SCL's Appendix, Wynn Resorts, Ltd.'s 12/18/14 Responses and Objections to Second Request for Production of Documents (objecting on the ground that "to the extent the Request seeks documents from Wynn Macau that reside only in Macau, the Request seeks documents containing personal information of third parties protected by the Macau Personal Data Protection Act"). Having relied on the MPDPA as a basis for objecting to U.S. discovery in another case, Plaintiff's counsel should not be heard to argue here that the MPDPA did not actually require SCL to redact personal data from documents that reside only in Macau before producing them in the U.S.

In any event, the record here demonstrates that the MPDPA stands as a very real obstacle to the production of documents from Macau. As the "data controller," VML is responsible for all of the data housed on its servers in Macau, including SCL documents. Beginning in May 2011, representatives of VML had a number of communications and meetings with OPDP, which is responsible for administering the MPDPA, regarding the collection, review and transfer of documents to respond to (among other things) production requests made to SCL in this case. In those communications, OPDP instructed VML that

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personal data of any kind could not be transferred outside of Macau absent either consent by the data subject or advance consent from OPDP. VML sought OPDP's advance consent in a letter dated June 27, 2012. But OPDP denied VML's request on August 8, 2012, telling VML that SCL's lawyers were not even permitted to ***review*** documents in Macau that are subject to the MPDPA in order to determine whether they are responsive to U.S. discovery requests.[28]

Shortly before OPDP advised VML that its request had been rejected, LVSC announced that VML was under investigation by OPDP for previous data transfers to the United States.[29] On the heels of that announcement, Francis Tam, Macau's Secretary for Economy and Finance, was quoted in the press as stating that if OPDP found "any violation or suspected breach" of the MPDPA, the government "will take appropriate action with no tolerance. Gaming enterprises should pay close attention to and comply with relevant laws and regulations."[30]

After this Court issued its September 14, 2012 Order, SCL's new counsel flew to Macau in the hope of persuading OPDP to change its position, which would have made it impossible for SCL to produce any documents from Macau. On November 29, OPDP relented in part, giving VML permission to review documents containing personal data by automated means for responsiveness so long as Macanese lawyers reviewed all potentially responsive documents and redacted any personal data (or obtained individual consents) before those documents were transferred out of Macau. VML complied with the OPDP's directive when the Court ordered SCL to produce documents on an expedited basis, by January 4, 2013.

On April 16, 2013, the OPDP concluded its investigation into the 2010 processing and transfer of plaintiff's email and other electronically stored information to the United States by imposing administrative penalties totaling 40,000 patacas on VML. Although the fine (equivalent to $5,000) was relatively modest, the warning was unmistakable. OPDP reiterated

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[28] The correspondence between VML and the OPDP is collectively attached as Exhibit E to SCL's Appendix. These letters are authenticated by the affidavit and Declaration of David Fleming, collectively attached as Exhibit F to SCL's Appendix.

[29] *See* 8-K filing attached as Exhibit G to SCL's Appendix.

[30] *See* articles attached as Exhibit H to SCL's Appendix.

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that a data controller like VML may "transfer the data [outside of Macau] only after notifying [the OPDP], [and] having received a decision or obtained an authorisation from [OPDP]." Having been the subject of one investigation, which resulted in a penalty, VML clearly would have risked much more severe penalties, including substantially higher penalties and even imprisonment of the responsible parties for up to one year, had it chosen to transfer documents outside Macau in violation of the conditions OPDP imposed.[31]

There is no American interest in imposing sanctions in an attempt to force a company doing business in Macau to violate Macanese disclosure law. That is particularly true when the information Plaintiff seeks is not relevant to the only issue currently before the Court.

* * * *

For all of these reasons, the balancing test the Nevada Supreme Court directed this Court to apply leads to the conclusion that no sanctions should be imposed on SCL for redacting personal data from the documents it produced in January 2013. At the very least, there is no even colorable basis for the kinds of drastic sanctions Plaintiff has suggested.

B. Traditional Rule 37 Standards Also Support Denial Of The Sanctions Plaintiff Seeks.

1. There Was No Willful NonCompliance With The Court's Orders.

"Under NRCP 37(b)(2), a district court has discretion to sanction a party for its failure to comply with a discovery order, which includes document production under NRCP 16.1." *Clark Co. School Dist. v. Richardson Const. Co.,* 123 Nev. 382, 391; 168 P.3d 87, 93 (2007). But a district court can impose sanctions "only when there has been ***willful noncompliance*** with the discovery order or willful failure to produce documents as required under NRCP 16.1." *Id.* (emphasis added). "In order for an act to constitute willfulness, the court's order must be clear ***with no misunderstanding of the intent of the order*** and, further, there is ***no other factor beyond the party's control which contributed to the non-compliance***." *LeGrande v. Adecco*, 233 F.R.D. 253, 257 (N.D.N.Y. 2005) (emphasis added).

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[31] *See* Articles 30 through 44 of the MPDPA. The English translation of the MPDPA provided by the Macau government is attached as Exhibit I to SCL's Appendix.

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In this case, the Court's September 14, 2012 Order did not unambiguously prohibit SCL or VML from complying with OPDP's direction to redact personal data from documents before they were transferred out of Macau. The Court precluded the Defendants from raising any objection or defense to the "admission, disclosure or production" of any document based on the MPDPA. But there was no mention of redactions of personal information from documents produced from Macau. Furthermore, SCL specifically told the Court in December 2012 about VML's communications with OPDP, including OPDP's directive that no documents containing personal data be transferred out of Macau absent redaction or consent. After some discussions, the Court seemed to agree that MPDPA redactions were permissible when it ordered SCL to produce the documents at issue here on an expedited basis. 12/18/12 H'ring Tr. at 24:12-27:18. That should be enough, in and of itself, to demonstrate that the Court's September Order was at least ambiguous, precluding the imposition of sanctions.

From his list of witnesses for the sanctions hearing, it appears that Plaintiff intends to attempt to delve into SCL's subjective understanding of the Court's September 2012 order. *See* Plaintiff's Witness List at 2 (naming an SCL "designated witness" to testify concerning SCL's "claims" that the September 14, 2012 and December 18, 2012 orders were ambiguous or permitted MPDPA redactions).[32] That, however, would necessarily intrude into work product and attorney-client privilege, which SCL does not intend to waive. Thus, in deciding whether SCL acted in good faith, the Court should view its orders objectively, considering whether a reasonable person in SCL's position would have found them at least ambiguous on the question of whether personal data could be redacted from documents that were located only in Macau in order to comply with the MPDPA.[33]

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[32] As Defendants have argued in their motion to quash—and as the Court ruled in August 2012—Plaintiff cannot demand the presence of a designated corporate representative at an evidentiary hearing. *See* 8/29/12 Hearing Tr. at 23:20-21 (granting motion for protective order "with respect to the 30(b)(6) witness. 30(b)(6) is a discovery device, not a device to compel attendance at evidentiary hearings or trials").

[33] No adverse inferences can be drawn from SCL's decision not to waive the privileges and work product protection afforded to it by Nevada law, under NRS 49.095 and Nevada Rule of Civil Procedure 26(b)(3). *See, e.g.*, *Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208, 226 (2d Cir. 1999) (there is "no precedent supporting . . . an [adverse] inference based on the invocation of the attorney-client privilege"). In its September 14, 2012 Order, the

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That analysis supports the conclusion that the Court's orders were at least ambiguous. Apart from the language of the September order and the colloquy in December 2012, the context in which the September order was issued suggests that it was not aimed at precluding SCL from complying with the MPDPA by redacting personal data on documents that had *not* been transferred to the U.S. "[I]mplicit in the district judges' authority to sanction is that the district judge must design the sanction to fit the violation." *City of Sparks v. Second Judicial District*, 112 Nev. 952, 920 P.2d 1014, 1016 (1996). Here, the violation was defendants' failure to volunteer at an earlier point in time that LVSC had transferred Jacobs' ESI and other documents from Macau to Las Vegas. Forcing *SCL* to violate the MPDPA in the future with respect to documents that had never been transferred to the U.S.—or imposing additional sanctions on it for refusing to do so —simply would not fit that violation.

In any event, the fact that OPDP required VML to redact personal data as the price of being able to transfer documents to the U.S. demonstrates that there were factors beyond SCL's control that contributed to any non-compliance with the Court's orders. In *Societe Internationale Pour Participations Industrielles et Commericales, S.A. v. Rogers*, 357 U.S. 197, 211 (1958), the Supreme Court noted that "[i]t is hardly debatable that fear of criminal prosecution constitutes a weighty excuse for nonproduction, and this excuse is not weakened because the laws preventing compliance are those of a foreign sovereign." Yet that is precisely what VML and/or its directors would have faced had they decided to disobey the directives VML received from OPDP.[34]

That the threat of sanctions was real is apparent from how SCL and VML behaved.

Court stated that it had not drawn adverse inferences from LVSC's assertions of privilege and work product protection. Order at 2, n.1. Unfortunately, however, the Court did just that in erroneously concluding (at 6) that a July 2011 change in corporate policy restricting LVSC's access to SCL data that was subject to the MPDPA "was made with an intent to prevent the disclosure of the transferred data as well as other data." The Court also appears to have drawn improper inferences from the assertion of attorney-client privilege in concluding that "Defendants and their agents" engaged in varying "degrees of willfulness" in "concealing the existence of the transferred data and failing to disclose the transferred data to the Court."

[34] Although VML is SCL's subsidiary, VML has its own Board with its own fiduciary duties. Because VML was and is the data controller, it is VML's directors and employees that are potentially at risk. Under those circumstances, it is not clear that SCL would have had the power to compel VML to violate OPDP's directives had

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Having Macanese counsel review and redact personal data added an enormous cost burden to the document production process. If SCL and VML could have produced the documents without those redactions, they could have transferred the documents to the U.S. for review, produced those that were not privileged, and avoided any possibility of a renewed sanctions motion. Instead, SCL sent FTI to Macau to prepare the electronic documents for review, and VML hired nearly two dozen Macanese lawyers over the Christmas holidays to conduct the initial review and redact the documents before they were transferred out of Macau. Then SCL incurred even more costs to produce the redaction log, and LVSC incurred significant additional costs hunting for duplicate or near-duplicate documents in the United States that could be produced without redactions. The evidence will show that the cost of these procedures, which enabled SCL to comply with the MPDPA while producing as much unredacted information as possible, exceeded $2.4 million.[35] That alone proves that SCL acted in good faith, by taking extraordinary steps to meet its obligations to this Court while at the same time not trying to force VML to violate its obligations under Macanese law.[36]

2. Plaintiff's Ability To Make His Case On Jurisdiction Was Not Prejudiced.

In any event, the conduct at issue here cannot possibly warrant the sanctions Plaintiff requests. For the reasons outlined above, SCL did not act in bad faith. And Plaintiff's ability to make his jurisdictional case was not compromised because the redacted personal data—and in most cases the documents themselves—are simply not relevant to any viable jurisdictional theory. This lack of jurisdictional relevance makes the notion that SCL acted in bad faith, out of some desire to conceal documents, even more far-fetched. If SCL had been trying to hide information by redacting documents, FTI would not have conducted a search for whatever

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it chosen to do so.

[35] *See* Declaration of Jason Ray, attached as Exhibit J to SCL's Appendix.

[36] Whether SCL acted in good faith in this respect is again an issue that the Court should decide based on the objective facts, rather than attempting to determine who ultimately made the decision to proceed as SCL did and then trying to figure out whether that person acted with subjective good faith. As SCL has already explained, an inquiry into those issues would necessarily invade attorney-client privilege and work product protections, which SCL will not waive. For the reasons outlined above, the Court may not draw any adverse inferences from SCL's assertion of privilege.

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duplicates existed in the U.S. SCL also would not have obtained consents from the four deponents or attempted to obtain Plaintiff's consent. Nor would it have repeatedly offered to take additional steps to try to find duplicates of, or seek consents to unredact personal data in, specific documents that Plaintiff identified as having particular relevance to the jurisdictional inquiry.

Under these circumstances, the kinds of extreme sanctions Plaintiff has suggested—such as a finding by the Court that jurisdiction has been established—would be entirely unwarranted and inappropriate. *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 698 (1982), which Plaintiff typically cites as authority for the proposition that such a sanction ***can*** be imposed, proves the point. In that case, the insurance companies that were resisting jurisdiction had no excuse at all for withholding documents. Indeed, they had promised on a number of occasions to produce documents showing the extent of the business they conducted in the U.S., but never did so. Even then, the court gave the defendants the opportunity to show that they were not subject to the general jurisdiction of the court, but they failed even to attempt to make such a showing.[37] Here, by contrast, Plaintiff obtained thousands of documents without MPDPA redactions in response to his document requests; the relatively small amount of information that has been withheld based on the MPDPA will have no impact whatsoever on his ability to prove his remaining general jurisdictional theory.

For the same reasons, evidentiary sanctions would also not be appropriate here. In *Linde*, the district court sanctioned the defendant bank for its failure to produce documents by allowing the jury to make adverse inferences as to what was in those documents and precluding the bank from introducing evidence that the withheld documents might have been offered to contradict. But the court selected that sanction because the plaintiffs had shown both that the withheld documents were "essential" and that it was likely that those documents would have

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[37] The plaintiff in that action sought to prove that the foreign insurance companies did business in the forum by writing policies there. Ironically, under *Daimler AG,* the discovery the plaintiff sought would have been irrelevant to jurisdiction.

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substantiated plaintiffs' claims. 269 F.R.D. at 196. Here, by contrast, Plaintiff has never even attempted to show (nor could he show) that any of the redacted personal data was likely to substantiate his claim that SCL is "at home" in Las Vegas. Indeed, Plaintiff's current theory—that SCL's "nerve center" is in Las Vegas—proves how unimportant documents that could be found only in Macau truly are. For if Plaintiff cannot prove his "Las Vegas as nerve center" theory based on the thousands of documents that were produced out of ***Las Vegas*** and the testimony of the individuals in Las Vegas on whose presence Plaintiff relies, he could not possibly do so based on names or other personal data that was redacted from documents that could be located only in Macau.

3. SCL Is Not Responsible For The Delay In The Proceedings.

Plaintiff's *modus operandi* in this litigation has been to accuse Defendants of misconduct on a routine basis, in every court paper he files and in every appearance before this Court; to ignore the extensive discovery he has received and act as though Defendants have produced nothing at all; and to blame the 3-1/2 year delay since the Nevada Supreme Court's decision to vacate this Court's jurisdictional ruling on Defendants' supposed recalcitrance. The reality, however, is very different than the fiction Plaintiff relentlessly repeats.

When the Court granted Plaintiff the right to take jurisdictional discovery, it did so based on Plaintiff's representation that he had "tried to narrowly confine what it is that we want to do" with respect to jurisdictional discovery. 9/27/11 H'rng Tr. at 20. The U.S. Supreme Court's decision in *Daimler* confirms that discovery on the issue of general jurisdiction should be narrowly confined; as the Supreme Court observed, it is "hard to see why much in the way of discovery would be needed to determine where a corporation is at home." 134 S.Ct. at 762 n.20. But notwithstanding his representations to the Court, Plaintiff has pursued the broadest possible discovery on the specific topics on which the Court allowed discovery—without regard to whether that discovery is likely to result in any evidence that is evenly remotely relevant to any viable theory of jurisdiction. Furthermore, when SCL's then-counsel attempted to shortcut the need for extensive discovery by offering to stipulate to a detailed set of facts, Plaintiff's counsel refused even to discuss possible stipulations on even the most basic facts (such as travel to and

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from Macau and where SCL Board meetings were held).[38]

Once this Court issued its sanctions order in September 2012, Plaintiff dropped any pretense of cooperating in discovery. In hindsight, it is apparent that Plaintiff's entire strategy was to attempt to win the jurisdictional argument through a "discovery tort" rather than on the merits. This strategy should not be countenanced: any jurisdictional determination involving a non-U.S. corporation should be made based on the facts and the law, rather than on litigation gamesmanship.

III.

CONCLUSION

For the reasons outlined above and to be presented at the hearing, no sanctions should be imposed on SCL.

DATED this 6th day of February, 2015.

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[38] See Letter from John Owens, Esq. attached as Exhibit K to SCL's Appendix.

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February 2015, the foregoing **SCL's MEMORANDUM REGARDING PLAINTIFF'S RENEWED MOTION FOR SANCTIONS** was served on the following parties through the Court's electronic filing system:

ALL PARTIES ON THE E-SERVICE LIST

/s/ Erica Bennett

An employee of Kemp, Jones & Coulthard, LLP

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IN THE SUPREME COURT OF THE STATE OF NEVADA

*****

SANDS CHINA LTD., A Cayman Islands corporation, Petitioner, v. CLARK COUNTY DISTRICT COURT, THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11, Respondents, and STEVEN C. JACOBS, Real Party in Interest.	Case No.: 68265 (Consolidated with Case Numbers 68275 and 68309) **REAL PARTY IN INTEREST STEVEN C. JACOBS' SUPPLEMENTAL APPENDIX** **VOLUME IV 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' SUPPLEMTNAL APPENDIX VOLUME IV OF XI** properly addressed to the following:

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Minute Order, dated 12/12/2014	IV	SA0989 – SA0990
Defendant Sands China LTD's Motion to Dismiss Third Amended Complaint for Lack of Personal Jurisdiction and Failure to State a Claim, dated 1/12/2015	IV	SA0991 – SA1014
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Plaintiff's Jurisdictional Ex. 173, admitted on 4/20/2015	VI	SA1220
Plaintiff's Jurisdictional Ex. 176, admitted on 4/20/2015	VI	SA1221 – SA1222
Plaintiff's Jurisdictional Ex. 178, admitted on 4/20/2015	VI	SA1223 – SA1226
Plaintiff's Jurisdictional Ex. 182, admitted on 4/20/2015	VI	SA1227 – SA1228
Plaintiff's Jurisdictional Ex. 238, admitted on 4/20/2015	VI	SA1229 – SA1230
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Plaintiff's Jurisdictional Ex. 425, admitted on 4/20/2015	VI	SA1253 – SA1256
Plaintiff's Jurisdictional Ex. 437, admitted on 4/20/2015	VI	SA1257 – SA1258
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Plaintiff's Jurisdictional Ex. 476, admitted on 4/20/2015	VI	SA1260 – SA1264
Plaintiff's Jurisdictional Ex. 495, admitted on 4/20/2015	VI	SA1265
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Plaintiff's Jurisdictional Ex. 702, admitted on 4/20/2015	VI	SA1279 – SA1282
Plaintiff's Jurisdictional Ex. 665, admitted on 4/20/2015	VI	SA1283 – SA1287
Plaintiff's Jurisdictional Ex. 624, admitted on 4/20/2015	VI	SA1288 – SA1360
Plaintiff's Jurisdictional Ex. 188, admitted on 4/20/2015	VI	SA1361 – SA1362
Plaintiff's Jurisdictional Ex. 139, admitted on 4/20/2015	VI	SA1363 – SA1367
Plaintiff's Jurisdictional Ex. 153, admitted on 4/20/2015	VI	SA1368 – SA1370
Plaintiff's Jurisdictional Ex. 165, admitted on 4/20/2015	VI	SA1371
Plaintiff's Jurisdictional Ex. 172, admitted on 4/20/2015	VI	SA1372 – SA1374
Plaintiff's Jurisdictional Ex. 175, admitted on 4/20/2015	VI	SA1375
Plaintiff's Jurisdictional Ex. 508, admitted on 4/20/2015	VI	SA1376 – SA1382
Plaintiff's Jurisdictional Ex. 515, admitted on 4/20/2015	VI	SA1383 – SA1386

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Plaintiff's Jurisdictional Ex. 1049, admitted on 4/20/2015	VI	SA1387
Plaintiff's Jurisdictional Ex. 447, admitted on 4/20/2015	VI	SA1388 – SA1389
Plaintiff's Jurisdictional Ex. 1024, admitted on 4/21/2015	VI	SA1390 – SA1391
Plaintiff's Jurisdictional Ex. 501, admitted on 4/21/2015	VI	SA1392 – SA1394
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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
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Plaintiff's Jurisdictional Ex. 607, admitted on 4/21/2015	VI	SA1409 – SA1411
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Plaintiff's Jurisdictional Ex. 669, admitted on 4/21/2015	VI	SA1413
Plaintiff's Jurisdictional Ex. 690, admitted on 4/21/2015	VI	SA1414 – SA1415
Plaintiff's Jurisdictional Ex. 1142, admitted on 4/21/2015	VI	SA1416
Plaintiff's Jurisdictional Ex. 804, admitted on 4/21/2015	VI	SA1417
Plaintiff's Jurisdictional Ex. 1163, admitted on 4/21/2015	VI	SA1418 – SA1420
Plaintiff's Jurisdictional Ex. 1166, admitted on 4/21/2015	VI	SA1421
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Plaintiff's Jurisdictional Ex. 1186, admitted on 4/21/2015	VI	SA1426
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Plaintiff's Jurisdictional Ex. 1190, admitted on 4/21/2015	VI	SA1429
Plaintiff's Jurisdictional Ex. 535, admitted on 4/21/2015	VI	SA1430 – SA1431
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Plaintiff's Jurisdictional Ex. 686, admitted on 4/22/2015	VII	SA1453 – SA1456
Plaintiff's Jurisdictional Ex. 752, admitted on 4/22/2015	VII	SA1457 – SA1458
Plaintiff's Jurisdictional Ex. 628, admitted on 4/22/2015	VII	SA1459 – SA1460
Plaintiff's Jurisdictional Ex. 627, admitted on 4/22/2015	VII	SA1461 – SA1462
Plaintiff's Jurisdictional Ex. 580, admitted on 4/22/2015	VII	SA1463 – SA1484
Plaintiff's Jurisdictional Ex. 270, admitted on 4/22/2015	VII	SA1485 – SA1488
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Plaintiff's Jurisdictional Ex. 667, admitted on 4/22/2015	VII	SA1491 – SA1493

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Plaintiff's Jurisdictional Ex. 670, admitted on 4/22/2015	VII	SA1494 – SA1496
Plaintiff's Jurisdictional Ex. 225, admitted on 4/22/2015	VII	SA1496A
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Plaintiff's Jurisdictional Ex. 955, admitted on 4/28/2015	VII	SA1497
Plaintiff's Jurisdictional Ex. 103, admitted on 4/28/2015	VII	SA1498 – SA1499
Plaintiff's Jurisdictional Ex. 1035, admitted on 4/28/2015	VII	SA1499A - SA1499F
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Plaintiff's Jurisdictional Ex. 91, admitted on 4/30/2015	VII	SA1590
Plaintiff's Jurisdictional Ex. 100, admitted on 4/30/2015	VII	SA1591
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Plaintiff's Jurisdictional Ex. 162, admitted on 4/30/2015	VII	SA1595
Plaintiff's Jurisdictional Ex. 167, admitted on 4/30/2015	VII	SA1596
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Plaintiff's Jurisdictional Ex. 558, admitted on 4/30/2015	VII	SA1607
Plaintiff's Jurisdictional Ex. 561, admitted on 4/30/2015	VII	SA1608
Plaintiff's Jurisdictional Ex. 261, admitted on 4/30/2015	VII	SA1609 – SA1628
Plaintiff's Jurisdictional Ex. 267, admitted on 4/30/2015	VII	SA1629 – SA1630
Plaintiff's Jurisdictional Ex. 378, admitted on 4/30/2015	VII	SA1631
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Plaintiff's Jurisdictional Ex. 158B, admitted on 5/1/2015	VII	SA1637
Plaintiff's Jurisdictional Ex. 1097, admitted on 5/1/2015	VII	SA1638 – SA1639
Plaintiff's Jurisdictional Ex. 748, admitted on 5/4/2015	VII	SA1640 – SA1641
Plaintiff's Jurisdictional Ex. 970, admitted on 5/5/2015	VII	SA1642 – SA1643
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Plaintiff's Jurisdictional Ex. 1228, identified as SCL00101583, admitted on 5/5/2015	VIII	SA1651
Plaintiff's Jurisdictional Ex. 1229, identified as SCL00108526, admitted on 5/5/2015	VIII	SA1652
Plaintiff's Jurisdictional Ex. 1230, identified as SCL00206713, admitted on 5/5/2015	VIII	SA1653
Plaintiff's Jurisdictional Ex. 1231, identified as SCL00210953, admitted on 5/5/2015	VIII	SA1654 – SA1656
Plaintiff's Jurisdictional Ex. 1232, identified as SCL00173958, admitted on 5/5/2015	VIII	SA1657 – SA1658
Plaintiff's Jurisdictional Ex. 1233, identified as SCL00173842, admitted on 5/5/2015	VIII	SA1659 – SA1661
Plaintiff's Jurisdictional Ex. 1234, identified as SCL00186995, admitted on 5/5/2015	VIII	SA1662 – SA1663

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Plaintiff's Jurisdictional Ex. 1235, identified as SCL00172747, admitted on 5/5/2015	VIII	SA1664 – SA1666
Plaintiff's Jurisdictional Ex. 1236, identified as SCL00172796, admitted on 5/5/2015	VIII	SA1667
Plaintiff's Jurisdictional Ex. 1237, identified as SCL00172809, admitted on 5/5/2015	VIII	SA1668 – SA1669
Plaintiff's Jurisdictional Ex. 1238, identified as SCL00105177, admitted on 5/5/2015	VIII	SA1670
Plaintiff's Jurisdictional Ex. 1239, identified as SCL00105245, admitted on 5/5/2015	VIII	SA1671 – SA1672
Plaintiff's Jurisdictional Ex. 1240, identified as SCL00107517, admitted on 5/5/2015	VIII	SA1673 – SA1675
Plaintiff's Jurisdictional Ex. 1241, identified as SCL00108481, admitted on 5/5/2015	VIII	SA1676
Plaintiff's Jurisdictional Ex. 1242, identified as SCL00108505, admitted on 5/5/2015	VIII	SA1677 – SA1678
Plaintiff's Jurisdictional Ex. 1243, identified as SCL00110438, admitted on 5/5/2015	VIII	SA1679 – SA1680
Plaintiff's Jurisdictional Ex. 1244, identified as SCL00111487, admitted on 5/5/2015	VIII	SA1681 – SA1683
Plaintiff's Jurisdictional Ex. 1245, identified as SCL00113447, admitted on 5/5/2015	VIII	SA16384
Plaintiff's Jurisdictional Ex. 1246, identified as SCL00113467, admitted on 5/5/2015	VIII	SA1685
Plaintiff's Jurisdictional Ex. 1247, identified as SCL00114299, admitted on 5/5/2015	VIII	SA1686 – SA1687
Plaintiff's Jurisdictional Ex. 1248, identified as SCL00115634, admitted on 5/5/2015	VIII	SA1688

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Plaintiff's Jurisdictional Ex. 1249, identified as SCL00119172, admitted on 5/5/2015	VIII	SA1689 – SA1691
Plaintiff's Jurisdictional Ex. 1250, identified as SCL00182392, admitted on 5/5/2015	VIII	SA1692 – SA1694
Plaintiff's Jurisdictional Ex. 1251, identified as SCL00182132, admitted on 5/5/2015	VIII	SA1695 – SA1697
Plaintiff's Jurisdictional Ex. 1252, identified as SCL00182383, admitted on 5/5/2015	VIII	SA1698 – SA1699
Plaintiff's Jurisdictional Ex. 1253, identified as SCL00182472, admitted on 5/5/2015	VIII	SA1700
Plaintiff's Jurisdictional Ex. 1254, identified as SCL00182538, admitted on 5/5/2015	VIII	SA1701
Plaintiff's Jurisdictional Ex. 1255, identified as SCL00182221, admitted on 5/5/2015	VIII	SA1702
Plaintiff's Jurisdictional Ex. 1256, identified as SCL00182539, admitted on 5/5/2015	VIII	SA1703
Plaintiff's Jurisdictional Ex. 1257, identified as SCL00182559, admitted on 5/5/2015	VIII	SA1704
Plaintiff's Jurisdictional Ex. 1258, identified as SCL00182591, admitted on 5/5/2015	VIII	SA1705
Plaintiff's Jurisdictional Ex. 1259, identified as SCL00182664, admitted on 5/5/2015	VIII	SA1706
Plaintiff's Jurisdictional Ex. 1260, identified as SCL00182713, admitted on 5/5/2015	VIII	SA1707
Plaintiff's Jurisdictional Ex. 1261, identified as SCL00182717, admitted on 5/5/2015	VIII	SA1708
Plaintiff's Jurisdictional Ex. 1262, identified as SCL00182817, admitted on 5/5/2015	VIII	SA1709

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Plaintiff's Jurisdictional Ex. 1263, identified as SCL00182892, admitted on 5/5/2015	VIII	SA1710
Plaintiff's Jurisdictional Ex. 1264, identified as SCL00182895, admitted on 5/5/2015	VIII	SA1711
Plaintiff's Jurisdictional Ex. 1265, identified as SCL00184582, admitted on 5/5/2015	VIII	SA1712 – SA1713
Plaintiff's Jurisdictional Ex. 1266, identified as SCL00182486, admitted on 5/5/2015	VIII	SA1714 – SA1715
Plaintiff's Jurisdictional Ex. 1267, identified as SCL00182431, admitted on 5/5/2015	VIII	SA1716 – SA1717
Plaintiff's Jurisdictional Ex. 1268, identified as SCL00182553, admitted on 5/5/2015	VIII	SA1718 – SA1719
Plaintiff's Jurisdictional Ex. 1269, identified as SCL00182581, admitted on 5/5/2015	VIII	SA1720 – SA1721
Plaintiff's Jurisdictional Ex. 1270, identified as SCL00182589, admitted on 5/5/2015	VIII	SA1722 – SA1723
Plaintiff's Jurisdictional Ex. 1271, identified as SCL00182592, admitted on 5/5/2015	VIII	SA1724 – SA1725
Plaintiff's Jurisdictional Ex. 1272, identified as SCL00182626, admitted on 5/5/2015	VIII	SA1726 – SA1727
Plaintiff's Jurisdictional Ex. 1273, identified as SCL00182659, admitted on 5/5/2015	VIII	SA1728 – SA1729
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Plaintiff's Jurisdictional Ex. 1275, identified as SCL00182721, admitted on 5/5/2015	VIII	SA1732 – SA1733
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Plaintiff's Jurisdictional Ex. 1280, identified as SCL00182867, admitted on 5/5/2015	VIII	SA1744 – SA1745
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Plaintiff's Jurisdictional Ex. 1282, identified as SCL00182683, admitted on 5/5/2015	VIII	SA1748 – SA1750
Plaintiff's Jurisdictional Ex. 1283, identified as SCL00182670, admitted on 5/5/2015	VIII	SA1751 – SA1756
Plaintiff's Jurisdictional Ex. 1284, identified as SCL00182569, admitted on 5/5/2015	VIII	SA1757 – SA1760
Plaintiff's Jurisdictional Ex. 1285, identified as SCL00182544, admitted on 5/5/2015	VIII	SA1761 – SA1763
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Plaintiff's Jurisdictional Ex. 1288, identified as SCL00182459, admitted on 5/5/2015	VIII	SA1773 – SA1776
Plaintiff's Jurisdictional Ex. 1289, identified as SCL00182395, admitted on 5/5/2015	VIII	SA1777 – SA1780
Plaintiff's Jurisdictional Ex. 1290, identified as SCL00182828, admitted on 5/5/2015	VIII	SA1781 – SA1782

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Plaintiff's Jurisdictional Ex. 1100 **Filed Under Seal**	X	SA1931 – SA1984
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Declaration of Todd L. Bice, Esq. in Support of Opposition to Defendant Sands China LTD's Motion for Summary Judgment on Personal Jurisdiction and Countermotion for Summary Judgment, dated 7/14/2014 **Filed Under Seal**	X & XI	SA2005 – SA2235

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OMITTED	II	n/a
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Plaintiff's Jurisdictional Ex. 1230, identified as SCL00206713, admitted on 5/5/2015	VIII	SA1653
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Plaintiff's Jurisdictional Ex. 1234, identified as SCL00186995, admitted on 5/5/2015	VIII	SA1662 – SA1663
Plaintiff's Jurisdictional Ex. 1235, identified as SCL00172747, admitted on 5/5/2015	VIII	SA1664 – SA1666
Plaintiff's Jurisdictional Ex. 1236, identified as SCL00172796, admitted on 5/5/2015	VIII	SA1667
Plaintiff's Jurisdictional Ex. 1237, identified as SCL00172809, admitted on 5/5/2015	VIII	SA1668 – SA1669
Plaintiff's Jurisdictional Ex. 1238, identified as SCL00105177, admitted on 5/5/2015	VIII	SA1670
Plaintiff's Jurisdictional Ex. 1239, identified as SCL00105245, admitted on 5/5/2015	VIII	SA1671 – SA1672
Plaintiff's Jurisdictional Ex. 1240, identified as SCL00107517, admitted on 5/5/2015	VIII	SA1673 – SA1675
Plaintiff's Jurisdictional Ex. 1241, identified as SCL00108481, admitted on 5/5/2015	VIII	SA1676
Plaintiff's Jurisdictional Ex. 1242, identified as SCL00108505, admitted on 5/5/2015	VIII	SA1677 – SA1678
Plaintiff's Jurisdictional Ex. 1243, identified as SCL00110438, admitted on 5/5/2015	VIII	SA1679 – SA1680

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Plaintiff's Jurisdictional Ex. 1244, identified as SCL00111487, admitted on 5/5/2015	VIII	SA1681 – SA1683
Plaintiff's Jurisdictional Ex. 1245, identified as SCL00113447, admitted on 5/5/2015	VIII	SA16384
Plaintiff's Jurisdictional Ex. 1246, identified as SCL00113467, admitted on 5/5/2015	VIII	SA1685
Plaintiff's Jurisdictional Ex. 1247, identified as SCL00114299, admitted on 5/5/2015	VIII	SA1686 – SA1687
Plaintiff's Jurisdictional Ex. 1248, identified as SCL00115634, admitted on 5/5/2015	VIII	SA1688
Plaintiff's Jurisdictional Ex. 1249, identified as SCL00119172, admitted on 5/5/2015	VIII	SA1689 – SA1691
Plaintiff's Jurisdictional Ex. 1250, identified as SCL00182392, admitted on 5/5/2015	VIII	SA1692 – SA1694
Plaintiff's Jurisdictional Ex. 1251, identified as SCL00182132, admitted on 5/5/2015	VIII	SA1695 – SA1697
Plaintiff's Jurisdictional Ex. 1252, identified as SCL00182383, admitted on 5/5/2015	VIII	SA1698 – SA1699
Plaintiff's Jurisdictional Ex. 1253, identified as SCL00182472, admitted on 5/5/2015	VIII	SA1700
Plaintiff's Jurisdictional Ex. 1254, identified as SCL00182538, admitted on 5/5/2015	VIII	SA1701
Plaintiff's Jurisdictional Ex. 1255, identified as SCL00182221, admitted on 5/5/2015	VIII	SA1702
Plaintiff's Jurisdictional Ex. 1256, identified as SCL00182539, admitted on 5/5/2015	VIII	SA1703
Plaintiff's Jurisdictional Ex. 1257, identified as SCL00182559, admitted on 5/5/2015	VIII	SA1704

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Plaintiff's Jurisdictional Ex. 1258, identified as SCL00182591, admitted on 5/5/2015	VIII	SA1705
Plaintiff's Jurisdictional Ex. 1259, identified as SCL00182664, admitted on 5/5/2015	VIII	SA1706
Plaintiff's Jurisdictional Ex. 1260, identified as SCL00182713, admitted on 5/5/2015	VIII	SA1707
Plaintiff's Jurisdictional Ex. 1261, identified as SCL00182717, admitted on 5/5/2015	VIII	SA1708
Plaintiff's Jurisdictional Ex. 1262, identified as SCL00182817, admitted on 5/5/2015	VIII	SA1709
Plaintiff's Jurisdictional Ex. 1263, identified as SCL00182892, admitted on 5/5/2015	VIII	SA1710
Plaintiff's Jurisdictional Ex. 1264, identified as SCL00182895, admitted on 5/5/2015	VIII	SA1711
Plaintiff's Jurisdictional Ex. 1265, identified as SCL00184582, admitted on 5/5/2015	VIII	SA1712 – SA1713
Plaintiff's Jurisdictional Ex. 1266, identified as SCL00182486, admitted on 5/5/2015	VIII	SA1714 – SA1715
Plaintiff's Jurisdictional Ex. 1267, identified as SCL00182431, admitted on 5/5/2015	VIII	SA1716 – SA1717
Plaintiff's Jurisdictional Ex. 1268, identified as SCL00182553, admitted on 5/5/2015	VIII	SA1718 – SA1719
Plaintiff's Jurisdictional Ex. 1269, identified as SCL00182581, admitted on 5/5/2015	VIII	SA1720 – SA1721
Plaintiff's Jurisdictional Ex. 1270, identified as SCL00182589, admitted on 5/5/2015	VIII	SA1722 – SA1723
Plaintiff's Jurisdictional Ex. 1271, identified as SCL00182592, admitted on 5/5/2015	VIII	SA1724 – SA1725

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Plaintiff's Jurisdictional Ex. 1272, identified as SCL00182626, admitted on 5/5/2015	VIII	SA1726 – SA1727
Plaintiff's Jurisdictional Ex. 1273, identified as SCL00182659, admitted on 5/5/2015	VIII	SA1728 – SA1729
Plaintiff's Jurisdictional Ex. 1274, identified as SCL00182696, admitted on 5/5/2015	VIII	SA1730 – SA1731
Plaintiff's Jurisdictional Ex. 1275, identified as SCL00182721, admitted on 5/5/2015	VIII	SA1732 – SA1733
Plaintiff's Jurisdictional Ex. 1276, identified as SCL00182759, admitted on 5/5/2015	VIII	SA1734 – SA1735
Plaintiff's Jurisdictional Ex. 1277, identified as SCL00182714, admitted on 5/5/2015	VIII	SA1736 – SA1738
Plaintiff's Jurisdictional Ex. 1278, identified as SCL00182686, admitted on 5/5/2015	VIII	SA1739 – SA1741
Plaintiff's Jurisdictional Ex. 1279, identified as SCL00182938, admitted on 5/5/2015	VIII	SA1742 – SA1743
Plaintiff's Jurisdictional Ex. 1280, identified as SCL00182867, admitted on 5/5/2015	VIII	SA1744 – SA1745
Plaintiff's Jurisdictional Ex. 1281, identified as SCL00182779, admitted on 5/5/2015	VIII	SA1746 – SA1747
Plaintiff's Jurisdictional Ex. 1282, identified as SCL00182683, admitted on 5/5/2015	VIII	SA1748 – SA1750
Plaintiff's Jurisdictional Ex. 1283, identified as SCL00182670, admitted on 5/5/2015	VIII	SA1751 – SA1756
Plaintiff's Jurisdictional Ex. 1284, identified as SCL00182569, admitted on 5/5/2015	VIII	SA1757 – SA1760
Plaintiff's Jurisdictional Ex. 1285, identified as SCL00182544, admitted on 5/5/2015	VIII	SA1761 – SA1763

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Plaintiff's Jurisdictional Ex. 1286, identified as SCL00182526, admitted on 5/5/2015	VIII	SA1764 – SA1767
Plaintiff's Jurisdictional Ex. 1287, identified as SCL00182494, admitted on 5/5/2015	VIII	SA1768 – SA1772
Plaintiff's Jurisdictional Ex. 1288, identified as SCL00182459, admitted on 5/5/2015	VIII	SA1773 – SA1776
Plaintiff's Jurisdictional Ex. 1289, identified as SCL00182395, admitted on 5/5/2015	VIII	SA1777 – SA1780
Plaintiff's Jurisdictional Ex. 129, admitted on 4/30/2015	VII	SA1592 – SA1594
Plaintiff's Jurisdictional Ex. 1290, identified as SCL00182828, admitted on 5/5/2015	VIII	SA1781 – SA1782
Plaintiff's Jurisdictional Ex. 132A, admitted on 4/30/2015	VII	SA1597 – SA1606
Plaintiff's Jurisdictional Ex. 139, admitted on 4/20/2015	VI	SA1363 – SA1367
Plaintiff's Jurisdictional Ex. 153, admitted on 4/20/2015	VI	SA1368 – SA1370
Plaintiff's Jurisdictional Ex. 158B, admitted on 5/1/2015	VII	SA1637
Plaintiff's Jurisdictional Ex. 162, admitted on 4/30/2015	VII	SA1595
Plaintiff's Jurisdictional Ex. 165, admitted on 4/20/2015	VI	SA1371
Plaintiff's Jurisdictional Ex. 167, admitted on 4/30/2015	VII	SA1596
Plaintiff's Jurisdictional Ex. 172, admitted on 4/20/2015	VI	SA1372 – SA1374
Plaintiff's Jurisdictional Ex. 173, admitted on 4/20/2015	VI	SA1220
Plaintiff's Jurisdictional Ex. 175, admitted on 4/20/2015	VI	SA1375
Plaintiff's Jurisdictional Ex. 176, admitted on 4/20/2015	VI	SA1221 – SA1222
Plaintiff's Jurisdictional Ex. 178, admitted on 4/20/2015	VI	SA1223 – SA1226

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Plaintiff's Jurisdictional Ex. 182, admitted on 4/20/2015	VI	SA1227 – SA1228
Plaintiff's Jurisdictional Ex. 187, admitted on 4/30/2015	VII	SA1500 – SA1589
Plaintiff's Jurisdictional Ex. 188, admitted on 4/20/2015	VI	SA1361 – SA1362
Plaintiff's Jurisdictional Ex. 225, admitted on 4/22/2015	VII	SA1496A
Plaintiff's Jurisdictional Ex. 238, admitted on 4/20/2015	VI	SA1229 – SA1230
Plaintiff's Jurisdictional Ex. 256, admitted on 4/20/2015	VI	SA1231 – SA1232
Plaintiff's Jurisdictional Ex. 257, admitted on 4/22/2015	VII	SA1496B- SA1496E
Plaintiff's Jurisdictional Ex. 261, admitted on 4/30/2015	VII	SA1609 – SA1628
Plaintiff's Jurisdictional Ex. 267, admitted on 4/30/2015	VII	SA1629 – SA1630
Plaintiff's Jurisdictional Ex. 270, admitted on 4/22/2015	VII	SA1485 – SA1488
Plaintiff's Jurisdictional Ex. 273, admitted on 4/22/2015	VII	SA1445
Plaintiff's Jurisdictional Ex. 292, admitted on 4/20/2015	VI	SA1233 – SA1252
Plaintiff's Jurisdictional Ex. 378, admitted on 4/30/2015	VII	SA1631
Plaintiff's Jurisdictional Ex. 4, admitted on 4/20/2015	VI	SA1219
Plaintiff's Jurisdictional Ex. 425, admitted on 4/20/2015	VI	SA1253 – SA1256
Plaintiff's Jurisdictional Ex. 437, admitted on 4/20/2015	VI	SA1257 – SA1258
Plaintiff's Jurisdictional Ex. 441, admitted on 4/20/2015	VI	SA1259
Plaintiff's Jurisdictional Ex. 447, admitted on 4/20/2015	VI	SA1388 – SA1389
Plaintiff's Jurisdictional Ex. 476, admitted on 4/20/2015	VI	SA1260 – SA1264
Plaintiff's Jurisdictional Ex. 495, admitted on 4/20/2015	VI	SA1265
Plaintiff's Jurisdictional Ex. 498,	VII	SA1645 – SA1647

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admitted on 5/5/2015		
Plaintiff's Jurisdictional Ex. 501, admitted on 4/21/2015	VI	SA1392 – SA1394
Plaintiff's Jurisdictional Ex. 506, admitted on 4/21/2015	VI	SA1395 – SA1399
Plaintiff's Jurisdictional Ex. 508, admitted on 4/20/2015	VI	SA1376 – SA1382
Plaintiff's Jurisdictional Ex. 511, admitted on 4/21/2015	VI	SA1400
Plaintiff's Jurisdictional Ex. 515, admitted on 4/20/2015	VI	SA1383 – SA1386
Plaintiff's Jurisdictional Ex. 523, admitted on 4/21/2015	VI	SA1401 – SA1402
Plaintiff's Jurisdictional Ex. 535, admitted on 4/21/2015	VI	SA1430 – SA1431
Plaintiff's Jurisdictional Ex. 540, admitted on 4/21/2015	VI	SA1432 – SA1433
Plaintiff's Jurisdictional Ex. 543, admitted on 4/21/2015	VI	SA1434 – SA1435
Plaintiff's Jurisdictional Ex. 550, admitted on 4/22/2015	VII	SA1446 – SA1447
Plaintiff's Jurisdictional Ex. 558, admitted on 4/30/2015	VII	SA1607
Plaintiff's Jurisdictional Ex. 561, admitted on 4/30/2015	VII	SA1608
Plaintiff's Jurisdictional Ex. 580, admitted on 4/22/2015	VII	SA1463 – SA1484
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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Plaintiff's Jurisdictional Ex. 624, admitted on 4/20/2015	VI	SA1288 – SA1360
Plaintiff's Jurisdictional Ex. 627, admitted on 4/22/2015	VII	SA1461 – SA1462
Plaintiff's Jurisdictional Ex. 628, admitted on 4/22/2015	VII	SA1459 – SA1460
Plaintiff's Jurisdictional Ex. 638, admitted on 4/22/2015	VII	SA1489 – SA1490
Plaintiff's Jurisdictional Ex. 661, admitted on 4/21/2015	VI	SA1412
Plaintiff's Jurisdictional Ex. 665, admitted on 4/20/2015	VI	SA1283 – SA1287
Plaintiff's Jurisdictional Ex. 667, admitted on 4/22/2015	VII	SA1491 – SA1493
Plaintiff's Jurisdictional Ex. 668, admitted on 4/20/2015	VI	SA1270 – SA1277
Plaintiff's Jurisdictional Ex. 669, admitted on 4/21/2015	VI	SA1413
Plaintiff's Jurisdictional Ex. 670, admitted on 4/22/2015	VII	SA1494 – SA1496
Plaintiff's Jurisdictional Ex. 686, admitted on 4/22/2015	VII	SA1453 – SA1456
Plaintiff's Jurisdictional Ex. 690, admitted on 4/21/2015	VI	SA1414 – SA1415
Plaintiff's Jurisdictional Ex. 692, admitted on 4/20/2015	VI	SA1278
Plaintiff's Jurisdictional Ex. 694, admitted on 4/22/2015	VII	SA1448 – SA1452
Plaintiff's Jurisdictional Ex. 702, admitted on 4/20/2015	VI	SA1279 – SA1282
Plaintiff's Jurisdictional Ex. 722, admitted on 4/22/2015	VII	SA1496F
Plaintiff's Jurisdictional Ex. 744, admitted on 4/22/2015	VII	SA1496G-SA1496I
Plaintiff's Jurisdictional Ex. 748, admitted on 5/4/2015	VII	SA1640 – SA1641
Plaintiff's Jurisdictional Ex. 752, admitted on 4/22/2015	VII	SA1457 – SA1458
Plaintiff's Jurisdictional Ex. 782, admitted on 4/30/2015	VII	SA1635 – SA1636
Plaintiff's Jurisdictional Ex. 804,	VI	SA1417

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admitted on 4/21/2015		
Plaintiff's Jurisdictional Ex. 91, admitted on 4/30/2015	VII	SA1590
Plaintiff's Jurisdictional Ex. 955, admitted on 4/28/2015	VII	SA1497
Plaintiff's Jurisdictional Ex. 970, admitted on 5/5/2015	VII	SA1642 – SA1643
Plaintiff's Motion on Deficient Privilege Log on Order Shortening Time, dated 9/16/2014	IV	SA0855 – SA0897
Plaintiff's Motion to Conduct Jurisdictional Discovery, dated 9/21/2011	II	SA0283 – SA0291
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
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
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
Plaintiff's Reply in Support of Plaintiff's Motion on Deficient Privilege Log on Order Shortening Time, dated 10/3/2014	IV	SA0925 – SA0933
Real Party in Interest, Steven C. Jacobs' Reply in Support of Countermotion regarding Recall of Mandate, dated 3/28/2014	II	SA0314 – SA0318
Real Party in Interest, Steven C. Jacobs' Response to Motion to Recall Mandate and Countermotion regarding same, dated 2/7/2014	II	SA0292 – SA0303
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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Jurisdiction, dated 7/24/2014		
Reply in Support of Countermotion for Summary Judgment, dated 7/24/2014	III	SA0671 – SA0764
Reply in Support of Motion to Recall Mandate and Opposition to Countermotion to Lift Stay, dated 3/28/2014	II	SA0305 – SA0313
Sands China's Closing Argument Power Point in Jurisdictional Hearing, dated 5/7/2015	IX	SA1783 – SA1853
SCL's Memorandum regarding Plaintiff's Renewed Motion for Sanctions, dated 2/6/2015	IV	SA1049 – SA1077
Transcript of Hearing on Motions, dated 3/19/2015	V	SA1140 – SA1215
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
Transcript of Hearing regarding Mandatory Rule 16 Conference, dated 4/27/2011	I	SA0190 – SA0225
Transcript of Hearing regarding Motions on 8/14/2014	III	SA0771 – SA0816
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
Transcript of Telephone Conference on 9/10/2014	III	SA0840 – SA0854
Transcript of Telephone Conference on 9/9/2014	III	SA0823 – SA0839
Writ of Mandamus, dated 8/26/2011	II	SA0281 – SA0282

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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

PLAINTIFF'S MOTION ON DEFICIENT PRIVILEGE LOG ON ORDER SHORTENING TIME

Hearing Date:

Hearing Time:

This Court now knows first-hand just what Plaintiff Steven C. Jacobs ("Jacobs") has been pointing out for nearly ***two years***: Defendant Sands China Ltd.'s ("Sands China") privilege log is simply untenable. It lacks even the most basic information required to assert a claim of privilege. Even after Jacobs noted the sorry state of the log in ***2012***, Sands China did nothing to actually correct it.

Indeed, after taking no corrective measures concerning the log's deficiencies, Sands China attempted to shift the burden on to Jacobs, proclaiming to this Court the validity and

completeness of its privilege log. Sands China went so far as to claim that it is Jacobs' responsibility to go through it line by line and challenge each document separately. But now that this Court has itself seen the log's wholesale failures, Sands China claims that it should be given a do-over. It proposes that the Court give it an additional two weeks to now make changes. Of course, Sands China does not explain why it did not long ago correct these blatant deficiencies if they could have been corrected in two weeks.

The legal consequences of Sands China's refusal to provide an appropriate log is well-settled and straightforward: The law mandates that a party not benefit from their own non-compliance. Thus, when a party produces a facially-deficient log, courts hold that the party has failed to sustain its claim of privilege and thus any theoretical privilege is waived. And so it must be with Sands China.

This Motion is based upon the accompanying Memorandum of Points and Authorities and exhibits thereto, as well as the papers and pleadings on file in this case, and any additional argument this Court chooses to consider at the time of hearing.

DATED this 16th day of September, 2014.

PISANELLI BICE PLLC

By: _____

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ORDER SHORTENING TIME

Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 18th day of September, 2014, at 9:30 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF'S MOTION ON DEFICIENT PRIVILEGE LOG ON ORDER SHORTENING TIME** on for hearing.

DATED this 16th of February, 2014.

DISTRICT COURT JUDGE

Respectfully submitted by:

PISANELLI BICE PLLC

By: _____

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DECLARATION OF TODD L. BICE, ESQ. IN SUPPORT OF PLAINTIFF'S MOTION ON DEFICIENT PRIVILEGE LOG ON ORDER SHORTENING TIME

I, TODD L. BICE, ESQ., being duly sworn, declare as follows:

1. I am a partner at the law firm of Pisanelli Bice PLLC, attorneys of record for Plaintiff Steven C. Jacobs ("Jacobs") in the action styled *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No A-10-62769, pending in the Eighth Judicial District Court, Clark County Nevada. I make this Declaration in support of Jacobs' Motion on Deficient Privilege Log On An Order Shortening Time (the "Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. After the Nevada Supreme Court issued its writ regarding Jacobs' Advanced Discovery documents, the Court held hearings on August 14, 2014 and August 28, 2014. The Court announced its planned in camera review so that it could complete the process before motion practice in the CityCenter case. As reflected in the Court's minutes, the Court directed the parties "to meet and confer to clarify privilege log issues as to description and redaction." However, counsel for Jacobs heard nothing from Sands China. Rather than "meet and confer," or address the long-standing defects with its privilege log, Sands China filed a Motion to Establish a Protocol for Ruling on Privileged on Advanced Discovery Documents on an order shortening time. There, Sands China represented that the log was complete and that Jacobs' supposed failure to challenge each entry line by line constituted a waiver of any problems with the log. According to Sands China, the Court did not even need to look at documents in camera unless a challenge had been made by Jacobs to each specific document.

3. At the September 2, 2014 hearing on Sands China's motion, it full-throttle represented the sufficiency of its log. (Hr'g Tr., Sept. 2, 2014 at 13:11-12, on file ("It's our belief that we have carried our prime requirement that we provide a detailed privilege log.").)

4. Now that this Court has seen the log, it knows otherwise. It is in a complete state of disarray. On a teleconference with the parties on September 9, 2014, the Court rightly described Sands China's privilege log as "really awful." (Hr'g Tr. at 3:8-9, Sept. 9, 2014, on file.)

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5. Despite knowing of these deficiencies for over two years, Sands China took no corrective steps. Instead, it now asks this Court for two weeks so as to redo the privilege log. Respectfully, the time for doing that has long ago passed. Sands China sought to shift the burden on to Jacobs by representing that its privilege log was forthright and complete.

6. If Sands China is given the time it has requested, and this Motion is heard in the ordinary course, the Court will not be able to complete its in camera review before the Court is preoccupied with CityCenter and Jacobs will once again be denied the opportunity to set down the sanctions hearing that this Court has planned.

7. This request for an order shorting time is not made for any improper purpose and is not meant to vex, harass, or annoy the opposing parties.

DATED this 16th day of September, 2014.

TODD L. BICE, ESQ.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

A. Sands China's Privilege Log is Beyond Untenable, And It Has Known It For Years.

Jacobs will not burden this Court with a full recital of the history of Sands China's privilege log. Recall briefly, that Jacobs deposited volumes of data with Advanced Discovery on the basis that Sands China represented it did not know what Jacobs possessed and thus needed an opportunity for a privilege review.[1] On September 26, 2012, Sands China's then-co-counsel, Munger, Tolles & Olson LLP ("MTO"), produced a privilege log concerning its review of Jacobs' ESI. That log consisted of approximately 3,000 single-spaced pages. Jacobs' counsel went through the arduous task of reviewing the log and its wholesale inadequacies. Those deficiencies were glaring, as outlined in a lengthy and detailed letter from Jacobs' counsel. (Correspondence from D. Spinelli, Esq. to B. Schneider, Esq., Oct. 9, 2012, Ex. 1.)

In response and after putting Jacobs' counsel through the exercise of examining the log, Sands China's counsel claimed that it was only a "preliminary" log and thus Jacobs had essentially wasted days needlessly going through it because Sands China shortly, it was said, would be providing a real log. (*See id.*) However, that did not happen. Instead, after claiming that the log was forthcoming, Jacobs' counsel received a notice of substitution of counsel, informing it that MTO was no longer involved in the case. (*See* correspondence from D. Spinelli, Esq. to all counsel, Nov. 27, 2012, Ex. 2.)

It was not until over two months after the so-called "preliminary" log had been sent, that Jacobs received what was represented to be the final privilege log, which was produced by Sands China's current counsel. (Correspondence from J. Stephen Peek, Esq. to J. Pisanelli, Esq. & T. Bice, Esq., Dec. 3, 2012, Ex. 3 ("The first privilege log on the CD . . . constitutes a replacement of the privilege log that was previously supplied to your office on or about

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[1] In hindsight, Jacobs challenges these early representations, considering that Sands China had surreptitiously brought its own copy of Jacobs' ESI to the United States to clandestinely review without disclosing it to Jacobs or this Court.

September 26, 2012 with respect to our review of Jacobs' ESI.") (emphasis added.);[2] *see also* Correspondence from J. Stephen Peek, Esq. to J. Pisanelli, Esq. & T. Bice, Esq., Feb. 7, 2013, Ex. 4.) But this log simply eliminated a number of documents, it continued with all of the same deficiencies that had been outlined in Jacobs' October 9 letter.

Sands China's proffered excuse – insinuating that its current counsel lacked access to the Advanced Discovery database so that they could review the documents and address the privilege log – is equally untenable.[3] Indeed, it is Jacobs' counsel who forced the issue so as to remove MTO once they withdrew and to make sure Sands China's current counsel had access. Any claim of an inability to correct the log long ago is indefensible. (Correspondence from J. Stephen Peek, Esq. to D. Spinelli, Esq., Nov. 29, 2012, Ex. 5 ("[W]e agree that the user accounts for MTO may be disabled and user account for the following individuals added: Mark Jones, Michael Lackey at Mayer Brown . . . .").)

But as this Court knows, nothing was done to provide a privilege log that actually satisfied Sands China's obligations, despite the passage of over a year and a half after the purported final log was produced.

B. Sands China Seeks to Shift the Burden Onto Jacobs, Proclaiming its Log as Complete.

Following the issuance of the Nevada Supreme Court's writ, this Court held hearings on August 14, 2014 and August 28, 2014. The Court announced that it would promptly commence its in camera review so as to complete its review before motion practice in the CityCenter case. The Court directed the parties "to meet and confer to clarify privilege log issues as to description and redaction." (Minutes, Aug. 14, 2014, on file.)

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[2] At this Court's August 9, 2014 telephone conference, it was suggested that the current log is the fault of MTO. However, MTO had withdrawn from this case before that log's production. (*See* Hr'g Tr., Sept. 2, 2014 at 18:22-24 ("Your Honor, that is - - we don't - - against, this happened with predecessor counsel, who's very, very – they're very good lawyers.").)

[3] Throughout its motion to establish a protocol, Sands China claims that this Court should give it access to the Advanced Discovery database, suggesting that it otherwise had not always had such access. That is not the case.

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However, counsel for Jacobs heard nothing from Sands China. Rather than "meet and confer," or address the well-known problems with its privilege log, Sands China filed a Motion to Establish a Protocol for Ruling on Privileged on Advanced Discovery Documents on an order shortening time. (Def.'s Mot. to Establish a Protocol for Ruling on Privileges on Advanced Discovery Documents, Aug. 27, 2014, on file.; Pl.'s Opp'n to Defs.' Mot. to Establish a Protocol on Privileges on Advanced Discovery Documents, Aug. 29, 2014, on file.) There, Sands China reaffirmed the log, claiming it was complete and that Jacobs had the burden to challenge each log entry, line by line. Sands China went so far as to claim that Jacobs' failure to do so constituted a waiver of any log deficiencies. According to Sands China, it did not even need to look at the documents in camera unless Jacobs could muddle through this 1,700-page log and identify each problem. (Def.'s Mot. to Establish a Protocol at 12-13.)

At the September 2, 2014, hearing on its motion, Sands China doubled down on its request for burden-shifting, claiming how it had met its burden to provide a detailed log and thus the burden shifted to Jacobs to challenge each entry line by line. (Hr'g Tr., Sept. 2, 2014 at 13:11-12, on file ("It's our belief that we have carried our prime requirement that we provide a detailed privilege log."); *id.* at 14:7-8 ("We just believe that we have satisfied our burden by providing a detailed privilege log.").

But this Court plainly has now recognized what Jacobs has been complaining about for nearly the last two years: The log is so absurdly deficient that it fails to establish even a facial basis for claiming privilege over most of the documents. On the parties' conference call with the Court on September 9, 2014, the Court rightly described the privilege log as "really awful." (Hr'g Tr. at 3:8-9, Sept. 9, 2014, on file ("I've got to say, guys, it's a really awful privilege log . . . ."); *id.* at 5:23-24 ("Well, the log's pretty awful.".))

The legal consequence of doubling down on this "awful" privilege log and asking this Court to shift the burden on to Jacobs is not the opportunity for a do-over, as Sands China now wants. The failure to correct these blatant deficiencies means that any claim of privilege fails. As the courts say, the failure to provide a legitimate log is itself a waiver of any entitlement to claim

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privilege over the documents. As such, this Court should employ the protocol that Jacobs previously outlined: It should hold Sands China to its representations that its log is complete. It should thus review the entries of the log, and if the entry is insufficient to even establish a basis for plausible privilege, the Court should reject the claim and not waste its time with an in camera inspection. Doing otherwise merely rewards Sands China for its admitted noncompliance.

II. DISCUSSION

A. Sands China is Bound to the Consequences of its Untenable Log.

The law is long-standing that a party asserting privilege must establish a *prima facie* showing that the documents are privileged by providing a privilege log that identifies: "(a) the attorney and client involved, (b) the nature of the document, (c) all persons or entities shown on the document to have received or sent the document, (d) all persons or entities known to have been furnished the documents or informed of its substance, and (e) the date the document was generated, prepared, or dated." *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 698 (D. Nev. 1994). The privilege log should also provide the titles of the individuals such as "Esq." or "CPA" so the opposing party and the Court can easily determine the application of a privilege. *Go v. Rockefeller Univ.*, 280 F.R.D. 165, 175 (S.D.N.Y. 2012) ("[T]he privilege log is insufficient to the extent it fails to identify the identities, titles, and roles of the authors, recipients, and those CC'ed on these communications.") (internal quotations omitted).

"Moreover, given today's litigation technology, there is no good reason why privilege logs should not include . . . other readily accessible metadata for electronic documents, including, but not limited to: addressee(s), copyee(s), blind copyee(s), date, time, subject line, file name, file format, and a description of any attachments." *Favors v. Cuomo*, 285 F.R.D. 187, 223 (E.D.N.Y. 2012) (internal citation omitted). The subject matter description must also be more than just the email subject line. *Id.* at 224 n.36 ("However, where merely listing the subject line, file name, or document title would result in vague, confusing, or conclusory descriptions, . . . it is the defendant's obligation to supplement its privilege log with an affidavit or description of

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general subject matter sufficient to establish its claim of privilege.") (internal quotations and citation omitted).

The cases are legion in explaining the legal consequences of failing to produce a legitimate log: The claim of privilege necessarily fails and the party thereby waives any ability to assert privilege. *S.E.C. v. Yorkville Advisors, LLC*, 12 CIV. 7728 GBD HBP, --- F.R.D. ---, 2014 WL 2208009, at *15 (S.D.N.Y. May 27, 2014) (collecting cases);[4] *Masters Ltd. v. Husky Injection Molding Sys. Ltd.*, 01 C 1576, 2001 WL 1558303, at *3 (N.D. Ill. Dec. 6, 2001) ("This Court has provided Husky with multiple opportunities and sufficient time to comply with Rule 26(b)(5). At this stage of the game, immediate production of any document not described at all on Husky's privilege log is the necessary sanction."). Indeed, in one of the very cases cited by Sands China, the court explained that parties who prepare an inadequate log should not be rewarded with the court doing their job for them through an in camera inspection. *Davis v. City of New York*, Civ. 699 (SAS)(HBP) 2012 WL 2005826, at *4 (S.D.N.Y. June 4, 2012) (after

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[4] (citing See, e.g., Chase Manhattan Bank, N.A. v. Turner & Newall, PLC, supra, 964 F.2d at 166 (2d Cir.1992); Fingerhut ex rel. Fingerhut v. Chautauqua Inst. Corp., Inc., 07-CV-502-JTC, 2014 WL 1572387 at *4 (W.D.N.Y. Apr. 18, 2014); McNamee v. Clemens, supra, 2014 WL 1338720 at *3; Anderson v. Sposato, CV 11–5663(SJF)(WDW), 2014 WL 794282 at *3 (E.D.N.Y. Feb. 26, 2014); Taylor v. Otis Elevator Co., 12–CV196F, 2013 WL 1340387 at *1 (W.D.N.Y. Apr. 1, 2013); Gen. Motors LLC v. Lewis Bros., L.L.C., 10-CV-00725S(F), 2012 WL 3128949 at *7 (W.D.N.Y. July 31, 2012); In re Application of Chevron Corp., 749 F.Supp.2d 170, 181–82 (S.D.N.Y.2010) (Kaplan, D.J.); Kingsway Fin. Servs., Inc. v. Pricewaterhouse–Coopers LLP, 03 Civ. 5560(RMB)(HBP), 2006 WL 1295409 at *1 (S.D.N.Y. May 10, 2006) (Pitman, M.J.); FG Hemisphere Assocs., L.L.C. v. Republique Du Congo, 01 Civ. 8700(SAS)(HBP), 2005 WL 545218 at *6 (S.D.N.Y. Mar. 8, 2005) (Pitman, M.J.); Lugosch v. Congel, 219 F.R.D. 220, 239 (N.D.N.Y.2003); Bruker v. City of New York, 93 Civ. 3848(MGC)(HBP), 2002 WL 484843 at *5 (S.D.N.Y. Mar. 29, 2002) (Pitman, M.J.); Strougo v. BEA Assocs., supra, 199 F.R.D. at 521; A.I.A. Holdings, S.A. v. Lehman Bros., Inc., 97 Civ. 4978(LMM)(HBP), 2000 WL 1538003 at *3 (S.D.N.Y. Oct. 17, 2000) (Pitman, M.J.); Large v. Our Lady of Mercy Med. Ctr., 94 Civ. 5986(JGK)(THK), 1998 WL 65995 at *4 (S.D.N.Y. Feb. 17, 1998) (Katz, M.J.); Hurst v. F.W. Woolworth Co., supra, 1997 WL 61051 at *6; PKFinans Int'l Corp. v. IBJ Schroder Leasing Corp., supra, 1996 WL 525862 at *3–*4; John Labatt Ltd. v. Molson Breweries, 93 Civ. 75004(RPP), 94 Civ. 71540(RPP), 1995 WL 23603 at *1 (S.D.N.Y. Jan. 20, 1995) (Patterson, D.J.), appeal transferred sub nom., Dorf & Stanton Commc'ns, Inc. v. Molson Breweries, 56 F.3d 13 (2d Cir.1995), aff'd,100 F.3d 919 (Fed. Cir.1996); Smith v. Conway Org., Inc., 154 F.R.D. 73, 76 (S.D.N.Y.1994) (Sweet, D.J.); Allstate Life Ins. Co. v. First Trust Nat'l Ass'n, supra, 1993 WL 138844 at *3; Bank v. Mfrs. Hanover Trust Co., 89 Civ. 2946(MJL), 1990 WL 155591 at *2 (S.D.N.Y. Oct. 9, 1990) (Bernikow, M.J.); Carte Blanche (Singapore) PTE., Ltd. v. Diners Club Int'l, Inc., 130 F.R.D. 28, 32 (S.D.N.Y.1990) (Leisure, D.J.); see also Sheikhan v. Lenox Hill Hosp., 98 Civ. 6468(WHP), 1999 WL 386714 at *3 (S.D.N.Y. June 11, 1999) (Pauley, D.J.)).

finding the descriptions on the log inadequate, the court ordered the production because "'if *in camera* review were an adequate remedy to a deficient privilege log, there would be little reason for litigants to comply with the Federal Rules of Civil Procedure and the Local Rules and prepare an index of documents withheld on the ground of privilege'") (quoting *Davis v. City of New York*, Civ. 699 (SAS)(HBP), 2012 WL 612794 (S.D.N.Y. Feb. 27, 2012)).

This is not a case of some minor deficiencies in an otherwise legitimate privilege log, where the court is simply in need of some additional evidence to evaluate the claim of privilege. This log's failures are wholesale. It does not identify all senders, recipients, attorneys, or accountants. Many communications do not include an individual that could plausibly suggest a claim of privilege. The subject matter descriptions of the documents do not adequately explain why the documents would be privileged and provide nothing more than the vague subject line of the emails. The log demonstrates no plausible basis for claims of privilege over vast volumes of its contents. And, Sands China's plea for more time to amend the log is a simple admission that it has been deficient for the last two years. *Burch v. Regents of Univ. of Cal.*, CV.S-04-0038 (WBS)(GGH), 2005 WL 6377313, at *3 (E.D. Cal. Aug. 30, 2005).

Respectfully, Sands China has earned no right for a do-over at this point. The deficiencies in the log are pervasive and despite notice, have remained unaddressed for nearly two years. Not only did Sands China stubbornly refuse to make those corrections log ago, it affirmatively stood on this log just weeks ago, thereby once again waiving any entitlement for a do-over now. *See* NRCP 26(e); *Yorkville Advisors, LLC*, --- F.R.D.---, 2014 WL 2208009, at *13; *Ryan v. Staten Island Univ. Hosp.*, 04-CV-2666 (NG)(KAM), 2006 WL 3497875, at *7 (E.D.N.Y. Dec. 5, 2006) ("[D]efendant had a duty to supplement its privilege log . . . .").

III. CONCLUSION

This Court should not burden itself with an in camera review of documents where the log is transparently without merit. This Court should enforce what the law has long provided: For any deficient log entries, no claim of privilege can be entertained. This Court need only concern itself with those documents where the log itself establishes a plausible basis for privilege. Neither

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this Court nor Jacobs should continue to bear the burdens and consequences of Sands China's failures.

DATED this 16th day of September, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 16th day of September, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF'S MOTION ON DEFICIENT PRIVILEGE LOG ON ORDER SHORTENING TIME** properly addressed to the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; and SANDS CHINA LTD., a Cayman Islands corporation, Defendants. AND RELATED CLAIMS	Case No.: A-10-627691 Dept. No.: XI **RECEIPT OF COPY**

I HEREBY CERTIFY that a true and correct copy of Plaintiff's Motion on Deficient Privilege Log on Order Shortening Time was received via hand delivery:

Date: 9/16/14

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By: J. Stephen Peek/Val 4:22pm
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EXHIBIT 1

PB | PISANELLI BICE

October 9, 2012

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VIA E-MAIL AND UNITED STATES MAIL

Bradley R. Schneider, Esq.
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RE: *Steven C. Jacobs v. Las Vegas Sands Corp, et al.*
Eighth Judicial District Court, Case No. A627691-B

Dear Counsel:

The purpose of this correspondence is to outline certain deficiencies in Sands China Limited's ("SCL") "preliminary privilege log" (the "Privilege Log") produced on September 26, 2012. As addressed below, SCL is obligated to immediately supplement its Privilege Log and production of documents described herein or, alternatively, participate in an EDCR 2.34 conference.

Initially, the requirements for a privilege log bear mentioning. Under NRCP 26(b)(5):

> When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection.

In addition, a privilege log must include the following information for each purportedly protected document:

> (1) the author(s) and their capacities; (2) the recipients (including cc's) and their capacities; (3) other individuals with access to the document and their capacities; (4) the type of document; (5) the subject matter of the document; (6) the purpose(s) for the production of the document; (7) the date on the document; and (8) a detailed, specific explanation as to why the document is privileged or otherwise immune from discovery, including a presentation of all factual grounds and legal analyses in a non-conclusory fashion.

Disc. Comm. Op. No. 10, *Albourn v. Koe M.D.* (Nov. 2001). Ultimately, the purpose of a privilege log "is to provide a party whose discovery is constrained by a claim of privilege with information sufficient to evaluate such a claim and to resist if it seems unjustified." *Universal City Dev. Partners, Ltd. v. Ride & Show Eng'g, Inc.*, 230 F.R.D. 688, 698 (M.D. Fla. 2005) (emphasis added).

With the rules in mind, the deficiencies in SCL's Privilege Log are stark. To begin, SCL asserts Nevada's attorney-client privilege over documents without providing both the documents' author(s) and recipient(s).[1] (*See, e.g.*, SJACOBS0049-53, 387-88, 96, 411, 505-13, 514-22, 538, 539, 563-64, 589, 590, 592, 593, 594, 610, 614, 630, 631, 819, 823, 881, 886, 891, 912, 1287, 1288, 1289.) Certain documents contain neither an author nor recipient (or fail to identify an actual individual, *e.g.*, identifying "Administrator," "VCL," "TechDev," "user," "PW Employee," or "cdrguest"), making it virtually impossible to evaluate SCL's claim of privilege. By definition, the attorney-client privilege only applies to "confidential communications *[b]etween the client or the client's representative and the client's lawyer or the representative of the client's lawyer*." NRS 49.095(1) (emphasis added). On the face of the Privilege Log, there is no basis upon which to claim privilege as to these documents. Accordingly, Jacobs expects SCL to immediately produce them.

Even where the document's author(s) and recipient(s) are identified, SCL fails to identify the capacities of the parties. Once again, the Privilege Log fails to demonstrate that these documents are, in fact, confidential communications between a client and lawyer for the purpose of rendering legal advice. Because the Privilege Log as prepared by SCL fails to establish any factual basis for the assertion of a privilege – it does not identify the lawyers or a basis for asserting that the information involves the provision of legal advice – the claims of privilege are invalid and the documents must be promptly produced. *See Pham v. Hartford Fire Ins. Co.*, 193 F.R.D. 659, 662 (D. Colo. 2000) (rejecting party's assertion of attorney-client privilege because the party did not "identify the lawyers . . . involved in the conversations").

Particularly troubling is SCL's claim of attorney-client privilege over many documents that Jacobs knows are not between a client and lawyer. For instance, SCL asserted the privilege over communications solely between Jacobs and the following executives and directors:

- Sheldon Adelson (*see, e.g.*, SJACOBS00082973, 81107, 87574, 87689);
- Betty Yurcich (*see, e.g.*, SJACOBS00054571, 81365, 87557);
- Michael Leven (*see, e.g.*, SJACOBS00054108, 58069, 60493, 88333, 88381);
- David Turnbull (*see, e.g.*, SJACOBS00052534);
- Irwin Siegel (*see, e.g.*, SJACOBS00059862);

[1] These documents are identified as either an "Edoc" or "Edoc-Attachment." However, because SCL has had access to the documents, SCL must identify the specific file format of the documents. *See Nurse Notes, Inc. v. Allstate Ins. Co.*, Civil Action No. 10-CV-14481, 2011 WL 2173934 (E.D. Mich. June 2, 2011).

- Stephen Weaver (*see, e.g.*, SJACOBS00058523, 87784); and
- Elana Friedland (*see, e.g.*, SJACOBS00082684).

Not surprisingly, it seems that many of these non-privileged communications may go to the very heart of this case. (*See, e.g.*, SJACOBS00082684 ("Stock Options.msg").) As SCL well knows, a communication is only privileged if it "is in furtherance of the rendition of professional legal services to the client . . . ." NRS 49.055. In other words, "while discussions between executives of legal advice should be privileged, conversations between executives about company business policies and evaluations are not." *Wilstein v. San Tropai Condo. Master Ass'n*, 189 F.R.D. 371, 379 (N.D. Ill. 1999). Indeed, ***a communication that is not addressed to or from a lawyer is presumed not to be privileged.*** *See Saxholm AS v. Dynal, Inc.*, 164 F.R.D. 331, 339 (E.D.N.Y. 1996) (noting that "documents . . . which were not addressed to or from Saxholm's attorneys (or, in appropriate situations, patent agents) are presumed *not* to be privileged and must be produced." (emphasis in original)). Nothing in SCL's Privilege Log rebuts the presumption of non-privilege.

Additionally, even for those documents where a lawyer is the author or recipient, it is not privileged simply because it was addressed to or from a lawyer. Indeed, "it is well settled that merely copying an attorney on an email does not establish that the communication is privileged." *IP Co., LLC v. Cellnet Tech., Inc.*, No. C08-80126 MISC MMC (BZ), 2008 WL 3876481 (N.D. Cal. Aug. 18, 2008) (citing *ABB Kent-Taylor, Inc. v. Stallings & Co.*, 172 F.R.D. 53, 57 (W.D.N.Y. 1996)). Thus, SCL was required to make a "clear showing" that communications to or from a lawyer were made in confidence and for the purpose of legal advice. *See Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323, 327 (N.D. Cal. 1985) (requiring a party to establish all elements of privilege, "including confidentiality, which is not presumed"); *Marten v. Yellow Freight Sys., Inc.*, No. CIV. A. 96–2013–GTV, 1998 WL 13244 (D. Kan. Jan. 6, 1998) ("When an attorney serves in a non-legal capacity, such as a voting member of a committee required to review proposed employment actions, his advice is privileged only upon a clear showing that he gave it in a professional legal capacity."). Again, SCL's log fails to establish a valid assertion of privilege in this regard.

In fact, a vast majority of the documents SCL listed in its Privilege Log (presumably, because a lawyer was copied on the communication) appear to have been created in the ordinary course of business. For example, there are hundreds of "CIS" documents that appear to be regular business reports sent to SCL's executives. (*See* Priv. Log at 1681-2578.) If so, the documents are not privileged, regardless of whether a lawyer was copied on the communication. *See Coleman v. Am. Broad. Cos., Inc.*, 106 F.R.D. 201, 205 (1985) ("[C]ommunications between an attorney and another individual which relate to business, rather than legal matters, do not fall within the protection of the privilege.").

As another example, SCL asserts the attorney-client privilege over an email from Fred Kraus to Steve Jacobs, wherein Kraus asks Jacobs: "What number can I reach you on[?]" (*See* SJACOBS00060879.) Despite the fact that Fred Kraus is/was an in-house lawyer for Las Vegas Sands Corp. (though he likely has dual business and lawyer roles), the email is obviously not for the purpose of providing legal advice and is not privileged.

Similarly, SCL claims privilege over a communication from Louis Lau to several SCL executives, including former in-house counsel Luis Melo, with an attached report on "Prostitution Activities at the Macau Venetian Resort." (*See* SJACOBS00076132.) However, even if Louis Lau were an attorney, the underlying report appears to have been prepared in the ordinary course of business, making it non-privileged. *See also Upjohn v. United States*, 449 U.S. 383, 395–96 (1981) (noting that "the [attorney-client] privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney . . . . " and "a party cannot conceal a fact merely by revealing it to his lawyer").

The examples go on and on, and if Jacobs were to identify each document that appears to be an ordinary business document, as opposed to a confidential communication between a client and lawyer, this letter would mirror SCL's unwieldy 3,090-page Privilege Log. To be blunt, Jacobs does not believe that SCL has acted forthrightly in the preparation of its Privilege Log. Unfortunately, it confirms Jacobs' suspicion that SCL has elected to use the process as a means of further withholding discoverable information that it considers to be harmful to its position in this litigation. On its face, many documents on the Privilege Log are not privileged, and a party that inappropriately puts matters on a privilege log so as to conceal them from discovery is rightly subject to sanctions.

Reinforcing that problem, SCL asserts the attorney-client privilege over communications to and from third parties, which are clearly not privileged. *See United States v. ChevronTexaco Corp.*, 241 F. Supp. 2d 1065, 1070-71 (N.D. Cal. 2002) ("As a general rule, the privilege does not extend to communications between either the client or its attorney and a third party."); *see also United States v. Ruehle*, 583 F.3d 600, 612 (9th Cir. 2009) (acknowledging "the settled rule that *any* voluntary disclosure of information to a third party waives the attorney-client privilege"). For example, SCL asserts the attorney-client privilege over emails from an unidentified third party, "sandsinsider@hotmail.com," to SCL's former general counsel, Luis Melo. (*See* SJACOBS00060054-57.) The subjects of the emails from this third party are "Corruption Commission of Hong Kong – Your people being investigated," "Cotai Ferry – corruption investigation," and "RE: Cotai Ferry – corruption investigation." (*See id.*) Despite that Melo's forward of these emails may be privileged, the actual emails from "sandsinsider@hotmail.com" are not privileged and must be produced to Jacobs. *See Matter of Fischel*, 557 F.2d 209, 212 (9th Cir. 1977) (noting that "facts which an attorney receives from a third party about a client are not privileged.") (quoting *Hickman v. Taylor*, 329 U.S. 495 (1947)); *see also id.* ("An attorney's subsequent use of

this information in advising his client does not automatically make the information privileged.").

The "sandsinsider@hotmail.com" example is not an isolated incident. SCL improperly asserts the attorney-client privilege over hundreds – if not thousands – of communications between SCL employees and various third parties, including, but not limited to, persons with email addresses from the following domain names:

- austal.com (*see, e.g.*, SJACOBS00094334);
- amisales.com (*see, e.g.*, SJACOBS00094337);
- gs.com (*see, e.g.*, SJACOBS00052503 –04);
- playboy.com (*see, e.g.*, SJACOBS00086278);
- edesedort.com (*see, e.g.*, SJACOBS00093926);
- swiretravel.com (*see, e.g.*, SJACOBS00093917);
- simsl.com (*see, e.g.*, SJACOBS00095200);
- hutai-serv.com (*see, e.g.*, SJACOBS00100202);
- aon-asia.com (*see, e.g.*, SJACOBS00100199);
- cafedesigngroup.com (*see, e.g.*, SJACOBS00088160);
- knadesign.com (*see, e.g.*, SJACOBS00058663);
- rrd.com (*see, e.g.*, SJACOBS00056732);
- intl-risk.com (*see, e.g.*, SJACOBS00056108);
- ballytech.com (*see, e.g.*, SJACOBS00081060);
- citigate.com.hk (*see, e.g.*, SJACOBS00080068);
- pwc.com (*see, e.g.*, SJACOBS00054341);
- ensenat.com (*see, e.g.*, SJACOBS00053341);
- ceslasia.com (*see, e.g.*, SJACOBS00049937);
- bocigroup.com (*see, e.g.*, SJACOBS00049109);
- bocmacau.com (*see, e.g.*, SJACOBS00049109);
- towerswatson.com (*see, e.g.*, SJACOBS00048725);
- tricorglobal.com (*see, e.g.*, SJACOBS00046482); and
- prestigehk.com (*see, e.g.*, SJACOBS00046066).
- ubs.com (*see, e.g.*, SJACOBS000 40661)
- citi.com (*see, e.g.*, SJACOBS00041059)

SCL provides no plausible basis for claiming privilege over such communications. Once again, Jacobs demands the immediate production of all of the documents sent to or received from third parties.

Finally, SCL asserts an unidentified and uncited "Gaming Regulatory" privilege over many documents listed in the Privilege Log. (*See, e.g.*, SJACOBS00088333, 92841-42, 92844-45.) Specifically, without elaboration or explanation, SCL claims that documents

and emails it received from the Macau government are somehow protected from disclosure in this case. (*See id.* ("Document from Macau Govt.pdf"), 84740 (email from joli@macau.ctm.net), 84765 (email from joli@macau.ctm.net)). Not only has SCL failed to establish the existence of a privilege over the documents exchanged with the Macau government, but SCL has once again improperly asserted a privilege over documents and emails received from third parties. Once again, we demand that SCL produce all emails and documents obtained from third parties.

Ultimately, in order for SCL to withhold documents identified in the Privilege Log, SCL was required to establish the existence of a privilege and make a "clear showing" that the asserted privilege applies to those documents. *See Metzger v. Am. Fid. Assur. Co.*, No. CIV-05-1387-M, 2007 WL 3274922, 1 (W.D.Okla. Oct. 23, 2007); *see also United State v. Austin*, 416 F.3d 1016, 1019 (9th Cir. 2005) ("A party claiming the [attorney-client] privilege must identify specific communications and the grounds supporting the privilege as to each piece of evidence over which privilege is asserted."). SCL has not done so.

Due to the voluminous nature of the Privilege Log, this letter only encompasses those deficiencies noted in our initial review, and additional defects may be raised upon further examination of the 3,000 page Privilege Log. Considering the apparent attempt to withhold information where no credible claim of privilege appears to exist, SCL again appears to be taking untenable positions for the purpose of withholding evidence. If SCL does not immediately remedy this and produce the documents and an actual, forthright privilege log, Jacobs will ask the Court to brand SCL's conduct as a bad faith assertion of privilege and require it to produce all documents on the privilege log. Jacobs is not going to be burdened with searching for needles in a haystack by SCL's improper preparation of a voluminous and transparently deficient log.

If SCL will not timely comply with its obligations under Rule 26, supplement its privilege log and produce the above-described documents that cannot be privileged or otherwise protected, please consider this correspondence as a request for a conference under EDCR 2.34.

Sincerely,

Debra L. Spinelli

cc: J. Stephen Peek, Esq. (via e-mail only)
Brad D. Brian, Esq. (via e-mail only)
Henry Weissmann, Esq. (via e-mail only)
John Owens, Esq. (via e-mail only)

EXHIBIT 2

From: Debra Spinelli
Sent: Tuesday, November 27, 2012 4:20 PM
To: Steve Peek (SPeek@hollandhart.com); Mark M. Jones (m.jones@kempjones.com); J. Randall Jones (r.jones@kempjones.com); Jing Zhao (j.zhao@kempjones.com)
Cc: James Pisanelli; Todd Bice (tlb@pisanellibice.com); Eric T. Aldrian; Jennifer L. Braster
Subject: Jacobs v. LVSC, et al. -- SCL Privilege log for Jacobs' documents
Attachments: 2012 10 18 - email from B Schneider re Defs' privilege log for Jacobs' docs with AD.pdf; DLS Ltr to MTO re Privilege Log.pdf

Counsel --

I am writing to follow up on the status of Sands China, Ltd.'s ("Sands China") privilege log related to documents Mr. Jacobs possessed and provided to Advanced Discovery. Former SCL counsel, MTO produced a preliminary log on September 26, 2012. In a letter dated October 9, 2012 (attached), we raised a number of deficiencies with respect to that preliminary log. Mr. Schneider (with MTO) and I exchanged a few emails thereafter, the last one dated October 18, 2012 (attached for ease of reference), wherein he said he expected to produce a final log shortly thereafter. Because this log concerns Mr. Jacobs' documents that his counsel cannot review, we would like to resolve and/or brief the court on related issues and move promptly forward. Please advise of the status.

Thank you,
Debbie

Debra L. Spinelli
Pisanelli Bice PLLC
3883 Howard Hughes Pkwy, Suite 800
Las Vegas, NV 89169
tel 702.214.2100
fax 702.214.2101

Please consider the environment before printing.

PB | PISANELLI BICE

October 9, 2012

DEBRA L. SPINELLI
ATTORNEY AT LAW
DLS@PISANELLIBICE.COM

VIA E-MAIL AND UNITED STATES MAIL

Bradley R. Schneider, Esq.
MUNGER, TOLLES & OLSON LLP
355 South Grand Street, 35th Floor
Los Angeles, CA 90071

RE: *Steven C. Jacobs v. Las Vegas Sands Corp, et al.*
Eighth Judicial District Court, Case No. A627691-B

Dear Counsel:

The purpose of this correspondence is to outline certain deficiencies in Sands China Limited's ("SCL") "preliminary privilege log" (the "Privilege Log") produced on September 26, 2012. As addressed below, SCL is obligated to immediately supplement its Privilege Log and production of documents described herein or, alternatively, participate in an EDCR 2.34 conference.

Initially, the requirements for a privilege log bear mentioning. Under NRCP 26(b)(5):

> When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection.

In addition, a privilege log must include the following information for each purportedly protected document:

> (1) the author(s) and their capacities; (2) the recipients (including cc's) and their capacities; (3) other individuals with access to the document and their capacities; (4) the type of document; (5) the subject matter of the document; (6) the purpose(s) for the production of the document; (7) the date on the document; and (8) a detailed, specific explanation as to why the document is privileged or otherwise immune from discovery, including a presentation of all factual grounds and legal analyses in a non-conclusory fashion.

Disc. Comm. Op. No. 10, *Albourn v. Koe M.D.* (Nov. 2001). Ultimately, the purpose of a privilege log "is to provide a party whose discovery is constrained by a claim of privilege with information sufficient to evaluate such a claim and to resist if it seems unjustified." *Universal City Dev. Partners, Ltd. v. Ride & Show Eng'g, Inc.*, 230 F.R.D. 688, 698 (M.D. Fla. 2005) (emphasis added).

With the rules in mind, the deficiencies in SCL's Privilege Log are stark. To begin, SCL asserts Nevada's attorney-client privilege over documents without providing both the documents' author(s) and recipient(s).[1] (*See, e.g.*, SJACOBS0049-53, 387-88, 96, 411, 505-13, 514-22, 538, 539, 563-64, 589, 590, 592, 593, 594, 610, 614, 630, 631, 819, 823, 881, 886, 891, 912, 1287, 1288, 1289.) Certain documents contain neither an author nor recipient (or fail to identify an actual individual, *e.g.*, identifying "Administrator," "VCL," "TechDev," "user," "PW Employee," or "cdrguest"), making it virtually impossible to evaluate SCL's claim of privilege. By definition, the attorney-client privilege only applies to "confidential communications *[b]etween the client or the client's representative and the client's lawyer or the representative of the client's lawyer*." NRS 49.095(1) (emphasis added). On the face of the Privilege Log, there is no basis upon which to claim privilege as to these documents. Accordingly, Jacobs expects SCL to immediately produce them.

Even where the document's author(s) and recipient(s) are identified, SCL fails to identify the capacities of the parties. Once again, the Privilege Log fails to demonstrate that these documents are, in fact, confidential communications between a client and lawyer for the purpose of rendering legal advice. Because the Privilege Log as prepared by SCL fails to establish any factual basis for the assertion of a privilege – it does not identify the lawyers or a basis for asserting that the information involves the provision of legal advice – the claims of privilege are invalid and the documents must be promptly produced. *See Pham v. Hartford Fire Ins. Co.*, 193 F.R.D. 659, 662 (D. Colo. 2000) (rejecting party's assertion of attorney-client privilege because the party did not "identify the lawyers . . . involved in the conversations").

Particularly troubling is SCL's claim of attorney-client privilege over many documents that Jacobs knows are not between a client and lawyer. For instance, SCL asserted the privilege over communications solely between Jacobs and the following executives and directors:

- Sheldon Adelson (*see, e.g.*, SJACOBS00082973, 81107, 87574, 87689);
- Betty Yurcich (*see, e.g.*, SJACOBS00054571, 81365, 87557);
- Michael Leven (*see, e.g.*, SJACOBS00054108, 58069, 60493, 88333, 88381);
- David Turnbull (*see, e.g.*, SJACOBS00052534);
- Irwin Siegel (*see, e.g.*, SJACOBS00059862);

---

[1] These documents are identified as either an "Edoc" or "Edoc-Attachment." However, because SCL has had access to the documents, SCL must identify the specific file format of the documents. *See Nurse Notes, Inc. v. Allstate Ins. Co.*, Civil Action No. 10-CV-14481, 2011 WL 2173934 (E.D. Mich. June 2, 2011).

- Stephen Weaver (*see, e.g.*, SJACOBS00058523, 87784); and
- Elana Friedland (*see, e.g.*, SJACOBS00082684).

Not surprisingly, it seems that many of these non-privileged communications may go to the very heart of this case. (*See, e.g.*, SJACOBS00082684 ("Stock Options.msg").) As SCL well knows, a communication is only privileged if it "is in furtherance of the rendition of professional legal services to the client . . . ." NRS 49.055. In other words, "while discussions between executives of legal advice should be privileged, conversations between executives about company business policies and evaluations are not." *Wilstein v. San Tropai Condo. Master Ass'n*, 189 F.R.D. 371, 379 (N.D. Ill. 1999). Indeed, ***a communication that is not addressed to or from a lawyer is presumed not to be privileged.*** *See Saxholm AS v. Dynal, Inc.*, 164 F.R.D. 331, 339 (E.D.N.Y. 1996) (noting that "documents . . . which were not addressed to or from Saxholm's attorneys (or, in appropriate situations, patent agents) are presumed *not* to be privileged and must be produced." (emphasis in original)). Nothing in SCL's Privilege Log rebuts the presumption of non-privilege.

Additionally, even for those documents where a lawyer is the author or recipient, it is not privileged simply because it was addressed to or from a lawyer. Indeed, "it is well settled that merely copying an attorney on an email does not establish that the communication is privileged." *IP Co., LLC v. Cellnet Tech., Inc.*, No. C08-80126 MISC MMC (BZ), 2008 WL 3876481 (N.D. Cal. Aug. 18, 2008) (citing *ABB Kent-Taylor, Inc. v. Stallings & Co.*, 172 F.R.D. 53, 57 (W.D.N.Y. 1996)). Thus, SCL was required to make a "clear showing" that communications to or from a lawyer were made in confidence and for the purpose of legal advice. *See Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323, 327 (N.D. Cal. 1985) (requiring a party to establish all elements of privilege, "including confidentiality, which is not presumed"); *Marten v. Yellow Freight Sys., Inc.*, No. CIV. A. 96–2013–GTV, 1998 WL 13244 (D. Kan. Jan. 6, 1998) ("When an attorney serves in a non-legal capacity, such as a voting member of a committee required to review proposed employment actions, his advice is privileged only upon a clear showing that he gave it in a professional legal capacity."). Again, SCL's log fails to establish a valid assertion of privilege in this regard.

In fact, a vast majority of the documents SCL listed in its Privilege Log (presumably, because a lawyer was copied on the communication) appear to have been created in the ordinary course of business. For example, there are hundreds of "CIS" documents that appear to be regular business reports sent to SCL's executives. (*See* Priv. Log at 1681-2578.) If so, the documents are not privileged, regardless of whether a lawyer was copied on the communication. *See Coleman v. Am. Broad. Cos., Inc.*, 106 F.R.D. 201, 205 (1985) ("[C]ommunications between an attorney and another individual which relate to business, rather than legal matters, do not fall within the protection of the privilege.").

As another example, SCL asserts the attorney-client privilege over an email from Fred Kraus to Steve Jacobs, wherein Kraus asks Jacobs: "What number can I reach you on[?]" (*See* SJACOBS00060879.) Despite the fact that Fred Kraus is/was an in-house lawyer for Las Vegas Sands Corp. (though he likely has dual business and lawyer roles), the email is obviously not for the purpose of providing legal advice and is not privileged.

Similarly, SCL claims privilege over a communication from Louis Lau to several SCL executives, including former in-house counsel Luis Melo, with an attached report on "Prostitution Activities at the Macau Venetian Resort." (*See* SJACOBS00076132.) However, even if Louis Lau were an attorney, the underlying report appears to have been prepared in the ordinary course of business, making it non-privileged. *See also Upjohn v. United States*, 449 U.S. 383, 395–96 (1981) (noting that "the [attorney-client] privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney . . . . " and "a party cannot conceal a fact merely by revealing it to his lawyer").

The examples go on and on, and if Jacobs were to identify each document that appears to be an ordinary business document, as opposed to a confidential communication between a client and lawyer, this letter would mirror SCL's unwieldy 3,090-page Privilege Log. To be blunt, Jacobs does not believe that SCL has acted forthrightly in the preparation of its Privilege Log. Unfortunately, it confirms Jacobs' suspicion that SCL has elected to use the process as a means of further withholding discoverable information that it considers to be harmful to its position in this litigation. On its face, many documents on the Privilege Log are not privileged, and a party that inappropriately puts matters on a privilege log so as to conceal them from discovery is rightly subject to sanctions.

Reinforcing that problem, SCL asserts the attorney-client privilege over communications to and from third parties, which are clearly not privileged. *See United States v. ChevronTexaco Corp.*, 241 F. Supp. 2d 1065, 1070-71 (N.D. Cal. 2002) ("As a general rule, the privilege does not extend to communications between either the client or its attorney and a third party."); *see also United States v. Ruehle*, 583 F.3d 600, 612 (9th Cir. 2009) (acknowledging "the settled rule that *any* voluntary disclosure of information to a third party waives the attorney-client privilege"). For example, SCL asserts the attorney-client privilege over emails from an unidentified third party, "sandsinsider@hotmail.com," to SCL's former general counsel, Luis Melo. (*See* SJACOBS00060054-57.) The subjects of the emails from this third party are "Corruption Commission of Hong Kong – Your people being investigated," "Cotai Ferry – corruption investigation," and "RE: Cotai Ferry – corruption investigation." (*See id.*) Despite that Melo's forward of these emails may be privileged, the actual emails from "sandsinsider@hotmail.com" are not privileged and must be produced to Jacobs. *See Matter of Fischel*, 557 F.2d 209, 212 (9th Cir. 1977) (noting that "facts which an attorney receives from a third party about a client are not privileged.") (quoting *Hickman v. Taylor*, 329 U.S. 495 (1947)); *see also id.* ("An attorney's subsequent use of

this information in advising his client does not automatically make the information privileged.").

The "sandsinsider@hotmail.com" example is not an isolated incident. SCL improperly asserts the attorney-client privilege over hundreds – if not thousands – of communications between SCL employees and various third parties, including, but not limited to, persons with email addresses from the following domain names:

- austal.com (*see, e.g.*, SJACOBS00094334);
- amisales.com (*see, e.g.*, SJACOBS00094337);
- gs.com (*see, e.g.*, SJACOBS00052503 –04);
- playboy.com (*see, e.g.*, SJACOBS00086278);
- edesedort.com (*see, e.g.*, SJACOBS00093926);
- swiretravel.com (*see, e.g.*, SJACOBS00093917);
- simsl.com (*see, e.g.*, SJACOBS00095200);
- hutai-serv.com (*see, e.g.*, SJACOBS00100202);
- aon-asia.com (*see, e.g.*, SJACOBS00100199);
- cafedesigngroup.com (*see, e.g.*, SJACOBS00088160);
- knadesign.com (*see, e.g.*, SJACOBS00058663);
- rrd.com (*see, e.g.*, SJACOBS00056732);
- intl-risk.com (*see, e.g.*, SJACOBS00056108);
- ballytech.com (*see, e.g.*, SJACOBS00081060);
- citigate.com.hk (*see, e.g.*, SJACOBS00080068);
- pwc.com (*see, e.g.*, SJACOBS00054341);
- ensenat.com (*see, e.g.*, SJACOBS00053341);
- ceslasia.com (*see, e.g.*, SJACOBS00049937);
- bocigroup.com (*see, e.g.*, SJACOBS00049109);
- bocmacau.com (*see, e.g.*, SJACOBS00049109);
- towerswatson.com (*see, e.g.*, SJACOBS00048725);
- tricorglobal.com (*see, e.g.*, SJACOBS00046482); and
- prestigehk.com (*see, e.g.*, SJACOBS00046066).
- ubs.com (*see, e.g.*, SJACOBS000 40661)
- citi.com (*see, e.g.*, SJACOBS00041059)

SCL provides no plausible basis for claiming privilege over such communications. Once again, Jacobs demands the immediate production of all of the documents sent to or received from third parties.

Finally, SCL asserts an unidentified and uncited "Gaming Regulatory" privilege over many documents listed in the Privilege Log. (*See, e.g.*, SJACOBS00088333, 92841-42, 92844-45.) Specifically, without elaboration or explanation, SCL claims that documents

and emails it received from the Macau government are somehow protected from disclosure in this case. (*See id.* ("Document from Macau Govt.pdf"), 84740 (email from joli@macau.ctm.net), 84765 (email from joli@macau.ctm.net)). Not only has SCL failed to establish the existence of a privilege over the documents exchanged with the Macau government, but SCL has once again improperly asserted a privilege over documents and emails received from third parties. Once again, we demand that SCL produce all emails and documents obtained from third parties.

Ultimately, in order for SCL to withhold documents identified in the Privilege Log, SCL was required to establish the existence of a privilege and make a "clear showing" that the asserted privilege applies to those documents. *See Metzger v. Am. Fid. Assur. Co.*, No. CIV-05-1387-M, 2007 WL 3274922, 1 (W.D.Okla. Oct. 23, 2007); *see also United State v. Austin*, 416 F.3d 1016, 1019 (9th Cir. 2005) ("A party claiming the [attorney-client] privilege must identify specific communications and the grounds supporting the privilege as to each piece of evidence over which privilege is asserted."). SCL has not done so.

Due to the voluminous nature of the Privilege Log, this letter only encompasses those deficiencies noted in our initial review, and additional defects may be raised upon further examination of the 3,000 page Privilege Log. Considering the apparent attempt to withhold information where no credible claim of privilege appears to exist, SCL again appears to be taking untenable positions for the purpose of withholding evidence. If SCL does not immediately remedy this and produce the documents and an actual, forthright privilege log, Jacobs will ask the Court to brand SCL's conduct as a bad faith assertion of privilege and require it to produce all documents on the privilege log. Jacobs is not going to be burdened with searching for needles in a haystack by SCL's improper preparation of a voluminous and transparently deficient log.

If SCL will not timely comply with its obligations under Rule 26, supplement its privilege log and produce the above-described documents that cannot be privileged or otherwise protected, please consider this correspondence as a request for a conference under EDCR 2.34.

Sincerely,

Debra L. Spinelli

cc: J. Stephen Peek, Esq. (via e-mail only)
Brad D. Brian, Esq. (via e-mail only)
Henry Weissmann, Esq. (via e-mail only)
John Owens, Esq. (via e-mail only)

From: Schneider, Bradley
To: Debra Spinelli; Brian, Brad; Owens, John; Weissmann, Henry; "Steve Peek (SPeek@hollandhart.com)"
Cc: Todd Bice; James Pisanelli
Subject: RE: Jacobs v. LVSC, et al. - SCL"s privilege log
Date: Thursday, October 18, 2012 10:44:23 AM

Debbie -- I wanted to update you on the status of SCL's official privilege log for the documents it reviewed in Relativity. While we initially expected to complete the log by this week, that proved overly-optimistic. We now expect to provide you the log by the end of next week. At the same time, our efforts to complete the log have borne fruit: we have downgraded a large volume of documents that were on our preliminary privileged log from privileged to non-privileged. I will be transmitting a list of these documents to Advanced Discovery shortly, with instructions that they release these documents to you immediately. Lastly, when you have a chance, please let me know when Defendants can expect a log of documents over which Mr. Jacobs is asserting privilege.

Bradley R. Schneider | Munger, Tolles & Olson LLP
355 South Grand Avenue | Los Angeles, CA 90071
Tel: 213.683.9237 | Fax: 213.683.4037
bradley.schneider@mto.com | www.mto.com

From: Schneider, Bradley
Sent: Wednesday, October 10, 2012 5:34 PM
To: Debra Spinelli; Brian, Brad; Owens, John; Weissmann, Henry; Steve Peek (SPeek@hollandhart.com)
Cc: Todd Bice; James Pisanelli
Subject: RE: Jacobs v. LVSC, et al. - SCL's privilege log

Debbie -- I called and left a message earlier this afternoon but since you are obviously busy, let me briefly respond to your letter by email. As I explained in my September 26, 2012 email, the September 26 log was a preliminary privilege log. We provided the log to you as a courtesy to give you a sense of the documents over which SCL might be asserting privilege following its review of the documents in the Relativity database. (Perhaps I could have made this more clear on the 26th.) Thus, the various issues you raise in your letter are premature. Since September 26, we have been working assiduously to prepare an official privilege log, consistent with the requirements of the Nevada Rules of Civil Procedure. We expect to transmit this more formal log to you next week. After you have reviewed that log, we would be happy to confer about any issues with respect to that log.

On a related point, when can we expect Mr. Jacobs to provide a log of the Relativity documents over which he is asserting privilege and/or personal privacy? I asked this in my September 15 letter, but you have not yet responded. Please advise as soon as possible.

Best,

Brad

Bradley R. Schneider | Munger, Tolles & Olson LLP
355 South Grand Avenue | Los Angeles, CA 90071
Tel: 213.683.9237 | Fax: 213.683.4037
bradley.schneider@mto.com | www.mto.com

From: Debra Spinelli [mailto:dls@pisanellibice.com]
Sent: Tuesday, October 09, 2012 6:21 PM
To: Schneider, Bradley; Brian, Brad; Owens, John; Weissmann, Henry; Steve Peek (SPeek@hollandhart.com)
Cc: Todd Bice; James Pisanelli
Subject: Jacobs v. LVSC, et al. - SCL's privilege log

Please see the attached correspondence.

Thanks,
Debbie

Debra L. Spinelli
Pisanelli Bice PLLC
3883 Howard Hughes Pkwy, Suite 800
Las Vegas, NV 89169
tel 702.214.2100
fax 702.214.2101

addressed herein.

EXHIBIT 3

HOLLAND&HART

J. Stephen Peek
Phone 702-222-2544
Fax 702-669-4650
SPeek@hollandhart.com

December 3, 2012

VIA E-MAIL AND U.S. MAIL

James J. Pisanelli
Todd L. Bice
Pisanelli Bice PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Re: *Jacobs v. Las Vegas Sands Corp., et al.*

Dear Counsel:

Please find enclosed a CD containing two privilege logs with respect to the above-referenced matter. Please also find attached Exhibit A, which contains a list of attorneys and legal support staff that appear in the privilege logs.

The first privilege log on the CD (captioned Privilege Log for Relativity Review of *Jacobs' ESI*) constitutes a replacement of the preliminary privilege log that was previously supplied to your office on or about September 26, 2012 with respect to our review of Jacobs' ESI. Please be advised that this privilege log eliminates many documents that were subsequently declassified after additional review. The second privilege log on the CD is captioned Defendants' Second Supplemental Privilege Log and pertains to the documents reviewed in the above-referenced matter. This Supplemental Privilege Log constitutes the final privilege log for documents in the possession of Las Vegas Sands Corp.

We further note that we are in receipt of your October 9, 2012 letter and your November 27, 2012 email. We believe the revised privilege log addresses many of the issues you raised in that correspondence, and we are continuing to consider some of the points you raised, but we did not want to delay providing you with the updated, replacement Relativity Privilege Log in the interim.

Defendants reserve their right to supplement their privilege logs in accordance with Rule 26(e). Thank you for your prompt attention to this matter.

Sincerely,

J. Stephen Peek
of Holland & Hart LLP

RJC
Enclosure

Exhibit A: Attorneys and legal support staff appearing on Defendants' privilege logs

Adler, Howard	Huang, John	Radtke, Gerhard
Alves, Leonel	Hunt, Jeremy	Ramirez, Antonio
Barron, Bill	Hyman, Gayle	Ren, Zhaoyu
Benudiz, Pete	Isaac, Armando	Rodrigues, Jose
Binnersley, Nigel	Ji, William	Rubenstein, Rob
Bruce, Bonnie	Jones, Jessica	Russell, Charles
Cai, Jacqueline	Katoh, Ann	Salt, Anne
Canada, Julie	Kennedy, John	Saldanha , Henrique
Chan, Gordon	Kinmonth, Fred	Sayles, Perry
Cheang, Doris	Klinger, Leslie	Segorbe, Beatriz
Cheung, Judy	Ko, Teresa	Sheridan, Matthew
Cheung, Sidney	Kraus, Fred	Silva, Ricardo
Choy, Constance	Kuo, Jason	Soares, Joco
Cowan, Steve	Kwok, Clement	Spatzer, Barry
Cruger, Gus	Lai, Calivin	Tao, Liang
Cuatrecasas, Goncalvese	Lam, Phil	Toth, Gail
Degmon, Dana L.	Lee, Daniel	Tseng, Ivy
Deist, Kathleen	Levy, Franklin	Valente, Jorge
Dineen, Julie	Li, Winnie	Valdez, Monica
Ding, Serene	Liu, Greg	Velt Osborne, Elizabeth
Eicher, Holly	Lobo, Carlos	Vry, Cynthia
Ellison, Minter	Manhao, Maria	Wan, Michelle
Ferreira, Luis	Margalit, Nir	Waters, Susan
Ferreira, Cavaleiro	Matkowsky, Jonathan	Weinrot, Daniel
Fifield, William	McGrath, William	Wetzel, Carol
Fisch, Peter	Melo, Luis	Wheeler, Larry
Forbush, Deanna	Meredith, Charles	Williams, Dylan
Freidus, Harris	Meylan, Robert	Wong, Denise
Frieman, Ilan	Mills, Peter	Wong, Nadia
Fu, Brian	Ng, Audrey	Woo, Ka Wai
Gogliormella, Salvatore	Ng , Vincent	Wu, Phoebe
Gonzalez, Al	Notare, Kathryn	Yau, Roland
Gruder, Bruce	O'Loughlin, Hugh	Yeow, Damien
Harris, Mark	Padarin, Michael	Yeung, Adrian
Ho, Wendy	Page, John	Yiu, Vivian
Hu, Christine	Petronzio, Gail	Yuen, Iris
Hu, Lawrence	Pfeiffer, Julie	Yuen, George
Huang, Grace		

EXHIBIT 4

HOLLAND&HART

J. Stephen Peek
Phone (702) 222-2544
Fax (702) 669-4650
speek@hollandhart.com

February 7, 2013

VIA EMAIL AND U.S. MAIL

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Pisanelli & Bice
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Re: Las Vegas Sands/Jacobs

Dear Counsel:

Please find attached to this email Sands China Ltd.'s privilege log, redaction log, and third supplemental responses with respect to the above-referenced matter. Please also find attached Exhibit A, a list of attorneys and legal support staff that appear in the privilege log, and Exhibit B, a list of law firms that appear in the privilege log.

First, we have enclosed a privilege log (captioned Sands China Ltd.'s Privilege Log) with respect to the documents reviewed by Sands China Ltd. in the above-referenced matter. If a duplicate of the privileged document was located within the United States, we have provided the names of the sender and recipients. If a duplicate has not been located within the United States, we have provided information regarding the attorneys identified by redactions only. Defendants reserve their right to supplement their privilege logs in accordance with Rule 26(e).

Second, we have enclosed a redaction log (captioned Sands China Ltd.'s Redaction Log) providing additional information with respect to the documents produced by Sands China Ltd. in redacted form.

Third, we have enclosed Sands China Ltd.'s Third Supplemental Responses to Plaintiff's First Requests for Production of Documents.

A disc containing each of the foregoing documents is also being mailed

Thank you for your prompt attention to this matter.

Sincerely,

/s/ J. Stephen Peek

J. Stephen Peek
of Holland & Hart LLP

JSP/RJC
Enclosures
5979189_1.DOC

EXHIBIT 5

From: Debra Spinelli
Sent: Tuesday, December 11, 2012 7:08 AM
To: Steve Peek
Cc: Brian Kawasaki; Tien Nguyen; J. Randall Jones; Mark M. Jones; James Pisanelli; Todd Bice; Jim Pollock; Eric T. Aldrian; Jennifer L. Braster; Lackey, Jr., Michael E.; John Prado
Subject: Re: Jacobs v. LVSC, et al., No. A627691-B - Jacobs' Release of Certain Documents for SCL Review

Steve-

Confirming our conversation on the day you sent the below email, November 29, 2012, we discussed and confirmed that the documents on the list attached to my November 14 email were documents Mr. Jacobs was releasing for Sands China's privilege review, after certain previously agreed steps were taken (items 3 and 4 in Brian's November 14 email). They are not documents in which Mr. Jacobs is claiming a privilege (though the file paths are protected hence the scrub as agreed in items 3 and 4).

Can you please update me regarding points 3 and 4 so that this process can be completed?

Thanks,
Debbie

On Nov 29, 2012, at 2:14 PM, "Steve Peek" <SPeek@hollandhart.com> wrote:

> Debbie:
>
> We have done our best to review all of the emails associated with AD's Scope of Work that are preliminarily outlined in your email of May 22, 2012 and numerous follow up emails and to discuss this Scope of Work with MTO. We have not completed the review and discussion and will continue to do our best to follow up with you on these issues. In the meantime, we agree that the user accounts for MTO may be disabled and user accounts for the following individuals added:
>
> Mark Jones
> Michael Lackey at Mayer Brown
> Kristina Portner at Mayer Brown
> Michelle Webster at Mayer Brown
>
> Also, we agree that you may confirm with Brian the documents on your list which I understand only to be documents on which Mr. Jacobs' claims a privilege.
>
> Understand that I am doing my best to understand items 3 and 4 on Brian's list and will respond shortly. In the meantime, this should not impede your ability to review the documents in the Relativity data base, except those on which SCL and/or LVSC claim a privilege.

From: Debra Spinelli [mailto:dls@pisanellibice.com]
Sent: Wednesday, November 14, 2012 6:18 PM
To: Steve Peek; Brian Kawasaki; Tien Nguyen; J. Randall Jones; Mark M. Jones
Cc: James Pisanelli; Todd Bice; Jim Pollock; Eric T. Aldrian; Jennifer L. Braster; John Prado
Subject: RE: Jacobs v. LVSC, et al., No. A627691-B - Jacobs' Release of Certain Documents for SCL Review

Steve –

I look forward to promptly hearing the points on which you disagree, especially considering my email is providing SCL with access to documents rather than limiting access. Also, there is no unilateral direction in my email considering Mr. Jacobs is the only one who could release these documents for SCL's review and the process was already negotiated, agreed to, and outlined in my May 22, 2012 email and AD's Scope of Work.

I think it will be helpful to you, Randall and Mark to review my May 22, 2012 email to Advanced Discovery (which was drafted by me following lengthy conference calls with MTO, and negotiated/approved by John Owens on behalf of MTO/SCL prior to being sent to AD). I am attaching it here because it provides the basis for the instructions in my email (which largely are cut and pasted language from the applicable sections from the May 2012 email).

In any event, since MTO substituted out as counsel and is no longer involved in this action, there is absolutely no reason why their accounts cannot and should not be immediately disabled, and their access to my clients documents immediately cease. In fact, this should have taken place the day the substitution was filed.

Thanks,
Debbie

From: Steve Peek [mailto:SPeek@hollandhart.com]
Sent: Wednesday, November 14, 2012 5:58 PM
To: Debra Spinelli; Brian Kawasaki; Tien Nguyen; J. Randall Jones; Mark M. Jones
Cc: James Pisanelli; Todd Bice; Jim Pollock; Eric T. Aldrian; Jennifer L. Braster; John Prado
Subject: RE: Jacobs v. LVSC, et al., No. A627691-B - Jacobs' Release of Certain Documents for SCL Review

Brian and Debbie:

It was my understanding that no unilateral direction would be given to Brian and that all communications with him would be given jointly from Pisanelli Bice and Munger Tolles. I do not agree with all of Ms. Spinelli's directions to you so I would ask that you stand down and take no action until you hear from either me or Mr. Jones.

Steve

From: Debra Spinelli [mailto:dls@pisanellibice.com]
Sent: Wednesday, November 14, 2012 5:03 PM
To: Brian Kawasaki; Tien Nguyen; Steve Peek; J. Randall Jones; Mark M. Jones
Cc: James Pisanelli; Todd Bice; Jim Pollock; Eric T. Aldrian; Jennifer L. Braster; John Prado
Subject: RE: Jacobs v. LVSC, et al., No. A627691-B - Jacobs' Release of Certain Documents for SCL Review

Thank you, Brian.

From: Brian Kawasaki [mailto:bkawasaki@advanceddiscovery.com]
Sent: Wednesday, November 14, 2012 1:29 PM
To: Debra Spinelli; Tien Nguyen; Steve Peek; J. Randall Jones; Mark M. Jones
Cc: James Pisanelli; Todd Bice; Jim Pollock; Eric T. Aldrian; Jennifer L. Braster; John Prado
Subject: RE: Jacobs v. LVSC, et al., No. A627691-B - Jacobs' Release of Certain Documents for SCL Review

Debbie – Thank you and understood. We will do the following:

1. Disable the User Accounts that were provided to Munger, Tolles & Olson for the database
2. Confirm the documents on your list (reach out if anything is unclear or there are any questions)
3. Prepare those documents, with no available info or metadata to the original source/path of where that document resided, in the SCL Counsel's database
4. Make those available for Mr. Pollock to confirm the appropriate info is hidden/not available.
5. Once confirmed, make the data available to SCL's new counsel, Jones & Coulthard, and help with any support/training for use of the database and organizing the documents as needed (Such as segregating the new docs from the previously provided docs, to make a clear distinction.)

Randall and Mark – Tien Nguyen, project manager for our team, will reach out to you when it is time for access to be granted to confirm the number of users needed access and to coordinate any time for training. Also we'll confirm the billing procedures for the portion responsible for SCL.

We will keep you updated as to the progress, and reach out to the individuals accordingly, such as Jim Pollock to work together to confirm data is provided in the proper manner.

Brian

Brian Kawasaki | Advanced Discovery | C: 310.926.3601 | O: 213.223.6300 | bkawasaki@advanceddiscovery.com

---

From: Debra Spinelli [mailto:dls@pisanellibice.com]
Sent: Wednesday, November 14, 2012 1:18 PM
To: 'Brian Kawasaki'; 'Tien Nguyen'; Steve Peek (SPeek@hollandhart.com); J. Randall Jones (r.jones@kempjones.com); Mark M. Jones (m.jones@kempjones.com)
Cc: James Pisanelli; Todd Bice; Jim Pollock; Eric T. Aldrian; Jennifer L. Braster
Subject: Jacobs v. LVSC, et al., No. A627691-B - Jacobs' Release of Certain Documents for SCL Review

Brian–

In Phase I of the document review process coordinated by Advanced Discovery ("AD") in the above-referenced action, AD provided my firm (on behalf of Mr. Jacobs) an Excel spreadsheet listing all documents that fell within the search terms provided by Mr. Jacobs. We since reviewed the information on that spreadsheet (i.e., my firm has not reviewed any of the underlying documents) and identified (as best we could under the circumstances) documents that we believe should not be withheld by Mr. Jacobs as Privileged/Confidential/Personal/Irrelevant Documents. The attached document provides the AD identifiers associated with documents that – after two additional steps – can be released to SCL's counsel for their privilege review.

Prior to making the documents on the attached list available to SCL's counsel for a privilege review, AD must scrub and/or mask the file paths of these remaining documents so that any post-termination

organization of documents cannot be reviewed and/or ascertained by SCL's counsel. (This is necessary because the original scrubbing/masking of file paths did not take place until *after* the search terms were run and the presumptively protected documents isolated from the rest of Mr. Jacobs' documents.)

Additionally, Mr. Jacob's expert (Jim Pollock, copied on this email) shall be given an opportunity to review the documents to ensure the steps above have been followed, and no protected information is revealed.

When these two steps are complete, AD may provide SCL's counsel with access to these documents via AD's secure online system. To reiterate the process already in place, only SCL's counsel can review the documents on the secure online platform. The documents shall not be printed (either through a system print or through a screen print) and shall not be downloaded. They only may be viewed on the system.

Finally, the documents not identified on the attached list that were isolated as a result of running Mr. Jacobs' search terms, MUST REMAIN ISOLATED FROM AND INACCESSIBLE BY DEFENDANTS until (1) written agreement by the parties; and/or (2) a Court order. Mr. Jacobs will be providing a privilege log with respect to these documents to Defendants' counsel under separate cover.

On a ministerial note, please note that the law firm of Munger Tolles & Olson is no longer counsel for SCL in this action and therefore the attorneys associated with that firm (i.e., Brad Brian, John Owens, Brad Schneider, and Henry Weissman) are not copied on this email. Randall Jones and Mark Jones, of the law firm Kemp, Jones & Coulthard, LLP, have formally appeared in this action on behalf of SCL and are copied on this email. Also, Steve Peek of Holland & Hart remains involved in this action on behalf of LVSC and SCL, and is also copied on this email.

Please contact me should you have any questions or require any clarification. Otherwise, we look forward to your updates on the status of this process.

Thank you,
Debbie

Debra L. Spinelli
Pisanelli Bice PLLC
3883 Howard Hughes Pkwy, Suite 800
Las Vegas, NV 89169
tel 702.214.2100
fax 702.214.2101

MOT
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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

PLAINTIFF STEVEN C. JACOBS' MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT

Hearing Date:

Hearing Time:

Now that the Supreme Court's remittitur has issued concerning the claims against Sheldon G. Adelson ("Adelson"), Steven C. Jacobs ("Jacobs") moves to file the proposed Third Amended Complaint attached hereto as Exhibit A. The proposed amended complaint adds an additional claim against Adelson for his tortious discharge of Jacobs in violation of public policy and augments his defamation claims. Defendants will suffer no prejudice because this case is in its infancy from a substantive standpoint due to the endless wrangling over Sands China's claims of not being subject to personal jurisdiction in Nevada. This Court is intimately familiar with the background of this action. Jacobs will not burden it with a full recital at this point. Simply put,

this action concerns the wrongful termination of Jacobs in violation of public policy. The interests of justice require that Jacobs be permitted to amend his complaint.

This Motion is made pursuant to Nevada Rule of Civil Procedure 15(a), and is based upon the accompanying Memorandum of Points and Authorities and exhibits thereto, as well as the papers and pleadings on file in this case, and any additional argument this Court chooses to consider at the time of hearing.

DATED this 26th day of September, 2014.

PISANELLI BICE PLLC

By: _____

James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
Jordan T. Smith, Esq., Bar No. 12097
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Las Vegas, Nevada 89101

Attorneys for Plaintiff Steven C. Jacobs

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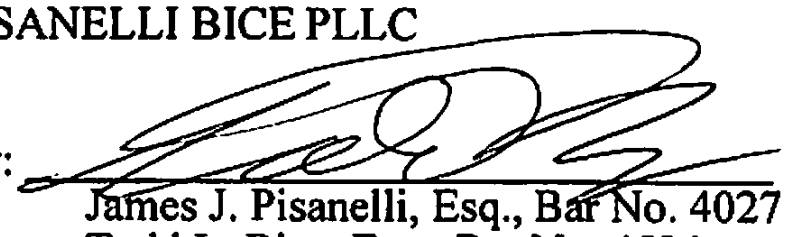
NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 07 day of NOVEMBER, 2014, at CHAMBERS .m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF STEVEN C. JACOBS' MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT** on for hearing.

DATED this 26th day of September, 2014.

PISANELLI BICE PLLC

By: 

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Attorneys for Plaintiff Steven C. Jacobs

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I. DISCUSSION

A. Leave to Amend Is Freely Given.

Nevada Rule of Civil Procedure 15(a) permits a party to amend its pleading by agreement or with the Court's leave. "***[L]eave to amend should be freely given when justice requires***," *Weiler* v. *Ross*, 80 Nev. 380, 382, 395 P.2d 323, 323 (1964) (emphasis added), and "this mandate is to be heeded." *Marschall* v. *City of Carson*, 86 Nev. 107, 112, 464 P.2d 494, 498 (1970) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

The grant or denial of a motion for leave to amend is addressed to the trial court's "sound discretion." *Kantor* v. *Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000); *Nev. Bank of Commerce* v. *Edgewater, Inc.*, 84 Nev. 651, 653, 446 P.2d 990, 991 (1968). However, it is an abuse of that discretion and inconsistent with the spirit of the Nevada Rules of Civil Procedure for the Court to deny leave without any justifying reason. *See Adamson* v. *Bowker*, 85 Nev. 115, 120, 450 P.2d 796, 800 (1969). "In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant . . . undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, *etc.* – the leave sought should, as the rules require, be 'freely given.'" *Id.* at 121, 450 P.2d at 800 (quoting *Foman*, 371 U.S. at 182).

B. Jacobs is Entitled to Amend His Complaint to Add Additional Claims Against Adelson.

As demonstrated by the proposed complaint, Jacobs seeks to augment his claims against Adelson. Evidence has demonstrated that Adelson personally oversaw and drafted Jacobs' termination as part of vendetta for Jacobs' refusal to go along with improper actions advocated by Adelson. Adelson's push to terminate Jacobs stemmed from personal animus, and was unrelated to the best interests of LVSC, Sands China, or his companies' shareholders. This amendment has not been unduly delayed, or made in bad faith, and it will not prejudice any of the Defendants.

Finally, the amendment is not futile. Executives, like Adelson, are personally liable for wrongfully discharging an employee in violation of public policy. *Kunkle v. Q-Mark, Inc.*, 3:13-CV-82, 2013 WL 3288398, at *5 (S.D. Ohio June 28, 2013) ("This Court's review of law in

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other jurisdictions reveals that a ***most courts recently considering the issue recognize claims against individual employees, such as supervisors, who violate public policy by participating in wrongful termination of an employee.***") (emphasis added) (collecting cases). Therefore, Jacobs should be granted leave to file the Third Amended Complaint containing the additional allegations against Adelson.

II. CONCLUSION

Based upon the foregoing, Jacobs respectfully requests that this Court grant him leave to file the proposed Third Amended Complaint attached hereto as Exhibit A.

DATED this 26th day of September, 2014.

PISANELLI BICE PLLC

By: _____

James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 26th day of September, 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' MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT** to the following:

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An employee of PISANELLI BICE PLLC

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EXHIBIT A

ACOM
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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 ADELSON, an individual; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

AND RELATED CLAIMS

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

THIRD AMENDED COMPLAINT

Plaintiff, for his causes of action against Defendants, alleges and avers as follows:

PARTIES

1. Plaintiff Steven C. Jacobs ("Jacobs") is a Florida resident who also maintains a residence in Georgia.

2. Defendant Las Vegas Sands Corp. ("LVSC") is a publicly-traded Nevada corporation with its principal place of business in Clark County, Nevada. More than 50% of the voting power in LVSC is controlled, directly or indirectly, by its Chairman and CEO, Sheldon G. Adelson ("Adelson").

3. Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and is 70% owned by LVSC. Sands China is publicly traded on the Hong Kong Stock Exchange. While Sands China publicly holds itself out as being headquartered in Macau, its true headquarters are in Las Vegas, where all principle decisions are made and direction is given by executives acting for Sands China.

4. Defendant Adelson is a Nevada resident who directs and operates his gaming enterprise from Las Vegas, Nevada.

5. The true names and capacities, whether individual, corporate, partnership, associate or otherwise of Defendants named herein as DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, and each of them are unknown to Plaintiff at this time, and he therefore sues said Defendants and each of them by such fictitious names. Plaintiff will advise this Court and seek leave to amend this Complaint when the names and capacities of each such Defendants have been ascertained. Plaintiff alleges that each said Defendant herein designated as a DOE or ROE is responsible in some manner for the events and happenings herein referred to as hereinafter alleged.

6. Each Defendant is the agent of the other Defendants such that each Defendant is fully liable and responsible for all the acts and omissions of all of the other Defendants as set forth herein.

JURISDICTION AND VENUE

7. The Court has personal jurisdiction over the Defendants and the claims set forth herein pursuant to NRS 14.065 on grounds that such jurisdiction is not inconsistent with the Nevada Constitution or United States Constitution.

8. Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because the material events giving rise to the claims asserted herein occurred in Clark County, Nevada.

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COMMON ALLEGATIONS

LVSC's Dysfunction and Infighting

9. LVSC and its subsidiaries develop and operate large integrated resorts worldwide. The company owns and operates properties in Las Vegas, Nevada, Macau (a Special Administrative Region of China), Singapore, and Bethlehem, Pennsylvania.

10. The company's Las Vegas properties consist of The Palazzo Resort Hotel Casino, The Venetian Resort Hotel Casino, and the Sands Expo and Convention Center.

11. Macau, which is located on the South China Sea approximately 37 miles southwest of Hong Kong, was a Portuguese colony for over 400 years, and is the largest and fastest growing gaming market in the world. LVSC opened the Sands Macau, the first Las Vegas-style casino in Macau. Thereafter, LVSC opened the Venetian Macau and the Four Seasons Macau on the Cotai Strip section of Macau where the company has resumed development of additional casino-resort properties.

12. Beginning in or about 2008, LVSC's business was in a financial freefall, with its own auditors subsequently issuing a going concern warning to the public. LVSC's problems due to the economic decline were exacerbated when the Chinese government imposed visa restrictions limiting the number of permitted visits by Chinese nationals to Macau. Because Chinese nationals make up more than half the patrons of Macau casinos, China's policy significantly reduced the number of visitors to Macau from mainland China, which adversely impacted tourism and the gaming industry in Macau. LVSC insiders viewed these visa restrictions as a message from the Chinese Central Communist government's displeasure over a number of activities by LVSC and its Chairman, Adelson.

13. Indeed, LVSC's Board members and senior executives internally expressed concern over Adelson's oftentimes erratic behavior, but failed to inform shareholders or take corrective action. Adelson's behavior had become so corrosive that some government officials in Macau, one of LVSC's principal markets, were no longer willing to even meet with Adelson. On a fact-finding tour of Asia by select LVSC Board members and senior executives – where they met to discuss LVSC's declining fortunes with Asian business leaders and government officials –

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a common theme was that Adelson had burned many bridges in Macau and specific reference was made to an often-discussed confrontation between Macau's then-Chief Executive, Edmund Ho, and Adelson. Indeed, in the fact-finding tour's meeting with Chief Executive Ho, he informed the LVSC executives of his views that while Adelson had done much to improve Macau's economic fortunes, the time had come for him to spend more time with his family and leave the company's operations to others. Translated into blunt businessman's terms: Adelson needed to retire.

14. Adelson's behavior did not just alienate outsiders, it effectively paralyzed the management's ability to respond to the financial calamity. LVSC faced increased cash flow needs, which, in turn, threatened to trigger a breach of the company's maximum leverage ratio covenant in its U.S. credit facilities. Due to Adelson's erratic behavior, LVSC's then-president and Chief Operating Officer William Weidner ("Weidner") lost confidence in Adelson's abilities, and undertook steps that Adelson would characterize as an attempted coup. Because Adelson controls more than fifty percent (50%) of LVSC's voting power, Adelson forced Weidner's removal from the company so as to preserve his own control.

15. Weidner was replaced as President and COO by Michael Leven ("Leven"), a member of LVSC's Board of Directors.

16. Because of the dysfunction and paralysis Adelson created, LVSC failed to access capital markets in a timely fashion, which then forced the company to engage in a number of emergency transactions to raise funds in late 2008 and early 2009. Ironically for LVSC's shareholders – all of those except for Adelson, that is – this unnecessary delay resulted in Adelson's personal wealth as the financing source for a quick influx of liquidity. But, to access those funds, Adelson would charge LVSC a hefty price, obtaining convertible senior notes, preferred shares, and warrants. Later, Adelson would reap a staggering windfall as a result of these highly-favorable (for him) financing terms. Conveniently, Adelson was the principal beneficiary, to the detriment of all other shareholders, of the very financial calamity that he helped create.

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LVSC Hires Jacobs to Run Its Macau Operations

17. It is in this poisonous environment that Jacobs enters the LVSC picture. Even before Leven became LVSC's President and COO, he had reached out to Jacobs to discuss potential COO candidates to replace Weidner. Leven and Jacobs had known each other for many years having worked together at U.S. Franchise Systems in the 1990's and in subsequent business ventures thereafter. When Leven received an offer from LVSC's Board to become the company's President and COO, he again reached out to Jacobs to discuss the opportunity and the conditions under which he (Leven) would accept the position. The conditions included but were not limited to Leven's compensation package and a commitment from Jacobs to join Leven for a period of 90-120 days to "ensure my [Leven's] success."

18. Jacobs travelled to Las Vegas in March 2009 where he met with Leven and Adelson for several days to review the company's Nevada operations. While in Las Vegas, the parties agreed to a consulting contract between LVSC and Jacobs' company, Vagus Group, Inc. Jacobs then began assisting LVSC in restructuring its Las Vegas operations.

19. Jacobs, Leven, and Adelson subsequently travelled to Macau to conduct a review of LVSC's operations there. While in Macau, Leven told Jacobs that he wanted to hire him to run LVSC's Macau operations. Jacobs and Leven returned to Las Vegas after spending approximately a week in Macau. Jacobs then spent the bulk of the next 2-3 weeks working on the Las Vegas restructuring program and also negotiating with Leven regarding LVSC's desire to hire him as a full-time executive.

20. On May 6, 2009, LVSC announced that Jacobs would become the interim President of Macau Operations. Jacobs was charged with restructuring the financial and operational aspects of the Macau assets. This included, among other things, lowering operating costs, developing and implementing new strategies, building new ties with local and national government officials, and eventually spinning off the Macau assets into a new company to be taken public on the Hong Kong Stock Exchange.

21. Notwithstanding that Jacobs would be spending the majority of his time in Macau focusing on LVSC's operations in that location, he was also required to perform duties in

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Las Vegas including, but not limited to, working with LVSC's Las Vegas staff on reducing costs within the company's Las Vegas operations, consulting on staffing and delayed opening issues related to the company's Marina Bay Sands project in Singapore, and participating in meetings of LVSC's Board of Directors.

22. On June 24, 2009, LVSC awarded Jacobs 75,000 stock options in the company to reward him for his past performance as a LVSC team member and to incentivize him to improve his future performance as well as that of the company. LVSC and Jacobs executed a written Nonqualified Stock Option Agreement memorializing the award.

23. On or about August 4, 2009, Jacobs received LVSC's "Offer Terms and Conditions" (the "Term Sheet") for the position of "President and CEO Macau[.]" The Term Sheet reflected the terms and conditions of employment that had been negotiated by Leven and Jacobs while Jacobs was in Vegas working under the original consulting agreement with LVSC and during his subsequent trips back to Las Vegas. With Adelson's express approval, Leven signed the Term Sheet on or about August 3, 2009, and had his assistant, Patty Murray, email it to Jacobs who was then in Macau. Jacobs signed the Term Sheet accepting the offer contained therein and delivered a copy to LVSC. LVSC's Compensation Committee approved Jacobs' contract on or about August 6, 2009. LVSC thereafter filed a copy of the Term Sheet with the United States Securities and Exchange Commission, disclosing it as Jacobs' employment contract with LVSC.

Jacobs Saves the Titanic

24. The bases for Jacobs' full-time position were apparent. The accomplishments for the four quarters over which Jacobs had presided created significant value. From an operational perspective, Jacobs and his team removed over $365 million of costs from LVSC's Macau operations, repaired strained relationships with local and national government officials in Macau who would no longer meet with Adelson due to his obstreperous behavior, and refocused operations on core businesses to drive operating margins and profits, thereby achieving the then-highest EBITDA figures in the history of the company's Macau operations.

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25. Due in large part to the success of its Macau operations under Jacobs' direction, LVSC was able to raise over $4 billion dollars from the capital markets, spin off its Macau operations into a new company – Sands China Limited – which became publicly traded on the Hong Kong Stock Exchange in late November 2009, and restart construction on a previously stalled expansion project on the Cotai Strip known as "Parcels 5 and 6." Indeed, for the second quarter ending June 2010, net revenue from Macau operations accounted for approximately 65% of LVSC's total net revenue (*i.e.*, $1.04 billion USD of a total $1.59 billion USD).

26. To put matters in perspective, when Jacobs began performing work for the company in March 2009, LVSC shares were trading at just over $1.70 per share and its market cap was approximately $1.1 billion USD. At the time of Jacobs' departure in July 2010, LVSC shares were over $28 per share and its market cap exceeded $19 billion USD.

27. Jacobs' success was repeatedly confirmed by Board members of LVSC as well as those of the new spinoff, Sands China. When Leven was asked in February 2010 to assess Jacobs' 2009 job performance, he advised: "*there is no question as to Steve's performance[;] the Titanic hit the iceberg[,] he arrived and not only saved the passengers[,] he saved the ship.*" Unremarkably, Jacobs received a full bonus in 2009 and no more than three months later, May, 2010, he was awarded an additional 2.5 million stock options in Sands China. The options had an accelerated vesting period of less than two years.

28. But Adelson would make sure that Jacobs was cheated out of what he was owed, a practice that Adelson has honed in dealing with many executives and companies that refused to do as Adelson demanded.

Jacobs' Confrontations with Adelson

29. Jacobs' success was in spite of numerous ongoing debates he had with Adelson, including Adelson's insistence that as Chairman of both LVSC and Sands China, and the primary shareholder, he was ultimately in charge, including on day-to-day operations as well as such minute issues as carpeting, room design, and the choice of paper towel dispensers to be used in the men's room. As Leven would remind Jacobs, both orally and in writing, Adelson was in

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charge and the substantive decisions, including such things as construction in Macau, were controlled and made in Las Vegas:

> Per my discussion with sga [Adelson] pls be advised that input from anyone [in Macau] is expected and listened to but final design decisions are made by sga and las vegas[.] [T]here appears to be some confusion and I want to clear the matter once and for all [that] everyone has inputed [*sic*] but sga makes the final decisions[.]

30. But a greater impediment concerned the unlawful and/or unethical business practices put in place by Adelson and/or under his watch, as well as repeated outrageous demands Adelson made to pursue illegal and illegitimate ends. The demands included, but were not limited to:

a. Demands that Jacobs use improper "leverage" against senior government officials of Macau in order to obtain Strata-Title for the Four Seasons Apartments in Macau;

b. Demands that Jacobs threaten to withhold Sands China business from prominent Chinese banks unless they agreed to use influence with newly-elected senior government officials of Macau in order to obtain Strata-Title for the Four Seasons Apartments and favorable treatment with regards to labor quotas and table limits;

c. Demands that secret investigations be performed regarding the business and financial affairs of various high-ranking members of the Macau government so that any negative information obtained could be used to exert "leverage" in order to thwart government regulations/initiatives viewed as adverse to LVSC' s interests;

d. Demands that Sands China continue to use the legal services of Macau attorney Leonel Alves despite concerns that Mr. Alves' retention posed serious risks under the criminal provisions of the United States code commonly known as the Foreign Corrupt Practices Act ("FCPA"); and

e. Demands that Jacobs refrain from disclosing truthful and material information to the Board of Directors of Sands China so that it could decide if such information relating to material financial events, corporate governance, and corporate independence should be disclosed pursuant to regulations of the Hong Kong Stock Exchange. These issues included, but were not limited to, junkets and triads,

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> government investigations, Leonel Alves and FCPA concerns, development issues concerning Parcels 3, 7 and 8, and the design, delays and cost overruns associated with the development of Parcels 5 and 6.

31. Jacobs reported these improprieties to Leven and LVSC's general counsel, in accordance with LVSC's company whistleblower guidelines.

32. When Jacobs objected to and/or refused to carry out Adelson's illegal demands, Adelson repeatedly threatened to terminate Jacobs' employment. This is particularly true in reference to: (i) Jacobs' refusal to comply with Adelson's edict to terminate Sands China's General Counsel, Luis Melo ("Melo"), and his entire legal department and replace him/it with Leonel Alves and his team; (ii) Adelson's refusal to allow Jacobs to present to the Sands China Board information that the company's development of Parcels 5 and 6 was at least 6 months delayed and more than $300 million USD over-budget due to Adelson-mandated designs and accoutrements the Sands China management team did not believe would be successful in the local marketplace; (iii) Adelson's refusal to allow Jacobs to disclose to the Board LVSC findings relating to the allegations contained in a Reuters article that LVSC was conducting business with Chinese organized crime syndicates, known as Triads; and (iv) Adelson's refusal to allow Jacobs to discuss his concerns with the Board regarding the use and rehiring of Leonel Alves after Alves had requested a $300 million payment for government officials in China.

33. During this same time, Jacobs began developing suspicions concerning the propriety of certain financial practices and transactions involving LVSC and other LVSC subsidiaries, including, but not limited to: (i) certain transactions related to Hencing island, the basketball team, the Adelson Center, and the Macau ferry contract which all involved payments that LVSC made; (ii) allegations concerning LVSC's practice of couriering undeclared monies into the United States to repay gambling debts of third parties and/or to be used to fund accounts for non-residents once they arrived in the country; (iii) LVSC's practice referred to as the Affiliate Transaction Advise ("ATA"), which allowed third parties and gamblers to move money into the United States by depositing monies with an LVSC overseas affiliate or marketing office, creating an account in Las Vegas from which the depositor or their designee would be issued chips with which to gamble, and then transferring the "winnings" back offshore either to the original

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depositor or to a third party designee not involved in the transaction; (iv) using the ATA process to move monies for known and/or alleged members of Triads; and (v) structuring and/or using offshore subsidiaries to funnel monies onto the gaming floor.

34. One such suspicious entity was WDR, LLC, a wholly-owned subsidiary set up by LVSC at the apparent behest of Robert Goldstein. When Jacobs raised that entity and certain transactions with Sands China's then-existing CFO, he similarly considered the transactions involving WDR as suspicious and expressed concerns over potential money laundering. Of course, Jacobs would be fired before he could further pursue the matter. When LVSC's then-existing CFO, Ken Kay, was asked about WDR at a deposition, he professed to have no knowledge of WDR or what purpose it would serve. But, just a few months after Kay was questioned about WDR, Leven quietly had the entity dissolved.

35. Jacobs' disagreements with Adelson came to a head in late June 2010 when they were in Singapore to attend the grand opening of LVSC's Marina Bay Sands. While in Singapore, Jacobs attended several meetings of LVSC executives including Adelson, Leven, Ken Kay (LVSC's Chief Financial Officer), and others. During these meetings, Jacobs disagreed with Adelson's and Leven's desire to expand the ballrooms at Parcels 5 and 6, which would add an incremental cost of approximately $30 million to a project already significantly over budget when Sands China's existing facilities were already underutilized. In a separate meeting, Jacobs disagreed with Adelson's desire to aggressively grow the junket business within Macau as the margins were low, the decision carried credit risks, and based upon recent investigations by Reuters and others alleging LVSC's involvement with Chinese organized crime groups, known as Triads, connected to the junket business.

36. Following these meetings, Jacobs re-raised the issue about the need to advise the Sands China Board of the delays and cost overruns associated with the development of Parcels 5 and 6 in Macau so that a determination could be made of whether the information must be disclosed. Jacobs also raised the need to disclose LVSC's involvement with Triads and the implications of Adelson's desire to grow Sands China's junket business in Macau, as well as Adelson's rehiring of Leonel Alves, given Jacobs' and others' FCPA concerns. Once again,

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Adelson reminded Jacobs that he was both the chairman and the controlling shareholder and that Jacobs should "do as I please." This was consistent with Adelson's attitudes and Jacobs' belief that Adelson considered himself untouchable. Indeed, on a prior occasion when Jacobs had voiced his concern over how Nevada's gaming regulators might view Adelson's actions, Adelson scoffed at the suggestion, informing Jacobs that he (Adelson) controlled the regulators, not the other way around.

37. When Jacobs refused, Adelson commenced carrying out a scheme to fire and discredit Jacobs for having the audacity to blow the whistle and confront Adelson. Adelson has admitted his personal animus and malice toward Jacobs even before firing him. Adelson had privately been angling for some excuse to terminate Jacobs.

LVSC and Sands China Implement Adelson's "Exorcism Strategy"

38. In or about July 2010, Adelson directed executives from LVSC in Las Vegas, Nevada to begin the process of terminating Jacobs. This process, which would be referred to as the "exorcism strategy," was planned and carried out from Las Vegas and included (1) the creation of fictitious Sands China letterhead upon which a notice of termination was prepared, (2) preparation of the draft press releases with which to publicly announce the termination, and (3) the handling of all legal-related matters for the termination. Again, all of these events took place in Las Vegas, ostensibly by agents acting for both LVSC and Sands China.

39. Indeed, it was LVSC in-house attorneys, claiming to be acting on behalf of Sands China, who informed the Sands China Board on or about July 21, 2010, about Adelson's decision to terminate Jacobs, and directed the Board members to sign the corporate documents necessary to effectuate Jacobs' termination. These same attorneys promised to explain the basis for the termination to the Board members during the following week's Board meeting (after the termination took place). Predictably, as Adelson is all-controlling, he took action first and then decreed how the Board thereafter reacted.

40. Promptly thereafter, the team that Adelson had placed in charge of overseeing the sham termination – Leven, Kenneth Kay (LVSC's CFO), Irwin Siegel (LVSC/Sands China Board member), Gayle Hyman (LVSC's general counsel), Daniel Briggs (LVSC's VP of investor

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relations), Ron Reese (LVSC's VP of public relations), Brian Nagel (LVSC's chief of security), Patrick Dumont (LVSC's VP of corporate strategy), and Rom Hendler (LVSC's VP of strategic marketing) – left Las Vegas and went to Macau in furtherance of the scheme.

41. On the morning of July 23, 2010, Jacobs attended a meeting with Leven and Siegel, which had been represented to him (albeit falsely) as pertaining to the upcoming Sands China Board meeting. During the meeting, Leven unceremoniously advised Jacobs that he was being terminated effective immediately. When Jacobs asked whether the termination was purportedly "for cause" or not, Leven responded that he was "not sure" but that the severance provisions of the Term Sheet would not be honored. Leven then handed Jacobs the letter drafted by LVSC's attorneys and signed by Adelson advising him of the termination.

42. Cognizant that he had no legitimate basis to terminate Jacobs for cause, Adelson authorized and expected Leven to meet with Jacobs and implement the termination strategy. As is now a well-documented Adelson tactic, he had no regard for the contractual terms of Jacobs' employment agreement. Instead, Adelson's tried and true tactic is to demand a discount off of what is contractually owed for a lesser amount. If Jacobs, or anyone else for that matter, will not acquiesce in Adelson's strong arm tactics, Adelson retorts to "sue me, then." And, that is essentially how the Adelson game-plan played out with Jacobs.

43. When Leven could not persuade Jacobs to "voluntarily" resign, Jacobs was escorted off the property by two members of security in public view of many company employees, resort guests, and casino patrons. Jacobs was not permitted to return to his office to collect his belongings, but was instead escorted to the border to leave Macau.

44. Because Leven had not been able to persuade Jacobs to resign, the next play from the Adelson playbook went into effect – fabricating purported cause for the termination. Once again, this aspect of the plan was also carried out in Las Vegas by executives professing to act for both LVSC and Sands China. Indeed, this time they prepared a false letter in Las Vegas and put it on Venetian Macau, Ltd. letterhead and identified twelve manufactured "for cause" reasons for Jacobs' termination. Transparently, one of the purported reasons is an attempt to mask one of Adelson's personal transgressions: The letter absurdly claimed that Jacobs exceeded his authority

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and failed to keep the companies' Boards of Directors informed of important business decisions. Not surprisingly, not only are the after-the-fact excuses a fabrication, they would not constitute "cause" for Jacobs' termination even if they were true, which they are not.

45. All but conceding that fact, Adelson would later claim to have developed (*i.e.*, fabricated) some 34 "for cause" reasons for Jacobs' termination.

46. Confirming what Jacobs had complained about regarding Adelson's improper demands and concealment of information from the Board, Adelson subsequently arranged the termination of Sands China's then-General Counsel, Luis Melo, and made sure that Leonel Alves was retained to perform services for Sands China despite knowledge of Alves acting with disregard for the United States Foreign Corrupt Practices Act. Also with Jacobs' departure, and with complete disregard for internal concerns regarding junket affiliations with Triads, Adelson announced that Sands China would be implementing a new junket strategy whereby it would partner with existing and established junkets to grow its VIP business. In or about the same time frame, LVSC and Sands China also publicly disclosed a material delay in the construction of Parcels 5 and 6 and a cost increase of $100 million to the project, further confirming the appropriateness of Jacobs' insistence upon disclosure despite Adelson's insistence otherwise.

47. Jacobs was not terminated for cause. He was terminated for blowing the whistle on improprieties and placing the interests of shareholders above those of Adelson. Indeed, in just one candid communication Leven sent to executives (including Adelson) just days before Jacobs' termination, Leven claimed that the problem with Jacobs was that "he believes he reports to the board, not the chair [Adelson]."

FIRST CAUSE OF ACTION

(Breach of Contract - LVSC)

48. Plaintiff restates all preceding and subsequent allegations as though fully set forth herein.

49. Jacobs and LVSC are parties to various contracts, including the Term Sheet and Nonqualified Stock Option Agreement identified herein.

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50. The Term Sheet provides, in part, that Jacobs would have a 3-year employment term, that he would earn an annual salary of $1.3 million plus a 50% bonus upon attainment of certain goals, and that he would receive 500,000 LVSC stock options (in addition to the previously awarded 75,000 LVSC options) to vest in stages over three years.

51. The Term Sheet further provides that in the event Jacobs was terminated "Not For Cause," he would be entitled to one year of severance plus accelerated vesting of all his stock options with a one-year right to exercise the options post-termination.

52. Jacobs has performed all of his contractual obligations except where excused.

53. LVSC breached by falsely terminating Jacobs for "cause" when, in reality, the purported bases for Jacobs' termination, as identified in the belatedly-manufactured August 5, 2010 letter, are pretextual and in no way constitute "cause."

54. On September 24, 2010, Jacobs made proper demand upon LVSC to honor his right to exercise the remaining stock options he had been awarded in the company. LVSC rejected Jacobs' demand and, thus, further breached the Term Sheet and the stock option agreement by failing to honor the vesting and related provisions contained therein based on the pretext that Jacobs was terminated for "cause."

55. LVSC has wrongfully characterized Jacobs' termination as one for "cause" in an effort to smear him and deprive him of what he is owed. As a direct and proximate result of LVSC's wrongful termination of Jacobs' employment and failure to honor the "Not For Cause" severance provisions contained in the Term Sheet, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

SECOND CAUSE OF ACTION

(Breach of Contract - LVSC and Sands China)

56. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

57. On or about May 11, 2010, LVSC caused Sands China to grant 2.5 million Sands China share options to Jacobs. Fifty percent of the options were to vest on January 1, 2011,

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and the other fifty percent was to vest on January 1, 2012. The grant is memorialized by a written agreement between Jacobs and Sands China.

58. Pursuant to the Term Sheet agreement between Jacobs and LVSC, Jacobs' stock options are subject to an accelerated vest in the event he is terminated "Not for Cause." The Term Sheet further provides Jacobs with a one-year right to exercise the options post-termination.

59. Jacobs has performed all his contractual obligations except where excused.

60. On September 24, 2010, Jacobs made proper demand upon LVSC and Sands China to honor his right to exercise the remaining 2.5 million stock options he had been awarded in Sands China. LVSC and Sands China rejected Jacobs' demand and, thus, further breached the Term Sheet and the Sands China share grant agreement by characterizing Jacobs' termination as being for "cause" when, in reality, the purported bases for Jacobs' termination, as identified in the belatedly-manufactured August 5, 2010 letter, are pretextual and in no way constitute "cause."

61. LVSC and Sands China have wrongfully characterized Jacobs' termination as one for "cause" in an effort to deprive him of contractual benefits to which he is otherwise entitled. As a direct and proximate result, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

THIRD CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing - LVSC)

62. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

63. All contracts in Nevada contain an implied covenant of good faith and fair dealing.

64. The conduct of LVSC described herein including, but not limited to, the improper and illegal demands made upon Jacobs by Adelson, Adelson's continual undermining of Jacobs' authority as the President and CEO of LVSC's Macau operations (and subsequently Sands China), and the wrongful characterization of Jacobs' termination as being for "cause," is unfaithful to the purpose of the agreements between Jacobs and LVSC and was not within the reasonable expectations of Jacobs.

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65. As a direct and proximate result of LVSC's wrongful conduct, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

FOURTH CAUSE OF ACTION

(Tortious Discharge in Violation of Public Policy - LVSC)

66. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

67. LVSC retaliated against Jacobs by terminating his employment because he (i) objected to and refused to participate in the illegal conduct requested by Adelson, and (ii) attempted to engage in conduct that was required by law and favored by public policy. In so doing, LVSC tortiously discharged Jacobs in violation of public policy.

68. As a direct and proximate result of LVSC's tortious discharge, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

69. LVSC's conduct, which was carried out and/or ratified by managerial level agents and employees, was done with malice, fraud and oppression, thereby entitling Jacobs to an award of punitive damages.

FIFTH CAUSE OF ACTION

(Defamation Per Se - Adelson, LVSC, Sands China)

70. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

71. In an attempt to cover their tracks and distract from their improper activities, Adelson, LVSC and Sands China have waged a public relations campaign to smear and spread lies about Jacobs. One such instance is a press release made by Adelson, LVSC and Sands China after an adverse court ruling on March 15, 2011. Having been unable to obtain a procedural victory in Court, the Defendants undertook to smear Jacobs in the media, issuing a statement to Alexander Berzon, a reporter for the Wall Street Journal, which provided:

> *"While I have largely stayed silent on the matter to this point, the recycling of his allegations must be addressed," he said "We have a substantial list of reasons why Steve Jacobs was fired for cause and interestingly he has not refuted a single one of them. Instead, he has attempted to explain his*

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termination by using outright lies and fabrications which seem to have their origins in delusion."

72. The Defendants' media campaign stating that: (1) Jacobs was justifiably fired "for cause" and (2) Jacobs had resorted to "outright lies and fabrications" were false and constitute defamation per se.

73. All of the offending statements made by Adelson concerning Jacobs and identified in Paragraph 71, *supra,* were (1) false and defamatory; (2) published to a third person or party for the express intent of republication to a worldwide audience; (3) maliciously published knowing their falsity and/or in reckless disregard of the truth thereof; (4) intended to and did in fact harm Jacobs' reputation and good name in his trade, business, profession, and customary corporate office; and (5) were of such a nature that the law presumes significant economic damages.

74. Adelson's malicious defamation of Jacobs was made in both his personal as well as his representative capacities as Chairman of the Board of LVSC and as Chairman of the Board of its affiliate, Sands China; both of which ratified and endorsed either explicitly or implicitly Adelson's malicious invective.

75. The comments and statements noted in Paragraph 71, *supra,* were made without justification or legal excuse, and were otherwise not privileged because they did not function as a necessary or useful step in the litigation process and did not otherwise serve its purposes.

76. As a direct and proximate result of Adelson, LVSC, and Sands China's defamation, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000. Moreover, Jacobs is entitled to the imposition of punitive damages against Adelson, LVSC, and Sands China, said imposition not being subject to any statutory limitations under NRS 42.005.

SIXTH CAUSE OF ACTION

(Tortious Discharge in Violation of Public Policy - Adelson)

77. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

78. Corporate officers, directors and/or agents are personally liable for tortious conduct which they undertake, including engaging in a tortious discharge in violation of public policy.

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79. Adelson retaliated against Jacobs by terminating his employment because Jacobs (i) objected to and refused to participate in the illegal conduct demanded by Adelson, and (ii) attempted to engage in conduct favored by public policy. In so doing, Adelson tortiously discharged Jacobs in violation of public policy.

80. Adelson terminated Jacobs' employment with the intent to harm Jacobs for refusing to comply with Adelson's illegal and unethical demands.

81. Adelson terminated Jacobs' employment for his own personal benefit, and not for the benefit of Sands China, LVSC or their shareholders, to whom Adelson owes a fiduciary duty of loyalty.

82. As a direct and proximate result of Adelson's tortious discharge, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

83. Adelson's conduct was done with malice, fraud and oppression, thereby entitling Jacobs to an award of punitive damages.

SEVENTH CAUSE OF ACTION

(Aiding and Abetting Tortious Discharge in Violation of Public Policy – Sands China)

84. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

85. LVSC and Sands China are separate legal entities, each capable of making agreements.

86. LVSC wrongfully terminated Jacobs' employment because he (i) objected to and refused to participate in the illegal conduct requested by Adelson, and (ii) attempted to engage in conduct that was required by law and favored by public policy. In so doing, LVSC tortiously discharged Jacobs in violation of public policy.

87. Sands China, through its agents, substantially assisted LVSC's tortious discharge of Jacobs by, among other things, making agreements with LVSC, carrying out overt acts to effectuate the termination and ratifying the termination for the benefit of Adelson and LVSC, and not for the benefit of Sands China's shareholders, to whom they owed a fiduciary duty of loyalty.

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88. As a direct and proximate result of Sands China's conduct, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

89. Sands China's conduct was undertaken with malice, fraud and oppression, thereby entitling Jacobs to an award of punitive damages.

EIGHTH CAUSE OF ACTION

(Civil Conspiracy Tortious Discharge in Violation of Public Policy- LVSC and Sands China)

90. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

91. LVSC and Sands China are separate legal entities, each capable of making agreements.

92. LVSC and Sands China agreed, acted in concert and conspired to effectuate Jacobs' tortious discharge.

93. LVSC and Sands China intended to harm Jacobs for refusing to follow the illegal and improper demands of their common-chairman, Adelson.

94. As a direct and proximate result of LVSC's and Sands China's civil conspiracy, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

95. LVSC and Sands China's conduct was done with malice, fraud and oppression, thereby entitling Jacobs to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For compensatory damages in excess of Ten Thousand Dollars ($10,000.00), in an amount to be proven at trial;

2. For punitive damages in excess of Ten Thousand Dollars ($10,000.00), in an amount to be proven at trial;

3. For pre-judgment and post-judgment interest, as allowed by law;

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4. For attorney fees and costs of suit incurred herein, as allowed by law, in an amount to be determined; and

5. For such other and further relief as the Court may deem just and proper.

DATED this 26th day of September, 2014.

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants. AND RELATED CLAIMS	Case No.: A-10-627691 Dept. No.: XI **PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION ON DEFICIENT PRIVILEGE LOG ON ORDER SHORTENING TIME** Hearing Date: October 9, 2014 Hearing Time: 8:30 a.m.

I. INTRODUCTION

Defendant Sands China Ltd. ("Sands China") cannot avoid the legal consequences of their failures by quarreling over the meaning of the phrase doubling down.[1] Sands China's belief that

[1] Jacobs' description of Sands China's conduct is both fair and accurate. Cn. (Hr'g Tr., Sept. 2, 2014 at 13:11-12, on file ("**It's our belief that we have carried our prime requirement that we provide a detailed privilege log**.") (emphasis added); id. at 14:7-8 ("**We just believe that we have satisfied our burden by providing a detailed privilege log**.") (emphasis added)); see also MERRIAM-WEBSTER DICTIONARY (2014) (defining "double down" as "to become more tenacious, zealous, resolute in a position or undertaking") available at http://www.merriam-webster.com/dictionary/double%20down.

it is too big and important to be bound by the laws' requirement cannot continue. Its so-called privilege log does not satisfy the requirements of a good faith effort.[2] Its deficiencies were obvious, well-known and perpetuated. Indeed, Sands China now admits that as many as 50% of the documents for which it claimed privilege had no legitimate basis in law or fact. Groundless cries of privilege were made so as to deprive Jacobs access to sources of proof and to create a false appearance both before this Court and Nevada Supreme Court. Sands China's request for a do over now two years later must be rejected.

Sands China misses the boat when it claims that a proper privilege log will facilitate this Court's in camera review. Of course it would. That is the entire point of a forthright and legitimate privilege log in every case. But that is not what Sands China did. It submitted what it knew was an improper log and then stood pat on it, seeking to improperly shift the burden onto Jacobs and this Court to unravel its wholesale failures. Indeed, Sands China's request for a do over now is nothing more than an admission that its log always was insufficient.

The law provides for actual consequences for Sands China's refusal to comply. Tellingly, Sands China dares not provide any actual evidence to remedy the questions left open by the non-compliant log and its privileges. This debacle only underscores how Sands China used its deficient log to withhold information from Jacobs' counsel for multiple years and thereby delayed the jurisdictional and sanctions hearings to which Jacobs is entitled.

II. DISCUSSION

A. Sands China's Knowingly Deficient Log Waives Any Claim of Privilege [3]

Unable to reconcile its position with the law, Sands China simply ignores the mountain of authority holding that the failure to provide an adequate privilege log results in the wavier of privilege: "**The law is well settled that failure to produce a privilege log or production of an inadequate privilege log may be deemed waiver of the privilege**." Haid v. Wal-Mart Stores, Inc.,

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[2] (Hr'g Tr. at 3:8-9, Sept. 9, 2014, on file ("I've got to say, guys, it's a really awful privilege log . . . ."); id. at 5:23-24 ("Well, the log's pretty awful.".))

[3] Of course, arguments about the consequences of a knowingly deficient log presuppose the existence of a valid privilege that has otherwise not been waived. As demonstrated in Jacobs' companion motion to be heard at the same time, Sands China has also failed to establish any legitimate claim of privilege regardless of its deficient log.

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99-4186-RDR, 2001 WL 964102 (D. Kan. June 25, 2001) (emphasis added); see also S.E.C. v. Yorkville Advisors, LLC, 12 CIV. 7728 GBD HBP, --- F.R.D. ---, 2014 WL 2208009, at *15 (S.D.N.Y. May 27, 2014) (collecting cases); Chimney Rock Pub. Power Dist. v. Tri-State Generation & Transmission Ass'n, Inc., No. 10-CV-02349-WJM-KMT, 2013 WL 1969264, at *6 (D. Colo. May 13, 2013) ("Failure to assert a privilege properly on a privilege log results in a waiver of the claim of privilege."); Flanagan v. Benicia Unified Sch. Dist., CIVS07-0333 LKK GGH, 2008 WL 2073952, at *5 (E.D. Cal. May 14, 2008) ("Under federal law, improper assertions of privilege in the privilege log, failure to timely create a privilege log…, or the failure to identify with specificity the information withheld on account of assertion of a privilege, may constitute a waiver of the privilege.") (collecting cases).

Sands China hitches its cart to select cases where parties were allowed to supplement their privilege log absent evidence of knowing deficiency or delay. But of course, Sands China's request to redo its privilege log now serves as an admission that its log is and always has been deficient. Burch v. Regents of Univ. of Cal., CV.S-04-0038 (WBS)(GGH), 2005 WL 6377313, at *3 (E.D. Cal. Aug. 30, 2005); (compare Hr'g Tr., Sept. 2, 2014 at 13:11-12, 14:7-8 (standing by and doubling down on privilege log).)

None of the cases to which Sands China cling provide protection for a knowing and facially deficient log, particularly one where the party claiming privilege later is forced to admit that half of the documents had no basis for privilege to begin with. For example, in Phoenix Ins. Co. v. Your Vitamins, Inc., 2:12-CV-00564-MMD, 2013 WL 459226, at *2 (D. Nev. Feb. 5, 2013) the party could fix the deficient privilege log within ten days, and there was no showing that the deficiencies were knowing, longstanding and pervasive. In contrast here, Sands China's privilege log always was and remains untenable. Sands China now admits that nearly (if not more than) half of the claims of privilege had no basis in law or fact. And, it stood pat on this log for over two years until this Court finally saw it. This is not a case where a good faith log was prepared and minor corrections need to be made. Likewise, McKenzie v. Walgreen Co., 2:12-CV-0044-KJD-NJK, 2013 WL 211104, at **3-5 (D. Nev. Jan. 18, 2013) involved a claim that certain

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documents on the privilege log were not actually privileged, it did not involve a claim of waiver based upon a deficient privilege log. And, the party in McKenzie could fix the log within just one week. Id. at *5.

Sands China's reliance upon CSX Transportation. Inc. v. Admiral Insurance Company, 93-132-CIV-J-10, 1995 WL 855421, at *5 (M.D. Fla. July 20, 1995) establishes that Sands China has waived its privileges. There, the court found the privilege log to be inadequate and required the proponent of the privilege to provide evidentiary submissions to support its privilege claims. Sands China, despite being clearly aware of this authority, failed to provide any "affidavits, deposition testimony, other sworn statements, or other evidence necessary to establish all factors of the asserted protections." Id. Plainly, Sands China could not find anyone willing to testify in support of its privilege claims.

Similarly, in Davis v. City of New York, 10 CIV. 0699 SAS, 2011 WL 1742748, at *2 (S.D.N.Y. May 5, 2011), the city submitted declarations in support of its two privilege logs. The court also warned, "[i]f a random in camera review of a selected group of documents on the privilege logs reveals that the assertion of privilege was baseless, **the Court will not hesitate to find that the City has waived any claim of privilege with regard to the remainder of the documents.**" Id. at *4. (emphasis added) Again, Sands China has not provided declarations in support of its privileges despite having ample opportunity to do so. Thus, Davis supports Jacobs and the Court should find waiver.[4]

Sands China's featured case, American National Bank & Trust Co. of Chicago v. Equitable Life Assurance Society of U.S., 406 F.3d 867, 878 (7th Cir. 2005) is easily distinguishable. The appellate court reversed a magistrate's order to release all documents on a privilege log because the magistrate did not have any evidence of bad faith. Id. at 878 ("[T]he magistrate judge admitted that he had 'no direct information [of] bad faith.'"). The appellate court determined that the party

[4] It appears that Sands China's citation to Marcus v. United States may be incorrect as Jacobs was unable to locate this case. Jacob's inability to address this unlocatable case should not be construed as an agreement to Sands China's description.

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asserted its privileges in good faith. Id. at 879. But the court indicated that the sanction of waiving all privileges would be appropriate if there was a finding of bad faith, willfulness, or fault. Id.

Here, the Court has gone through enough of the documents on Sands China's privilege log to observe that the log and privilege designations do not satisfy the hallmarks of good faith. Instead, Sands China purposely overreached and then sought to shift the burden onto Jacobs to unravel its knowing deficiencies. (Hr'g Tr. at 10:4-5, Sept. 9, 2014, on file ("[B]ut part of my frustration has to do with what I would call overreaching in the designation.").) The Court has explicitly determined that Sands China does not appear to have employed any decision-making process to determine whether documents were actually privileged. (Id. at 3:8-11 ("I've got to say, guys, it's a really awful privilege log, and some of the decision-making process that seems to relate to whether a document was privileged or not seems to be missing.").

Even after hearing the Court's repeated criticisms, Sands China has the audacity to **triple-down** on its privilege log by stating that the log sufficiently provided the senders/recipients and adequately described the subject matter. (Opp'n at 6:10-7:15.) Contrary to Sands China's mischaracterizations, these failures were not the result of "metadata" or other technical mishaps. Unless, of course, Sands China takes the position that it did not have a duty to review the privilege log columns to ensure that the metadata properly populated the columns. Sands China relies upon its "players/capacity chart" but this chart was provided at the behest of the Court two years after the log was produced. Sands China's initial log should have set forth all "Esqs" and "CPAs" so that Jacobs could properly assess the claims of privilege. See Go v. Rockefeller Univ., 280 F.R.D. 165, 175 (S.D.N.Y. 2012) ("[T]he privilege log is insufficient to the extent it fails to identify the identities, titles, and roles of the authors, recipients, and those CC'ed on these communications.")

Another opportunity for a do over is unwarranted. Sands China was already given an opportunity to cure its privilege log after Jacobs noted the first log's deficiencies. (Correspondence from D. Spinelli, Esq. to B. Schneider, Esq., Oct. 9, 2012, Ex. 1; (Correspondence from J. Stephen Peek, Esq. to J. Pisanelli, Esq. & T. Bice, Esq., Dec. 3, 2012,

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Ex. 3 ("The first privilege log on the CD . . . constitutes a replacement of the privilege log that was previously supplied to your office on or about September 26, 2012 with respect to our review of Jacobs' ESI.").) Sands China produced what it considered to be a corrected log and Sands China has been doubling down on it ever since. Sands China had an affirmative duty to produce a compliant privilege log to avoid a waiver of privilege and it has continually failed to do so. Its conscious failure is a waiver.

B. Sands China's Supplemental Log Does Not Unring Its Waiver of Privilege and Jacobs is Not Required To Show Prejudice

Sands China had an affirmative duty to provide a privilege log that sufficiently preserved its claims of privilege. Yorkville Advisors, LLC, 2014 WL 2208009, at *13 ("[I]t was the SEC's affirmative obligation, as the party asserting the privilege, to furnish the information listed…."); Ryan v. Staten Island Univ. Hosp., 04-CV-2666 (NG)(KAM), 2006 WL 3497875, at *7 (E.D.N.Y. Dec. 5, 2006) ("[D]efendant had a duty to supplement its privilege log…."). Sands China's belated efforts to correct its privilege log over two years after the deficiencies were pointed out, and only because the Court forced them, results in waiver. While a new and forth right log could ordinarily assist the Court with its in camera review of documents, it does not revive a purported privilege that has already been lost through its failure to provide a proper log.

Jacobs does have to demonstrate prejudice arising from Sands China's abuse of privilege and deficient log. See Bowne of New York City, Inc. v. AmBase Corp., 150 F.R.D. 465, 485 (S.D.N.Y. 1993) ("It bears emphasis that these cases do not require the discovering party to demonstrate prejudice, such as, for example, proof that the privilege holder has disclosed only favorable materials."); Yorkville Advisors, LLC, 2014 WL 2208009, at *13 ("The fact that defendants may have failed to specify the exact nature of the Privilege Logs' deficiencies is immaterial…."). The burden is on Sands China, not Jacobs, to establish that it has not waived its privileges. Diamond State Ins. Co., 157 F.R.D. at 698; United States v. Aramony, 88 F.3d 1369, 1389 (4th Cir. 1996); Weil v. Inv./Indicators, Research & Mgmt., Inc., 647 F.2d 18, 25 (9th Cir. 1981).

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But, to be sure, Jacobs has suffered prejudice. It is painfully obvious that Sands China has wrongfully withheld discoverable documents from Jacobs **for years** and improperly hid behind its deficient privilege log to do so. Sands China pats itself on the back for finally releasing **over 7,000 wrongfully withheld documents** two years after the documents were improperly withheld in the first place. Sands China's abuse of the privilege has caused Jacobs and the Court to waste significant time, energy, and costs accommodating Sands China's failures. Sands China's month-long fiasco of attempting to redo its privilege log has caused the Court to miss the opportunity to complete the in camera review during September before CityCenter and the Court's other commitments occupy the Court's time. As a result, the sanctions and jurisdictional hearings have been delayed again—much to Sands China's benefit. Jacobs' ability to prosecute his claims on the merits has been frustrated once more and he has been forced to endure yet another perversion of the discovery process.

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III. CONCLUSION

The law provides consequences for a party's knowing refusal to provide a legitimate privilege log to assert claims of privilege. That Sands China's log was undertaken in knowing non-compliance of law is not open to serious debate. Even Sands China now concedes that half of the documents on it were never privileged in the first place. And even if Jacobs or this Court could have sorted out that nonsense, the log fails to provide any legitimate claims of privilege on its face. The degree of Sands China's noncompliance evidences a willful abuse of the privilege with the intent to stymie discovery and unduly delay these proceedings. If the deficiencies of Sands China's privilege do not constitute a waiver, then none ever will. The deficiencies were open and obvious and Sands China stood pat on the log attempting to shift the burden on to Jacobs and this Court.

DATED this 3rd day of October, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd day of October, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION ON DEFICIENT PRIVILEGE LOG ON ORDER SHORTENING TIME** properly addressed to the following:

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TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

STEVEN C. JACOBS, Plaintiff, vs. LAS VEGAS SANDS CORP, SANDS CHINA LTD, Defendants.	CASE NO. A-10-627691 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

PLAINTIFF'S MOTION FOR RELEASE OF DOCUMENTS FROM ADVANCED DISCOVERY ON THE GROUNDS OF WAIVER; PLAINTIFF'S MOTION ON DEFICIENT PRIVILEGE LOG ON OST

THURSDAY, OCTOBER 9, 2014

APPEARANCES:

For the Plaintiff:	JAMES J. PISANELLI, ESQ. TODD L. BICE, ESQ. JORDAN T. SMITH, ESQ. DEBRA SPINELLI, ESQ.
For the Defendants:	J. STEPHEN PEEK, ESQ. JON RANDALL JONES, ESQ. MARK JONES, ESQ.
RECORDED BY:	JILL HAWKINS, DISTRICT COURT
TRANSCRIBED BY:	KRISTEN LUNKWITZ

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

THURSDAY, OCTOBER 9, 2014 8:30 A.M.

THE COURT: Good morning, Mr. Peek. How are you today?

MR. PEEK: Good morning.

THE COURT: Mr. Morris called to say he had to be down with Judge Denton, so he was unable to join us and asked us to proceed without him. So, we're here related to some motions that the plaintiffs have filed and I report that I have made absolutely no progress on your case since I've been in the pretrial process of CityCenter. I've taken the boxes home several times, but I have not gotten to them as part of what I'm trying to do with the other case. I keep hoping I'll get to them, but I don't.

MR. PISANELLI: I know that feeling of taking the work home and never quite getting it.

THE COURT: I've got a Yukon and I can only put so much in it and then it comes back on Mondays. Most of it's been read, but you're at the end.

MR. PISANELLI: Yeah.

THE COURT: So, --

MR. RANDALL JONES: Bring -- take my briefcase as well, Your Honor. That's about it.

THE COURT: Well it takes me two trips to load it with the boxes. So, all right. Mr. Pisanelli, are you

going to argue some motions this morning?

MR. PISANELLI: I am.

THE COURT: Okay.

MR. PISANELLI: Do you have a preference on how we begin?

THE COURT: I don't care which one we start with. They're basically the same issue. They've been bad again. Their privilege log is bad. It's taking too long. They're still bad, bad, bad.

MR. PISANELLI: Well, when you put it that way. You're kind of stealing my thunder

THE COURT: I was summarizing the argument.

MR. PISANELLI: Yeah.

Your Honor, I know you hear -- I'm starting, by the way, privilege log deficiencies, and I know you hear this phrase so much you probably consider it to be a cliché at this point, but I'm going to use it anyway because it seems to fit the circumstances that if not know, when?

We know that there are consequences to failing to provide an adequate privilege log. We know it from when we were trained as lawyers just out of law school and we certainly know it from being trained by you in this courtroom. You have some very high standards for all of us to conduct ourselves and we all do. Sometimes it's lawyering, sometimes it's clienting, if that's a word, but

you understand my point. You set a high bar for us here in Business Court and we all -- and when I say we, I mean all of us, at both tables, do our best to try and comply with it.

We've fallen not a little short, about as short as your high standards that I can think of in any case I've ever --

THE COURT: I've had one that's worse.

MR. PISANELLI: Really? Well, you see more of them than I do. This is as bad as I've gotten. In the totality of circumstances, not just the worst log, but when you take the entire dispute into consideration, that's when I think we get to the point of being comfortable with the fact that what we're asking for is rather harsh.

And I'm not going to repeat everything that's in the briefs, but I think it's important to point out just a couple of very quick facts of why it is not beyond the pale, it is not severe, and it is not overly harsh to say that the rule that you always apply, applies here. And that is that we start with when this log originally was produced, coupled with our very extensive objections, which followed only two weeks later and that's September 26, 2012.

You combine that fact, that we started in 2012, this thing was amended once, called a final log a couple of

months later in December 2012, and all that final really did, as you may recall, is took some stuff off it. Right? But it never addressed all of the deficiencies that we brought to their attention.

And so, we, for two years, were holding on to a log that does very little. It leaves a few clues, I'll give them that credit, here and there of what the actual document was. It leaves a few clues, here and there, of what the underlying premise was for the assertion of the privilege and then that's it.

And we heard, for two years now, Sands China stand behind it, for two years dealing with us. And now all the way up to only a couple of weeks ago before you, I think the quote, something to the effect of: We have carried our prime requirement that we provide a detailed privilege log.

So, we don't have to look to any of the cases that talk about a party that says: Okay, it was a bad first effort, Your Honor, but I fixed it and only two weeks had lapsed, only a month has lapsed, only two months have lapsed, but I fixed it. It was a good faith assertion and the first effort we see from some of the cases where leniency was the rule that was applied and then other times it was the timing of the correction that got some of the parties off the hook for their bad privilege logs.

But here, we have a disastrous one. I think you

may have characterized it as awful, being kind to them, and we had them standing behind stubbornly and defiantly for two solid years only to come in, at the end of the day, looking for the do over. And that's why I started this conversation with the concept that if not now, then when?

THE COURT: Well, sometimes when I give do overs, there are assessments of expenses that are related to it.

MR. PISANELLI: Sure.

THE COURT: And that may be part of what happens after I finish, if I ever get to it, the in-camera review.

MR. PISANELLI: Right.

THE COURT: And that's, I think, where the issue is -- because it's not necessarily a waiver just because their privilege log is awful, or was awful before they started trying to do a better job.

MR. PISANELLI: Yep.

THE COURT: But it's caused a lot of people a lot of work and this isn't' the first time in this case we've had something like this happen.

MR. PISANELLI: Right.

THE COURT: And so the question is: I understand what you're saying, but isn't the appropriate remedy some sort of recompense for the expense and time that everyone has had to go through?

MR. PISANELLI: But, I mean, how do you put that -

- let me start with the underlying premise. Of course you're right. All right. But we bring this log to your attention that says it may result in the waiver and the may, of course, is the definition that's the key word to all of it, it means you decide.

THE COURT: Judicial discretion.

MR. PISANELLI: Yeah. Exactly. It's up to you. I'm not going to pretend it's anything other than your decision and I throw this last fact into context of why now is the time that it's something more than a just a writing a check that seems to be irrelevant to this -- to these parties because no matter how many checks they write for checks, nothing seems to change.

We have, as I've said, a terrible log. We have two years of defiance of standing behind it, but then look at what we've now learned. What was put on the log was so reckless that already, before you started your in-camera review, 50 percent --

THE COURT: Well, no I actually --

MR. PISANELLI: -- of them gone --

THE COURT: -- started it, Mr. Pisanelli. Remember, I started it and then I said --

MR. PISANELLI: And then you had to stop.

THE COURT: -- it was awful.

MR. PISANELLI: Yeah.

THE COURT: And then we had a -- somebody decided to take a second look.

MR. PISANELLI: Yep. My point is only before we got any benefit of your work, 50 percent of the 3,000 pages are withdrawn. You have to put, I think, that into context: the timing, the stubbornness to correct, and how bad it was, how reckless -- reckless isn't even the right word. All right. These are skilled attorneys starting at MTO and moving through the roster of people whose fingerprints are on this. These are skilled people who knew what they were doing and before you have taken one document off it, they took 50 percent of the 3,000 page privilege log and said: Yeah, we shouldn't have done that.

So, I won't beat the dead horse. You know what my position is.

THE COURT: I do.

MR. PISANELLI: Today does present the circumstances where I think -- and just let me put the proposal out there and Your Honor, of course, can do with it as you please; but I think the fair proposal, in light of the totality of the circumstances, is that it's a two-step process on your in-camera review. You start at what the privilege log said and if that's not good enough, it's released. If it is good enough in your view, then the in-camera review of the document itself can be analyzed to see

if it should have been on there in the first place, but holding them responsible for what they put on that log in the first instance, I don't think is overly harsh. They didn't correct it. They knew what they were doing and now it's time to pay.

We can't get the two years, really three years, back. We can get some of our attorneys' fees back, and I understand your point, but we can't get the fact that they have stalled this case for three years now and we're still in a jurisdictional phase because we can't seem to get a good faith effort on --

THE COURT: And I still have to do an --

MR. PISANELLI: --

THE COURT: -- evidentiary hearing according to your writ.

MR. PISANELLI: You understand our frustrations. Sometimes --

THE COURT: Oh boy.

MR. PISANELLI: -- we've been boisterous about it. Sometimes we banged our head on the table, sometimes literally, other times figuratively, but you understand our frustration.

THE COURT: Absolutely.

MR. PISANELLI: We think holding Sands China responsible for their own conduct and choices is not overly

harsh and that's all we ask of you.

THE COURT: All right. Thank you. Mr. Jones.

Mr. Sorenson, I already handled your case. I'm done. I granted it.

MR. SORENSON: Thank you, Your Honor.

MR. RANDALL JONES: I don't want to belabor this either. I think I understand what you're suggesting, but I do think it's important to point out a couple of things that I just think are inaccurate.

First of all, the privilege log, in it and of itself, I don't believe has delayed the evidentiary hearing, certainly not in any material way because there were other issues, as you well know, that had to do with many other writs, that had -- that were really the delay and the delay was as a result of stays that were issued by both this Court and the Supreme Court with respect to how certain things were handled, including discovery.

And I want to point out, you know, Mr. Bice has, I think to his credit, has acknowledged that the Munger Tolles law firm is a very good law firm.

THE COURT: But that's a really awful privilege log to come out of a very good law firm then. I don't know who they send it out to do, but it doesn't appear to have the quality of anybody, except for one firm, that I've ever seen before.

MR. RANDALL JONES: And I --

THE COURT: And that's a local firm. Sorry.

MR. RANDALL JONES: And I assume it's not our firm, my --

THE COURT: Not yours.

MR. RANDALL JONES: -- firm.

THE COURT: Not even a case you're involved in.

MR. RANDALL JONES: But, I do want to point out, in defense of Munger Tolles, and this is something that wed didn't really even get into until this whole issue came up after the Supreme Court ruled on the ruling that you had made about a class of persons -- Mr. Jacobs being allowed to take these documents because, at that point, Judge, --

THE COURT: Not being able to take them. That wasn't what I said.

MR. RANDALL JONES: I'm sorry. Being --

THE COURT: I said being able to review them --

MR. RANDALL JONES: -- able to use them.

THE COURT: -- and use them.

MR. RANDALL JONES: I misspoke. That's certainly what I meant and I hope the Court understood what I meant, but the point is is that the privilege log became moot at that point as long as that ruling was out there until we heard what the Supreme Court had to do --

THE COURT: You're right.

MR. RANDALL JONES: -- or had to say.
THE COURT: It did. Which is why --
MR. RANDALL JONES: So --
THE COURT: -- I asked when you came back if you wanted a second chance to look at it again and --
MR. RANDALL JONES: And --
THE COURT: -- initially, you guys said: No.
MR. RANDALL JONES: Initial -- well, what I said at the -- when you put that question to me, and I'm happy to stand here in front of you and tell you I said it and why I said it.

When the District Court asks me, and I've got a document which I have not had an opportunity to review, I have not had an opportunity to review the protocol in any detail and you ask me and you -- and I don't blame you for doing it, but you put me on the spot.

THE COURT: Of course I did.
MR. RANDALL JONES: What did you expect me --
THE COURT: That's my job.
MR. RANDALL JONES: What did you expect me to say? I had to stand on the document that our prior counsel had offered to the Court until I knew otherwise and as soon as we knew otherwise, we immediately informed the Court of that and took action to correct the situation.

But getting back to Munger Tolles and the

condition of that initial log. You know, it's easy in hindsight to say: You know, what a bad job they did and how faulty that log was, but if you go back in the context of the time and you look at what they were trying to do at the time they were trying to do it -- we're talking about close to 100,000 documents with a protocol that they did not devise. It was a protocol that was essentially put together Advanced Discovery on the categories and you have to remember, Judge, the way those categories were set up and this had to do with the issue of redaction f the documents is just one example.

If any document in a chain was privileged, whether it be the document that it -- that included an attachment that was not privileged, it had to be -- the only way you could designate it was privileged. If the attachment was privileged but the e-mail that it was attached to was not privileged, then you had to designate it as privileged.

And so, -- and they were working under, in my -- at least from my perspective, with 100,000 documents, pretty extreme time constraints with a protocol that did not allow them all the categories, that's why we had to revise it, to designate these documents in the appropriate fashion so that we didn't run into this mess later on.

And then the question becomes, and I certainly understand their argument, Mr. Jacobs' argument that:

Well, why didn't you fix it? And, as I said before, once you made your ruling that Mr. Jacobs was entitled to review these documents and that there was no privilege because of the class of persons that he was in, what's the point? Should we have -- when it came --

THE COURT: It still doesn't make sense to me and I know the Supreme Court has ruled, but he can't review a document that he's the recipient or the author of. That still doesn't make sense to me, but I understand the ruling.

MR. RANDALL JONES: And I understand your statement, Judge, but the bigger point, as it relates to this motion, is: Are sanctions appropriate, of any kind, based upon the timing of these issues? And --

THE COURT: Right now.

MR. RANDALL JONES: And --

THE COURT: At this point, I agree with you they're not and I already told Mr. Pisanelli that. They may be some day.

MR. RANDALL JONES: And I -- and because you made that comment, I certainly, at least, want to give you our side of the story or at least our initial side of the story because if this is an argument that needs to be made later, I don't want it to go un --

THE COURT: You know if it becomes an issue later

I'm going to give you an opportunity argue and if it becomes an issue where reviewing the now revised privilege log and revised redacted documents, most of which are sitting in the vestibule of my office at the moment, if it appears to me there has still been such a dramatic shortfall, I think it will be a significant hearing that we have.

If, on the other hand, it looks like that when you got a fresh shot at it that you had an opportunity to do the right thing and you did the right thing and what I've got back there and what's on the Advanced Discovery website are, in fact, arguably privileged, even though I may disagree with some of them that you designated, then it's a different discussion and I talk to Mr. Pisanelli about what the attorneys' fees are that he's incurred in the last few months as a result of this additional delay.

So, --

MR. RANDALL JONES: And, Judge, --

THE COURT: -- I've got these two different things that I might get, but I've got to finish the review before I can get there and I have to look at them more.

MR. RANDALL JONES: But that's -- I --

THE COURT: And I've told Mr. Pisanelli that. He doesn't like it, but I've got to look at them all.

MR. RANDALL JONES: Well -- and, Your Honor, just

for the record, I don't like that you would still consider that there would be any appropriate sanction later on because I do think we've tried as best we could in good faith --

THE COURT: Do you know how many hours I spent on it the first time before you guys decided to redo it? That's frustrating for a judge who already has limited time, Mr. Jones, to go through that effort, come in and have a discussion with counsel, and then have the recognition that something should be changed and I recognize that from your perspective, you were relying on what you believe to be very competent prior counsel and their work.

MR. RANDALL JONES: And I appreciate that, Your Honor, and, by the way, I -- we certainly understand you have a busy docket and I would hope that you would understand that we don't want to do anything to increase your burden unnecessarily and to the extent that there was -- that did occur, and I certainly saw and heard some of your frustration at some of the hearings leading up to today on this subject, and I -- as it relates to prejudice, I understand the Court has been -- your -- you've told us that you've been significantly inconvenienced and frustrated by this --

THE COURT: Well the biggest part is the --

MR. RANDALL JONES: -- process.

THE COURT: -- window I have from when CityCenter decided they wanted to have that month continuance, that window was when I was going to look at these documents. Because of the hiccup, and then the secondary problem with Advanced Discovery when I went on and looked at all the documents and then all of a sudden they get changed in the middle of my review, which I know they still haven't explained, but it happened, has caused me to then have to find another window of time, which may not be until my December break of CityCenter, to be able to sit down there and look at these documents. And that's what the real issue is, Mr. Jones, is the timing issue.

MR. RANDALL JONES: And let me leave you with this. The point about the additional review is to -- and because there's a point they made about we want a do over and change the privilege log. As you know, we're not adding anything to the privilege log. We're taking things away from the log.

THE COURT: Absolutely. And I appreciate that.

MR. RANDALL JONES: And so, the point being, hopefully, whatever time was lost by the Court in the review, will be made up by the reduction in the number of documents that you have to review, which we believe will be in excess of 50 percent based on, I think, what we're

seeing so far.

THE COURT: That's why your brother convinced me to stop the review I was doing because he was telling me it was going to be 30 to 40 percent and then it went up a little bit. So, I'm very glad of the efforts. I'm glad to not have to review all of those documents, but it did cause this timing delay that is a significant issue.

MR. RANDALL JONES: So, I hope the Court would take into account the fact that we have substantially reduced the burden on the Court which would at least lesson the time that it would take to review the documents at the end of the day and I'll leave it at this, Your Honor. Assuming, because of CityCenter, that we aren't able to get to this evidentiary hearing until well after you've had a chance to review the privileged documents and make your ruling, then there would be no actual privilege -- or prejudice to Mr. Jacobs because he will have had the documents in sufficient time to prepare himself for the evidentiary hearing.

And so, I would ask the Court to keep an open mind about those issues and consider those as well as giving us the opportunity at a later date, if the Court thinks it's necessary, to address this issue again.

THE COURT: Oh, absolutely.

MR. RANDALL JONES: Thank you.

THE COURT: Mr. Pisanelli.

MR. PISANELLI: My final points, Your Honor, it always seems -- it's always interesting to me that the party that has caused delay, in this case three years, seems to say no harm, no foul. I guess time is on their side. If this takes 45 years to get to an actual hearing, no harm, no foul because you ultimately got what you fought so hard to get, which, by the way, should have been voluntarily disclosed.

So there is not a lot of credibility that should be given to an argument that they have not caused any prejudice in this case.

I'll leave Your Honor with two points. Counsel tells you that the log deficiencies for two years didn't cause the delay apparently because the other bad things they were doing caused delay. I'm not sure you can ever, with a straight face, say: Don't sanction me for this behavior because it would have happened anyway because I was so bad in the other behavior. They can't really take shelter from their own bad conduct which caused delay.

But, with that said, it's still not true. Recall part of this delay was the assertion of privilege that -- from Sands China, for these documents. They went to the Supreme Court and claimed privilege on documents, now 7,000 of which were never privileged in the first instance and

they released them after the delay had already occurred. After the Supreme Court sent them back, they released 7,000 documents and said now that there was no causal connection between that improper assertion and the delay -- this current delay that we're suffering. That's just not true.

And, finally, Sands China says that they had no opportunity to review the privilege log and that's why up to only weeks ago they still stood behind them saying that they had met their objection. What is left from that story, Your Honor, is that we had two very important events prior to Sands China standing before you and saying that the log was good enough. One was extensive meet and confers very recently, just before that hearing.

And, most importantly, Ms. Spinelli wrote a thesis on the problems with this privilege log two years ago that were in the possession of all counsel, past and forward. And so to claim that they didn't have a chance to review the log isn't exactly accurate. They chose not to review the log. They chose to ignore all of the deficiencies set forth in Ms. Spinelli's letter and they chose to ignore what we brought to their attention in our meet and confer. To suggest they didn't have a chance, poor Sands China, I don't think really comports with the evidence of what we know here.

Taking all of this into consideration, Your Honor,

I won't beat the dead horse but I think now is the time. They've had more than enough chance. They've done what they can to continue to delay this process and we think there should be some consequences to it.

THE COURT: Okay. The motion is denied without prejudice through after I finish the review of the in-camera and redacted documents that -- which the claim of privilege is based.

Is that -- did we basically combine bot of the arguments, Mr. Pisanelli, or do you want to argue the one separately?

MR. PISANELLI: No the other separate one really is a different issue.

THE COURT: I'm happy to listen.

MR. PISANELLI: So this argument of waiver, Your Honor, is founded upon three things, first of which, of course, is the Supreme Court's mandate from its recent opinion issued 2014, this year. The other is the undisputed fact of Jacobs' possession and how long he's had them, the manner in which he's possessed them, and the open notice. And the third, which is as important as those two, is the lack of evidence that was presented to you from Sands China to somehow rebut that they did not waive the attorney-client privilege as it relates to the documents in Mr. Jacobs' possession. You'll note --

THE COURT: You're talking about the delay between Mr. Campbell and Ms. Glaser's communications and disclosures related to the documents?

MR. PISANELLI: We're talking about the delay from when -- it really is prior to, but I'll just, for the sake of debate, say the delay starts when Mr. Jacobs is escorted to the border to leave Macau. That day is when this delay begins, because we know from Patty Glaser's own words, when she first communicates with Mr. Campbell, that she has had communications with people inside of her company that led her to believe that Mr. Jacobs has possession of documents. Her words. That she has, quote:

> Reason to believe, based on conversations with existing and former employees and consultants of the company, that Jacobs, her word, had stolen company property, including, but not limited to, --

And then she focused on these investigative reports, which were apparently quite sensitive to them that they wanted back.

The exchange then starts with Mr. Campbell who tells her: Yes, I'll have them and I'll give you the originals back, but understand one thing, Mr. Jacobs, like other executives who have access to privilege communication, and he travels around the world and continues to possess those, and were keeping copies. She

doesn't like that and she complains that not only she wants all copies of the investigative reports back, but she also says that she wants everything back. In other words, she starts a letter writing campaign, a little chest pounding, but doesn't do anything about it.

So, the delay that I'm talking about, Your Honor, is starting from her claim to have actual knowledge that Jacobs is possessing something to standing here today to take an analysis of what did Sands China do between that time in 2010, as we stand here today, what did they do, as the law requires them, to somehow retrieve these documents back from Mr. Jacobs? The answer, at the end of the day, is nothing. They wrote some letters. The law tells us that's not good enough. They communicated: We want our stuff back. You stole them. That's not good enough.

They actually even filed, somewhere along the way, motions in limine not to use them in the evidentiary hearing, but you don't see a motion anywhere from Sands China over that entire period of time going all the way back to 2010 that they did anything about it.

What they did do --

THE COURT: Is have their friends at Las Vegas Sands file something.

MR. PISANELLI: Do you remember that?

THE COURT: I don't remember anything about it.

MR. PISANELLI: The first time Patty Glaser --

THE COURT: Oh please. Please don't point at Mr. Kostrinksy. He's here for something else.

MR. PISANELLI: And what a remarkable coincidence that is.

So you remember it. Patty Glaser was in the front row pretending not to be the puppet master on that motion because Sands --

MR. RANDALL JONES: Your Honor, I'm going to object.

MR. PISANELLI: -- didn't want to come up in front --

MR. RANDALL JONES: These pejorative comments about counsel are inappropriate and Mr. Pisanelli --

THE COURT: Overruled.

MR. RANDALL JONES: -- likes to --

MR. PISANELLI: Thank you.

MR. RANDALL JONES: -- do it.

THE COURT: Overruled.

MR. PISANELLI: And then the next time Sands China came in here to sanction me and Todd Bice because we had actually bate stamped the documents that they had already disclosed, then Mr. Ma was in the back of the room, but never coming across the bar to actually assert what their company was obligated to assert as a retrieval of their

documents. It never happened in this case. So --

THE COURT: Well don't you think this goes to maybe if they ask for that affirmative relief there might be jurisdiction against them?

MR. PISANELLI: Of course that's the --

THE COURT: Okay. All right. I was just --

MR. PISANELLI: -- reason they did it, but --

THE COURT: -- trying to make --

MR. PISANELLI: -- do they get to --

THE COURT: -- sure we all understand what the real reason is.

MR. PISANELLI: Sure. But there's a consequence to that choice, too, right? That we have a company who now claims that someone else was doing their bidding for them and they even tried to claim that -- I think it was the *Teleglobe* [phonetic] case that companies can do that. Interestingly enough, *Teleglobe* [phonetic] said the exact opposite. We can't ignore the corporate forum when one party wants to gain an advantage here, avoiding personal jurisdiction, and pretend like it's one company so that their parent can go in and make their fight.

There's one party who owns these documents. That party was a -- in the audience. They weren't a participant. They didn't come in here and ask you for any relief. In other words, they didn't do what the law

requires them to do. And so we stand here today with what has to be a concession that Sands China did nothing.

And so, the second part of the analysis then has to be: How long did they do nothing? Even if we give them credit for what their parent did, which really was only one motion that went nowhere, that was still a two month delay by their analysis. But the truth of the matter is they haven't shown anything, by way of evidence, of how long they've actually known.

Recall what I said at the beginning. Patty Glaser tells Don Campbell immediately when Steve Jacobs in 2010 is discharged that we want our stuff back. They then, in this case, cite to Patty Glaser and her statements, not sworn statements, her statements at this very podium to say that we didn't know until Colby Williams wrote a letter saying I have privileged material and immaterial information, they let them know. And they equate and ask Your Honor to assume that the date that Colby Williams discovers there may be privileged information is the same day that they discovered that we had, Mr. Jacobs had privileged information.

The question then has to be: What evidence do you have Sands China, what evidence have you presented to this Court, to prove that those are the same dates? Because it's inconsistent with Patty Glaser -- with what Patty

Glaser said a year earlier, two years earlier, or a year earlier, going all the way back to June of 2010.

Instead of giving the declaration from those past and former employees that she talked about in June of 2010, they ignore those. They don't even give a declaration from Patty Glaser herself. They simply give the in court statements at this podium when she said to you: Your Honor, we didn't know until Colby Williams sent that letter. I can give you some sworn testimony if you want it. All right. I want it. And I imagine Your Honor wants it.

Where is it? Where has Sands China met its evidentiary burden, as they're obligated to do, to show you two things: When it was when they knew that Steve Jacobs, like virtually every other executive in the world, is in the possession of documents that he, as you said, communicated with, on, he was a recipient of them, he was an author of some of them? Where is the evidence of when they knew that when they took him to the border with his laptop in hand that they didn't know it was on that laptop? Where's their evidence of that? It's absent. All we have is Patty Glaser's words.

And then the second step is where is the evidence of what they did to protect it? Their burden. We've cited cases from federal courts, from state courts, from the Nevada Supreme Court. It's everywhere. It's their burden

to show that this information remained confidential and that they were very protective of it and tried to get it back.

The second --

THE COURT: Don't you think the efforts of Las Vegas Sands in trying to protect that information is something that I should consider for purposes of the evidentiary hearing as opposed for the waiver? Because we have the same similar argument about: Okay, so we have Las Vegas Sands still pulling all the strings here, which has been your argument throughout.

MR. PISANELLI: Sure.

THE COURT: That's why I have additional evidence by what's happened in my courtroom --

MR. PISANELLI: Sure.

THE COURT: -- about what's part of that jurisdictional argument. Isn't that how you are more effectively --

MR. PISANELLI: I think --

THE COURT: -- able to use that?

MR. PISANELLI: I think the answer, Your Honor, has to be both. It has to be both that the way they're -- the parent is conducting their business in the jurisdiction has to be taken into consideration of whether that company is subject to jurisdiction of this Court, but we also have

to say that these documents, really that are at issue, which we haven't yet had to deal with yet, the documents in possession of Mr. Jacobs that are at issue of the very claims that we someday litigate, that has to be governed by Sands China's behavior.

If here is a privilege there, we have to decide: Does Sands China try and set the default setting as no disclosure, unless there's an at issue waiver? Do they get that default setting if they never protected the documents in the first place? In other words, Sands China treated these documents from day one, when they escorted Mr. Jacobs to the border, they treated these documents as rightly in his possession. We know that because they didn't do anything to get them back.

As I said earlier, there's no evidence in the record of when they knew and so we have to assume that the evidence that they didn't give us, the evidence that Patty Glaser alluded to twice in a letter to Campbell and later in this courtroom, since they didn't present it to you, we have to conclude that it's bad for them and that all evidence will point to what we probably all assume, that they knew even before Jacobs was terminated what he possessed.

And so the second step then is: What did they do to protect it? If the answer is nothing, you've sat on

your hands for two years and done nothing, then the law tells us that there is a waiver there and Mr. Jacobs can defend himself with the same evidence that they're in possession of and show that these communications that go to the heart of the issues in this case are not only rightly in his possession, but can rightly be reviewed by his lawyers and presented to Your Honor or someday a jury to show that the claims and the defenses put forth by Sands China in this case are frivolous.

That's really, at the end of the day, what we're doing. It's that they're trying to hide the truth. Right? That's what a privilege is and I'm not making it up and counsel can be angry that that's pejorative, too, but the Supreme -- our Supreme Court and every court in the land says that we interpret attorney-client -- the assertion of the attorney-client privilege narrowly because it impedes the search for the truth and that's what we're doing here.

They are trying to take relevant and material evidence that will go the heart of this case, take them out of the picture so that the truth will be something short of a clean and clear picture. That's why every court that addresses privilege says: Very, very narrow interpretation. That's why every court that addresses this issue for parties like Sands China, that does nothing, nothing to protect the privilege, if it existed in the

first place, it's been waived.

So it' a very long-winded way of answering your question -- say that it's both. That it has to be taken into consideration as a factor for personal jurisdiction in this courtroom and there -- it should be released so that we can use that evidence both in the jurisdictional debate and the merits debate.

THE COURT: Thank you.

MR. PISANELLI: Thank you.

THE COURT: Mr. Jones.

MR. RANDALL JONES: Yes, Your Honor. Well, Mr. Pisanelli is right about one thing. He is right. I am angry. I'm angry when they try to take the law, as I certainly understand it, and has been interpreted by every judge and the Discovery Commissioner --

THE COURT: Well but here's --

MR. RANDALL JONES: -- that I've been in front of --

THE COURT: Here's the deal, Mr. Jones. Do you know who tried to get the documents back from Mr. Jacobs? Do you know who it was? It was Justin Jones. Remember? Justin filed -- well, you weren't here yet. Steve remembers. It was Justin Jones because we had a stay in place and we had some issues, so he filed a separate lawsuit.

MR. RANDALL JONES: I understand -- I've seen the record. I've read the record.

THE COURT: On behalf of Las Vegas Sands, not Sands China.

MR. RANDALL JONES: This was totally appropriate under the circumstances.

THE COURT: And why?

MR. RANDALL JONES: Because in those documents, Your Honor, were documents that related to privilege between Las Vegas Sands and Mr. -- and other parties.

So there were -- in other words, Las Vegas Sands had a dog in that fight.

THE COURT: Well, sure. They had the drive at their office.

MR. RANDALL JONES: Well, they had a dog in the fight because they had privileged documents they wanted to protect, but in addition to that, less than a month later, on September 28th, Las Vegas -- or Sands China, Limited, filed its own motion with this Court and you brought up an issue that Mr. Pisanelli had to admit because you, essentially, put it to him that the reason that Sands China was hesitant initially to get into that fight is because they didn't want to have to play the game of gothca with Mr. Jacobs and his counsel.

So, -- and the Court certainly understood --

THE COURT: I recognize that.

MR. RANDALL JONES: So, you have a party who has standing to bring that motion who brings and we -- I'm certainly happy to go through that timeline because I think that timeline not only belies everything that Mr. Pisanelli has said, it shows that Mr. Pisanelli more so, in my opinion, than his predecessor counsel, directly violated the rules that I think I'm supposed to comply with.

Well let me ask you, Your Honor. Am I to be -- understand from you, and I've been in this situation with you before on both sides of this issue, that I can receive privileged documents from a third party or my client, for that matter, and that I can keep these documents and I can call up the other sides and say: I've got some of your documents. I'm not going to tell you what they are, how many they are, but I can tell you this. I've looked at them a little bit and I -- enough to determine there are privileged documents in here and even though you've demanded a four -- excuse me, eight months before that if that client has any documents of my client, that you give them back immediately, even though that's happened, I get to tell the other attorney: Look, I've got these privileged documents. I don't know how many there are in there, but I'm going to keep them. And --

THE COURT: You and I both know there's ethical

issues there --

MR. RANDALL JONES: Yes, there are.

THE COURT: -- and Nevada has not adopted clawback as part of its --

MR. RANDALL JONES: Well --

THE COURT: -- rules and --

MR. RANDALL JONES: -- what Nevada has adopted --

THE COURT: -- until Nevada has adopted clawback, there is a very gray ambiguity there.

MR. RANDALL JONES: Well, Judge, we have the --

THE COURT: But there's a --

MR. RANDALL JONES: -- *Merits and Sitive* [phonetic] case that says what a duty of a lawyer is under these circumstances and I certainly don't believe that in this case that duty was followed. In addition to professional -- Nevada Rule of Professional Conduct 4.4B, which also requires full disclosure.

Now, what did my client get? Let's talk about his timeline. That's an absurdity. It -- all you've got to do is read the letter that Ms. Glaser sent. She said: We think you have -- we have reason to believe you have three reports and it may have other stuff. May, don't know, but may. But if you have those three reports, we want them back and, by the way, if you have anything else, give it back to us.

So, counsel's on notice. Counsel sends a letter. This is November 23rd of 2010. Counsel sends a letter and says: I don't know what you're talking about. I haven't even had a chance to talk to my client, but I'll look into it and let you know. And he writes back and says: Well, I do apparently have one report but I'm keeping it. I'll give you the original, but I'm keeping a copy and I'll talk to him about other stuff, but -- and this is where Mr. Pisanelli has the audacity to say that we disclosed all of these documents where Mr. -- relying on Mr. Campbell's statement that -- and, by the way, I wouldn't be surprised if he has other documents. Terminated employees, in my experience, often, often being the operative word here, have a multitude of documents they keep. So they -- we may have more.

That is blatantly not sufficient under the *Merits and Sitive* [phonetic] case.

Now, I'll give Mr. Campbell the benefit of the doubt that he didn't know what other documents were had because we know in July, July 8th of 2011, Mr. Williams sent an e-mail confirming that they now understood from documents they received a week before. So the week of July 1st, in his e-mail, he says: I've got 11 gigs of ESI and I started looking at some of it and I realized it was privileged and I stopped looking at it because Mr. Campbell

and Mr. Williams are good lawyers and they knew they were risking being disqualified from that case as, by the way, you admonished -- since they like to point at lawyers, you admonished these lawyers that if they wanted to go and look at this stuff while these motions were pending, they were risking being disqualified.

THE COURT: I did tell them that.

MR. RANDALL JONES: Yes, you did. And guess what they didn't do, at least allegedly, unless Mr. Pisanelli wants to get up here and admit something to the Court? They didn't look at them.

So, what has happened with this disclosure? Nothing. We have a motion by my client, Sands China, within three months of having this issue and, by the way, there were at least three meet and confers by August 3rd of 2011 about this issue --

THE COURT: Mr. Jones, Ms. Glaser stood here probably fifteen times and told me there was no way she was producing any documents and no way she was doing anything until I resolved the Motion to Dismiss.

I don't know if you know the history, but it was --

MR. RANDALL JONES: And, Your Honor, I don't know the history like you do. I certainly try to get caught up on the history, but with respect to this issue of whether

or not they complied with their duty, Mr. Pisanelli wants to --

THE COURT: No, I --

MR. RANDALL JONES: -- turn the duties around.

THE COURT: -- understand they have duties. You both have duties. And it's a --

MR. RANDALL JONES: And it's --

THE COURT: -- complex issue and the problem in this case is I had somebody who didn't want to participate in that process.

MR. RANDALL JONES: And, Your Honor, you've addressed that issue. You addressed that issue, what? About two years ago now. And I understand the Court still has concerns about that issue, that is not what we're talking about today.

THE COURT: I know.

MR. RANDALL JONES: Ms. Glaser said, as I understood it, after July 8th of 2011, they did look into what Mr. Jacobs may have taken, we have a different word for what he did, taken from the company. And we had no knowledge of ESI having been taken from the company until after Mr. Williams, Colby Williams, sent that e-mail on July 8th.

And, by the way, as you may recall, he said they think they have 11 gigabytes of documents, undefined. On

May 6th, I think, is when they sent their original disclosures and they have a paragraph that says: Oh, by the way, in addition to about 237 documents, which were all kind of plain vanilla stuff, we also have some ESI. Didn't say what it was, didn't say how much it was, until July 8th and they were only off by about 32 gigs. Instead 11 gigs, I think it was 44 gigs it ultimately ended up being, without any description of what it was, how they got it, when they got it, what was privileged or -- excuse me, other than the fact that it apparently -- some of it was privileged, which is in direct violation of Nevada Supreme Court precedent, the *Merits* [phonetic] case as well as the Rules of Professional Conduct.

So, if anybody should be outraged here it should be my client. You can't shift the burden, which is all they want to do.

And here's the dilemma we are faced with, Judge. There were some mistakes made. There were some mistakes made early on in the discovery process by my client. The Court has addressed those mistakes, but -- through an evidentiary hearing and this Court has said we're going to deal with that at some point in time, but what's -- the problem we're facing, and I understand Mr. Pisanelli's strategy and Mr. Bice's strategy, but it's to essentially take events that happened in the past and relive them every

single hearing we're in front of you on and to try to say: These guys are bad guys, they can never be reformed, and we're going to hold it against them until the end of the case.

And Mr. Pisanelli, I remember one of the first cases I got here in and he made some pejorative counsel about new counsel. I'm sure these are just the new people on the block on a long string of bad counsel that they've had and they'll be gone shortly thereafter. Well guess what?

THE COURT: I just smiled because I knew you guys were going to look at it with a fresh set of eyes.

MR. RANDALL JONES: And we did, Judge, and we're still here and we are trying to make sure -- and I'm not -- I'm telling you right now in open court we're not perfect and we're probably going to make some mistakes in the future, but I can guarantee the Court this. We are going to do everything we can to make sure we do it right and if we make a mistake, we're going to do everything we can to bring it to your attention immediately and to correct it.

And if -- I hope, I hope the Court has enough experience with me and my brother and Mr. Peek and Mr. Morris to give us some benefit of the doubt that we are going to comply with our ethical obligations and our duties to the Court and to opposing counsel and to the opposing

party, and we are going to do what we can to make sure that we comply with the rules and mitigate any errors that may have been made in the past, which I believe we have done and I would ask this Court. Do not let Mr. Pisanelli turn the rules on their head and make it my client's burden for something they were remiss at.

And to suggest, in spite of the lengthy case law we've suggested -- or showed to the Court otherwise, to suggest that the alleged three month delay from July 8th to September 28th or so is sufficient to have created a waiver is an absurdity.

First of all, three months, we've got cases we've cited where they went a couple of years and the Court made reference to the fact that in those cases where the parties agreed not to review the documents during the interim period, which is exactly what happened here, there could be no waiver because there was an agreement by counsel. In this case, Mr. Williams and Mr. Campbell, who we trusted when he told us he wasn't going to review the documents, we believed tehm.

And so there was -- and we told them, after three meet and confers where we couldn't reach an agreement about getting the documents back, and they agreed to continue to abstain from reviewing the documents, we would file the appropriate motions, which happened by September 28th in the

case of *Sands China*. It happened in early September in the case of *Las Vegas Sands*.

So, to suggest -- and, by the way, as you may know, there was an interim order that said you're not going to look at those documents until we get some further direction from the Supreme Court. And then we had the Advanced Discovery protocol in place by December. To suggest that during that time, from July 8th when we actually knew the extent of the documents, to then suggest there's a wholesale waiver of all the privilege of all those documents, when they agreed never to look at those documents without further order of the Court, and then we have an order imposing a prohibition on them reviewing them, is an absurdity and turns the rules on their head.

And if that's the rule, then I assume I can tell Ms. Bulla next time my client gets documents from the opposing party that are privileged, that, by the way, Judge Gonzalez told me I don't have to give those back to you and I can look at them. That is what Mr. Pisanelli is suggesting. And if so, I can't wait to get a case with Mr. Pisanelli where his client's documents are provided to me by my client that include all kinds of privileged documents.

Thank you.

THE COURT: Thanks, Mr. Jones.

Mr. Pisanelli, do you want to wrap up quickly?

MR. PISANELLI: Sands China doth protest too much, Your Honor. We hear lots of arguments about the *Merits* [phonetic] decision. The *Merits* [phonetic] decision doesn't have anything to do with this case. The *Merits* [phonetic] decision has to do whether there's lawyer misconduct on not disclosing to the other side what you may have. It doesn't even touch upon the issue of the burdens of the party who claims a privilege to produce evidence about when they knew and what they did to retrieve it. It's completely a red herring that has nothing to do with anything.

It's also interesting to point out that in one breath, they say that merits controls this issue, that there was attorney misconduct. I'm not sure if he's saying it was me or Don and Colby, but is he upset that we didn't tell them every document we had? Because I think if I did tell them every document that we had, we necessarily would have had to read those documents and then we'd be hearing a different argument: How dare you read the documents and now we want you disqualified. So the point of it is it's a circular argument that has nothing to do with Sands China. It's Sands China's behavior that is the focus of our motion.

And so, I will repeat, I heard a lot of argument.

I heard a lot of anger coming from Sands China, but this is what I didn't hear. Where is their evidence about when they knew what Steve Jacobs had? Silence. Where is the even argument -- where is the point to the record of when they came to this courtroom to retrieve it? Silence.

Instead, he pointed to you to two motions: A motion in limine, which is not a motion to retrieve their documents, and I think he overlooked a motion for sanctions that Sands China filed against us for alleged -- for using documents that were privileged but they seem to forget, you may remember that motion that there -- it was based upon document that they put in the record attached to their own motion and then tried to have us sanctioned for referencing their motion.

So, that's the totality of what they did to protect themselves. No evidence. Nothing to protect themselves.

The Supreme Court told us this year, Your Honor, at footnote 9, in this case, the following.

THE COURT: Yeah, because only one judge can have two writs issued against her on the same day. Same day.

MR. PISANELLI: We direct the District Court to make findings of fact and resolve whether Sands waived any privileges.

That's what they told you to do. In order to make

findings of fact and resolve whether Sands China waived any privileges, we needed to see Sands China's evidence of when they knew. It never came. All we had was reference to Patty Glaser's argument in this courtroom. We needed to see where it was they came to this courtroom and asked for the documents to be returned. It never happened. There's only one conclusion available. It doesn't matter how loudly you yell, it doesn't matter how angry you get, there's only one conclusion available and that is that they waived.

If they think that Colby Williams, or Don Campbell, or me, or Todd Bice, or Debbie Spinelli, or all of us should somehow be sanctioned under the *Merits* [phonetic] decision, then I invite them to file that motion and we'll have that debate at the appropriate time. But whether that happens or not, has nothing to do with whether Sands China protected what they claim to be privileged documents. The clear answer to that question is: No, they did not.

THE COURT: And it's your position that in order to protect the documents, they would have had to file something in Nevada which would have caused them to submit to the jurisdiction of Nevada?

MR. PISANELLI: I think they had to do something and they did nothing. So I think they needed to come into

this courtroom, yes. Would that effort been dispositive as to the personal jurisdiction? I don't know. That's not before us now. It certainly would have been a subject of debate, but they did nothing.

Yeah, it's -- and, again, the smartest person on our team, reminds us that in her letter to Don Campbell, Patty Glaser threatened that if I don't get my records back, I'm either coming to Las Vegas or Macau to get them back. They didn't go to Macau. Certainly no argument ever could have been made that by going to Macau to get relief from a Macau Court that they would have been -- subjected themselves to jurisdiction here or waiving some right not to subject themselves here. They didn't do anything. They didn't come to you. They didn't go to Macau. Didn't go anywhere.

So it's -- we're left with no evidence of when they knew and what has to be a conceded point that they did nothing.

THE COURT: Thank you.

MR. PISANELLI: Thank you.

THE COURT: I'm going to take this under submission. I need to think about it some more. I'm going to schedule it on October 24th on my chambers calendar for decision.

MR. PISANELLI: Thank you.

MR. RANDALL JONES: I just point out that the document that Ms. Glaser requested back was the one report that they admitted they had.

THE COURT: No, I know what report it is.

MR. RANDALL JONES: So if there's any argument of waiver, it's as to a couple of reports, period.

THE COURT: Okay. Anything else?

MR. PISANELLI: Thank you, Your Honor.

THE COURT: Have a nice day.

MR. RANDALL JONES: Thank you.

PROCEEDING CONCLUDED AT 9:25 A.M.

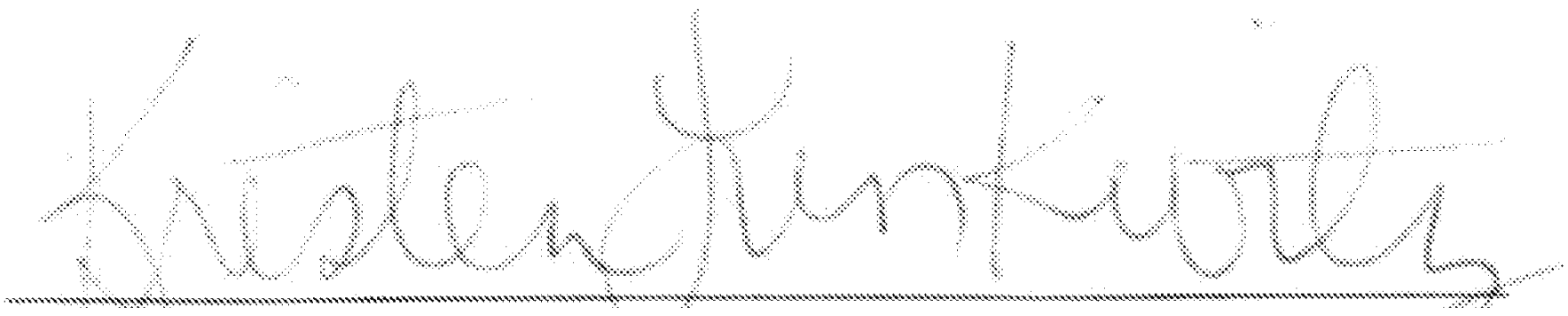
* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

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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; SHELDON G. ADELSON, in his individual and Representative capacity, DOES I through X, ; and ROE CORPORATIONS I through X, Defendants. AND ALL RELATED MATTERS.	Case No. A-10-627691-B Dept. No. XI **DEFENDANT SHELDON G. ADELSON'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT** **DATE: 11/7/14** **TIME: IN CHAMBERS**

Defendant Sheldon G. Adelson opposes plaintiff Steven C. Jacobs' Motion to for Leave to File Third Amended Complaint which, among other things, seeks to add new a new claim (tortious discharge in violation of public policy) against him and the other defendants. Plaintiff's motion for leave to amend, however, is untimely and barred because the

motion addresses issues other than jurisdiction over Sands China. Under the Nevada Supreme Court's August 26, 2011, Order all proceedings unrelated to determining whether the Court has jurisdiction over Sands China are **stayed** "except for matters relating to a determination of personal jurisdiction [over Sands China], until a decision on that issue has been entered." *See* Ex. A, Order at 3. For this reason, the Court should deny the motion to file a third amended complaint.

I. ARGUMENT

A. The Nevada Supreme Court's Stay Order Is Unequivocal; It Mandates Denial of Plaintiff's Motion.

The Supreme Court's August 26, 2011, Order could not be clearer. It unequivocally directs the Court to stay all proceedings in this action except for matters relating to a determination of personal jurisdiction over Sands China. The Supreme Court expressly ordered the Court "to hold an evidentiary hearing on personal jurisdiction, and to **stay this action** as set forth in this order until ***after*** entry of the [this Court's] personal jurisdiction decision." Ex. A, Order at 3 (emphasis added). The pending motion to amend invites this Court to violate the Supreme Court's express Order, which is an invitation the Court should decline.

II. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Leave to File Third Amended Complaint should be denied.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following document to be served via the Court's Odyssey E-Filing system: **DEFENDANT SHELDON G. ADELSON'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

TO:

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Las Vegas Sands Corp.
and Sands China, Ltd.

DATED this 10th day of October, 2014.

By: /s/ PATRICIA CANNON

EXHIBIT A

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE,
Respondents,
and
STEVEN C. JACOBS,
Real Party in Interest.

No. 58294

FILED

AUG 26 2011

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss for lack of personal jurisdiction.

Petitioner asserts that the district court improperly based its exercise of personal jurisdiction on petitioner's status as a subsidiary of a Nevada corporation with common officers and directors. Real party in interest contends that the district court properly determined that he had established a prima facie basis for personal jurisdiction based on the acts taken in Nevada to manage petitioner's operations in Macau.

The district court's order, however, does not state that it has reviewed the matter on a limited basis to determine whether prima facie grounds for personal jurisdiction exist; it simply denies petitioner's motion to dismiss, with no mention of a later determination after consideration of evidence, whether at a hearing before trial or at trial. While the order refers to the district court's comments at oral argument on the motion, the

transcript reflects only that the district court concluded there were "pervasive contacts" between petitioner and Nevada, without specifying any of those contacts. We have therefore found it impossible to determine the basis for the district court's order or whether the district court intended its order to be its final decision regarding jurisdiction or if it intended to consider the matter further after the admission of evidence at trial (or an evidentiary hearing before trial).

In MGM Grand, Inc. v. District Court, 107 Nev. 65, 807 P.2d 201 (1991), we held that jurisdiction over a nonresident corporation could not be premised upon that corporation's status as parent to a Nevada corporation. Similarly, the United States Supreme Court in Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), considered whether jurisdiction over foreign subsidiaries of a U.S. parent corporation was proper by looking only to the subsidiaries' conduct; the Court suggested that including the parent's contacts with the forum would be, in effect, the same as piercing the corporate veil. Based on the record before us, it is impossible to determine if the district court in fact relied on the Nevada parent corporation's contacts in this state in exercising jurisdiction over the foreign subsidiary.

Accordingly, having reviewed the petition, answer, reply, and other documents before this court,[1] we conclude that, based on the summary nature of the district court's order and the holdings of the cases

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[1]Petitioner's motion for leave to file a reply in support of its stay motion is granted, and we direct the clerk of this court to detach and file the reply attached to the August 10, 2011, motion. We note that NRAP 27(a)(4) was amended in 2009 to permit a reply in support of a motion without specific leave of this court; thus, no such motion was necessary.

cited above, the petition should be granted, in part. We therefore direct the district court to revisit the issue of personal jurisdiction over petitioner by holding an evidentiary hearing and issuing findings regarding general jurisdiction. If the district court determines that general jurisdiction is lacking, it shall consider whether the doctrine of transient jurisdiction, as set forth in Cariaga v. District Court, 104 Nev. 544, 762 P.2d 886 (1988), permits the exercise of personal jurisdiction over a corporate defendant when a corporate officer is served within the state. We further direct that the district court shall stay the underlying action, except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered. We therefore

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to hold an evidentiary hearing on personal jurisdiction, to issue findings of fact and conclusions of law stating the basis for its decision following that hearing, and to stay the action as set forth in this order until after entry of the district court's personal jurisdiction decision.[2]

Saitta, J.

Saitta

Hardesty, J.

Hardesty

Parraguirre, J.

Parraguirre

---

[2]Petitioner's motion for a stay is denied as moot in light of this order.

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court	COURT MINUTES	December 12, 2014

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

December 12, 2014 **10:00 AM** **Minute Order re: 10/21/14, 11/10/14, & 11/18/14 Sands China Filings; 10/24/14 Filing by Plaintiff**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

PARTIES PRESENT: None. Minute order only – no hearing held.

JOURNAL ENTRIES

- The Court has reviewed 10/21/14, 11/10/14 and 11/18/14 filings by Sands China providing additional information to the Court as well as the 10/24/14 filing by Plaintiff. The Court NOTES that no affidavits were included with the filings. Based upon this additional information the Court RULES as follows:

With respect to Ferreira, the information provided does not support a claim of functional equivalent which would support inclusion in the group afforded protection.

With respect to the CCKS and CKS recipients, there appears to be no basis to support a claim of joint representation of all involved in the communications, and the information provided does not support a claim of functional equivalent which would support inclusion in the group afforded protection. According to the briefing the ferry fleet was operated by an indirect subsidiary of VML. The information provided does not support a claim of privilege that would extend to the communications involving CCKS and CKS.

With respect to Margalit, there appears to be sufficient information that would support a claim of privilege by an attorney for the AdFam LLC working with Sands China and VML. Accordingly as to those communications the protection is extended.

The Court has attempted to correct all entries related to these 3 issues. Revised entries are included on Court's Exhibit 21 (replacing Court's Exhibit 4); Court's Exhibit 22 (replacing Court's Exhibit 7);

Court's Exhibit 23 (replacing Court's Exhibit 10); Court's Exhibit 24 (replacing Court's Exhibit 13); Court's Exhibit 25 (replacing Court's Exhibit 16); Court's Exhibit 26 (replacing Court's Exhibit 17); Court's Exhibit 27 (replacing Court's Exhibit 18); and Court's Exhibit 28 (replacing Court's Ex. 20).

CLERK'S NOTE: A copy of the above minute order was distributed to the parties via electronic mail. / dr

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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

DEFENDANT SANDS CHINA LTD.'S MOTION TO DISMISS THIRD AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND FAILURE TO STATE A CLAIM

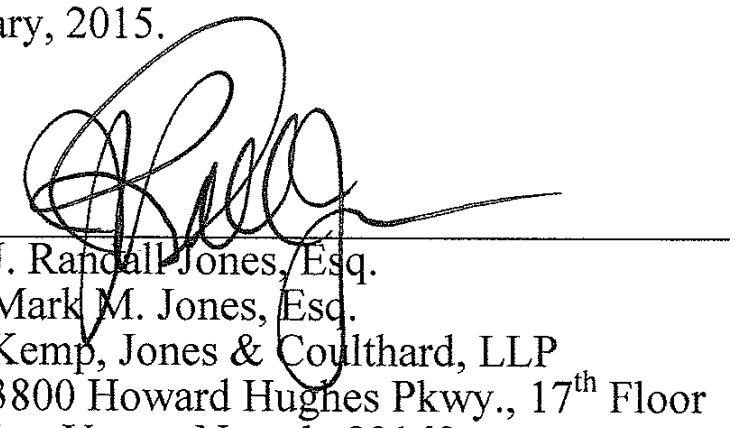
Date: 02/12/15
Time: 8:30 AM

Defendant Sands China Ltd. ("SCL"), by and through its undersigned counsel of record, hereby moves to dismiss Plaintiff Steven C. Jacobs' Third Amended Complaint for lack of personal jurisdiction and failure to state a claim upon which relief can be granted.

This Motion is made pursuant to Nevada Rules of Civil Procedure 12(b)(2) and 12(b)(5), and is based on the papers and pleadings on file with this Court, the Memorandum of Points and

Authorities attached hereto, and any and all oral arguments this Court may entertain in this matter.

DATED this 12th day of January, 2015.



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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

YOU, and each of you, will please take notice that the undersigned will bring the above and foregoing **DEFENDANT SANDS CHINA LTD.'S MOTION TO DISMISS THIRD AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND FAILURE TO STATE A CLAIM** on for hearing before the above-entitled Court on the 12 day of February, 2015, at the hour of 8:30 a.m./~~p.m.~~ in Department XI of the Eighth Judicial District Court.

DATED this _____ day of January, 2015.

UNSIGNED
DISTRICT COURT JUDGE

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As it applies to SCL, Jacobs' Third Amended Complaint is a desperate attempt to fabricate some basis for asserting personal jurisdiction over some claim against SCL. In addition to reasserting his defamation claim against all three Defendants, Plaintiff has added claims for civil conspiracy and aiding and abetting against SCL, accusing SCL of either conspiring with its parent company, Las Vegas Sands Corp. ("LVSC"), to tortiously discharge him in violation of public policy or aiding and abetting LVSC's supposed commission of such a tort. Even if they were timely and legally viable, those claims would not provide a basis for exercising personal jurisdiction over SCL. But those claims are *not* timely, nor are they legally viable. Plaintiff's new claims are barred by Nevada's three-year statute of limitations. His attempt to hold SCL liable for his purported tortious discharge also fails on the merits because a corporation cannot conspire with or aid and abet its own wrongful conduct. The only way SCL could be liable for conspiracy or aiding and abetting LVSC's alleged tortious discharge would be through the conduct of SCL directors or employees who are *not affiliated with LVSC*. But Plaintiff does not identify any such individuals who allegedly participated in his termination; on the contrary, he affirmatively alleges that SCL's independent directors did not know the real reasons for his termination. Under those circumstances, there is no basis for holding SCL liable for LVSC's alleged wrongdoing.

As to Plaintiff's renewed defamation claim, SCL adopts the merits arguments Mr. Adelson makes in his separate motion to dismiss. But even if Plaintiff's defamation claim were legally viable (which it is not), the Court also lacks jurisdiction over SCL with respect to that claim.

Finally, SCL incorporates by reference herein the jurisdictional and merits arguments it has previously asserted with respect to Plaintiff's original breach of contract claim against it (Plaintiff's Second Cause of Action). For the reasons outlined in SCL's motion for summary judgment on personal jurisdiction and to be presented at the evidentiary hearing scheduled for April 20, 2015, the Court lacks general jurisdiction over SCL. And Plaintiff's belated claim of

specific jurisdiction over SCL with respect to his breach of contract claim is not only waived but wrong; the contract that was allegedly breached (an options agreement between SCL and Jacobs that Jacobs never accepted) was negotiated, to be performed, and allegedly breached in Hong Kong or Macau and thus cannot provide a basis for asserting specific jurisdiction over SCL in Nevada.[1]

II. BACKGROUND

In his Third Amended Complaint ("TAC"), Jacobs continues to allege that he was employed, and then wrongfully terminated, by LVSC. TAC ¶ 23. According to the TAC, Jacobs was "terminated for blowing the whistle" on alleged "improprieties," including Mr. Adelson's supposed decision to conceal information on a variety of issues from the SCL Board. TAC ¶¶ 32, 36, 46, 47. Jacobs contends that Mr. Adelson planned and carried out a "scheme to fire and discredit Jacobs" (¶ 37), using LVSC executives and in-house counsel to plan his termination in Las Vegas and then to carry it out in Macau. *See* TAC ¶¶ 38-41. In his Fourth Cause of Action, Plaintiff accuses LVSC of terminating him in violation of public policy because he allegedly refused to participate in illegal conduct and instead attempted to engage in conduct that was "required by law and favored by public policy." TAC ¶ 67.

Jacobs does not allege that SCL's Board of Directors knew that he was being terminated in violation of public policy. On the contrary, he alleges that Mr. Adelson prevented him from disclosing alleged wrongdoing to the SCL Board and that Board members "sign[ed] the corporate documents necessary to effectuate Jacobs' termination" based on a promise by LVSC's in-house attorneys "to explain the basis for the termination" *after* it was accomplished. TAC ¶ 39; *see also* ¶¶ 30(e), 36. Nevertheless, in his newly added Seventh Cause of Action, Jacobs accuses SCL, acting through unnamed "agents," of "substantially assist[ing]" LVSC's purported tortious discharge in violation of public policy by "among other things, making

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[1] On the merits, as SCL argued in its 4/20/11 Motion to Dismiss the First Amended Complaint, Jacobs still fails to state a claim for breach of the options agreement because (i) he does not (and cannot) allege that he accepted that agreement by signing it, as the agreement required, and (ii) under the plain language of the agreement, Jacobs' options automatically terminated when his employment ended in July 2010, regardless of whether his termination was with or without cause.

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[unidentified] agreements with LVSC, carrying out overt acts to effectuate the termination and ratifying the termination for the benefit of Adelson and LVSC." TAC ¶ 87. Similarly, in his newly added Eighth Cause of Action, Jacobs alleges that LVSC and SCL "acted in concert and conspired to effectuate Jacobs' tortious discharge," though he does not say who, acting on behalf of SCL, supposedly entered into an agreement with LVSC to do so. In addition, Plaintiff alleges that both entities "intended to harm Jacobs for refusing to follow the illegal and improper demands of their common-chairman, Adelson." TAC ¶¶ 93-94.

The TAC also reiterates the defamation claim that this Court had previously dismissed, against Mr. Adelson, LVSC and SCL. The defamation claim is predicated on an email Mr. Adelson sent to a *Wall Street Journal* reporter after a hearing in this case, in which Mr. Adelson broke his previous silence to publicly deny Jacobs' accusations that he had been fired without cause because he was attempting to prevent illegal conduct. Mr. Adelson repeated the Defendants' position in the case, stating that "[w]e have a substantial list of reasons why Steve Jacobs was fired for cause and interestingly he has not refuted a single one. Instead, he has attempted to explain his termination by using outright lies and fabrications which seem to have their origins in delusions." TAC ¶ 71. Plaintiff contends that Mr. Adelson made these statements not only in his personal capacity but also in his capacities as Chairman of both LVSC and SCL, both of which he claims somehow "ratified or endorsed these statements either explicitly or implicitly" and therefore should be held liable for Mr. Adelson's statements. TAC ¶ 74.

This Court previously dismissed Jacobs' defamation claim against all three defendants, on the ground that Mr. Adelson's statement was absolutely privileged because it was made during the course of a judicial proceeding. On appeal, the Nevada Supreme Court reversed in a 4-3 decision, *Jacobs v. Adelson*, 130 Nev. Adv. Rep. 44, 325 P.3d 1282 (2014). But the Supreme Court declined to consider Mr. Adelson's alternative argument that Jacobs' defamation claim should be dismissed because his statement was protected by the conditional privilege of reply, specifically leaving that issue open for this Court to consider on remand. 325

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P.3d at 1288. For the reasons outlined in Mr. Adelson's motion to dismiss, the Court should dismiss Jacobs' renewed defamation claim on the merits on that and other grounds.

III. ARGUMENT

A. The Court Lacks Jurisdiction To Consider Plaintiff's Third Amended Complaint.

As explained in Defendants' Opposition to Plaintiff's Motion for Leave to File his Second Amended Complaint, filed on July 15, 2014, this Court lacks jurisdiction either to allow an amendment or to consider the merits of any amended pleading, in light of the stay the Nevada Supreme Court directed this Court to enter in its August 26, 2011 Order.[2] Under that Order, the action is stayed "except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered." *See* Ex. A hereto. If the Court does consider the merits of the TAC, however, Plaintiff's claims against SCL should be dismissed, both on the merits and for lack of personal jurisdiction.

B. Plaintiff's Conspiracy And Aiding And Abetting Claims Are Time-Barred.

Although there is no Nevada case directly on point, Jacob's claim for tortious discharge in violation of public policy should be governed by the three-year statute of limitations in NRS § 11.190(4)(e). *See Stalk v. Muskin*, 125 Nev. 21, 199 P.3d 838 (2009) (holding that NRS § 11.190(4)(e) applies to claims for intentional interference with prospective business advantage and contractual relations because those claims seek damages to business interests, which are property rights). *But see Sorenson v. Pavlikowski*, 94 Nev. 440, 444, 581 P.2d 851 (1978) (holding that the four-year statute of limitations in NRS § 11.190(2)(c) applied to claims such as legal malpractice that "sound[ ] in tort for interference with intangible property interests"). Whether the statute is three or four years, however, Jacobs' new claims against SCL are untimely because he was terminated on July 23, 2010, but did not file the TAC until more than four years later, on December 22, 2014.

[2] Although the Court granted him leave to file a Second Amended Complaint, Plaintiff did not do so, instead seeking leave to file and filing the TAC after the Nevada Supreme Court issued its mandate with respect to the defamation count.

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Those claims cannot be salvaged on the theory that they "relate back" to the original complaint. In his original complaint (filed on October 20, 2010) and his first amended complaint (filed on March 16, 2011), Plaintiff alleged the very same claim for tortious discharge in violation of public policy against LVSC that appears in the TAC. But he did not seek to hold SCL liable for his termination under *any* theory. Instead, his sole claim against SCL was limited to a breach of contract claim involving his options agreement with SCL. In that claim (which remains the Second Cause of Action in the TAC), Plaintiff did not allege that SCL bore any responsibility for his termination, but rather claimed that SCL had improperly accounted for the consequences of his termination when it declined to treat his options as having vested.

To be sure, Plaintiff sought to ensure that he could later expand his claims and the universe of defendants he named by claiming that as yet unknown "John Doe" or "Roe Corporation" defendants were "responsible in some manner for the events and happenings herein referred to." Complt. ¶ 4; First Am. Complt. ¶ 5. But this ploy avoids the statute of limitations through relation back only if the plaintiff exercises "'reasonable diligence in ascertaining the true identity of the intended [John Doe] defendants and promptly mov[es] to amend the complaint in order to substitute the actual for the fictional.'" *Sparks v. The Alpha Tau Omega Fraternity, Inc.*, 127 Nev. Adv. Rep. 23, 255 P.3d 238, 242 (2011) (quoting *Nurenberger Hercules-Werke v. Virostek*, 107 Nev. 873, 881, 822 P.2d 1100, 1106 (1991). "What constitutes 'reasonable diligence' . . . is a question of law." *Sparks*, 255 P.3d at 243.

Here, it is clear that Plaintiff did not meet his burden because he could have (and should have) made the same claims against SCL when he filed his original complaint. Plaintiff has alleged all along that his termination was orchestrated by Mr. Adelson and other LVSC executives. The TAC does not allege any newly discovered facts showing that the SCL Board was involved in the decision to terminate him or was aware of what Jacobs claims were the real reasons why he was being terminated. On the contrary, the TAC continues to allege, as the two previous versions of the complaint did, that Mr. Adelson prevented Jacobs from providing information about alleged wrongdoing to the SCL Board. In addition, the TAC affirmatively alleges that the SCL Board was *not* told why Jacobs was being terminated. Thus, Plaintiff seeks

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to hold SCL liable under conspiracy and aiding and abetting theories for the actions of Mr. Adelson and other LVSC executives who he claims were somehow also acting as agents of SCL. That theory is wrong as a matter of law. But for purposes of the statute of limitations analysis, the important point is that nothing prevented Jacobs from making that claim when he filed his original complaint or later when he filed his First Amended Complaint. That Jacobs has belatedly decided to assert those claims in the transparent hope of finding some claim, however weak, on which to predicate personal jurisdiction is hardly a reason for finding that he acted diligently to seek leave to amend his complaint. Accordingly, the new claims against SCL in the TAC do not relate back and are barred by the statute of limitations.

C. Plaintiff Has Not Stated A Claim for Conspiracy Or Aiding And Abetting.

Both civil conspiracy and aiding and abetting seek to impose vicarious liability on a party who affirmatively agrees to participate in, or knowingly and substantially assists, another person's commission of a tort. In this case, both claims fail on the merits for two reasons. First, Jacobs has failed to state a claim for tortious discharge in violation of public policy. Second, even if Jacobs had stated a claim against LVSC, he has not alleged any basis for holding SCL vicariously liable for LVSC's conduct.

1. Jacobs Has Not Properly Pleaded The Underlying Tort.

As Mr. Adelson points out in his separate motion to dismiss, Jacobs' claim that he was wrongfully discharged in violation of public policy is based on his characterization of himself as a "whistle-blower." TAC ¶ 47. But the Nevada Supreme Court has long held that a claim for tortious discharge does not lie where the purported whistleblower did not report his employer's alleged illegal activities to the proper authorities *outside* of the company. *See Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293, 774 P.2d 432, 434 (1989); *Bielser v. Professional Sys. Corp.*, 321 F.Supp.2d 1165, 1169 (D. Nev. 2004). These cases hold that mere "internal reporting" of alleged illegal activity "cannot support a tortious discharge claim under Nevada law." *Id.* Yet that is all Jacobs alleges here, claiming that he reported alleged "improprieties" to Mr. Leven and to LVSC's general counsel. TAC ¶ 31. Because this is not enough to support a tortious

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discharge claim against LVSC, Plaintiff's conspiracy and aiding and abetting claims against LVSC must also be dismissed.

2. Conspiracy Requires An Agreement Between Distinct Parties.

A second, independent reason for dismissing Plaintiff's conspiracy claim against LVSC is that the TAC does not allege any facts to support Plaintiff's conclusory assertion that SCL conspired with LVSC to terminate his employment with LVSC in violation of public policy. "An actionable [civil] conspiracy consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the acts or acts." *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1488-89, 970 P.2d 98, 112 (1998) (quoting *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989)).[3] To hold a defendant liable for conspiracy, "a plaintiff must prove an agreement between the tortfeasors, whether explicit or tacit." *Mahlum*, 114 Nev. at 1489, 970 P.2d at 112; *see also GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (Nev. 2001). This agreement "need not be in any particular form and need not extend to all the details or the conspiratorial scheme so long as its primary purpose is to cause injury to another." *Eikelberger v. Tolotti*, 96 Nev. 525, 528 n.1, 611 P.2d 1086, 1088 n.1 (1980); Restatement (Second) of Torts § 876(a), cmt. a. But for an agreement to exist, there must be two distinct persons who entered into it: it is well-settled that a person cannot conspire with himself. *Nelson Radio & Supply Co. v. Motorola, Inc.*, 200 F.2d 911, 914 (5th Cir. 1952); *see also Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984).

The TAC alleges that "LVSC and Sands China are separate legal entities, each *capable* of making agreements." TAC ¶ 91 (emphasis added). While that is undoubtedly true, the critical questions here are *who*, acting on behalf of the two entities, supposedly entered into an agreement to terminate Jacobs; *when* was the agreement made; and *what* did the person who

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[3] For purposes of this motion to dismiss, SCL assumes that Nevada law applies. However, because the alleged tort and resulting injury took place in Macau, Nevada choice of law rules strongly favor applying Macanese law to Plaintiff's conspiracy and aiding and abetting claims. *See Gen. Motors Corp. v. Dist. Ct.*, 122 Nev. 466, 474-75, 134 P.3d 111, 117 (2006). SCL reserves the right to argue the application of Macanese law should the Court sustain the TAC.

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