

CERTIFICATE OF SERVICE

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

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SERVED VIA HAND-DELIVERY ON 07/22/2015
The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

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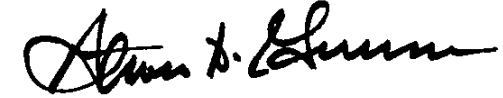
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| 1 | Plaintiff's Jurisdictional Ex. 624, admitted on 4/20/2015 | VI | SA1288 – SA1360 |
| 2 | Plaintiff's Jurisdictional Ex. 627, admitted on 4/22/2015 | VII | SA1461 – SA1462 |
| 3 | Plaintiff's Jurisdictional Ex. 628, admitted on 4/22/2015 | VII | SA1459 – SA1460 |
| 4 | Plaintiff's Jurisdictional Ex. 638, admitted on 4/22/2015 | VII | SA1489 – SA1490 |
| 5 | Plaintiff's Jurisdictional Ex. 661, admitted on 4/21/2015 | VI | SA1412 |
| 6 | Plaintiff's Jurisdictional Ex. 665, admitted on 4/20/2015 | VI | SA1283 – SA1287 |
| 7 | Plaintiff's Jurisdictional Ex. 667, admitted on 4/22/2015 | VII | SA1491 – SA1493 |
| 8 | Plaintiff's Jurisdictional Ex. 668, admitted on 4/20/2015 | VI | SA1270 – SA1277 |
| 9 | Plaintiff's Jurisdictional Ex. 669, admitted on 4/21/2015 | VI | SA1413 |
| 10 | Plaintiff's Jurisdictional Ex. 670, admitted on 4/22/2015 | VII | SA1494 – SA1496 |
| 11 | Plaintiff's Jurisdictional Ex. 686, admitted on 4/22/2015 | VII | SA1453 – SA1456 |
| 12 | Plaintiff's Jurisdictional Ex. 690, admitted on 4/21/2015 | VI | SA1414 – SA1415 |
| 13 | Plaintiff's Jurisdictional Ex. 692, admitted on 4/20/2015 | VI | SA1278 |
| 14 | Plaintiff's Jurisdictional Ex. 694, admitted on 4/22/2015 | VII | SA1448 – SA1452 |
| 15 | Plaintiff's Jurisdictional Ex. 702, admitted on 4/20/2015 | VI | SA1279 – SA1282 |
| 16 | Plaintiff's Jurisdictional Ex. 722, admitted on 4/22/2015 | VII | SA1496F |
| 17 | Plaintiff's Jurisdictional Ex. 744, admitted on 4/22/2015 | VII | SA1496G-SA1496I |
| 18 | Plaintiff's Jurisdictional Ex. 748, admitted on 5/4/2015 | VII | SA1640 – SA1641 |
| 19 | Plaintiff's Jurisdictional Ex. 752, admitted on 4/22/2015 | VII | SA1457 – SA1458 |
| 20 | Plaintiff's Jurisdictional Ex. 782, admitted on 4/30/2015 | VII | SA1635 – SA1636 |
| 21 | Plaintiff's Jurisdictional Ex. 804, admitted on 4/30/2015 | VI | SA1417 |
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| 1 | admitted on 4/21/2015 | | |
| 2 | Plaintiff's Jurisdictional Ex. 91, admitted on 4/30/2015 | VII | SA1590 |
| 3 | Plaintiff's Jurisdictional Ex. 955, admitted on 4/28/2015 | VII | SA1497 |
| 4 | Plaintiff's Jurisdictional Ex. 970, admitted on 5/5/2015 | VII | SA1642 – SA1643 |
| 5 | Plaintiff's Motion on Deficient Privilege Log on Order Shortening Time, dated 9/16/2014 | IV | SA0855 – SA0897 |
| 6 | Plaintiff's Motion to Conduct Jurisdictional Discovery, dated 9/21/2011 | II | SA0283 – SA0291 |
| 7 | Plaintiff's Omnibus Response in Opposition to the Defendants' Respective Motions to Dismiss The Fifth Cause of Action Alleging Defamation Per Se, dated 5/23/2011 | I | SA0231 – SA0246 |
| 8 | Plaintiff's Opposition to Sands China LTD's Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Failure to Join an Indispensable Party, dated 2/9/2011 | I | SA0017 – SA0151 |
| 9 | Plaintiff's Opposition to Sands China LTD's Motion to Dismiss his Second Cause of Action (Breach of Contract), dated 5/23/2011 | II | SA00247 – SA0261 |
| 10 | Plaintiff's Reply in Support of Plaintiff's Motion on Deficient Privilege Log on Order Shortening Time, dated 10/3/2014 | IV | SA0925 – SA0933 |
| 11 | Real Party in Interest, Steven C. Jacobs' Reply in Support of Countermotion regarding Recall of Mandate, dated 3/28/2014 | II | SA0314 – SA0318 |
| 12 | Real Party in Interest, Steven C. Jacobs' Response to Motion to Recall Mandate and Countermotion regarding same, dated 2/7/2014 | II | SA0292 – SA0303 |
| 13 | Renewed Objection to Purported Evidence Offered in Support of Defendant Sands China LTD's Motion for Summary Judgment on Personal | II | SA0667 – SA0670 |

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

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS' BRIEF
ON SANCTIONS FOR FEBRUARY 9,
2015 EVIDENTIARY HEARING**

AND RELATED CLAIMS

I. INTRODUCTION

There can no longer be any pretending that Defendant Sands China Ltd. ("Sands China") has not engaged in a longstanding and willful violation of its discovery obligations, including (but hardly limited to) this Court's September 14, 2012, December 18, 2012,¹ and March 27, 2013 Orders. This Court imposed sanctions against Sands China and its Co-Defendant Las Vegas Sands Corp. ("LVSC"), precluding any use of the Macau Personal Data Privacy Act ("MPDPA") as grounds for nonproduction of documents in jurisdictional discovery. That sanction, which Sands China now seeks to circumvent and relitigate, stems from what can only be fairly

¹ The written order was entered January 16, 2013.

1 characterized as fraud upon the judicial process. Concealing evidence and making false
2 arguments that the MPDPA precluded a production of documents in this action, Sands China and
3 LVSC hid from this Court as well as Jacobs that volumes of highly relevant documents had long
4 been located in the United States. On top of that, all the while that Sands China and LVSC were
5 representing to this Court that the data could not be accessed, their counsel was secretly reviewing
6 that same material while repeating the false representations that the data was inaccessible. There
7 can be no debate as to the wholesale assault upon the integrity of the judicial process.

8 Sands China deployed false representations about its access and location to evidence for
9 the very purpose of delaying this case. And, it worked. This action has been pending now for
10 over four years. Yet, no merits discovery has occurred, precisely because of Sands China's
11 longstanding and continuing misconduct. Thus, for good reason, this Court precluded
12 Sands China from any further reliance upon the MPDPA for jurisdictional discovery or the
13 jurisdiction hearing.

14 Contrary to Sands China's apparent hopes, it does not get to relitigate the propriety of that
15 sanction under the guise of debating the consequences for violating the sanctions order. The
16 evidence of Sands China's deceit of the Court has already been determined, as has been the
17 sanction. Sands China's request that it receive a do-over – whether it should be sanctioned for
18 using the MPDPA to delay and obstruct discovery – must fail. Indeed, what Sands China seeks is
19 to undo the prior sanction altogether.² Sands China wants to ignore all of the prejudice inflicted
20 upon Jacobs that resulted in the sanction in the first place, and then contend that all that prejudice
21 should be disregarded and only the individual redactions – undertaken in violation of this Court's
22 Sanctions Order – should be considered.

23 The sad fact is that Sands China has continually disregarded multiple Court orders with
24 the express purpose of delaying this action and denying Jacobs access to long-ago-ordered
25 jurisdictional discovery. From the near inception of this case, Sands China fraudulently employed
26 the MPDPA to obstruct discovery and delay this case. It did so for the simple purpose of trying to
27

28 ² A decision, as the Supreme Court agreed, Sands China and LVSC had failed to challenge
in any of their various writ proceedings.

1 preclude evidence from coming to light as to its jurisdictional contacts with Nevada. The law
2 presumes prejudice from unnecessary delay and that is certainly true here where the case has
3 largely been frozen for the benefit of Sands China because of its knowing noncompliance.

4 Because this Court's prior sanction has proven insufficient to bring this intransigent litigant
5 into compliance, the time has come for severe sanctions, including striking its baseless affirmative
6 defense as well as the imposition of other evidentiary and monetary sanctions. Accepting
7 Sands China's present position, it wants to reargue to which documents it should be allowed to
8 enlist the MPDPA. Brazenly, Sands China contends that this Court must examine its entitlement
9 to enlist the MPDPA on a document-by-document basis, as opposed to examining the entirety of
10 its conduct relative to the MPDPA and the prejudice that it has inflicted. In this convenient
11 fashion, Sands China claims that the benefits of noncompliance necessarily outweigh any
12 consequences.

13 **II. STATEMENT OF RELEVANT FACTS**

14 **A. The Court's First Sanction Does Not Deter Further Discovery Abuses.**

15 Ever since the Nevada Supreme Court ordered an evidentiary hearing on Sands China's
16 personal jurisdiction defense, it has waged a near endless campaign of discovery obstruction.
17 First, under cover of the MPDPA, Sands China knowingly and purposefully deceived this Court
18 (and Jacobs) regarding the location and review of discoverable information. (Decision and Order,
19 Sept. 14, 2012, on file.) Once it learned of Sands China's deception, the Court convened its first
20 evidentiary sanctions hearing. (*See id.*)

21 Because Sands China appears to think that it can reargue its ability to rely upon the
22 MPDPA, it bears recalling the conduct it employed against this Court and Jacobs for nearly two
23 years: Sands China claimed that it could not produce any documents in the United States because
24 of the MPDPA and that it would be a long, drawn out process to get any documents out of Macau.
25 It went on to affirmatively represent that all of the documents were located in Macau and that they
26 could not be reviewed in the United States. But, as established at the evidentiary hearing, these
27 representations were repeatedly made to the Court by counsel for Sands China and these
28 representations were false. To the contrary, even before this litigation commenced, Sands China

1 had transferred volumes of relevant information to the United States and concealed its existence.
2 Yet, all the while representations were being made of how documents could not be reviewed and
3 accessed here in the United States, counsel was affirmatively reviewing them at the offices of
4 LVSC's in-house counsel. Indeed, LVSC's Director of Information Technology openly admitted
5 that Sands China and LVSC had a free flow of data until the fallout of this litigation and then a
6 "stone wall" was erected so as to preclude access to data for purposes of complying with
7 discovery obligations in this case as well as subpoenas from the United States government.

8 The Court determined that Sands China's "lack of disclosure appears to the Court to be an
9 attempt to stall discovery, and in particular, the jurisdictional discovery in these proceedings
10 Given the number of occasions the MPDPA and the production of ESI by Defendants was
11 discussed there can be no other conclusion than that the conduct was repetitive and abusive."
12 (*Id.* ¶¶ 32-32.) The Court found "willful and intentional conduct with an intent to prevent" Jacobs
13 and the Court from accessing, and ruling upon, discoverable information in the jurisdictional
14 proceedings. (*Id.* ¶¶ 35(a)-(b).) The Court recognized "[t]he delay and prejudice to the Plaintiff in
15 preparing his case is significant" (*Id.* ¶ 36.)

16 In the face of this unprecedented lack of candor and deceit, this Court ordered that "[f]or
17 jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and
18 Sands China will be precluded from raising the MPDPA as an objection or as a defense to
19 admission, disclosure or production of any documents." (*Id.* at p. 8(a).) Sands China was also
20 ordered to make a \$25,000 contribution to the Legal Aid Center of Southern Nevada and to pay
21 Jacobs' reasonable attorneys' fees. (*Id.* at p. 9(c)-(d).)

22 **B. Sands China Refuses to Produce Documents From Macau and Misleads the**
23 **Court Again.**

24 Unfortunately, this Court's first round of sanctions did not dissuade Sands China's conduct.
25 It paid a nominal fine but continued to secure delay upon delay, and there have been no
26 consequences ever since. In fact, even two months after the first sanctions were imposed,
27 Sands China admitted that it had not even started producing documents from Macau. As a
28 consequence, Jacobs filed a Motion for NRCP 37 Sanctions and Sands China reactively filed a

1 Motion for Protective Order on Order Shortening Time. (Pl.'s Mot. for NRCP 37 Sanction,
2 Nov. 21, 2012, on file; Def.'s Mot. Protective Order, Dec. 4, 2012, on file.)

3 During the December 18, 2012 hearing, the Court again recognized Sands China's history
4 violating court orders. (Hr'g Tr. at 28:17, Dec. 18, 2012, on file ("Well, they've violated numerous
5 orders.")) In a familiar refrain, the Court was understandably perturbed by Sands China's ongoing
6 runaround by the revolving door of attorneys.

7 The Court: I've had people tell me how they're complying. I've
8 had people tell me how they're complying differently, I've had
9 people tell me how they tried to comply but now apparently they're
in violation of law. I mean, I've had a lot of things.

10 (*Id.* at 28:20-23.)

11 Again confronted with Sands China's continuing stalling and noncompliance, this Court
12 ordered Sands China to produce all documents by January 4, 2013. (Court Minutes, Dec. 18,
13 2012, on file; Order, Jan. 16, 2013, on file ("Sands China shall produce all information in its
14 possession, custody, or control that is relevant to jurisdictional discovery, including electronically
15 stored information ('ESI'), within two weeks of the hearing, on or before January 4, 2013;"))
16 But even then, the maneuvering continued, with Sands China attempting to renegotiate the
17 consequences of its deception and its prohibited use of the MPDPA. Attempting to hedge,
18 Sands China raised the question of redactions, which this Court made clear it was permitted to do
19 for issues like privilege, but it was not modifying sanctions that the MPDPA was no longer a basis
20 for continuing noncompliance:

21 Mr. Peek: Yeah. We need to have redactions as part of that, as
22 well, as that's - - I understood - -

23 The Court: I didn't say you couldn't have redactions.

24 Mr. Peek: That's what I thought.

25 The Court: I didn't say you couldn't have *privilege logs*. I didn't
say any of that, Mr. Peek.

26 (*Id.* at 27:8:-14.)

27 Since it had paid a nominal \$25,000 fine for its prior affirmative misrepresentations to this
28 Court – and thereby delaying this case for well over a year – Sands China was not deterred from

1 continuing noncompliance. At the deadline for production, Sands China represented that it had
2 completed a Holiday miracle: the review and production of 5,000 documents. Of course, if this
3 were true, then Sands China simply was admitting that its two years of delay in not complying
4 with discovery in Macau had all been a ruse. If it could have actually complied with the
5 production in just weeks, then it cannot pretend that it had any excuse for noncompliance for over
6 two years.

7 Sands China filed a "Report on Its Compliance with the Court's Ruling of December 18,
8 2012." (Def.'s Report on Its Compliance with the Ct.'s Ruling of Dec. 18, 2012, Jan. 8, 2013, on
9 file.) However, Sands China's Report admitted a violation of the Court's September 2012 Order.

10 Macau attorneys reviewed each of the documents identified as
11 potentially responsive to determine whether the document was, in
12 fact, relevant to jurisdictional discovery, and if so, whether it
13 contained any 'personal data' within the meaning of the MPDPA. *If
the documents did contain 'personal data,' the reviewers then
redacted that personal information.*

14 (*Id.* at 7:2-6 (emphasis added).) Sands China boasted that it spent \$500,000 to violate the Court's
15 directive. (*Id.* at 7:7-9.) On February 7, 2013, Sands China produced a so-called "Redaction
16 Log" for the 2,680 documents it redacted in violation of the Court's Order. Many of these
17 documents were redacted beyond recognition or use.

18 Because Sands China's MPDPA redactions plainly violated the Court's September 2012
19 and December 18, 2012 Orders, Jacobs filed a Renewed Motion for NRCP 27 Sanctions on Order
20 Shortening Time. (Pl.'s Renewed Mot. for NRCP 27 Sanctions on OST, Feb. 8, 2013, on file.)
21 The Court granted Jacobs' Motion and found "Jacobs has made a prima facie showing as to a
22 violation of this Court's orders which warrants an evidentiary hearing." (Order Regarding Pl.'s
23 Renewed Mot. for NRCP 37 Sanctions on OST, March 27, 2013, p. 2, on file.) The Court stated,
24 "Sands China violated this Court's September 14, 2012 Order by redacting personal data from its
25 January 4, 2013 document production based upon the MPDPA" (*Id.*) The Court ordered
26 Sands China to search and produce records for twenty custodians identified by Jacobs, including
27 Jacobs' Court-approved discovery requests, by April 12, 2013. (*Id.*) The Court reiterated "as
28

1 previously ordered, LVSC and Sands China are precluded from redacting or withholding
2 documents based upon the MPDPA." (*Id.* at p.3.)

3 **C. Sands China's Misdirection at the Nevada Supreme Court.**

4 To secure further delay, Sands China sought writ review at the Nevada Supreme Court,
5 challenging this Court's scheduling of an evidentiary hearing on additional sanctions. Pursuing
6 that relief, Sands China made an incredible representation to the Supreme Court: It claimed that
7 this Court's September 2012 Order did not preclude redactions of documents from Macau
8 because, it says, the Court's order only applied to documents that were already located in the
9 United States. (Pet'rs' Notice of Filing in Related Case Re: Correction of Record of March 3,
10 2014 Oral Argument at p. 4, March 24, 2014, S. Ct. Case No. 62944, on file.) Sands China went
11 so far as to represent that this Court's September 2012 Order did not pertain to documents that
12 were still located in Macau. (*Id.*) According to Sands China, this Court's sanction was
13 meaningless because the MPDPA sanction only pertained to documents that were located in the
14 United States, while it had already admitted to this Court that the MPDPA did not even apply to
15 documents if they were in the United States.

16 On August 7, 2014, the Nevada Supreme Court denied Sands China's writ petition and
17 endorsed the approach taken by this Court. *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev.
18 Adv. Op. 61, 331 P.3d 876, 877 (2014) ("Here, the district court properly employed this
19 framework when it found that the existence of a foreign international privacy statute did not
20 excuse petitioners from complying with the district court's discovery order."). The
21 Supreme Court held that the MPDPA does not relieve a litigant of its obligation to comply with
22 discovery orders. *Id.*, 331 P.3d at 880.

23 **D. Sands China's Continues to Willfully Disregard the Court's Orders.**

24 Although this Court vacated the partial stay of its March 2013 Order after the Nevada
25 Supreme Court's ruling, Sands China's noncompliance and obstruction has continued to this very
26 day. It did not take any steps to remedy its noncompliance, and it has continued to use the
27 MPDPA as a basis for nonproduction notwithstanding this Court's sanctions order which already
28 precludes such redactions. As of October 2014, Sands China admits that approximately

1 2,600 documents were improperly redacted. (Def.'s Revised Pre-Hearing Memorandum Re: Pl.'s
2 Renewed Mot. for Sanctions at 3:24-4:1, Oct. 17, 2014, on file.) Confirming that its ongoing
3 contempt is knowing and willful, just last month, January 5, 2015, Sands China produced
4 approximately 7,627 additional documents with MPDPA redactions.

5 Although Sands China purports to have located some documents in the United States and
6 subsequently produced them without redactions ("replacement images"), a large number of
7 documents allegedly do not have counterparts in the United States. On January 23, 2015,
8 Sands China provided only 569 replacement images related to its production earlier in the month.³
9 Its "Second Supplemental Redaction Log" demonstrates that at least 5,876 documents contain
10 MPDPA redactions. Sands China has even made MPDPA redactions to certain "replacement
11 images" allegedly located in the United States and outside the jurisdiction of the MPDPA.
12 Furthermore, the replacement images were effectively produced *after* Jacobs deposed
13 Sands China's witnesses. Thus, these documents were rendered unavailable to Jacobs during the
14 most useful part of discovery.

15 Sands China's engineered delay of the discovery process⁴ has led to the irreplaceable loss
16 of evidence. Key witnesses have left the companies, passed away, or have otherwise disappeared.
17 The unending delay has brought this case to the brink of the five-year rule just as Sands China
18 prefers. Sands China's maneuvering will force Jacobs to rush through merits discovery in an
19 extremely shortened timeframe based upon its attempts to profit from its delays. The time has
20 come for substantial – and meaningful – sanctions. Nothing short of that is going to convince this
21 litigant that it cannot profit from violating Court orders.

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25 ³ These documents were produced after Sands China represented on December 18, 2012
26 that "[w]e've given them everything we have in Las Vegas, including the ghost image information
27 of the Jacobs ESI." (Hr'g Tr. at 14:23-25, Dec. 18, 2012, on file.) Given the volume of subsequent
28 productions, Sands China plainly had no basis for making such a representation.

⁴ Including the three month holding pattern caused by Sands China's untenable privilege
log.

1 **III. ARGUMENT**

2 **A. Sands China's Noncompliance is Knowing, Intentional and Longstanding**
3 **Which Warrants Severe Sanctions.**

4 In *Las Vegas Sands v. Eighth Judicial District Court*, 130 Nev. Adv. Op. 61, 331 P.3d
5 876, 880 (2014), the Nevada Supreme Court upheld this Court's refusal "to excuse [Sands China]
6 for [its] noncompliance with the district court's previous [discovery] order." The Supreme Court
7 determined that this Court acted well within its jurisdiction and did not act arbitrarily or
8 capriciously in finding that Sands China had violated the Court's discovery orders. *Id.* The
9 High Court also approved this Court's balancing approach wherein this Court indicated that "it
10 intended to 'balance' [Sands China's] desire to comply with the foreign privacy law in determining
11 whether discovery sanctions are warranted" *Id.* But as the Supreme Court also made clear,
12 Sands China "did not challenge" this Court's Sanctions Order which precluded it from relying
13 upon the MPDPA. *Id.* at 878.

14 The Nevada Supreme Court explained that "the mere presence of a foreign international
15 privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply
16 with Nevada discovery rules. Rather, the existence of an international privacy statute is relevant to
17 the district court's sanctions analysis in the event that its order is disobeyed." *Id.* Citing the
18 United States Supreme Court's opinion in *Societe Nationale Industrielle Aerospatiale v.*
19 *United States District Court*, 482 U.S. 522 (1987) and the RESTATEMENT (THIRD) OF FOREIGN
20 RELATIONS LAW § 442(1)(c) (1987), the Supreme Court identified five factors to consider:

21 (1) "the importance to the investigation or litigation of the
22 documents or other information requested"; (2) "the degree of
23 specificity of the request"; (3) "whether the information originated in
24 the United States"; (4) "the availability of alternative means of
25 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 important interests of the state where the information is
located."

26 *Id.* Each of these factors weighs heavily in favor of substantial sanctions.
27
28

1 ***1. The MPDPA was repeatedly and continuously misused to bar access to***
2 ***volumes of jurisdictional discovery.***

3 Sands China attempts to neuter this Court's MPDPA sanction by claiming that this Court
4 should only look at its application relative to redactions, as opposed to the nearly two-year delay
5 Sands China secured through its wholesale use of the MPDPA to obstruct all jurisdictional
6 discovery. Through this sleight of hand, Sands China wants to go through document-by-
7 document as to the redactions it used under the MPDPA after years of wholesale obstruction – to
8 argue over whether any single document (considered in isolation) is needed to establish
9 jurisdiction. But of course, that is not the standard. Sands China has secured delay for years
10 through misuse of the MPDPA, and that misuse is ongoing. Had Sands China not misused the
11 MPDPA, the incessant delay would not have occurred.

12 Documents are considered "important" to the litigation where they are "directly relevant."
13 *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1475 (9th Cir. 1992). "A court
14 need consider *only the relevance* of the requested documents to the case; it need not find that the
15 documents are vital to a proper [cause of] action." *Chevron Corp. v. Donziger*, 296 F.R.D. 168,
16 204-05 (S.D.N.Y. 2013) (quotations omitted) (emphasis added).

17 Here, there can be no question as to the importance and relevancy to the documents which
18 Sands China obstructed access to through use of the MPDPA relative to establishing jurisdiction.
19 *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) holds that the proper inquiry "is whether that
20 corporation's affiliations with the State are so 'continuous and systematic' as to render [it]
21 essentially at home in the forum State." *Id.* at 761 (quotations omitted). Under *Daimler AG*,
22 general jurisdiction will be found in the place of incorporation, the principal place of business,
23 and where the corporate "nerve center" is located and primary decisions are made. *Id.* at 760
24 (citing *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010)); *see also Hertz Corp.*, 559 U.S. at 92-93 (a
25 corporation's principal place of business is determined by its "nerve center," which is the "place
26 where the corporation's officers direct, control and coordinate the corporation's activities).⁵

27
28 ⁵ See also *Topp v. CompAir Inc.*, 814 F.2d 830, 836 (1st Cir. 1987) ("[T]he method for
deciding whether a parent is doing business in a state for the purpose of finding personal
jurisdiction can be applied to the analogous issue of determining the principal place of business

1 As this Court knows all too well, Sands China enlisted the MPDPA to block access to
2 virtually all evidence relating to personal jurisdiction. It was not until it got caught deceiving this
3 Court as to the MPDPA that virtually any documents were produced by Sands China. Indeed,
4 even if the Court ignored that wholesale misuse, its continuing improper use of the MPDPA to
5 make redactions is also withholding relevant information. For instance, Jacobs requested
6 documents related to the location of Sands China's board meetings and participants, executive
7 travel to Macau, the work of Leven and Goldstein, the decision to obtain financing, the execution
8 of contracts with Nevada entities, decisions related to Parcels 5 and 6, the decision to terminate
9 Jacobs, and other operational decisions. Jacobs also requested documents related to decisions to
10 purchase goods, services, or financing, which are relevant to determining the location of
11 Sands China's headquarters and nerve center.⁶

12 The redacted personal data obstructs Jacobs from ascertaining who attended the board
13 meetings in person or telephonically; who traveled to Macau and from where; who made daily
14 decisions, where were they made, to whom were the decisions communicated, and to which
15 location were the decisions communicated. Moreover, the redacted documents and personal data
16 are relevant to Jacobs' "agency theory" of jurisdiction. *Daimler AG* did not eliminate the agency
17 theory of personal jurisdiction. The Supreme Court only rejected the Ninth Circuit's "less
18 rigorous" approach based upon the "importance" of the activity and hypothetical readiness to

19
20 for diversity jurisdiction."); *Suzanna Sherry, Don't Answer That! Why (and How) the*
21 *Supreme Court Should Duck the Issue in Daimlerchrysler v. Bauman*, 66 Vand. L. Rev. En Banc
22 111, 118 (2013) ("A year before *Goodyear*, *Hertz Corp. v. Friend* had defined "principal place of
23 business" for purposes of diversity jurisdiction as the corporation's "nerve center [], typically . . .
[its] headquarters." Putting the two cases together suggests that MBUSA's maintenance of three
facilities in California, none of them headquarters or a nerve center, was not sufficient to
constitute continuous and systematic contacts.") (footnotes omitted).

24 ⁶ Merely entering into agreements in the forum may not give rise to general jurisdiction, but
25 demonstrating where the decision was made to enter into the contracts is relevant to establishing a
26 corporation's nerve center. Sands China's continued reliance on *Martinez v. Aero Caribbean*, 764
27 F.3d 1062 (9th Cir. 2014), is unavailing. In *Martinez*, a French company had "no offices, staff, or
28 other physical presence in California, and it [was] not licensed to do business in the state."
Id. at 1070. Under those circumstances, entering into contracts to purchase, advertising, and visits
by representatives were insufficient to confer general jurisdiction. *Id.* By contrast, every decision
is made in Nevada which, in conjunction with its contractual activities, confers jurisdiction in
Nevada.

1 perform. *See Daimler AG*, 134 S. Ct. at 759 ("Daimler argues, and several Courts of Appeals
2 have held, that a subsidiary's jurisdictional contacts can be imputed to its parent only when the
3 former is so dominated by the latter as to be its alter ego But we need not pass judgment on
4 invocation of an agency theory in the context of general jurisdiction, for in no event can the
5 appeals court's analysis be sustained."). The redacted personal information is relevant to
6 determining who was acting as an agent of whom and from where.

7 As this Court has already observed, the redacted documents and information are relevant
8 to jurisdictional discovery and merits the imposition of sanctions. After all, each of these
9 documents was triggered by the jurisdictional search terms confirming that they satisfy the
10 requirement of "relevancy." (*See Hr'g Tr.* at 27:22-23, Aug. 14, 2014, on file ("I've already made
11 a determination that you should produce them. You said you're not going to. I said, okay, that's
12 bad, I'm going to sanction you.").)

13 **2. *Jacobs' discovery requests were specific.***

14 Predictably, Sands China next tries to relitigate the propriety of Jacobs' discovery requests,
15 pretending as though this Court has not already done so. Yet, on September 27, 2011, the Court
16 held a hearing on Jacobs' Motion to Conduct Jurisdictional Discovery. (Order Re: Pl.'s Mot. to
17 Conduct Jurisdictional Discovery & Def.'s Mot. for Clarification, March 8, 2012, on file.) The
18 Court detailed the documents to which Jacobs is entitled. (*See generally id.*) The Court granted
19 Jacobs' document requests regarding the following:

- 20 (1) The date, time, and location of each Sands China Board meeting, the location of
21 each Board member, and how they participated in the meetings;
- 22 (2) Travels to and from Macau/China/Hong Kong by Adelson, Leven, Goldstein,
23 and/or *any other LVSC executive* who has had meetings related to Sands China,
24 provided services to Sands China or traveled to Macau/China/Hong Kong for
25 Sands China business;
- 26 (3) Leven's service as CEO of Sands China and/or the Executive Director of
27 Sands China Board of Directors;
- 28

- 1 (4) The negotiation and execution of agreements for the funding of Sands China that
- 2 occurred, in whole or in part, in Nevada.
- 3 (5) Contracts/agreements that Sands China entered into with entities based in or doing
- 4 business in Nevada;
- 5 (6) The work Robert Goldstein performed for Sands China, including while acting as
- 6 an employee, officer, or director of LVSC;
- 7 (7) Shared services agreements;
- 8 (8) Memoranda, emails, and/or other correspondence that reflect services performed
- 9 by LVSC on behalf of Sands China;
- 10 (9) Work performed on behalf of Sands China in Nevada including, but not limited to,
- 11 documents related to Cirque du Soleil and Harrah's;
- 12 (10) Reimbursements made to any LVSC executive for work performed or services
- 13 provided related to Sands China; and
- 14 (11) Documents provided to Nevada gaming regulators.

15 (*Id.*) The Court also denied some of Jacobs' discovery requests. (*Id.*)

16 Thus, all of Jacobs' document requests were already vetted by this Court and sufficiently
17 specific. Sands China's attempt to characterize Jacobs' approved discovery requests as "broad and
18 generalized" is simply revisionist history attempting to manufacture an excuse for its knowing
19 contempt of this Court's Orders. (Def.'s Revised Pre-Hearing Memorandum at 14:18-19.); *See*
20 *Pershing Pac. W., LLC v. MarineMax, Inc.*, No. 10-CV-1345-L DHB, 2013 WL 941617, at *7
21 (S.D. Cal. Mar. 11, 2013) (finding discovery requests sufficiently specific where "the Court has
22 imposed limitations on the scope of production for several of the Requests.").

23 **3. Sands China redacted documents originating from the United States.**

24 Sands China incorrectly states that "the only documents SCL produced with MPDPA
25 redactions were documents that originated in Macau and could be located only in Macau."
26 (*Id.* at 15:7-8.) It claims that it located duplicates and near duplicates in the United States and
27 produced them without MPDPA redactions. (*Id.* at 15:3-4.) However, a number of documents
28 produced as "replacement images" from the United States contain MPDPA redactions.

1 Sands China is not employing the MPDPA to redact only documents emanating from Macau. It is
2 utilizing the blocking statute to redact documents purportedly produced from this jurisdiction.
3 This practice is inappropriate even under Sands China's own tortured interpretation of the
4 MPDPA.

5 Furthermore, "where the information cannot be *easily obtained* through alternative means,
6 the origin of the information can be counterbalanced with the inability to obtain the information
7 through an alternative means, thus favoring disclosure." *Chevron Corp.*, 296 F.R.D. at 206
8 (S.D.N.Y. 2013) (emphasis in original, internal quotations omitted). But, as this Court already
9 knows, none of the documents were "easily obtained" through alternative means. It was only
10 after Sands China had got caught deceiving Jacobs and this Court that any of the documents were
11 produced. Incredibly, Sands China wants to pretend that the Court can ignore the years of delay
12 Sands China achieved through that course of conduct.

13 **4. *Sands China fails to prove that alternate means are available..***

14 Sands China further misstates the law when it suggests that alternate means are available
15 to obtain the redacted information. That is not what the law contemplates. "[T]he alternative
16 means must be 'substantially equivalent' to the requested discovery." *Richmark Corp.*,
17 959 F.2d at 1475. Even if some documents can be obtained from the United States, there is no
18 legitimate alternative means of securing the information when there is difficulty in obtaining *all*
19 documents and when some of the requests do not relate to communications with other parties.
20 *Pershing Pac. W., LLC*, 2013 WL 941617, at *8. Sands China must show that its feigned
21 alternatives are substantially equivalent to the requested information. *See In re Air Crash at*
22 *Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. 374, 378 (C.D. Cal. 2002) ("However, defendant has
23 not shown that the ASC report is substantially equivalent to the requested documents.")

24 In this case, Jacobs has no alternative means of obtaining "substantially equivalent"
25 information. While some duplicative documents were located in the United States, and were
26 produced without MPDPA redactions, Sands China admits that *thousands* of documents have no
27 counter-part in the United States and will not be produced without redaction. Jacobs has no other
28 method of obtaining the personal data identifying the decision-makers, attendees, senders,

1 recipients, of subject(s) of the documents and communications. Sands China's so-called redaction
2 logs are not an adequate substitute. The entity that created a document, or sent and received a
3 communication, is not as important as the precise identity of the individuals involved. A directive
4 from the Chairman is more relevant to the jurisdictional "nerve center" analysis than an email
5 from a slot host.

6 And, the belated MPDPA consents from *only four witnesses* proves the point. These four
7 witnesses were apparently involved in a suspiciously low number of email communications and
8 thousands of other relevant documents involved people that Sands China has not even attempted
9 to ask for consent. Sands China admits it has not made any other efforts to obtain MPDPA
10 consent. Instead, it shrugs, "[i]t is not practical *to attempt* to secure consents from all of the *many*
11 individuals whose names and other personal information were redacted from documents"
12 (Def.'s Revised Pre-Hearing Memorandum at 17 n.16 (emphasis added).)⁷ If it is not practical for
13 Sands China to obtain consents, then it is not a substantially equivalent alternative. See
14 *United States v. Vetco Inc.*, 691 F.2d 1281, 1290 (9th Cir. 1981) ("It is not substantially
15 equivalent because of the cost in time and money of attempting to obtain those consents.").

16 **5. The United States' interest outweighs Macau's supposed interests.**

17 The balance of national interests is the most important factor. *Richmark Corp.*, 959 F.2d
18 at 1476. The United States has a "substantial" interest in "vindicating the rights of American
19 plaintiffs" and a "vital" interest "in enforcing the judgments of its courts." *Id.* at 1477. "[T]he
20 United States has a substantial interest in fully and fairly adjudicating matters before its courts,
21 [and] [a]chieving that goal is only possible with complete discovery." *Chevron Corp.*, 296
22 F.R.D. at 206 (internal quotations omitted).

23 When considering the strength of Macau's interests, the Court must consider "'expressions
24 of interest by the foreign state,' 'the significance of disclosure in the regulation . . . of the activity
25 in question,' and 'indications of the foreign state's concern for confidentiality *prior to the*
26 *controversy*.'" *Richmark Corp.*, 959 F.2d at 1476 (quoting RESTATEMENT (THIRD) OF FOREIGN
27

28 ⁷ Assuming *arguendo* that consent under the MPDPA must be "freely" given, Sands China
has not made any efforts – gentle or otherwise – to obtain consents.

1 RELATIONS LAW § 442 cmt. c) (bold added). In the absence of earlier statements of interest, a
2 foreign government can express its interests by formally intervening in an action or filing an
3 amicus brief. *See Chevron Corp.*, 296 F.R.D. at 206-07 (government can intervene); *see also In re*
4 *Rubber Chemicals Antitrust Litig.*, 486 F. Supp. 2d 1078, 1082 & n.2 (N.D. Cal. 2007) (foreign
5 government offering to submit amicus brief as it had done in other matters).

6 Sands China must submit actual evidence – not argument – that it faces serious
7 consequences and show the extent to which Macau enforces its privacy laws. *See In re Air Crash*
8 *at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. at 379. Letters to litigants are not such proof. *Id.*
9 ("This letter is not persuasive proof that defendant or its officers or managing agents will be
10 criminally prosecuted for complying with an order of this Court. Nor has defendant presented
11 any evidence regarding the manner and extent to which Singapore enforces its secrecy laws.").
12 Naked fear of prosecution is not sufficient. *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 197
13 (E.D.N.Y. 2010) *cited with approval Las Vegas Sands*, 130 Nev. Adv. Op. 61, 331 P.3d at 880.

14 The United States has an overwhelming interest in ensuring that Jacobs – and all of its
15 citizens – receive full and fair discovery to uncover the truth of their judicial claims. Nevada's
16 interest is no different. Sands China has no *official* statement of the Macanese government
17 *outside of this litigation* regarding its interests in preventing Sands China's disclosure of
18 information. To be sure, Sands China has letters purportedly from the OPDP but those letters did
19 not express interest in the redaction of this information before the case. *See Richmark Corp*, 959
20 F.2d at 1476 (letters from PRC's State Secrecy Bureau sent during litigation *do not* constitute
21 statement of interest because they were sent in response to the litigation in question).

22 And, despite being aware of this litigation and the grandiose claims of wide-reaching
23 implications, the Macanese government has not moved to intervene or file an *amicus* brief to state
24 its actual interests (if any). *Chevron Corp.*, 296 F.R.D. at 206-07; *In re Rubber Chemicals*
25 *Antitrust Litig.*, 486 F. Supp. 2d at 1082 & n.2. And the evidence at the evidentiary hearing will
26 show that this is no accident. Even Sands China's own witnesses will have to acknowledge that
27 they transmit so-called personal data out of their Macau casinos every day in communications
28

1 with individuals at the parent company, LVSC. They just do not want to release that information
2 when it can be used against them as opposed to when they do so in pursuit of their own interests.

3 Additionally, Sands China has no evidence that it will actually be subject to any form of
4 sanction, let alone a serious one. Again, the letters to Sands China do not constitute sufficient
5 evidence and Sands China has no proof of any other material consequences for supposed
6 violations of the MPDPA stemming from a court ordered production in the United States. *In re*
7 *Air Crash at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. at 379.

8 **6. Additional factors – Sands China is willfully disregarding the Court's**
9 **orders in bad faith.**

10 This is the case where the Court must also recognize the party's willful noncompliance. A
11 party's good faith efforts to produce documents and to comply with the Court's Order may also be
12 considered. *Chevron Corp.*, 296 F.R.D. at 213 ("[T]he final factor: whether defendants have
13 acted in good faith in their attempts to produce the requested documents . . . and to comply with
14 the Court's order."). Nevertheless, good faith and willful non-compliance is only relevant when
15 the requesting party attempts to obtain the harshest sanctions – dismissal, default, or contempt.
16 *Id.* Lesser sanctions, such as adverse evidentiary presumptions, can be imposed even in the
17 absence of bad faith or willfulness. *Id.*

18 A party is willfully disregarding a court's order unless it is "factually impossible" to
19 comply. For example, in *Richmark Corporation*, the resisting party made the same argument that
20 Sands China advances here. It "contend[ed] that it has no 'present ability' to comply with the
21 discovery order because doing so would violate PRC law." 959 F.2d at 1481. The Ninth Circuit
22 soundly rejected this position. The court held "[t]o prevail here, [the resisting party] bears the
23 burden of proving that it is 'factually impossible' to comply with the district court's order – for
24 example, because the documents are not in [the party's] possession or no longer exist." *Id.* Like
25 Sands China, the resisting party never disputed that it had the ability to produce the documents, it
26 only argued "that disclosing the information will result in negative consequences for it, in that it
27 might be prosecuted by the PRC." *Id.* This was not enough to "make out a showing of present
28 inability to comply." *Id.*

1 Sands China's plea that it "cannot comply" is but empty rhetoric. It is not impossible for
2 Sands China to comply with this Court's orders. Sands China could have told this Court the truth
3 all along before it improperly stalled this case through the misuse of the MPDPA. And even as to
4 its redactions, Sands China (and its vendor) can remove the redactions and produce the documents
5 with ease. Again, Sands China routinely sends personally data out of Macau and into Las Vegas
6 as part of its daily business operations without MPDPA problems. In other words, Sands China
7 does not view the MPDPA as an obstacle if the transmission of personal data facilitates doing
8 business, but the MPDPA is somehow an impediment to this Court's lawfully ordered discovery.
9 Sands China is *choosing* to use the MPDPA to avoid this Court's orders because it does not want
10 to be exposed. Selective use of the MPDPA does not make Sands China's non-compliance any
11 less "willful."

12 In addition, Sands China's role in influencing Macanese officials to interpret the MPDPA
13 in a draconian manner is also relevant to Sands China's good faith. *See Chevron Corp.*, 296
14 F.R.D. at 201 ("As will be seen below, there are troubling aspects as to the manner in which the
15 *Córdova* ruling was sought and procured, matters that go to the good faith of the LAPs and their
16 attorneys."). Previously, the MPDPA was never applied to prohibit the export of email address or
17 names of senders and recipients. Sands China proposes that it is just a coincidence that the
18 Macau government developed its current MPDPA policy at almost precisely the same moment
19 that Sands China and LVSC needed an excuse not to comply with discovery in this case and with
20 the subpoenas issued by the United States government. But as LVSC's own technology officer,
21 Mangit Singh, confirmed, this was anything but a coincidence.

22 The correspondence exchanged between Sands China and the OPDP is not evidence of
23 good faith as these letters were designed to be rejected. *See Linde*, 269 F.R.D. at 199
24 ("Defendant's letters requesting permission from foreign banking authorities to disclose
25 information protected by bank secrecy laws are not reflective of an "extensive effort" to obtain
26 waivers Instead, the letters were calculated to fail."). Sands China purposefully neglected to
27 provide the OPDP with all of the necessary information. (Pl.'s proposed Ex. 102 at 305
28 ("However, since your company has provided our Office with no information evidencing that

1 your company has obtained the express consent of the parties relating to such information, nor
2 any contract of employment . . . our Office cannot deem that your company's authorization of a
3 law firm in Hong Kong to inspect relevant documents complies with relevant stipulation of the
4 *Personal Data Protection Act.*") Sands China also failed to invoke the proper provision of the
5 MPDPA when asking for permission. (*Id.* at 305-06.)

6 "Finally, the years of delay caused by defendant's refusals to produce weigh against a
7 finding of good faith . . . It is now apparent that the delay was for no purpose at all; defendant
8 never intended to produce certain documents, regardless of this court's rulings" *Linde*, 269
9 F.R.D. at 200.⁸ Sands China has willfully disobeyed the Court's discovery order and has not acted
10 in good faith.

11 **B. NRCP 37 Supports the Issuance of Sanctions.**

12 Nevada Rule of Civil Procedure 37 authorizes sanctions for "willful noncompliance with a
13 discovery order of the court." *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d
14 777, 779 (1990). In addition to Rule 37, the Court has "inherent equitable powers" to impose
15 sanctions for "abusive litigation practices." *Id.* (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826
16 F.2d 915, 916 (9th Cir. 1987)) (citations omitted); *see also GNLV Corp. v. Serv. Control Corp.*,
17 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (noting that courts have the inherent authority to
18 impose discovery sanctions "where the adversary process has been halted by the actions of the
19 unresponsive party."). As the Nevada Supreme Court warned, "[l]itigants and attorneys alike
20 should be aware that these [inherent] powers may permit sanctions for discovery and other
21 litigation abuses not specifically proscribed by statute." *Young*, 106 Nev. at 92, 787 P.2d at 779.

22 "Fundamental notions of fairness and due process require that discovery sanctions be just
23 and that sanctions relate to the specific conduct at issue." *GNLV Corp.*, 111 Nev. at 870, 900 P.2d
24 at 325 (citing *Young*, 106 Nev. at 92, 787 P.2d at 779-80). The minimum sanction a court should
25 impose is one that deprives the wrongdoer of the benefits of their violations. *See Burnet v.*

26
27 ⁸ As part of Sands China's delay, the Court can consider Sands China's other efforts to slow
28 discovery, including its awful privilege log. *See Chevron Corp.*, 296 F.R.D. at 219 (accounting
for "Defendants' Further Efforts to Block Discovery" and noting "Defendants' recalcitrance in the
discovery process is not limited to the dispute over the Ecuadorian documents.").

1 *Spokane Ambulance*, 933 P.2d 1036, 1041 (Wash. 1997) (*en banc*) ("The purpose of sanctions
2 generally are to deter, punish, to compensate, to educate, and *to ensure that the wrongdoer does*
3 *not profit from the wrongdoing.*" (emphasis added)); *Woo v. Lien*, No. A094960, 2002
4 WL 31194374, at *6 (Cal. Ct. App., Oct. 2, 2002) (upholding trial court's imposition of sanctions
5 because not doing so "would allow the abuser to benefit from its actions.").

6 In cases similar to the case at hand, the United States Supreme Court has approved the
7 striking of a party's personal jurisdiction defense. *See, e.g., Ins. Corp. of Ireland v.*
8 *Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982). As another court has recognized under
9 like circumstances, the "sanction striking their personal jurisdiction defense would be appropriate
10 for failure to comply with the order to produce insofar as it required production of documents
11 bearing on their personal jurisdiction defense in this action." *Chevron Corp.*, 296 F.R.D. at 220.
12 Indeed, that court decided to strike the personal jurisdiction defense but proceeded to make
13 evidentiary findings as well so as to protect the record on appeal. *Id.* at 221 ("Nonetheless, the
14 Court recognizes that a reviewing court may disagree with this resolution of the personal
15 jurisdiction issue. Accordingly, in order to afford a reviewing court a full record on the issue, the
16 Court will take evidence and making findings at trial on the question whether it has personal
17 jurisdiction over the LAP Representatives independent of this sanctions order.").

18 At a minimum, Jacobs is entitled to both adverse evidentiary sanctions for the
19 jurisdictional hearing and serious monetary sanctions. The RESTATEMENT (THIRD) OF FOREIGN
20 RELATIONS Law § 442(1)(b) states that the "[f]ailure to comply with an order to produce
21 information may subject the person to whom the order is directed to sanctions, including . . . a
22 determination that the facts to which the order was addressed are as asserted by the opposing
23 party." "[A] court or agency may, in appropriate cases, make findings of fact adverse to a party
24 that has failed to comply with the order for production, even if that party has made a good faith
25 effort to secure permission from the foreign authorities to make the information available and that
26 effort has been unsuccessful." *Id.* at (2)(c). NRCP 37(b)(2) imposes a similar sanction for
27 disobeying a court's discovery order. It provides that the "designated facts shall be taken to be
28

1 established for the purposes of the action in accordance with the claim of the party obtaining the
2 order." NRCP 37(b)(2).

3 "An adverse inference serves the remedial purpose of restoring the prejudiced party to the
4 same position he would have been in absent the wrongful destruction of [or willful refusal to
5 produce] evidence by the opposing party." *Chevron Corp.*, 296 F.R.D. at 222. Adverse inferences
6 restore the evidentiary balance. *Linde*, 269 F.R.D. at 203. Again, a showing of bad faith is not
7 required. "The inference is adverse to the [nonproducing party] not because of any finding of
8 moral culpability, but because the risk that the evidence would have been detrimental rather than
9 favorable should fall on the party responsible for its [nonproduction]." *Id.* at 200 (quotations
10 omitted).

11 As this Court knows well, Sands China misused the MPDPA to disrupt and delay the
12 jurisdictional hearing. The law presumes that the delay has imposed severe prejudice upon
13 Jacobs. *Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042 (2010). Although that prejudice
14 is irreparable at this point, this Court must, at a minimum, deprive Sands China of the benefits of
15 its misuse of the MPDPA and draw all adverse inferences that Sands China's use of the MPDPA
16 would contradict its denials of being subject to personal jurisdiction in Nevada.

17 Additionally, this is a case where serious monetary sanctions must be imposed. Tellingly,
18 a case upon which Sands China relies⁹ approves a sanction of \$10,000 a day for refusing to
19 produce documents based upon an alleged foreign privacy statute. In *Richmark Corporation v.*
20 *Timber Falling Consultants*, a company resisted discovery, and refused to comply with court
21 orders, based upon "State Secrecy Laws" of the People's Republic of China. 959 F.2d 1471-72.
22 As a sanction, the district court awarded the discovery party its attorneys' fees and costs and
23 \$10,000 a day in contempt fines. *Id.* at 1472. The Ninth Circuit affirmed the sanction even
24 though, by the time of the appeal, the sanction amount "surpassed the amount of the underlying
25 [\$2.2 million dollar] judgment" *Id.* at 1481. The Court further held that if \$10,000 a day is
26 insufficient to coerce compliance, that amount should be increased. *Id.* at 1482.

27
28 ⁹ (Def.'s Revised Pre-Hearing Memorandum at 7:3-4 (citing *Richmark*).

1 The same level of monetary sanction should be imposed on Sands China. *i.e.* \$10,000 a
2 day from the January 4, 2013 date of compliance established at the December 18, 2012 hearing
3 until the February 9, 2015 sanctions hearing. Such a fine would equal \$7,660,000.00 and continue
4 until Sands China stops making MPDPA redactions.¹⁰ Respectfully, Jacobs believes that this
5 Court's small \$25,000 sanction had the effect of encouraging Sands China's ongoing belligerence.
6 Sands China is more than happy to pay such nominal sums to avoid having to comply with its
7 discovery obligations. This litigant has immeasurable financial resources and only a substantial
8 sanction will have any hope of influencing its conduct and reducing the benefit that it has
9 obtained from interminable delay.

10 Finally, Jacobs should be awarded his reasonable attorneys' fees and costs incurred in
11 attempting to obtain discovery and dealing with Sands China's MPDPA redactions. Once granted,
12 Jacobs will submit a proper and substantiated motion for attorneys' fees.

13 Jacobs' requested sanction comports with Nevada Supreme Court precedent. The
14 Supreme Court has announced a number of factors to consider when assessing the propriety of a
15 sanction.

16 The factors a court may properly consider include, but are not
17 limited to, the degree of willfulness of the offending party, the extent
18 to which the non-offending party would be prejudiced by a lesser
19 sanction, the severity of the sanction of dismissal relative to the
20 severity of the discovery abuse, whether any evidence has been
21 irreparably lost, the feasibility and fairness of alternative, less severe
22 sanctions, such as an order deeming facts relating to improperly
withheld or destroyed evidence to be admitted by the offending
party, the policy favoring adjudication on the merits, whether
sanctions unfairly operate to penalize a party for the misconduct of
his or her attorney, and the need to deter both the parties and future
litigants from similar abuses.

23 *Young*, 106 Nev. at 93, 787 P.2d at 780.

24 Sands China has knowingly and willfully failed to comply with its discovery obligations,
25 including violating the Court's September 2012, December 18, 2012, and March 2013 Orders.
26

27 ¹⁰ Alternatively, the Court could account for the stay pending the Nevada Supreme Court's
28 consideration of Sands China's writ petition. In that case, the sanction would amount to
\$3,080,000. (1/4/13 to 2/9/15 = 766 days. 5/13/13 stay pending writ to 8/14/14 hearing lifting
stay = 458 days. 766-458 = 308 days un-stayed X \$10,000 = \$3,080,000).

1 This is not a litigant that has any entitlement to rely upon restrictions of the MPDPA. It lost that
2 right when it got caught deceiving this Court as to the location of documents and the application
3 of the MPDPA so as to delay this case and thwart jurisdictional discovery. Sands China does not
4 get a do-over of the sanction simply because the sanction is now an inconvenience for it. It is not
5 impossible for Sands China to comply. *Richmark Corp.* 959 F.2d at 1481. Rather, Sands China
6 is choosing this Court's sanction over a hypothetical slap on the wrist from Macau. There are no
7 other feasible sanctions to remedy the delay and evidentiary imbalance that have been caused by
8 Sands China's misuse of the MPDPA. Even significant and severe monetary sanctions will not
9 undo the harm that Sands China has already caused nor deprive it of the benefit that it has
10 achieved.

11 **IV. CONCLUSION**

12 Sands China has successfully paralyzed this case through misuse of the MPDPA. Once
13 that misuse was uncovered, this Court held that Sands China could no longer rely upon it for the
14 jurisdictional phase of this case. Yet, Sands China thinks itself above the law. Thus, it secured
15 another two years of delay by doing exactly what this Court said it could not do.

16 DATED this 6th day of February, 2015.

17 PISANELLI BICE PLLC

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26
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28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 6th 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 **PLAINTIFF STEVEN C. JACOBS' BRIEF ON SANCTIONS FOR FEBRUARY 9, 2015 EVIDENTIARY HEARING** properly addressed to the following:

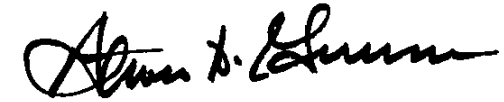
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DISTRICT COURT

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.

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'
OBJECTION TO DEFENDANT
SANDS CHINA'S APPENDIX TO ITS
MEMORANDUM REGARDING
PLAINTIFF'S RENEWED MOTION
FOR SANCTIONS**

AND RELATED CLAIMS

Plaintiff Steven C. Jacobs ("Jacobs") hereby objects to Defendant Sands China Ltd.'s ("Sands China") Appendix and the exhibits attached thereto related to Sands China's Memorandum Regarding Plaintiff's Renewed Motion for Sanctions. Sands China's Appendix seeks to put exhibits into the record that it knows are not admissible at the evidentiary hearing for a host of reasons, not the least of which is Sands China's attempt to avoid presenting witnesses with actual knowledge who would be subject to cross-examination. A party cannot simply circumvent that conscious choice by just attaching documents to a brief.

Sands China fails to lay any foundation for its exhibits, and they are not authenticated or admissible. This Court has set an evidentiary hearing, a fact that Sands China has known about

1 for well over a year. Before a document can be admitted into evidence, all preconditions to
2 admissibility must be satisfied. The document's proponent must lay a proper foundation for the
3 document's admission. *See Blaine Fashions, Inc. v. Scheri Shop*, 84 Nev. 339, 340 n.1, 440 P.2d
4 904, 905 n.1 (1968) ("We do not decide whether the documents met foundation requirements of
5 admissibility.").

6 The proponent must also show that the document is authentic, *i.e.*, that the matter in
7 question is what its proponent claims it to be. NRS 52.015 ("The requirement of authentication
8 or identification as a condition precedent to admissibility is satisfied by evidence or other
9 showing sufficient to support a finding that the matter in question is what its proponent claims.").

10 "The testimony of a witness is sufficient for authentication or identification if the witness has
11 personal knowledge that a matter is what it is claimed to be." NRS 52.025.

12 But the declaration of counsel is insufficient to authenticate the documents because the
13 "the affiant must be a person through whom the exhibits could be admitted into evidence." *See*
14 *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 774 (9th Cir. 2002) (quotations omitted). An
15 attorney cannot authenticate exhibits by stating in an affidavit that the documents are "true and
16 correct copies;" his statement lacks foundation. *Id.* at 776-77. The declaration of counsel also
17 concedes that Exhibit 311 is objectionable for lack of completeness. (Decl. Mark M.
18 Jones, Esq. ¶ 1, Feb. 6, 2015, on file.)

19 Sands China also purports to authenticate letters exchanged with the OPDP through
20 Declarations of David Fleming. (Def.'s Memo Re: Pl's Renewed Mot. Sanctions at 21 n.28,
21 Feb. 6, 2015, on file.) However, the Declarations of David Fleming do not lay any foundation for
22 these letters, and Sands China is simply seeking to avoid calling Fleming as a witness and thus
23 wants to introduce hearsay.

24 Besides, most all of Sands China's exhibits are inadmissible hearsay. Hearsay is
25 inadmissible unless it satisfies a recognized exception to the hearsay rule. *See* NRS 51.065
26 (stating general rule of hearsay). Sands China's Appendix is little more than out-of-court
27 statements offered to prove the truth of the matter asserted. NRS 51.035. Moreover, the
28 Declarations of Fleming and Jason Ray constitute hearsay themselves. *See Cunanan v. I.N.S.*,

1 856 F.2d 1373, 1374 (9th Cir. 1988) ("Under the Federal Rules of Evidence, both the affidavit
2 and the form I-213 would have been inadmissible as hearsay.").

3 This Court should sustain Jacobs' objection and disregarding Sands China's Appendix and
4 the exhibits therein until Sands China establishes a basis for their admission at this Court's
5 hearing.

6 DATED this 9th day of February, 2015.

7 PISANELLI BICE PLLC

8 By: 

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CERTIFICATE OF SERVICE

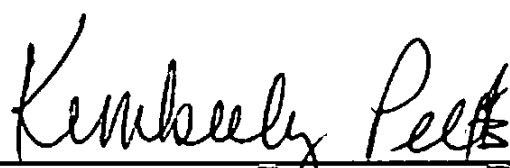
I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 9th day of February, 2015, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' OBJECTION TO DEFENDANT SANDS CHINA'S APPENDIX TO ITS MEMORANDUM REGARDING PLAINTIFF'S RENEWED MOTION FOR SANCTIONS** properly addressed to the following:

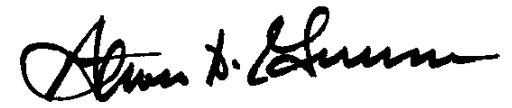
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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

STEVEN C. JACOBS,

Plaintiff,

vs.

LAS VEGAS SANDS CORP., SANDS
CHINA LTD., SHELDON G.
ADELSON,

Defendants.

CASE NO. A-10-627691

DEPT. NO. XI

Transcript of Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
**DEFENDANT SANDS CHINA LTD'S MOTION TO STAY COURT'S MARCH 6,
2015 DECISION AND ORDER AND TO CONTINUE THE EVIDENTIARY
HEARING ON JURISDICTION SCHEDULED FOR APRIL 20, 2015;
DEFENDANTS' PETITION FOR WRIT OF PROHIBITION OR MANDAMUS
FRIDAY, MARCH 13, 2015**

APPEARANCES:

For the Plaintiff: JAMES J. PISANELLI, ESQ.
TODD L. BICE, ESQ.
JORDAN T. SMITH, ESQ.

For the Defendants: J. STEPHEN PEEK, ESQ.
J. RANDALL JONES, ESQ.
STEVE L. MORRIS, ESQ.
IAN P. MCGINN, ESQ.

RECORDED BY: JILL HAWKINS, DISTRICT COURT

TRANSCRIBED BY: KRISTEN LUNKWITZ

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

1 FRIDAY, MARCH 13, 2015 AT 8:30 A.M.

2

3 THE COURT: Good morning.

4 MR. BICE: Good morning.

5 MR. JONES: Good morning.

6 MR. PEEK: Good morning, Your Honor.

7 THE COURT: Mr. Jones, it's your Motion.

8 MR. JONES: Thank you, Your Honor.

9 Your Honor, I would normally not file this kind of
10 a motion until the writ was filed and because of the timing
11 issues, we haven't been able to get the writ done because I
12 know the Court likes to at least have an opportunity to
13 look at the writ when it considers motions like this. So,
14 we apologize for not being able to have that --

15 THE COURT: I'm not worried about it in this
16 particular case, given the long history of the number of
17 writs that have gone up. This one is not one that concerns
18 me as much as most of them.

19 MR. JONES: With that said, Your Honor, I know the
20 Court is familiar with the factors under *Hansen* about
21 granting a stay and circumstances. Again, we're somewhat
22 handicapped having not had the opportunity to show you the
23 writ, but in terms of the factors, we looked at this, Your
24 Honor, as a situation where obviously from a timing
25 standpoint we had to file this now because the order is

1 going to take effect or require action by -- on the 16th.

2 With respect to the issues of the writ,
3 essentially, Your Honor, it's our position that the *Viega*
4 case does not contemplate a circumstance where the -- a
5 party does not have the opportunity to present evidence in
6 a jurisdictional hearing. So there's no precedent for this
7 type of situation in the state of Nevada at this point in
8 time and, therefore, we think this is an important issue
9 that needs to be decided by the Supreme Court.

10 THE COURT: So can I ask you a question?

11 MR. JONES: Sure.

12 THE COURT: What do you believe the standard of
13 proof is in the jurisdictional hearing that I've been
14 directed to conduct by the Nevada Supreme Court in the writ
15 that was issued on August 26th, 2011 or so?

16 MR. JONES: I'm sorry the standard of?

17 THE COURT: Proof.

18 MR. JONES: The standard of proof for?

19 THE COURT: For plaintiffs to show.

20 MR. JONES: For the plaintiffs to show? Well, you
21 know, Your Honor, I have to tell you that I've done this so
22 many times that I should know this off the top of my head,
23 but I don't want to misspeak as to what the standard is.

24 THE COURT: Here's what I think it is.

25 MR. JONES: All right.

1 THE COURT: Just -- and the only reason I know is
2 because I went through and read a lot of briefs yesterday
3 while I was listening to some boring depositions.

4 I think it's a prima facie showing by the
5 plaintiffs even after discovery occurred and I'm conducting
6 a jurisdictional hearing with additional findings that are
7 then made at the time of trial related to jurisdiction.

8 MR. JONES: The only difference of opinion that I
9 would have about this, and I have been involved in lots of
10 these cases, is I think prima facie case, that may be
11 correct with respect to specific jurisdiction. I don't
12 believe that is the standard -- it's my understanding
13 that's not the standard with respect to general
14 jurisdiction and so that is, obviously, an issue that we
15 would want to have the Supreme Court to weigh in on and
16 under those circumstances, this -- we do think that there
17 is an issue here that would result -- without the stay,
18 would result in a --

19 THE COURT: Well, here's why I think that's the
20 standard. In paragraph 2 of the writ or the order granting
21 the writ, it says:

22 Petitioner asserts District Court improperly based
23 its exercise of personal jurisdiction on petitioner's
24 status [indiscernible] officers and directors. The
25 real party in interest contends the District Court

1 properly determined that he had established a prima
2 facie basis for personal jurisdiction based on the acts
3 taken in Nevada to manage petitioner's operations in
4 Macau.

5 They never depart from that, which has been the
6 longstanding standard on the initial jurisdictional
7 determination that has to be made by the Court. What is
8 stated in this order is that I have to make specific
9 findings after conducting a further hearing and you guys
10 decided you wanted an evidentiary hearing and you wanted to
11 do discovery and so that was four years ago.

12 MR. JONES: Right. And I -- and my only comment
13 to that would be the comment in the order that you just
14 read about the acts taken in the state of Nevada and,
15 again, that -- I think, and this is just my interpretation,
16 Your Honor, the Supreme Court may say I'm completely wrong
17 about this, but I have had, I think, every case -- well,
18 even including this one now that's been decided since
19 *Daimler* has happened and I think the standard is that on
20 general jurisdiction is where the company is at home or the
21 foreign entity is at --

22 THE COURT: I understand, --

23 MR. JONES: -- home.

24 THE COURT: -- but the reason I'm asking the
25 questions is the standard of proof and if the standard of

1 proof is only a prima facie standard, that's a pretty low
2 standard, and it's merely a showing that the plaintiffs
3 have to make.

4 MR. JONES: And, again, my only quibble with that,
5 Your Honor, is that I think there's a differentiation
6 between specific jurisdiction and general. Even with the
7 language that you just quoted in this case, first of all, I
8 would say that that was pre *Daimler* and, secondly, --

9 THE COURT: True.

10 MR. JONES: -- I think that the language talks
11 about since it refers to acts in Nevada, I think that would
12 -- my interpretation of that would be an issue related to
13 specific jurisdiction, not general, but unfortunately,
14 because that really was not -- as I understood it, was not
15 really an issue that was specifically detailed by the
16 Supreme Court in that order, we don't have a lot of
17 guidance in that respect. So, that's my -- the difference
18 I have with the Court in terms of that issue.

19 THE COURT: Well I'm just asking the question
20 because --

21 MR. JONES: Sure.

22 THE COURT: -- my understanding what the hearing
23 has always been is that the plaintiffs have to make a prima
24 facie showing after presenting whatever evidence they're
25 going to make. It's not a very high standard. It's a

1 pretty low standard. I've been waiting for a long time to
2 do this hearing and I structured the decision I wrote as a
3 lesser sanction, and I do not see it as a terminating
4 sanction, because you're still able to test their prima
5 facie showing through cross-examining the evidence they
6 would present to make that showing without necessarily
7 presenting any affirmative evidence of your own.

8 I understand your issue, but because it's only a
9 prima facie showing that is required, I am not certain that
10 I see the level of prejudice that you're trying to express
11 to me. So I need you to -- if you think the standard of
12 proof is different than the prima facie, it affects my
13 decision making. So that's why I'm asking you these
14 questions.

15 MR. JONES: And I understand that and I saw --
16 certainly saw the Opposition filed by plaintiff which, I
17 think, makes them -- or brings up some of the points you
18 just referenced about prejudice and the standard. And so,
19 I would say to you if I wasn't -- if my comment wasn't
20 clear before, I do believe there is a definite distinction,
21 especially in light of the *Daimler* and *Viega* cases between
22 specific jurisdiction and general jurisdiction.

23 And so, the prima facie case I would certainly --
24 you know, my understanding of the law with respect to
25 specific jurisdiction. It is not my understanding of the

1 law with respect to general jurisdiction, especially in
2 light of *Daimler* and *Viega*. And so, in that regard, Your
3 Honor, I think that the standard of proof is significantly
4 different and higher for the plaintiff in this case to
5 demonstrate. And so, consequently, I think that that
6 factor actually weighs in our favor with respect to general
7 jurisdiction.

8 THE COURT: What do you think the standard of
9 proof is?

10 MR. JONES: Well, Your Honor, that's an
11 interesting question because I don't know that the Supreme
12 Court -- either the U. S. Supreme Court or the Nevada
13 Supreme Court has given us any particular direction on that
14 and I -- and as I sit here today, that may not be the case.
15 Again, I haven't --

16 THE COURT: I think that's a prima facie showing
17 on that, too, with the --

18 MR. JONES: It may be, Your Honor. I don't --

19 THE COURT: -- caveat that you still have got to
20 make the findings at trial.

21 MR. JONES: I don't know about that. I honestly
22 would have to -- I would want to look at that issue --

23 THE COURT: Okay.

24 MR. JONES: -- particularly because that, from my
25 perspective, you know, I -- maybe I should have anticipated

1 that, but I didn't, and so --

2 THE COURT: It's okay.

3 MR. JONES: In speaking directly to that, I just
4 think it's a higher standard and that's based upon my
5 reading of *Daimler* and *Viega*, but I can't -- off the top of
6 my head, I cannot point the Court to a specific higher
7 standard to reference.

8 THE COURT: Okay.

9 MR. JONES: So, with that said, Your Honor, I
10 think that there is a difference. I think that difference
11 is material and I think it's important and I think it's
12 something that we believe we need to get some direction
13 from the Supreme Court on, that their -- and I understand
14 that the Opposition's argument that, as you just said, you
15 didn't say the sanction is I'm going to strike any defense
16 of lack of personal jurisdiction, but we believe that the
17 order, as it's been issued, hamstring my client to such an
18 extent that there is certainly the possibility that it's
19 inevitable of a finding of jurisdiction against my client.

20 It so hampered their due process rights, and I
21 understand that the -- that, again, the plaintiff disagrees
22 with that. We think that that is an infringement of our
23 due process rights in presenting our case for a company
24 that primary place of business is in Macau. It's a Cayman
25 Islands company. It's on the Hong Kong Stock Exchange.

1 It's -- all of its employees are in Macau and it's being
2 told, essentially, you're going to come here and defend
3 yourself and if you -- in defending yourself at this
4 jurisdictional hearing, you won't be able to present any
5 affirmative evidence, we think that impacts our due process
6 rights and we think that that's an issue that needs to be
7 decided by the Supreme Court as to whether or not *Viega*
8 goes that far because certainly on its face, the *Viega* case
9 does not suggest that these kind of sanctions and inability
10 to present affirmative evidence as a part of the *Viega*
11 rule.

12 With respect to the prejudice, you know that's an
13 interesting issue. We believe that's an extremely
14 prejudicial to us and there's a case called -- it's *Sparks*
15 -- I'm trying to find my case now. I think it's the -- oh
16 yeah, I'm sorry. The *City of Sparks versus Sparks*
17 *Municipal Court*. I found this last night because, of
18 course, we didn't have an opportunity to Reply because of
19 the order shortening time, but that is a case that says --
20 this is a Nevada case.

21 THE COURT: I'm familiar with that case.

22 MR. JONES: Okay. With that said, then you
23 understand that the Court said:

24 A constitutional violation may be difficult or
25 impossible to remedy through money damages. Such a

1 violation made by itself be sufficient to constitute
2 irreparable harm.

3 So that is an issue, we think, that needs to be
4 presented to the Supreme Court with respect to the
5 prejudice of the plaintiff.

6 I -- again, I read their Opposition. They've
7 talked about delay. We don't think that any delay
8 associated with the MPDPA redactions has occurred. As we
9 presented at the sanctions hearing, but I would add this,
10 Judge. There has been a substantial time period that has
11 elapsed and I understand that and I understand the
12 plaintiffs saying that has impacted our ability to get to
13 this hearing -- jurisdictional hearing and ultimately the
14 hearing on the merits.

15 What has happened in the interim though, Judge, is
16 a bunch of writs and -- as you've already mentioned and I
17 don't see how it can be an inappropriate or prejudicial
18 delay to a party when the writs are filed and the Supreme
19 Court accepts them.

20 THE COURT: Well the problem is Rule 41 because
21 the orders that have been issued by the Nevada Supreme
22 Court in this case are unclear as to the effect of the
23 stays on the binding of the rule at the time under Rule 41
24 and when I previously asked for briefing on this issue from
25 the parties, the parties disagreed as to whether there was

1 tolling related to those stays. As a result of that, I've
2 got a serious problem and I have to start a trial prior to
3 October 19th, 2015.

4 MR. JONES: Well, let me address that issue, Your
5 Honor, anticipating that that issue may come up.

6 THE COURT: Well I put it in the decision I issued
7 last Friday for a reason.

8 MR. JONES: And I want to address that issue.
9 It's -- it is -- I would say this. I would acknowledge
10 that the case law in the state of Nevada has essentially
11 determined that the -- a stay tolls the statute.

12 THE COURT: But it's only a stay. If --

13 MR. JONES: Excuse me, tolls the five-year rule.

14 THE COURT: Only if it's a stay of the entire
15 case. We've not had a stay of the entire case in this
16 situation.

17 MR. JONES: Well, Your Honor, I don't know that I
18 read the case law that way and to the extent that that's an
19 issue, I think that we would acknowledge that the stay does
20 --

21 THE COURT: That's not what was acknowledged when
22 I got the briefing previously.

23 MR. JONES: Well I'm --

24 THE COURT: A different position --

25 MR. JONES: -- here acknowledging that point to

1 the Court in direct response to the Court's question.

2 THE COURT: And what is Las Vegas Sands' position?

3 MR. PEEK: Your Honor, it's the same position as
4 Sands China Limited.

5 THE COURT: So when do you think the -- or how
6 many days do you think have been tolled under Rule 41 as a
7 result of the --

8 MR. PEEK: Your Honor, given --

9 THE COURT: -- stays? I'm sorry.

10 MR. PEEK: My apologies.

11 Given the fact that the stay was issued in August
12 of 2011 and there were a number of intermediate stays after
13 that of the entire proceedings, including the
14 jurisdictional hearing, if we were to just use those stays
15 that stayed the entire case, as per the Court's comment and
16 inquiry, we would certainly go back to at least the -- I'm
17 trying to think the two writs that stayed the entire case.
18 That would be the one related to Justin Jones, the one
19 related to the attorney-client privilege of the documents
20 that Mr. Jacobs took when he left, and then the stay
21 related to the sanctions that the Court's order of March
22 27th of 2013. I don't know the exact time frame of those,
23 but if I took those three stays which stayed the entire
24 case, including jurisdictional discovery and jurisdictional
25 hearing, Your Honor, the Justin Jones decision, I think,

1 was in September 2012 and I don't remember when the Supreme
2 Court decision was, but I can go back and calculate those
3 times. But they're probably at least a year.

4 If you were certainly to go back all the way to
5 September -- to August of 2011, we know -- I can do that
6 calculation for you because that would be three years and
7 approximately six months. So multiply three times -- three
8 and a half times 365 which comes out to 1,000 days.

9 THE COURT: You think there's been three days of
10 stay?

11 MR. PEEK: Yeah. So --

12 THE COURT: I mean, three years of stay?

13 MR. PEEK: There's been at least three years of
14 stay using that one, Your Honor, but using just those that
15 stayed the entire case because they would be on top of the
16 jurisdictional --

17 THE COURT: I don't care what you say the number
18 is, I just care that you say on the record how many days
19 you think --

20 MR. PEEK: I don't know the exact number of days,
21 Your Honor. Using the two forms of calculus, the one
22 calculus where the Court says the stay of the entire case.
23 I don't know that calculus. I can do that and present it
24 to the Court.

25 I do -- I certainly do know the calculus as it

1 relates to September -- excuse me, August of 2011.

2 THE COURT: Okay. So let me ask you a question a
3 little bit differently and the reason I'm asking you, and
4 I'm going to include Mr. Morris in this discussion, is part
5 of my concerns, as I indicated on page 2 of my decision
6 that was issued last Friday, is the Rule 41 issues that I
7 previously had briefed by the parties which did not appear
8 to take the same position that you are taking at this
9 point.

10 If you are agreeing and stipulating on the record
11 that there has been an extension of the five-year rule for
12 a certain period of time, that will weigh in my
13 consideration of this Motion, --

14 MR. PEEK: Okay.

15 THE COURT: -- but I need you to, as a group, all
16 three of you, to give me that -- what period of time that
17 is because that is a significant issue for me as a trial
18 judge because in unpublished decisions that the Nevada
19 Supreme Court have issued, they have been very critical of
20 judges who do not ensure their cases are tried within the
21 five-year rules.

22 MR. PEEK: And Your Honor I'm respectful of that
23 concern of the Court and respectful of the Supreme Court's
24 criticism, but I can't give you an exact answer here today
25 but --

1 THE COURT: Okay.

2 MR. PEEK: -- I would like --

3 THE COURT: That's fair.

4 MR. PEEK: I'm going to say, Your Honor, that for
5 at least for a period of one year or more there has been a
6 stay of the entire proceedings and if I may, Your Honor, --
7 if you give me a little bit of a break so I can talk to my
8 colleagues to get an answer on that? I want to talk to Mr.
9 Adelson's counsel and I want to talk to Mr. Jones as well.

10 MR. JONES: I think we can calculate the period of
11 time related to the stays of the entire case within a few
12 minutes -- well, certainly come within a real close within
13 a real close number within a few minutes if we can get --
14 and we can give that to the Court, but I would certainly
15 agree with Mr. Peek that at a minimum, we're probably
16 talking about over a year but I don't have the exact number
17 of days off the top of my head.

18 THE COURT: Okay.

19 MR. PEEK: Can we have a moment, Your Honor, to
20 counsel with each other to --

21 THE COURT: Mr. Bice, do you want them to take
22 their break before or after you argue now?

23 MR. BICE: Well, I obviously want --

24 THE COURT: Because I'm going to give them the
25 break before I decide.

1 MR. BICE: All right. Then have them do it now.
2 THE COURT: Okay.
3 MR. BICE: Because I'm -- I want to be heard --
4 THE COURT: Absolutely. I'm just trying to get
5 them --
6 MR. BICE: -- on this.
7 THE COURT: -- to give me a number.
8 MR. BICE: Thank you, Your Honor.
9 THE COURT: So you can take a short break.
10 However long you need.
11 MR. PEEK: Thank you, Your Honor.
12 THE COURT: Have a nice visit. I'm going to try
13 and find the prior briefing that occurred. Does anybody
14 remember when that was? Two years ago?
15 MR. BICE: Your Honor, I'm not sure that briefing
16 ultimately was ever submitted. I recall us having the
17 discussion and I recall us having a dispute about it, but I
18 don't know that the briefing ever actually occurred.
19 THE COURT: Was it two years ago?
20 MR. PEEK: I don't -- I remember the inquiry of
21 the Court and I'm like Mr. Bice, I do not remember that
22 there actually was a brief submitted to the Court on this
23 issue. I do remember the Court inviting briefing on this
24 issue, but I don't believe that any of us did.
25 THE COURT: Imagine that. Me inviting briefing.

1 Okay. Bye. Go consult.

2 MR. PEEK: Thank you, Your Honor.

3 [Recess taken at 8:49 a.m.]

4 [Hearing resumed at 9:05 a.m.]

5 THE COURT: While you were gone, we found where we
6 discussed it. We discussed it in case number A671020,
7 which is the deposition case out of Florida on January 22nd,
8 2014. We were supposed to get briefs in this case sometime
9 in February 2014 and the only brief I got related to the
10 cyber-attack that Mr. peek filed. I didn't get a brief on
11 the five-year rule from anybody. I think there was a
12 discussion among counsel and you all decided that it wasn't
13 fruitful to file the brief because somebody called and
14 asked us to take the status check I had set off.

15 MR. PEEK: Or because of the cyber-attack, Your
16 Honor, we got a little distracted.

17 THE COURT: Mr. Peek, I -- that's probably why,
18 but that's -- Dulce was able to recollect that we had the
19 discussion in another case and it's -- the minutes in
20 A671020 on January 22, 2014 reflect the discussion we had
21 in this case about the five-year rule. So, --

22 MR. JONES: What -

23 THE COURT: -- did you come up with a number?

24 MR. JONES: With that said, Your Honor, no we did
25 not come up with a number. We've come up with an estimate,

1 but here's where -- what I can say to the Court.

2 To -- with respect to a stipulation, I need client
3 approval for that and I understand the concern of the Court
4 with the timing. My client is asleep right now, but I can
5 probably get ahold of him as early as 4 o'clock this
6 afternoon and I will have a precise number that I can
7 provide the Court and I can tell the Court whether I have
8 the authority to enter into a stipulation because obviously
9 this does go to the, you know, substantive rights of the
10 parties. And so I need to do that and I understand the
11 timing issues and --

12 THE COURT: I --

13 MR. JONES: -- if that's not acceptable to the
14 Court --

15 THE COURT: Thanks. I understand what you're
16 saying.

17 MR. JONES: I appreciate that but that is what I
18 would offer to the Court and the -- and I would be trying
19 to get confirmation of whether or not I have the authority
20 to stipulate to the tolling and the exact period of time
21 that we would agree that the case has been tolled with
22 respect to the five-year rule and -- as early as late this
23 afternoon. And, unfortunately, Your Honor, I need to have
24 that authority before I can do it on the record.

25 THE COURT: I absolutely understand, Mr. Jones.

1 Thank you.

2 MR. JONES: And with that said, Your Honor, I
3 don't know if you need to hear any additional arguments. I
4 think that the point is we do think our substantive due
5 process rights are impacted by the situation and we have a
6 unique situation here, unprecedented, and we think it's
7 imperative that we get some direction from the Supreme
8 Court.

9 THE COURT: Thank you.

10 MR. JONES: Thank you, Your Honor.

11 MR. PEEK: Your Honor, again, so with respect to
12 Las Vegas Sands, --

13 THE COURT: He didn't give me a number, so it
14 doesn't really matter what anybody else says.

15 MR. PEEK: I understand but I -- all right.

16 THE COURT: If we get to a point where somebody
17 wants to enter a stipulation, then all of you will have to
18 sign one.

19 MR. PEEK: Right. But I -- but, Your Honor given
20 that concern is that we certainly want until at least
21 whatever time Mr. Jones needs to get to somebody who is
22 asleep in Macau. I mean, it's only fair that if we're
23 going to enter a stipulation we have the client's consent
24 to do that.

25 THE COURT: Absolutely. It just means we can't do

1 a stipulation right now and I understand what he's --

2 MR. PEEK: No, but --

3 THE COURT: -- saying. Not that you weren't
4 willing to, you just can't.

5 MR. PEEK: Right and I understand the Court's
6 concern about the stay and having a stipulation, but that's
7 important to all of us.

8 THE COURT: I understand. Thank you. Mr. Bice,
9 your turn.

10 MR. BICE: Yes, thank you, Your Honor.

11 Your Honor, the five-year rule on this is a red
12 herring, we would submit. Here is -- and you can tell all
13 of the sort of wrangling going on over this issue. The
14 reason why there were no briefs submitted on it now upon
15 reflection of hearing this discussion is we're not -- our
16 client is not willing to run the risk. Even if the Court
17 ruled that it had been told and they objected to it --

18 THE COURT: I'm not ruling. The only way it's
19 happening is if there's a stipulation.

20 MR. BICE: And that's why they're -- that's why --
21 to hear this coming from them now, I think, sort of speaks
22 volumes. There is no basis for a stay under *Hansen* of the
23 Court's ruling. The Court's ruling -- if they would like
24 to go seek a stay from the Supreme Court, if they think
25 that they can convince the Supreme Court that a sanction

1 order -- there is no irreparable harm here. The
2 evidentiary hearing can go forward and if they want to try
3 to convince the Supreme Court that the Supreme Court should
4 review this and should enter a stay while it reviews is,
5 that is certainly something that they can attempt to do.
6 We will oppose that at the Supreme Court and we believe
7 that the Supreme Court will deny it. We believe that the
8 Supreme Court won't even entertain this writ because this
9 is not a case where privilege is implicated or any
10 irreparable harm is implicated. They are simply wrong when
11 they state that the law somehow that their due process
12 rights are implicated here.

13 As the U. S. Supreme Court has said and as the
14 Nevada Supreme Court has said, even striking an Answer in
15 its entirety as a discovery sanction for conduct far less
16 egregious than what has gone on in this case, does not
17 implicate people's due process rights.

18 It's a little ironic for us, obviously, to hear
19 the defendants, particularly Sands China, talking about due
20 process when for four years it has sabotaged that right of
21 Mr. Jacobs' throughout this proceeding, misrepresenting
22 where documents were at, their access to them, their use of
23 them, etcetera, etcetera.

24 So there is no basis under *Hansen* for a stay of
25 this case. There is no irreparable harm. The evidentiary

1 hearing can go forward. They have plenty of time to try
2 and convince the Nevada Supreme Court between now and April
3 20th that the Nevada Supreme Court should grant them a stay.

4 What this Court should not do is grant a -- grant
5 even a temporary stay so that it gives the appearance that
6 somehow the Court thinks that a stay is warranted because
7 that's what they will do. If the Court even gives them a
8 stay for a few days, they will tell the Court: Look, Judge
9 Gonzalez thinks that this is so important that it merits
10 even a stay. They should go to the Supreme Court and try
11 and convince them that there is a basis for a stay when
12 there isn't one at all on this writ petition because it
13 doesn't deprive them of any legal rights. But you know
14 what it does do, Your Honor? It deprives my client of
15 substantial rights.

16 Your Honor, we already know that Mr. Schwartz is
17 dead. We already know that Mike Leven is gone from the
18 company. I don't know how old Mr. Leven is, but he's not
19 young. Irwin Segel, Your Honor, who was also on the Sands'
20 Board of Directors that was intimately involved in this, he
21 has also left the Sands' Board and I know that Mr. Segel is
22 over 80 years old. I do not know the status of his health.
23 I know that Mr. Adelson is over 80 years old and has had
24 health problems in the past. We have got -- this case has
25 been going on for over four years. No evidence is being

1 preserved. The memories of people are fading. Their
2 testimony is not being preserved and they're all going to
3 be allowed to claim: You know what? I don't remember.

4 And that is going to become a convenient denial
5 for people and they'll be able to say: Well, passage of
6 time. I just can't remember now why this happened or what
7 we did, etcetera.

8 We need to be able to preserve evidence in this
9 case and we are being deprived of that and we have been
10 deprived of it for years as a result and principally -- you
11 know, Mr. Jones is new to the case, relatively speaking,
12 considering that it's four years old. He says that the
13 MPDPA, you know, hasn't had that much impact. The MPDPA is
14 the impetus of the -- of everything that has happened in
15 this case.

16 Let's remember something. It is the impetus, it
17 is the cornerstone that caused the stay to be in place the
18 first time. Mr. Fleming submitted a declaration to the
19 Nevada Supreme Court without disclosing all of the
20 documents were -- had been already brought over to Nevada
21 or in to the United States. Without disclosing that fact,
22 he represented to the Court, as Ms. Glaser did as well, to
23 the Supreme Court to obtain that stay that all of the
24 documents were in Macau and it would take them a \$1,000,000
25 to do that. That was their representations.

1 Now we know that those representations were
2 incomplete to say the least. So that MPDPA excuse has been
3 the entire predicate of the delay of this case since its
4 very inception. And so to claim that: Oh, it hasn't
5 really been the cause of the delay, is simply ignoring the
6 actual facts and ignoring the actual record.

7 So, under Hansen, they have to show you
8 irreparable harm, absent a stay. There is no irreparable
9 harm absent a stay and, as we cite the Second Circuit in
10 the *Linde* decision, which involved the exact same points,
11 the exact same arguments of someone saying: Well, we were
12 relying upon this Foreign Secrecy Act and so we're not
13 going to comply with discovery. And the Second Circuit
14 said: Well, that's too bad, but you can't seek writ review
15 by a sanctions order that's saying you're not allowed to do
16 that because your remedy is an appeal of all things after
17 all because it's an available remedy. If you lose, you can
18 appeal and the same is true here.

19 They do not suffer any irreparable harm because
20 they're not being forced to forfeit any rights whatsoever.
21 They forfeited those rights long ago when they got
22 sanctioned for misrepresenting to the Court about the MPD -
23 -- making the misrepresentations to the Court about the
24 MPDPA.

25 And, again, Your Honor, when you look at who is it

1 that's going to be prejudiced by yet another delay of this
2 case, there's only one side that is going to be prejudiced
3 and that's Mr. Jacobs because more and more evidence is
4 going to disappear with yet another delay of this case.

5 We have -- we set this hearing down for April 20th.
6 That hearing has to proceed, Your Honor. My client is
7 being prejudiced constantly by these delays and witnesses
8 are going to be allowed to claim that they don't remember
9 and witnesses are going to continue to disappear and/or
10 pass away. These are not young people that are -- that
11 were on the Board of Directors of Las Vegas Sands. George
12 Ku has also left the Board of Directors of Las Vegas Sands
13 Corp., Your Honor, and he was also there at the time and I
14 know that Mr. Ku is over 80 years is my recollection.

15 THE COURT: Anything else?

16 MR. BICE: So, with that, it should be denied,
17 Your Honor.

18 THE COURT: Thank you. Mr. Jones, anything else?

19 MR. JONES: Just briefly, Judge.

20 I would say this. I understand there's been a
21 long passage of time and I would point out though that
22 these are important issues and the fact that they're
23 important issues or the proof that they're important issues
24 and Mr. Bice talks about the time frames that have
25 occurred, the proof that they're important issues is the

1 fact that these writs were accepted and that decisions have
2 come out of those writs that give you guidance and give us
3 some guidance.

4 THE COURT: But I have witnesses who testified at
5 my sanctions hearing who don't remember stuff that only
6 happened two years ago. Imagine how bad it's going to be
7 when you finally start taking depositions in this case.

8 MR. JONES: Your Honor, you know, as you know, I'm
9 on both sides of cases and I'm faced with that same
10 prospect every day in cases that I have. That's not an
11 unusual circumstance and I've had witnesses --

12 THE COURT: It is unusual for a case to be four
13 years old and substantive discovery not to have started
14 yet.

15 MR. JONES: It's not as normal as others. I've
16 had cases where I didn't get out of the Motion to Dismiss
17 stage until 11 years and it went all the way to the United
18 States Supreme Court because important issues were
19 implicated.

20 THE COURT: I understand.

21 MR. JONES: And so that's what happens when you
22 have these kind of issues.

23 I would submit to this Court we are talking about
24 due process rights and we may -- the Supreme Court may
25 decide that our argument is not meritorious with respect to

1 these issues, but we believe we have a legitimate due
2 process issue that we think needs to be presented to the
3 Supreme Court and that case by -- I was talking about,
4 *Humana versus Forsyth*, I had class representatives who were
5 older people and after 11 years, I was worried that I
6 wasn't going to have a class representative anymore, but
7 those issues went up to the Ninth Circuit twice. Those
8 issues had to be addressed. And so, that is unfortunately
9 or not, and I would suggest that this is the way our system
10 works, those are issues that have to be addressed.

11 And so, the -- and I think you said it yourself
12 during the sanctions hearing. Delay alone is not
13 sufficient. Assuming that you -- as Mr. Bice asserts, that
14 you can tie all of the delay that has occurred here back to
15 the MPDPA issues, and I submit and I believe we showed
16 graphically that that's just not true, but even if it were
17 true, if these kind of issues are implicated, there's a --
18 and I think this Court has been cautious. Even though I
19 know you're anxious to have a jurisdiction hearing, you
20 have also been very cautious about letting these issues be
21 played out where these important matters are the subject of
22 the case and have granted stays I know -- where I got the
23 impression you didn't want to grant the stay because you
24 wanted to get on with things, but you still took the
25 cautious approach and we think that's the best approach

1 here.

2 I would ask the Court to give me until this
3 afternoon, at least until 5 o'clock --

4 THE COURT: Well you're not going to get a
5 stipulation because plaintiffs aren't going to stipulate.

6 MR. JONES: Well --

7 THE COURT: So even if you were to concede when
8 the timing was, they're not going to stipulate. So I don't
9 have a stipulation.

10 MR. JONES: I understand.

11 THE COURT: And so I don't have a stipulation that
12 I would need under Rule 41. So that's --

13 MR. JONES: I understand, Your Honor, but I -- if
14 my client gave that stipulation, if Las Vegas Sands did, if
15 Mr. Adelson was able to do that by 5 o'clock, whether Mr.
16 Bice stipulates or not, if there is a stay ultimately
17 granted by you or the Supreme Court and we continue on here
18 and as a -- we are willing -- we -- say the Court were
19 willing to do that, Mr. Bice may change his mind down the
20 road because that may be in his interest to do so.

21 The point is that he wants to push this case but
22 he is now telling you: I will not agree to that because I
23 want to push this matter. And so, you've got to balance
24 whether or not if my client were willing to stipulate to
25 this, that there is not this deadline on the five-year rule

1 the Court is up against. So that, again, alleviates the
2 concern for Mr. Bice's client versus is it a necessary
3 issue to go to the Supreme Court and determine whether or
4 not these due process issues are something that the Supreme
5 Court thinks need to be decided first?

6 THE COURT: Okay. Anything else?

7 MR. JONES: No. No, thank you, Your Honor.

8 THE COURT: Thank you. The Motion to Stay is
9 denied. Here the Court has to only make a prima facie
10 determination at the jurisdictional hearing that is
11 currently scheduled for April 20. I entered sanctions that
12 are a lesser sanction that, in my opinion, do not infringe
13 the due process rights of Sands China Limited.

14 Given the issues that I identified and procedural
15 posture portion of my brief, the timing, given a lack of
16 stipulation to the extension of the five-year rule or the
17 period of tolling pursuant to the stays, prevents me from
18 being able to grant a stay. So the Motion is denied.

19 Anything else?

20 MR. JONES: Your Honor, just if we could get a --

21 THE COURT: Here -- I'll say something because it
22 was in your brief. If you file a list of witnesses and
23 documents on behalf of Sands China, I am not going to
24 sanction you for doing that if you're doing it in order to
25 be cautions just in case the Nevada Supreme Court does

1 something else. So if you think you need to file that, go
2 ahead and file it. I have made a determination you may not
3 use those witnesses, but I'm not going to preclude you from
4 making that filing because I know that you put in one of
5 the briefs that you didn't want to offend me. You are not
6 going to offend me by preserving your rights.

7 MR. PEEK: Your Honor, there's a concern of giving
8 out \$250,000 to various legal associations, not being able
9 to get it back in case the Supreme Court does grant that
10 stay. Is the Court at least interested in granting a
11 limited stay as to --

12 THE COURT: No.

13 MR. PEEK: -- the payment of those monies?

14 THE COURT: I'm not interested in granting any
15 stay.

16 MR. PEEK: Okay.

17 THE COURT: I think the order that was fashioned
18 was one that you were lucky to get on your side.

19 MR. JONES: Your Honor, with respect to the order,
20 is Mr. Bice going to prepare that and if so, could we see
21 that and --

22 MR. BICE: Of course.

23 MR. JONES: -- obviously we'd like to see it as
24 soon as possible.

25 MR. BICE: Of course. Yes.

1 THE COURT: Okay.

2 MR. BICE: And we've agreed, Your Honor -- I think
3 we agreed that we're pushing off the deadline for witnesses
4 and exhibits for a week in any event because I know that
5 that was an issue in their Motion and Mr. Jones and Mr. --
6 the other Mr. Jones, we -- he and I have had a couple of
7 conversations over the last couple of days.

8 THE COURT: Okay.

9 MR. JONES: Yeah. That was my understanding that
10 Mark Jones agreed to --

11 THE COURT: But --

12 MR. BICE: Yeah.

13 MR. JONES: -- a week, assuming the Court is okay
14 with that.

15 THE COURT: Just so we're clear, I'm not going to
16 sanction you for filing something to preserve your rights.

17 MR. JONES: All right. Thank you.

18 THE COURT: I mean, I'm not going to. I mean, if
19 you've got to preserve your rights, preserve your rights.
20 It's not going to bother me.

21 MR. JONES: Very well. Thank you.

22 THE COURT: Anything else?

23 MR. PEEK: Nothing. Thank you.

24 THE COURT: Have a lovely weekend.

25 MR. MORRIS: Thank you.

1 MR. PEEK: Thank you, Your Honor.
2 THE COURT: Bye.
3 MR. MORRIS: Thanks for the coffee.
4 THE COURT: Absolutely, Mr. Morris.
5 MR. PEEK: Thanks for your patience on --
6 THE COURT: I have no issues, Mr. Peek. Have a
7 wonderful weekend. Travel safely.

8
9 PROCEEDING CONCLUDED AT 9:23 A.M.

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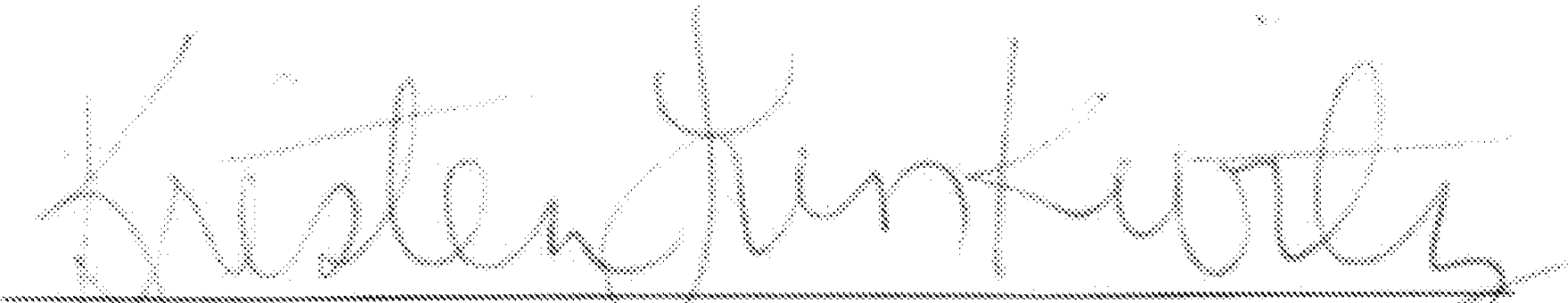
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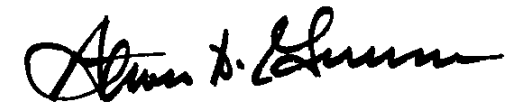
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal dotted line.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, MARCH 19, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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

2 (Court was called to order)

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

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

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

15 THE COURT: Right.

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

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

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

23 THE COURT: Yes.

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

1 interpret the order, is that it --

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

4 MR. BICE: Okay.

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

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

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

23 MR. BICE: Understood.

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

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

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

7 MR. BICE: All right.

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

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

1 THE COURT: Okay. Thank you.

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

6 MR. BICE: Uh-huh.

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

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

16 THE COURT: How's that possible?

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

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

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

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

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

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

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

16 THE COURT: Well, have they been produced?

17 MR. BICE: Those were.

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

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

20 THE COURT: Okay.

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

23 THE COURT: Okay.

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

1 THE COURT: So let me stop you before you're going
2 to argue, because I understand you have some issues about
3 scope. I'm trying to make sure that those precedent events --

4 MR. BICE: Correct.

5 THE COURT: -- that I previously set up have been
6 accomplished.

7 MR. BICE: And once -- yeah.

8 THE COURT: It's your position that some of the
9 documents related to my privilege review on the Advance
10 Discovery and the rulings that I made and the motions for
11 reconsideration, those documents have still not been produced.

12 MR. BICE: That is correct.

13 THE COURT: Okay.

14 MR. BICE: That is my understanding.

15 MR. RANDALL JONES: Your Honor, they have control of
16 the Advance Discovery documents, so I'm not sure --

17 THE COURT: No, they don't.

18 MR. BICE: We do not.

19 MR. RANDALL JONES: Well, they -- the Court --

20 THE COURT: I have control of the Advance Discovery.

21 MR. RANDALL JONES: The Court has control of the
22 Advance Discovery documents.

23 THE COURT: I issued an order.

24 MR. RANDALL JONES: Right.

25 THE COURT: The order said, produce these, if you

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

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

11 THE COURT: Yes.

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

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

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

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

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

23 THE COURT: Most recent ones.

24 MR. RANDALL JONES: Right.

25 THE COURT: Right.

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

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

8 MR. RANDALL JONES: Well --

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

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

14 THE COURT: Right.

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

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

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

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

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

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

7 THE COURT: Let's ask Mark Jones.

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

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

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

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

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

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

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

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

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

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

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

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

5 MS. SPINELLI: No.

6 THE COURT: Okay.

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

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

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

20 THE COURT: Okay.

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

1 course we'll release those.

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

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

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

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

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

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

24 Do you think you guys can do that?

25 MS. SPINELLI: Yes.

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

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

7 THE COURT: Have people sent it to me?

8 MR. BICE: We believe so.

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

11 MR. BICE: My mistake.

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

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

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

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

1 MR. BICE: Yes.

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

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

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

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

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

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

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

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

17 THE COURT: Thank you.

18 MR. BICE: Thank you.

19 THE COURT: Mr. Jones.

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

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

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

1 same page.

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

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

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

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

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

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

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

21 THE COURT: Okay. Anything else?

22 MR. RANDALL JONES: No.

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

25 The deposition, however, is limited, because Sands

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

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

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

9 MR. BICE: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

7 THE COURT: And some with revised redactions.

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

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

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

17 MR. BICE: Gotcha.

18 THE COURT: I am only talking about --

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

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

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

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

16 MR. SMITH: October.

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

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

22 MR. BICE: Correct. Correct. Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: -- clearly read it.

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

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

9 THE COURT: Okay. Thank you.

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

12 THE COURT: All right. Mr. Jones.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: What do you think it is?

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

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

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

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

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

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

15 MR. RANDALL JONES: Well --

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

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

20 THE COURT: Right.

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

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

1 right?

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

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

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

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

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

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

16 THE COURT: In this case?

17 MR. RANDALL JONES: In this case.

18 THE COURT: What about in the Florida case?

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

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

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

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

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

10 MR. RANDALL JONES: No.

11 THE COURT: Yes.

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

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

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

23 THE COURT: And?

24 MR. PEEK: And we identified those documents.

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

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

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

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

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

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

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

24 MR. PEEK: You did, Your Honor.

25 THE COURT: Amazing.

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

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

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

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

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

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

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

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

24 MS. SPINELLI: That's right.

25 THE COURT: All right.

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

3 THE COURT: Right.

4 MS. SPINELLI: Your Honor has stated --

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

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

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

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

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

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

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

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

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

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

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

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

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

5 THE COURT: When did you start that?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 a long time.

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

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

11 MR. BICE: Well, Your Honor --

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

15 THE COURT: Sure.

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

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

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

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

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

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

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

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

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

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

7 MR. BICE: I understand.

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

16 MR. BICE: Thank you, Your Honor.

17 MS. SPINELLI: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

1 why I said substantially similar.

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

7 THE COURT: Okay.

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

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

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

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

4 MR. RANDALL JONES: I understand.

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

15 MR. RANDALL JONES: I understand.

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

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

1 you gave me the clarification. I appreciate that.

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

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

7 THE COURT: Two weeks after they get access.

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

11 THE COURT: We do.

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

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

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

24 THE COURT: Yes.

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

1 access to this information.

2 THE COURT: Yes.

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

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

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

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

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

10 MR. BICE: -- verbatim.

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

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

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

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

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

16 MR. BICE: Absolutely.

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

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

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

24 MR. BICE: Exactly.

25 THE COURT: You can access certain information from

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

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

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

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

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

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

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

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

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

11 THE COURT: Okay.

12 MR. BICE: But with respect to --

13 THE COURT: Hold on a second.

14 MR. BICE: Yes.

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

17 MR. BICE: I apologize.

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

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

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

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

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

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

7 MR. MORRIS: I understand.

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

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

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

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

21 THE COURT: That's a different issue.

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

24 THE COURT: No. I said substantially similar.

25 MR. PEEK: Well, I'm not even -- I can't even say,

1 Your Honor, I don't think there's any evidence that's even
2 substantially similar, because none of us know, other than the
3 plaintiff, as to what Mr. Jacobs took when he left Macau in
4 July of 2010. None of us know that.

5 THE COURT: You're right. None of us actually know.

6 MR. PEEK: Other than Jacobs. So there's no
7 evidence in this record that it is, as you suggest,
8 substantially similar. I'm not saying it is or isn't. I'm
9 just saying there's no evidence in this record.

10 THE COURT: I am basing my conclusion that it is
11 substantially similar based upon the method by which the data
12 that was transferred was chosen. So that's --

13 MR. PEEK: But you don't know what -- you never
14 heard from Jacobs as to what --

15 THE COURT: I have no idea what --

16 MR. PEEK: -- he chose when he downloaded and took
17 things from Macau --

18 THE COURT: You're right, Mr. Peek.

19 MR. PEEK: -- in July 2010.

20 THE COURT: Absolutely.

21 MR. PEEK: So you can't even draw that inference,
22 Your Honor, respectfully.

23 THE COURT: All right. I disagree with you, but
24 okay. I've explained why I believe it's substantially
25 similar. I understand you have a different perspective, and I

1 also understand that there is a huge issue with the Advance
2 Discovery information being provided to everyone to use. So
3 -- but there was --

4 MR. PEEK: And with respect to my client, my
5 client's employee --

6 THE COURT: Yes?

7 MR. PEEK: -- Ron Reese, I think that we have had
8 certainly comments from Mr. Jones already which I would adopt,
9 as well.

10 THE COURT: Right.

11 MR. PEEK: And this certainly is something brand new
12 that just came up as part of a third amended complaint, not as
13 part of the Supreme Court's mandate in August of 2011 for an
14 evidentiary hearing on the issues that went up to the Supreme
15 Court.

16 THE COURT: Anything else in opposition to the
17 plaintiff's motion, Mr. Peek?

18 MR. PEEK: None other than what Mr. -- nothing
19 additional.

20 THE COURT: I understand that.

21 Now Mr. Bice. Sorry. I had to hit all those
22 people.

23 MR. BICE: Your Honor, the only parties that know
24 what Advance Discovery has are sitting to my right. That's
25 it. I don't have access. So Mr. Peek keeps saying they don't

1 know. They are the ones who reviewed it. And if Mr. Peek and
2 Mr. Jones chose not to review it even though Advance Discovery
3 gave them access and they instead had Mayer Brown do it or --
4 who's also counsel of record in this case, or MTO, which was
5 also counsel of record in this case, the defendants are the
6 only ones that know what is there.

7 Ms. Spinelli has confirmed it is 81,000 documents, I
8 believe, that are with Advance Discovery that we would have to
9 review. We can't do that in two weeks. Your Honor, you gave
10 them months to review this data, and they did. It took them I
11 don't remember how long, certainly six months to go through
12 this data and make their claims of privilege. That's what
13 they did. And they are the ones who have access to it.

14 THE COURT: But you already had a first shot at it.
15 You've already done it once.

16 MR. BICE: We ran -- all we could do -- Your Honor,
17 because they said we couldn't look at it, all we could do was
18 run search terms. That's not -- Mr. Peek is just wrong on
19 that. He was allowed to look at every piece of paper if he
20 wanted to do it --

21 MR. PEEK: That is --

22 MR. BICE: -- and he chose not to do it.

23 MR. PEEK: That is false. That is --

24 THE COURT: Mr. Peek, don't interrupt. Mr. Peek,
25 don't interrupt.

1 MR. BICE: And that is exactly what has. And we
2 have emails, and he knows that. And if they chose to run
3 search terms because it was easier for them, that was a
4 decision that they made. So we know that they were allowed to
5 look at every document, and that's why they claimed it was
6 taking them so long. The story that somehow, well, we only
7 had access -- ability to run search terms against that data is
8 simply false. They have had the ability. And not only did
9 they have that ability, Your Honor, they've had his drive that
10 they brought over here that now -- apparently they just
11 haven't looked at it. I guess we're all supposed to believe
12 that. We know that they were looking at certain emails on Mr.
13 Kostrinsky's computer, because we heard that testimony during
14 the evidentiary hearing, all the while that they were telling
15 us and you they couldn't access that information in the United
16 States and it was such a serious issue that they couldn't even
17 disclose it to the Court.

18 But, nonetheless, Your Honor, our point is we can't
19 -- we can't look at this information in that amount of time.
20 And if that's what the Court is ordering us to do, the Court
21 is putting us in a position that is prejudicial considering
22 that they are the only parties who have had access to this
23 information this entire amount of time. And they have had the
24 ability to look at every piece of paper that is in Advance
25 Discovery, except for those over which Mr. Jacobs was able to

1 pull out via search terms.

2 THE COURT: Okay. Anything else?

3 MR. BICE: No, Your Honor.

4 THE COURT: All right.

5 MR. RANDALL JONES: Your Honor, this is a related
6 issue, so just a clarification. We have disclosures that are
7 due tomorrow, both sides --

8 THE COURT: Hold on. We'll get to that. We'll get
9 to that in a minute.

10 So I need to ask you both a question, because I am
11 not operating under any assumptions about my sanctions order
12 which previously had an issue about notice provisions. So I
13 have two issues related to notice and response provisions that
14 are raised by this issue. One is by what appear to me to be
15 well-tailored requests for production of documents, which are
16 attached as Exhibit 1 to the expedited motion --

17 MR. BICE: Yes.

18 THE COURT: -- which I approve for submission. The
19 question I have is the return of the responsive information.
20 Typically there would be a 30-day return period --

21 MR. BICE: Correct.

22 THE COURT: -- which will put us at the day before
23 or the morning of our hearing if you serve them by RSE today.

24 MR. BICE: Correct. There's only two, Your Honor.

25 THE COURT: They're fairly easy.

1 MR. BICE: I think they're narrow. I would ask for
2 15 days.

3 THE COURT: Okay. That was what I wanted to know.

4 Mr. Jones, can you look at what's under Tab 1 of the
5 expedited motion near the end of the document are two specific
6 requests for production. They're on page 5 of the exhibit at
7 the end, so the next-to-the-last page. Mr. Bice is saying
8 since I'm going to grant it he would like me to order it
9 responded to in 15 days. Do you have a position?

10 MR. RANDALL JONES: I certainly have a position,
11 Your Honor, and my position would be that again -- we
12 understand you've ordered it, so my only position would be
13 that we are -- I understand or I get the impression you're
14 going to allow depositions. So between the depositions that
15 you sound like you're going to allow and preparing for the
16 hearing we have disclosures that we're working on, we have
17 motions in limine, the 15 days is, in consideration of
18 everything else we're trying to deal with, is too much of a
19 burden on us to try to get all this done.

20 THE COURT: Okay. Then let's talk about the next
21 notice issue, which is the notice of any depositions that you
22 decide to take. And this will apply both to the deposition of
23 Mr. Jacobs that we discussed and the depositions that are
24 being sought by the plaintiffs. Do you have a position
25 related to the notice period? The statutory notice -- or the

1 rule period is 15 days. Fifteen days will get you before the
2 hearing.

3 MR. BICE: Yes. I would ask the Court to do the
4 following. Mr. Jones and I have -- Mark Jones and I have
5 spoken, because we figured that the Court was going to --
6 well, I figured that the Court was going to allow some
7 depositions. Mr. Jones and I have talked about a couple-of-
8 week time span. One of those weeks is a little fuzzy on our
9 end, but I'm not saying he committed to anything, because he
10 had to check with -- he has a number of people he needed to
11 check with, so I don't know where he stands sort of on that.
12 We were going to try and do those depositions --

13 Mark, help me out.

14 MR. MARK JONES: 6th.

15 MR. BICE: -- the 6th, which is not really good for
16 me, or the following week, which I think was better on my end.
17 I would ask the Court --

18 THE COURT: Those are the weeks of the 6th and the
19 13th, the 13th being the week before our hearing.

20 MR. BICE: I understand that, Your Honor.

21 THE COURT: I'm not criticizing anyone.

22 MR. BICE: We're trying. So I would ask the Court
23 to do it on five days' notice, but obviously an instruction
24 that the parties are to try to cooperate in good faith on the
25 schedule. But if -- you know, if somebody just says, well,

1 we're not giving you a reasonable date, then five days'
2 notice. And if we can't agree, then we'll have to come back
3 to you; right?

4 THE COURT: All right.

5 MR. BICE: That's what I would ask.

6 THE COURT: Mr. Randall Jones, Mr. Peek, and Mr.
7 Morris, and Mr. Mark Jones, you have an offer of five days.

8 MR. RANDALL JONES: Your Honor, well, there's a
9 couple of issues here. One is Mr. Jacobs is in Florida, and
10 we would obviously want Mr. Jacobs to come to Las Vegas. We
11 would not want to have to take his deposition --

12 THE COURT: He has to come. He's a party.

13 MR. RANDALL JONES: Well, that's what I would
14 normally think.

15 MR. BICE: We have an issue with that.

16 MR. RANDALL JONES: But I -- in this case I --

17 THE COURT: They haven't filed a motion that says he
18 doesn't have to come. Until I grant it, the rule says he has
19 to come.

20 MR. RANDALL JONES: So with respect to the other
21 witnesses I don't know if they're -- Mr. Leven does not live
22 here anymore.

23 THE COURT: Well, here's the issue. Whatever I
24 decide is going to apply to both of you. So I would encourage
25 you to adopt or agree to something that you both believe will

1 be fair given your respective clients, the locations of your
2 former employees and current employees, and everything else.
3 Because you've got scheduling issues.

4 MR. RANDALL JONES: In that regard, Your Honor, the
5 only thing I could say at this point -- and I don't represent
6 those individuals, they're obviously Las Vegas Sands employees
7 -- is that I think we have to talk to them. We didn't know
8 what you were going to do today, and so I certainly have no
9 idea of their schedules and what their availability is. So
10 that's something that I -- you know --

11 THE COURT: So if you want to have an a chance to
12 have an opportunity to discuss the time limit with me from
13 15 days to something else, which is what I've been requested
14 from plaintiff, I need to hear from you three now.

15 MR. PEEK: Your Honor, we're --

16 THE COURT: Because right now there's an offer of
17 five. There's a rule that says 15.

18 MR. PEEK: I'm okay with the five. I don't know
19 whether you're going to order Mr. Reese, but I certainly
20 haven't talked to Mr. Reese, but I'm sure we could work
21 through that as far as Mr. Reese is concerned. I don't know
22 about Mr. Adelson. I'll let Mr. Morris address that. But I
23 do know that Passover is coming up very quickly, and that's
24 going to be an issue for Mr. Adelson --

25 THE COURT: Sure.

1 MR. PEEK: -- on Passover.

2 THE COURT: And Mr. Leven.

3 MR. PEEK: Thank you, Your Honor.

4 MR. BICE: Your Honor, with respect to Mr. -- on
5 this depo location issue this was my position, is that the
6 address they gave us for Mr. Leven is in Florida, and here was
7 my only position, is we are under a time constraint. If we
8 have -- if their position is that we have to travel for Mr.
9 Leven to Florida to take that deposition, then Mr. Jacobs is
10 in Florida, and we should not have to be having these planes
11 going to Florida to take Mr. Leven, if that's their position,
12 and then have Mr. Jacobs get on a plane and come here to take
13 his deposition if we're already going to be in Florida for Mr.
14 Leven. That was my only position.

15 THE COURT: I understand what you're saying. That
16 is a rational and well-reasoned position. But the rule says
17 that a plaintiff has to come -- and a party has to come for
18 their deposition.

19 MR. BICE: But the rule says "generally" that is the
20 case.

21 THE COURT: I know. I'm not saying I won't change
22 it.

23 MR. BICE: I understand.

24 THE COURT: I'm just saying right now assume he has
25 to come here.

1 MR. BICE: Right. And I said, if Mr. Leven is going
2 to come here, then --

3 THE COURT: No. Don't assume that.

4 MR. BICE: -- we don't have an issue.

5 MR. PEEK: He's a defendant, Your Honor.

6 THE COURT: Defendants have to come, too. If you
7 notice their depo and they don't show up, they're in a world
8 of hurt. But only one --

9 MR. PEEK: Well, he's not a defendant, Your Honor.

10 THE COURT: Right.

11 MR. PEEK: He's a representative. He's on the board
12 of directors, a former executive.

13 THE COURT: Okay.

14 MR. BICE: A director. He can be noticed.

15 THE COURT: Let's assume for a minute, Mr. Bice --

16 MR. BICE: Yes.

17 THE COURT: -- that your going to have the same rule
18 that applies to you --

19 MR. BICE: Yes.

20 THE COURT: -- and applies to them.

21 MR. BICE: Yep.

22 THE COURT: Are you happy with a five-day notice
23 period?

24 MR. BICE: Five days, with the parties obviously
25 working in good faith trying to cooperate. And if they can't,

1 then they come back to you. And I agree with that. Fine.

2 You know what, Mr. Peek is chuckling, so we'll just agree to
3 five days flat. We'll do it.

4 THE COURT: What do you want?

5 MR. BICE: They have to live with the same thing.

6 MR. PEEK: I've already said I'm okay with five
7 days, Your Honor. But I can't speak for Mr. Adelson with
8 respect to Passover.

9 THE COURT: Well, that's why I'm going to Mr. Morris
10 next.

11 Mr. Morris.

12 MR. MORRIS: No less than 15.

13 THE COURT: Mr. Jones.

14 MR. RANDALL JONES: Your Honor, I don't control any
15 of these witnesses, so I certainly the longer period of time
16 the better just because of all the other things we're trying
17 to deal with at the moment, which, again, includes things like
18 disclosures and motions in limine.

19 THE COURT: And you're going to talk about those in
20 a few minutes. Anything else?

21 MR. PEEK: Your Honor, do I get to address the
22 requests for production? Because those are addressed to Las
23 Vegas Sands.

24 THE COURT: Uh-huh. Sure.

25 MR. PEEK: And there is a Request Number 26 -- well,

1 25 and 26.

2 THE COURT: 25 and 26. "Identify and produce all
3 documents and/or communications since October 18th, 2010,
4 where Ron Reese is either --"

5 MR. PEEK: I have a temporal issue, Your Honor,
6 because, as we know, the so-called defamatory statement
7 occurred on or about March 15th or 16th of 2011. This is a
8 temporal issue that goes from October 18th, 2010, all the way
9 up I guess to the present time on each of them. So I have a
10 temporal issue both with the commencement of the October 18,
11 2010, as well as the open-ended time. I think that this ought
12 to be a very narrow -- if at all, if the Court is going to
13 grant this request, ought to be very narrow to that period of
14 time in which the so-called statement of -- that they claim is
15 defamatory on which their complaint is based should be
16 allowed, as opposed to all these other documents.

17 THE COURT: All right. The motion is granted in
18 part. With respect to the requests for production that are
19 attached behind Tab 1 to the expedited motion, which are
20 separately directed to Sands China and to Las Vegas Sands, the
21 response period for those is 21 days. Those requests for
22 production are to be served by hand delivery or other means
23 today.

24 With respect to the request to take witnesses to
25 examine them on later-produced documents or revised production

1 of redactions the request is granted.

2 Those witnesses, as well as the depositions of Mr.
3 Jacobs, may be taken upon 10 days' notice. The parties are
4 instructed to cooperate in setting the depositions on mutually
5 agreeable dates, times, and, if possible, locations.

6 With respect to the deposition of Mr. Ron Reese, who
7 has not previously been taken, the Court is granting that
8 request. It will also be subject to the 10 request.

9 Anything else?

10 MR. MORRIS: Say that again about Ron Reese.

11 THE COURT: I'm granting the request for him to be
12 taken.

13 MR. PEEK: And you're also granting the request
14 without any temporal limitations?

15 THE COURT: I am. Anything else?

16 MR. MORRIS: So the October -- the October date 2010
17 to --

18 THE COURT: That is the date that is in the request
19 for production. It appears to me to be narrowly tailored and
20 relates to the filing of the litigation and subsequent
21 discussions related to that, not just the defamatory
22 statements. So I think it's a relevant date.

23 Anything else?

24 MR. PEEK: So you're saying all the way up to today,
25 or to the time of --

1 THE COURT: Yes.

2 MR. PEEK: Okay.

3 THE COURT: Can we talk about the issue you had, Mr.
4 Jones, which was related to disclosures and motions in limine.

5 MR. RANDALL JONES: Yes, Your Honor. In light of
6 the Court's ruling today, the question is is it appropriate to
7 have the disclosures be due tomorrow. And also I guess the
8 other issue that's impacted by this would be motions in
9 limine, which I believe are due Monday. Those are --
10 presumably could change, and could change radically, depending
11 on what happens with these productions.

12 THE COURT: Well, if you have a motion in limine
13 that is going to be changed because of subsequent events that
14 are filed, I'm certainly likely to sign an OST, but it has to
15 relate to issues that were unknown at the time the motions
16 were to be filed, which is Monday. So if you're saying you
17 have some issues that you think need to be raised or may need
18 to be raised, they need to be filed on Monday. If other
19 issues come up, then I will consider an OST.

20 MR. MARK JONES: Your Honor, if I may. I put a call
21 in to Mr. Bice yesterday. He was obviously busy. I haven't
22 had a chance to connect with him yet, and I don't know if his
23 position is no or not, but you might recall that originally we
24 had a disclosure date due on -- I can't remember the exact
25 date, but then motions were due --

1 THE COURT: Couple of weeks ago, wasn't it?

2 MR. RANDALL JONES: Your Honor, I think it was a
3 week ago today -- a week ago tomorrow.

4 MR. MARK JONES: The motions were due a week later.
5 So I think the anticipation was there from the initial
6 disclosures that were going to be made to have it a week
7 later. We forgot to address that.

8 THE COURT: Well, here's my concern. Here's my
9 concern, and this is why I don't want to move the dates. When
10 we move the dates the person who suffers is me, because I need
11 you to do a good job on the briefing so I have an opportunity
12 to read the briefs, digest what you've put in there, and then
13 think about them and then making a decision during the
14 argument that you have prior to the start of the hearing. If
15 you compress those dates, I lose that ability. So I try to
16 never put motions in limine on that short track where I lose
17 my ability to read and think. Because it's important to me,
18 and this is an important issue, and I want to address it. So
19 I'd rather not move them. But I do understand if issues come
20 up after the day they're supposed to be filed that I may have
21 to sign an OST, and then I'm going to compress your opposition
22 schedule.

23 All right. Anything else? Mr. Morris.

24 MR. MORRIS: Yes, there is, Your Honor. Your Honor,
25 I wasn't involved in the Florida litigation. Mr. Bice was.

1 And --

2 THE COURT: I was, too. I don't know how I got
3 involved in the Florida litigation, but I was.

4 MR. MORRIS: Well, you're more fortunate than I.

5 THE COURT: No, I wasn't going to say that.

6 MR. MORRIS: When I look at this motion that you've
7 just granted with respect to expedited motion for
8 clarification and limited jurisdictional discovery I notice
9 that the justification for Mr. Reese's deposition is at the
10 foot of page 2. "Finally," he says, "Jacobs seeks to take the
11 deposition of Ron Reese to obtain limited documentary evidence
12 concerning that claim." "That claim" is the relative pronoun
13 that refers to the defamation claim. And that claim arises
14 out of a single statement on a single date. And he points --
15 goes on to point out some other things here. This request for
16 production of documents that you've just granted without
17 limitation, the temporal point that Mr. Peek raised, covers
18 much more time and much more territory and many more
19 communications that could have been made than are required to
20 establish who it is, as Mr. Bice said a moment ago, told Mr.
21 Reese to do what with respect to the defamatory statement.

22 I point that out for this reason. You've now said
23 they get to pry into all of the communications with media for
24 this unlimited period of time starting in October 2010. But
25 when we sought to -- when Mr. Adelson sought to get Mr.

1 Jacobs's communications with the same media in Florida he
2 didn't get it. They wouldn't give it up.

3 THE COURT: I'm not the Florida judge.

4 MR. MORRIS: Well, I know you're not the Florida
5 judge. I'm telling you that for this reason. If Mr. Jacobs
6 is going --

7 THE COURT: Mr. Morris, I've already ruled.

8 MR. MORRIS: If Mr. Jacobs is going to be deposed
9 here, then the documents that he has to yield are those
10 related to the ones you're now requiring, requiring be yielded
11 by Las Vegas Sands.

12 THE COURT: So, Mr. Morris, if you want to serve two
13 narrowly tailored requests for productions upon Mr. Jacobs, I
14 will allow those to be responded on 21 days' notice, subject
15 to objection.

16 Yes?

17 MR. BICE: Your Honor, this is discovery in the
18 Florida action. That's all this is. And. by the way --

19 THE COURT: It may have already -- it may have
20 already been produced.

21 MR. BICE: He's simply wrong on that.

22 THE COURT: He may be. Remember --

23 MR. BICE: How does that pertain to jurisdiction
24 over Sands China?

25 THE COURT: It doesn't. It doesn't.

1 MR. BICE: Well, then the merits stay that they are
2 relying on precludes him from conducting that discovery. We
3 have been barred from doing that discovery by their
4 insistence, and now he's admitting, I really want to engage in
5 merits discovery here for a second action that is on appeal in
6 the Florida courts. And that is --

7 THE COURT: Absolutely.

8 MR. BICE: -- completely inappropriate. Mr. Morris
9 doesn't know anything about that case, because I was the one
10 handling it. So how he could come into this courtroom and
11 represent that they didn't get any of these communications --
12 Mr. Jacobs had to produce phone records, Your Honor, about any
13 communications.

14 THE COURT: Mr. Bice, you can file an objection to
15 those requests when they are served on you. But they're going
16 to be on the 21-day notice.

17 Anything else?

18 Mr. Pisanelli.

19 MR. PISANELLI: Your Honor, when you were wrapping
20 up and giving your rulings you didn't address -- and maybe I
21 just missed it, but this idea of these 81,000 documents you
22 want produced from us in two weeks is problematic, and I just
23 want to tell you why.

24 First of all, they haven't even asked for them. So
25 it's not that there's a request. We've heard Mr. Jones

1 rightly say how busy he is with motions and everything else
2 and couldn't, he didn't think, respond to two discovery
3 requests. Yet we are being -- I can't think of a different
4 word -- potentially hijacked, our entire law firm working 24/7
5 to get this done on a request that, number one, they didn't
6 ask for, and, number two, they already have these documents
7 and have already reviewed them. I understand totally your
8 point about getting this thing moving, do one review and get
9 it done. But the timing of hijacking us as we're preparing
10 for this hearing puts us in an untenable position that it is
11 feeling as I sit at this table right now as an impossible
12 task. I don't want to walk out of this courtroom knowing that
13 I cannot live up to the order that you entered or are about to
14 enter, and that's why I'm bringing it to your attention. If
15 there was prejudice, if there was a request, if there was
16 somehow we have documents they don't, if Mr. Peek had never
17 sat on Las Vegas Boulevard and reviewed them already, a whole
18 'nother discussion. But to take all of our time away from
19 this case to produce it because the big picture is helped, and
20 I understand the logic of it, seems to be outweighed by the
21 prejudice that we suffer.

22 And so I would ask Your Honor to give us a fair
23 amount of time unrelated to this jurisdictional hearing. We
24 want this to go forward as much as you do, as much as anyone,
25 quite frankly.

1 THE COURT: I didn't make anything about the
2 jurisdictional hearing contingent on this production. I've
3 been trying to get these documents produced because to me they
4 relate to the jurisdictional issue and have related to the
5 jurisdictional issue, and I've been trying to get them
6 produced for a long time.

7 MR. PISANELLI: Yeah. From this side, not from us.

8 THE COURT: From all sides.

9 MR. PISANELLI: We haven't had them.

10 THE COURT: From all sides.

11 MR. PISANELLI: We haven't had them. But I
12 understand your point.

13 THE COURT: From all sides. Your client had them.
14 You couldn't review them because of the potential issues about
15 reviewing the other side's privileged information. I am past
16 the privileged information stage.

17 MR. PISANELLI: Correct.

18 THE COURT: It is now time for those documents to be
19 produced. And while I understand that there may be some items
20 in there that do not relate to jurisdictional issues, given
21 the theme that we have in this case from your client, I think
22 most of them are going to relate to your theme.

23 MR. PISANELLI: I understand that point. But it,
24 respectfully, doesn't address both our prejudice and the fact
25 that there's nothing to be gained by the defendants, because

1 they already have them and they've already seen them.

2 THE COURT: You don't know that they already have
3 them. I said "substantially similar." And, as you heard from
4 Mr. Bice, there are different documents that he has gotten off
5 of Advance Discovery that were not produced by these folks.
6 Whether they should have been produced --

7 MR. PISANELLI: Well, that doesn't mean they don't
8 have them.

9 THE COURT: Whether they should have been produced
10 or not is an entirely different issue --

11 MR. PISANELLI: That's right.

12 THE COURT: -- that I might deal with some other
13 day, but not today.

14 MR. PISANELLI: So -- but understand even Mr. Peek's
15 words, we don't know what Mr. Jacobs downloaded. Downloaded
16 from their system and left behind in their hands.

17 THE COURT: They absolutely do know, because the IT
18 guy told me.

19 MR. PISANELLI: Exactly. And that's all I'm saying,
20 Your Honor, is we can accomplish your objective without taking
21 away all of our time to prepare for this hearing. It's not
22 the production that bothers me. It's the two weeks thing.

23 THE COURT: Here's the reason I gave you two weeks.
24 You've already done it once. You've gone through and you've
25 made that review. And I understand that it was done by search

1 terms.

2 MR. PISANELLI: For personal items.

3 THE COURT: Yes, personal items. And privilege
4 items.

5 MR. BICE: Yes.

6 THE COURT: So that search has already been done
7 once. So I don't anticipate redoing it is going to be that
8 complicated. Now, I understand that you may think
9 differently, but you did it once already. Those documents
10 that were identified by those search terms that were sought to
11 elicit personal and privileged and private and financial
12 information have never been disclosed and are protected on the
13 Advance Discovery site from everybody.

14 Two weeks --

15 MS. SPINELLI: Could I ask a clarification, Your
16 Honor?

17 THE COURT: -- from the time you get access,
18 whenever that is.

19 MS. SPINELLI: So the 82,000 documents that are not
20 -- that have been released because they're not privileged by
21 Sands and they exclude my client's privileged documents, I
22 don't know how many documents my -- the search terms for my
23 privilege and nonrelevant -- I don't know how many documents
24 came from that. They're isolated somewhere on the Advance
25 Discovery. I don't have access to those. They're just with

1 Advance Discovery. The ones that Advance Discovery could in
2 theory release to us or are in the process of releasing to us
3 or whatever are 81,000 documents. This order from Your Honor
4 is to review however many are privileged and put them on a
5 log, release the ones that aren't privileged that just came up
6 with a search term, and then review the 81,000 to produce them
7 if they relate to this case --

8 THE COURT: I may not get the log in two weeks,
9 because I know that sometimes doing the log takes longer and
10 there's a lag between the production and the log. I want the
11 review done in two weeks after you get access.

12 MS. SPINELLI: I honestly think that is near
13 impossible, Your Honor. But I will do my best and have my
14 whole firm on it.

15 THE COURT: Okay. Anything else?

16 MR. RANDALL JONES: No, Your Honor.

17 THE COURT: Goodbye. And it's 10:06, so I'm sorry
18 you're late for your other thing.

19 THE PROCEEDINGS CONCLUDED AT 10:06 A.M.

20 * * * * *

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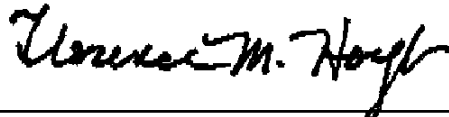
CERTIFICATION

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

AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

Respondents,

and

STEVEN C. JACOBS,
Real Party in Interest.

No. 67576

FILED

APR 02 2015

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

*ORDER DENYING PETITION IN PART
AND GRANTING STAY*

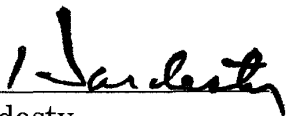
This is a petition for a writ of prohibition or mandamus challenging a district court order imposing sanctions for violations of a discovery order. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Writ relief is an extraordinary remedy, and whether a petition for extraordinary relief will be considered is solely within this court's discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Such relief is "is generally unavailable to review discovery orders," unless certain limited exceptions, not present here, apply. *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. No. 61, 331 P.3d 876, 878 (2014) (citing *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 128 Nev. Adv. Op. No. 57, 289 P.3d 201, 204 (2012); *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*,

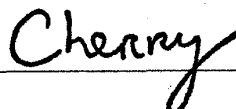
127 Nev. Adv. Op. No. 15, 252 P.3d 676, 679 (2011)). After reviewing the documents on file in this matter, we conclude that the only portion of the district court's March 6, 2015, order that may warrant relief is the portion directing Sands China Ltd. to make contributions of \$50,000 to each of five different legal organizations, and we will entertain the petition in that respect only. As writ relief is not warranted with respect to the remainder of the district court's order, *id.*, the petition is denied in all other respects.

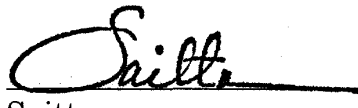
In light of the foregoing, we grant petitioners' motion for stay to the extent that we stay the portion of the district court's order directing Sands China Ltd. to make monetary contributions to third parties, until further order of this court. We deny the motion for stay in all other respects.¹


It is so ORDERED.²

 C.J.
Hardesty

 J.
Douglas

 J.
Cherry

 J.
Saitta

 J.
Gibbons

¹We also lift the temporary stay entered in this matter on March 17, 2015; as noted above, we stay the portion of the district court's order directing the payment of monetary contributions to third parties.

²The Honorable Kristina Pickering and the Honorable Ron Parraguirre, Justices, were voluntarily recused from this matter.

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