

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

2 *****

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

5 Petitioner,

6 v.

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

11 Respondents,

12 and

13 STEVEN C. JACOBS,

14 Real Party in Interest.

Case No.: 68265 Electronically Filed
Consolidated with Case Nos. 68275
68309 Jan 08 2016 09:19 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**ANSWER TO PETITION FOR
REHEARING OF EN BANC
ORDER**

15 **I. INTRODUCTION**

16 Petitioner Sands China Ltd. ("Sands China") attempts to distort this Court's
17 general jurisdiction ruling into a favorable ruling on specific jurisdiction. However,
18 neither this Court nor the District Court relied upon a "reverse agency theory" when
19 addressing specific jurisdiction over Sands China. Rather, the District Court found
20 — and this Court determined that substantial evidence supported — that Sands
21 China purposefully availed itself of the laws of Nevada by assuming *and breaching*
22 the Nevada-based Term Sheet and the interrelated Share Option Grant agreement
that flows from the Term Sheet.

23 Indeed, Sands China availed itself of jurisdiction through its Chairman and
24 "Special Advisor" when they both undertook those wrongful activities in the State
25 of Nevada, including the tort of defamation in the State. While physically present
26 in Nevada and claiming to be acting for Sands China in Nevada, Sheldon Adelson
27 and Mike Leven, oversaw and directed employees of Las Vegas Sands Corp.
28 ("LVSC") to orchestrate the wrongful termination of Real Party in Interest Steven

1 C. Jacobs ("Jacobs") and to breach the Term Sheet and Share Option Grant by
2 manufacturing false reasons for the termination. All of those wrongful activities,
3 including the tort of defamation, all occurred physically in Nevada by persons
4 claiming to be acting as Sands China's representatives. The District Court found the
5 presence of specific jurisdiction based upon the actions of Sands China's own
6 employees, not the actions of LVSC employees under any supposed "reverse
7 agency theory."

8 In addition to the overwhelming evidence presented at the jurisdictional
9 hearing, the District Court concluded that the adverse inference imposed in its
10 March 6, 2015 Order as a sanction for Sands China's discovery misconduct —
11 which this Court upheld — strengthened the case for exercising personal
12 jurisdiction. Even disregarding all of the evidence of Sands China's nefarious
13 activities in Nevada, the adverse inference by itself defeats Sands China's Petition
14 for Rehearing.

15 **II. DISCUSSION**

16 **A. Sands China Shows No Basis for Rehearing.**

17 "[T]he primary purpose of a petition for rehearing is to inform this court that
18 [it has] overlooked an important argument or fact, or that [it has] misread or
19 misunderstood a statute, case or fact in the record." *Stanfill v. State*, 99 Nev. 499,
20 501, 665 P.2d 1146 (1983); NRAP 40(c)(2). "The object of the petition is only to
21 show that the petitioner is entitled to a rehearing, not that he is entitled to a different
22 decision on the merits." *Gershenhorn v. Walter R. Stutz Enterprises*, 72 Nev. 293,
23 313, 306 P.2d 121, 121 (1957) (internal quotations omitted). Matters presented in
24 the briefs and oral argument may not be reargued in the petition for rehearing.
25 NRAP 40(c)(1). Sands China's arguments are not the substance of rehearing, as it
26 does not show that this Court misapprehended any fact or the law related to specific
27 jurisdiction on Jacobs' causes of action.

B. Substantial Evidence and Law Supports this Court's Decision on Specific Jurisdiction.

"A court has specific jurisdiction over a defendant when the defendant has certain minimum contacts with the forum state and an exercise of jurisdiction would not offend traditional notions of fair play and substantial justice." *Catholic Diocese, Green Bay v. John Doe 119*, 131 Nev. Adv. Op. 29, 349 P.3d 518, 520 (2015). As Jacobs' outlined in his Answer to the Writ Petitions, this Court utilizes a three part test to assess specific jurisdiction:

(1) the defendant purposefully avails himself of the privilege of serving the market in the forum *or* of enjoying the protection of the laws of the forum, *or* where the defendant purposefully establishes contacts with the forum state and affirmatively directs conduct toward the forum state, and (2) the cause of action arises from that purposeful contact with the forum or conduct targeting the forum.

Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 122 Nev. 509, 513, 134 P.3d 710, 712-13 (2006) (emphasis added).

And, specific jurisdiction may be established over a non-resident defendant "by attributing the contacts of the defendant's agent with the forum to the defendant." *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1158 (2014) (quotations omitted). "A showing that a defendant purposefully availed himself of the privilege of doing business *in a forum state typically consists of evidence of the defendant's actions in the forum, such as executing or performing a contract there.*" *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (emphasis added). It is also elementary that the commission of a single tort in the forum satisfies minimum contacts and due process. *Candy H. v. Redemption Ranch, Inc.*, 563 F. Supp. 505, 512 (M.D. Ala. 1983). The United States Supreme Court has held that "the commission of certain 'single or occasional acts' in a State may be sufficient to render a corporation

1 answerable in that State with respect to those acts. . . ." *Goodyear Dunlop Tires*
2 *Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (2011).

3 Contrary to Sands China's mischaracterization, the District Court was not
4 required to employ a purposeful *direction* analysis under *Calder v. Jones*, 465 U.S.
5 783 (1984). (Pet. Rehearing at 7.) Such an examination is used when dealing with
6 "a defendant *whose only contact with the forum is the 'purposeful direction' of a*
7 *foreign acting having effect in the forum state*" *Schwarzenegger*, 374 F.3d at
8 803 (quoting *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002))
9 (emphasis added); *see also id.* ("Schwarzenegger does not point to any conduct by
10 Fred Martin in California related to the Advertisement that would be readily
11 susceptible to a purposeful availment analysis . . . Therefore, to the extent that Fred
12 Martin's conduct might justify the exercise of personal jurisdiction in California,
13 that conduct must have been purposefully directed at California.").¹

14 In this case, the evidence established that Sands China's own executives —
15 principally Adelson and Leven — took actions *in Nevada* with regard to each of
16 Jacobs' causes of action and Jacobs' claims arise from those actions.

17 ***1. Breach of Contract***

18 Sands China exposes its lack of substance when it proclaims that the District
19 Court found specific jurisdiction over Jacobs' breach of contract claim based solely
20 on the acts of LVSC personnel and that there is not "a single fact" to support the
21 District Court's determination. (Pet. Rehearing at 9.) Hardly. The District Court
22 made numerous detailed findings, each of which is supported by the law and the
23 actions of Sands China's own employees in Nevada.

24 ¹ It is doubtful that Sands China can properly raise this issue (and many other
25 issues detailed herein) in its Petition for Rehearing as it did not argue that the
26 District Court should have employed the purposeful direction analysis or the *Calder*
27 "effects" test in any of its briefing. NRAP 40(a)(2) (requiring citation to page of the
28 brief where there is a claim that the Court overlooked, misapplied, or failed to
consider controlling authority). Notably, neither *Schwarzenegger* nor *Calder* — the
two cases cited for this proposition (Pet. Rehearing at 12) — appear in the Table of
Authorities or Argument Sections of Sands China's original Petition for Writ of
Prohibition or Mandamus or its Reply in support thereof.

1 In fact, Sands China not only ignores the conduct and wrongdoing of its own
2 executives in Nevada, it also ignores the law. First of all, the mere use of
3 correspondence and telephone calls to forum-based offices during contract
4 negotiations "are classic examples of the sort of contact that can give rise to *in*
5 *personam* jurisdiction." *Peterson v. Highland Music Inc.*, 140 F.3d 1313, 1320 (9th
6 Cir. 1998) This Court has held that a party purposefully avails itself of jurisdiction
7 even if it only employs correspondence and telephone calls in and out of the forum
8 to make a contract. *See Peccole v. Eighth Judicial Dist. Court In & For Cnty. of*
9 *Clark*, 111 Nev. 968, 971, 899 P.2d 568, 570 (1995); *see also Trump v. Eighth*
10 *Judicial Dist. Court of State of Nev. In & For Cty. of Clark*, 109 Nev. 687, 702, 857
11 P.2d 740, 750 (1993)("The negotiations included many telephone calls to Gomes in
12 Nevada, as well as the delivery of many documents, including the offending
13 document, into Nevada.").

14 The District Court found, and the evidence demonstrated, that Leven and
15 Jacobs had discussions about hiring Jacobs to oversee LVSC's Macau operations
16 and negotiated the terms of such arrangement while in Las Vegas. (28PA47333; *see*
17 16PA4324.) Leven and Jacobs exchanged drafts of what became known as the
18 "Term Sheet" (*i.e.* Jacobs' employment contract) in and out Nevada, and the
19 negotiations involved numerous correspondence and telephone calls into and out of
20 the forum (28PA47333; *see, e.g.*, 15PA44229; 6SA1363-67; 15PA44266;
21 6SA1368-70; 15PA44270-71; 6SA1371; 15PA44271-72; 6SA1372-74;
22 15PA44273-74; 6SA1375; 15PA44275-76; 6SA1221-22; 6SA1223-26;
23 19PA45294.) Leven and Adelson eventually approved the terms of the Term Sheet
24 in Nevada. (28PA47334; 15PA44228-29; 6SA1219.)² Thus, the Term Sheet is
25 unquestionably a Nevada contract.

26 ² On August 3, 2009, Leven signed the Term Sheet on behalf of LVSC.
27 (6SA1227-28; 15PA44221-22; 15PA44228.) Later, LVSC filed the Term Sheet
28 with the SEC representing that it constituted Jacobs' "Employment Offer, Terms,
and Conditions Agreed on August 3, 2009, by Steve Jacobs and the Company."
(6SA1356-57.)

1 Leven testified, that after Sands China's IPO, "Jacobs' employment pursuant to
2 the Term Sheet was transferred to [Sands China] and assumed by it." (28PA4791;
3 28PA47337; 15PA44253-54; 15PA44293.)³ The District Court further recognized,
4 and even Leven acknowledged, that the Term Sheet was with LVSC and then the
5 obligations were somehow later assumed by Sands China. (28PA47291.) Adelson
6 described it:

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

9 [overruled objections omitted]

10 A. Yes.

11 (19PA45105-06.) Indeed, it was understood by Sands China that "Jacobs was
12 serving as CEO pursuant to the terms and conditions of the Term Sheet that had
13 been negotiated and approved in Nevada with the Nevada parent." (28PA4791; *see*
14 6SA1227-28; 15PA44221-22; 15PA44228; 15PA44245; *see also* 5PA44212;
15 15PA44183-89 (not unusual for LVSC to have an employment agreement with an
16 executive of a subsidiary).)

17 As established by the numerous cases cited in Jacobs' Answer to the Petition,
18 this fact alone established a proper basis for the District Court's specific jurisdiction
19 ruling. (Ans. at 41.) And as the District Court further recognized, its jurisdiction
20 over the Nevada-based contract, which Sands China's own executives claim it
21

22 ³ LVSC's pre-IPO Nevada contacts related to the Term Sheet can be imputed
23 to Sands China for purposes of personal jurisdiction. A corporate promoter's pre-
24 formation contracts made in the forum subject the subsequent entity to jurisdiction.
25 *See Rees v. Mosaic Technologies, Inc.*, 742 F.2d 765, 768-69 (3rd Cir. 1984)
26 (reversing trial court's personal jurisdiction dismissal because the foreign
27 corporation personally availed itself of the privilege of acting in Pennsylvania when
28 its incorporator entered into a contract in the forum that the newly-formed entity
later ratified and accepted.). Sands China makes no attempt to address the *Ritter*
Disposables, Inc. v. Protner Nuev Tecnicas, S.L., No. 3:11-cv-00201-SWW, 2012
WL 3860598 at *8 (E.D. Ark. 2012) decision cited on page 42 of Jacobs' Answer to
the Petition. It is laughable to suggest that LVSC's actions as the incorporator "did
not invoke [Nevada's] laws or protections and were not directed at the forum." (Pet.
Rehearing at 9 (italics omitted).)

assumed, extended to its breach of the share option grant because the two agreements were inextricably intertwined and the Nevada Term Sheet controlled the vesting of the options as admitted by Leven. (28PA47294; 16PA44400-01;) Courts recognize that parties are subject to jurisdiction in the forum where intertwined contracts are involved. Where a district court has personal jurisdiction over one contract, jurisdiction exists over intimately related contracts even in cases where separate parties are involved. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992); *see also Manley v. Air Canada*, 753 F. Supp. 2d 551, 560 (E.D.N.C. 2010) (finding court could consider nature of relationships and contacts developed regarding first contract to support specific jurisdiction in suit over second contract since relationships in second contract grew out of relationships developed in first contract even if the first contract was a separate legal matter).⁴

Based upon his performance and the glowing reviews he recieved at the helm of Sands China, Jacobs ultimately was awarded 2.5 million options for Sands China shares pursuant to a Share Option Grant in satisfaction of Section 7 of the Term Sheet. (6SA1266-69; 15PA44128-35; 6SA1409-11.) Leven agreed that the Sands China stock options flowed from Section 7 of the Nevada Term Sheet. (16PA44376; 6SA1228.) Leven also conceded that that the Share Option Grant was inextricably linked to the Nevada-based Term Sheet and that it controlled the accelerated vesting of the Sands China shares to Jacobs:

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

[overruled objections omitted]

⁴ Sands China makes no effort to distinguish *Valspar Corp.* or *Manley*. Instead, for the first time, it cites two authorities discussing supplemental jurisdiction over separate claims — not interrelated contracts. (Pet. Rehearing at 11 (citing *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 275 (9th Cir. 2006) and 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, Civil 3d 1351 at 299 n.30 (2004)). Neither authority was cited or discussed in Sands China's briefing. NRAP 40(a)(2).

1 Q. Correct?

2 A. Yes.

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

5 [overruled objections omitted]

6 The Witness: Yes.

7 (16PA44400-01; 16PA44376-77 ("So, they were intertwined."); 28PA47294.)

8 As if that were not enough, the events giving rise to the actual breach of both
9 the Term Sheet and Share Option Grant all occurred in Nevada. As outlined in
10 Jacobs' briefing as well as the District Court's findings, the "exorcism strategy" to
11 terminate Jacobs without real "cause" and to deprive him of what was contractually
12 owed under the Term Sheet and Share Options Grant was hatched, orchestrated, and
13 occurred in Las Vegas. (6SA1412; 16PA44409; 16PA44412.) (21PA45693.)
14 (17PA44634-35.) Leven even admitted that the supposed reasons for Jacobs'
15 termination and the drafts of the termination "for cause" letter were prepared in Las
16 Vegas. (7SA1496G; 17PA44650-51; 7SA1453-56; 17PA44651; 17PA44687.)

17 Sands China ignores this mountain of evidence and the litany of District
18 Court conclusions which demonstrate Sands China' purposeful avilment. Instead,
19 Sands China points to *one* finding as a basis for reconsideration and baldly
20 proclaims that the District Court's resolution of specific jurisdiction for breach of
21 contract rested solely upon Paragraph 145. (Pet. Rehearing at 2.) In contrast to
22 Sands China's mischaracterization, Paragraph 145 simply states that "[t]he acts of
23 employees of LVS, as agent of SCL, related to compensation and termination of
24 Jacobs and SCL's assumption of the of the Nevada negotiated Term Sheet **support**
25 the conclusion that specific jurisdiction is appropriate over the breach of contract
26 claim." (28PA47358 (emphasis added).)⁵ In other words, Paragraph 145 augmented
27

28 ⁵ Sands China's addition of bracketed phrases to entirely change the substance
and meaning of Paragraph 145 is particularly telling and should not go unnoticed.

1 the hundreds of other factual findings made by the District Court that establish
2 specific jurisdiction.⁶ Paragraph 145 was hardly the only basis for the District
3 Court's finding of specific personal jurisdiction.⁷

4 **2. Aiding and Abetting/Conspiracy**

5 The District Court did not rely upon "reverse agency" to find specific
6 jurisdiction over Jacobs' aiding and abetting and conspiracy claims. Sands China
7 disregards the overwhelming evidence that Leven and Adelson — in their capacities
8 as Sands China employees — took significant steps to plot and execute Jacobs'
9 wrongful termination while in Nevada.

10 Adelson was the Chairman of Sands China and Leven was a "Special Advisor
11 to the Sands China Board. (18PA44920;15PA44189-90.) Adelson openly testified
12 that any time he and Leven dealt with Sands China business, they were wearing
13 their Sands China "hats" while they were in Nevada. (18PA44957; 18PA44982;
14 20PA45517; 20PA45528.) Adelson stated:

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

17 Q. SCL hats.
18

19 (Pet. Rehearing at 2.) The evidence confirmed that Sands China assumed the Term
Sheet through its own agents — not "employees of LVS."

20 ⁶ Jacobs acknowledges that this Court determined that a parent cannot act as
the agent of a subsidiary. (Decision at 4.) However, as Jacobs pointed out in his
21 Answer to the Writ Petition, there is authority holding to the contrary. *See, e.g.,*
22 *Schenck v. Walt Disney Co.*, 742 F. Supp. 838, 842 (S.D.N.Y. 1990); (Ans. at 33-
34.)

23 ⁷ Sands China raises two other arguments for the first time in its Petition for
Rehearing. Citing *Farmers Insurance Exchange v. Portage La Prairie Mutual*
24 *Insurance Company*, 907 F.2d 911 (9th Cir. 1990) to imply that personal
jurisdiction did not exist at the time that Jacobs' breach of claims arose. (Pet.
25 Rehearing at 10.) This case was not cited or mentioned in Sands China's papers and
is nonsensical in any event. The formation, performance, and breach of the
26 contracts pre-dated the time that Jacobs' claims arose. The same is true of Sands
China's new "but-for" and *Doe v. Unocal Corp.*, 248 F.3d 915 (9th 2001) argument
27 that was not addressed in its pleadings. (Pet. Rehearing at 10.) Jacobs would not
have breach of contract claims "but-for" the formation of the Nevada Term Sheet,
28 its performance through the Share Option Grant, and the action taken to breach the
contracts in Nevada.

1 A. - - SCL hats, period.

2 (21PA45571.) Accordingly, Adelson and Leven were wearing their Sands China
3 "hats" in Nevada when they schemed to terminate Jacobs.

4 The evidence demonstrated that, after returning to Las Vegas from a
5 company meeting in Singapore, Leven formulated a plan with Adelson to terminate
6 Jacobs. (16PA44404-05.) Leven referred to his plan as the "exorcism strategy."
7 (6SA1412; 16PA44412.) He explained that the decision-making process to
8 terminate Jacobs "was carried out in the chairman's office" in Las Vegas.
9 (16PA44409.) Leven, Adelson, and the other executives were in Las Vegas "putting
10 [their] ducks in a row," *i.e.*, "getting all of the things in place that it would take to
11 terminate Mr. Jacobs." (16PA44414; 6SA1413.) When putting all of the "ducks in a
12 row" in Las Vegas, Leven claims that he was acting for Sands China at Adelson's
13 direction. (16PA444414-15.)

14 Adelson and Leven conscripted LVSC executives including Robert Goldstein,
15 Gayle Hyman (General Counsel), Patrick Dumont (VP of Strategy), Ron Reese
16 (Public Relations), and other advisors in the legal department to carry out the
17 conspiracy. (16PA44405-07; 16PA44410-11; 16PA44436-37; 17PA44626.)
18 Adelson claims that he personally prepared the termination notice in Las Vegas.
19 (7SA1496F; 17PA44633-34; 21PA45697; 21PA45700.) Press releases about Jacobs'
20 termination also were crafted in Las Vegas. (16PA44415-1; 6SA1414-15; 6SA1416;
21 16PA44448.) Reese and other LVSC employees in Nevada were acting on behalf of
22 LVSC and assisting Sands China in the termination efforts. (16PA44418;
23 16PA44433; 16PA44440.) Hyman, another LVSC executive, prepared the SEC and
24 Hong Kong Stock Exchange disclosures in Las Vegas. (16PA44437.) Hyman also
25 drafted a letter to Sands China's Board members informing them that Adelson had
26 made the decision to terminate Jacobs. (7SA1448-52; 17PA44621-22.) Earlier drafts
27 of the letter were prepared and circulated in Las Vegas. (7SA1453-56; 17PA44623-
28 24.) Jacobs' cause of action arises from Adelson's and Leven's actions in Nevada.

1 The conspiratorial actions of Sands China in Nevada subject it to specific
2 jurisdiction. LVSC employees' roles as co-conspirators do not implicate "reverse
3 agency." Any other conclusion would implicitly abrogate the entire concept of
4 conspiracy jurisdiction. *See Davis v. Eighth Judicial Dist. of State of Nevada, In &*
5 *For Cnty. of Clark*, 97 Nev. 332, 338-39, 629 P.2d 1209, 1213-14 (1981);⁸ *Remmes*
6 *v. Int'l Flavors & Fragrances, Inc., a New York corporation*, 389 F. Supp. 2d 1080,
7 1094-95 (N.D. Iowa 2005) (surveying case law and stating "This issue has been
8 previously addressed by a number of federal courts, the majority of which have
9 concluded that jurisdiction based on the conspiracy theory does not violate due
10 process."); *Carsanaro v. Bloodhound Technologies, Inc.*, 65 A.3d 618, 642 (Del.
11 Ch. 2013).

12 3. Defamation

13 Sands China abandons all seriousness by proclaiming that the District Court
14 was "without any evidence that [Adelson] was acting as the agent of Sands China in
15 making the [defamatory] statement" (Pet. Rehearing at 3.)⁹ Adelson (wearing
16 his Sands China hat as explained above) instructed Reese to send the defamatory
17 statement to the Wall Street Journal. (6SA1426; 16PA44482-83.) Adelson admitted
18 to making the statement and conceded to making the statement on behalf of Sands
19 China, LVSC, and himself. (21PA45582-83; 21PA45585.) Adelson testified

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

22 [overruled objections omitted]

23 The witness: SCL has a substantial list of reasons [why Jacobs
24 was fired for cause].

25 (21PA45588.)

26 ⁸ *superseded on other grounds by rule as stated in Hansen v. Eighth Judicial*
27 *Dist. Court ex rel. Cnty. of Clark*, 116 Nev. 650, 6 P.3d 982 (2000).

28 ⁹ Although not addressed in this Court's Decision, Sands China is precluded
from asserting a lack of jurisdiction to this claim because it failed to raise it in the
Court below. (1SA0172-89); (Ans. at 45.)

1 The statement was made to the Wall Street Journal with the expectation that
2 it would be published and widely circulated, including in Nevada. (*See* 16PA44489;
3 *see also* 16PA44490-91.) Sands China attempts to run from this testimony by
4 describing it as "inconsistent" but the evidence demonstrates that Adelson made the
5 statement in Nevada in his capacity as Chairman of Sands China as a result of an
6 adverse ruling in this case. Sands China can be liable and subject to jurisdiction
7 based upon the defamatory statements of its Chairman. *Unker v. Joseph Markovits,*
8 *Inc.*, 643 F. Supp. 1043, 1049 (S.D.N.Y. 1986); *Viega GmbH*, 130 Nev. Adv. Op.
9 40, 328 P.3d at 1158.

10 Nor did the District Court blur "the distinction between liability for
11 defamation and specific jurisdiction in Nevada. . . ." (Pet. Rehearing at 3.) The
12 United States District Court for the District of Columbia has recently rejected a
13 similar argument. In doing so it stated:

14 the exercise of jurisdiction does not conflate jurisdiction with liability
15 as defendant maintains. The Court's conclusion that specific
16 jurisdiction exists for the limited purpose of hearing these. . . claims
17 does not necessarily mean that defendant will ultimately be
18 responsible for the [claims]. Rather, specific jurisdiction is proper
19 because defendant is *potentially* liable for the [claims]. In other words,
defendant's actions. . . are enough to put defendant in the position of
being subjected to litigation *on that issue*.

20 *Pension Ben. Guar. Corp. v. Asahi Tec Corp.*, 839 F. Supp. 2d 118, 127 (D.D.C.
21 2012) (emphasis in original).

22 **4. Reasonableness**

23 Sands China spends a short paragraph contesting the District Court's
24 "reasonableness" finding. (Pet. Rehearing at 8.) However, since Jacobs satisfied the
25 first two prongs of specific jurisdiction, "the forum's exercise of jurisdiction is
26 *presumptively reasonable*. To rebut that presumption, a defendant 'must present a
27 *compelling case*' that the exercise of jurisdiction would, in fact, be unreasonable."
28 *Roth v. Garcia Marquez*, 942 F.2d 617, 625 (9th Cir. 1991) (quotations omitted);

1 *Trump*, 109 Nev. at 702, 857 P.2d at 750. Sands China did not meet this burden.
2 (28PA47362.)

3 **5. *The Adverse Inference Sanction Defeats Rehearing***

4 After holding an evidentiary hearing related to Sands China's discovery
5 misconduct and disregard of its prior Orders, the District Court imposed several
6 sanctions against Sands China related to the personal jurisdiction hearing.
7 (14PA43828-29.) One such sanction was a rebuttable inference that all improper
8 Macau Data Privacy Act redactions would contradict Sands China's denials of
9 personal jurisdiction and support Jacobs' assertion of personal jurisdiction.
10 (14PA43828.) This Court did not overturn this sanction. (5SA1216-18.)

11 Although the volume of evidence presented at the jurisdictional hearing
12 effectively mooted this sanction as unnecessary, the District Court found that "[i]f
13 [it] were to consider the adverse evidentiary inference imposed by the Court's
14 March 6, 2015 Order, the case for exercising specific jurisdiction is even stronger."
15 (28PA47363.) As a result, if there is a debate about the sufficiency of evidence of
16 specific jurisdiction (there isn't), the adverse inference must tip the scales in Jacobs'
17 favor.

18 **6. *Public Policy Weighs in Favor of Exercising Jurisdiction***

19 Advocating for a shocking departure from well-settled personal jurisdiction
20 law, Sands China argues that Nevada's courthouses should be closed to out-of-state
21 plaintiffs. (Pet. Rehearing at 4.) But Jacobs' contacts with the forum are not
22 determinative.

23 The United States Supreme Court has held that "[i]n judging minimum
24 contacts, a court properly focuses on 'the relationship among the *defendant*, the
25 forum, and the litigation.'" *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775
26 (1984) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)) (emphasis added).
27 There is no requirement that "a plaintiff. . .have 'minimum contacts' with the forum
28 State before permitting that State to assert personal jurisdiction over a nonresident

defendant." *Id.* at 779. A plaintiff's in-state residency is not a requirement. *Id.* at 780. As long as a defendant has minimum contacts with the State, Nevada's courts should remain open to all plaintiffs who have been harmed and suffered damages here as Jacobs has proven he has suffered.

III. CONCLUSION

This Court did not misapprehend or overlook any law or fact related to the District Court's specific jurisdiction findings. Therefore, Sands China's Petition for Rehearing fails.

DATED this 7th day of January, 2016.

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CERTIFICATE OF COMPLIANCE PURSUANT TO RULES 40 AND 40A

I hereby certify that this brief for rehearing/reconsideration complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2007 in size 14 font in Times New Roman.

I further certify that this brief complies with the page or type-volume limitations of NRAP 40 or 40A because it does not exceed 4,667 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure

DATED this 7th day of January, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 7th day of January, 2016, I electronically filed and served a true and correct copy of the above and foregoing **ANSWER TO PETITION FOR REHEARING EN BANC ORDER** properly addressed to the following:

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**SERVED VIA HAND-DELIVERY ON
1/8/16**

The Honorable Elizabeth Gonzalez
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/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC