IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a Nevada corporation, SANDS CHINA LTD., a Cayman Islands corporation, and SHELDON G. ADELSON, an individual,

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number:

District Court Case Number A627691-B

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE TRIAL-SETTING ORDER

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
Ryan M. Lower, Bar No. 9108
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP, JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Bar No. 267
3800 Howard Hughes Pkwy, 17th Fl.
Las Vegas, Nevada 89169

HOLLAND & HART LLP
J. Stephen Peek, Bar No. 1758
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner Sands China Ltd. ("SCL") is a Cayman Islands corporation whose stock is publicly traded on the Stock Exchange of Hong Kong Limited. Petitioner Las Vegas Sands Corp. ("LVSC") is a publicly-traded Nevada corporation which owns the majority of Petitioner's stock.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
Ryan M. Lower, Bar No. 9108
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Bar No. 267
3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169

HOLLAND & HART LLP
J. Stephen Peek, Bar No. 1758
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

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I. INTRODUCTION

Petitioners are regrettably forced to again seek this Court's intervention to prevent another arbitrary and legally baseless ruling, but this time on an issue that the district court agrees warrants immediate review—whether Rule 41(e)'s five-year rule was tolled by this Court's stay of all proceedings except those relating to personal jurisdiction.

On August 26, 2011, this Court issued an Order Granting Petition for Writ Mandamus filed by Sands China Limited ("SCL"), APP0001–4. The Order directed the district court "to revisit the issue of personal jurisdiction" over SCL "by holding an evidentiary hearing and issuing findings regarding general jurisdiction," while staying all aspects of the underlying action "except for matters relating to a determination of personal jurisdiction." *Id.* at APP0003. The district court did not complete the required hearing until nearly four years later, in May 2015. On May 28, 2015, the court issued an order erroneously asserting jurisdiction over SCL, which is the subject of a separate writ petition filed June 19, 2015 and accepted by this Court on June 22, 2015 (No. 68265). (On June 24, 2015, this Court set a briefing schedule on that petition and *sua sponte* stayed the district court's May 28 Order).

This Petition addresses two separate orders, entered on May 27, 2015 (APP0050–56) and June 12, 2015 (APP0171–176), in which the district court ordered this case to be tried on the merits beginning October 14, 2015—*less than four months from now*—even though all merits discovery was stayed for close to four years while the parties focused solely on the question of whether the court had personal jurisdiction over SCL. (On June 12, 2015, the district court denied Defendants' Objection to the Order Setting Civil Jury Trial and Motion to Vacate and Reset Trial Based on Tolling of Five-Year Rule, APP0169–170). The only reason the district court

offered for setting that date was its purported fear, blamed on this Court, that the "five-year rule" set forth in NRCP 41(e) might require dismissal of the action if the trial did not commence before the fifth anniversary of the filing of Plaintiff's initial complaint on October 20, 2010. The court persisted in that view even when Defendants moved to vacate the trial date, APP0118–129 because of clear authority from this Court holding that a judicial stay, such as the stay entered in accordance with this Court's August 2011 Order, tolls the five-year clock so that the five-year period will not expire until July 22, 2019. *Boren v. City of North Las Vegas*, 98 Nev. 5, 638 P.2d 404 (1982). Further, to avoid any doubt, Defendants stipulated on the record to an extension of the five-year rule.

Even then, the district court refused to alter the trial date. Despite recognizing that Defendants' analysis "appears to be an appropriate calculation," the district court was unwilling to rely on Defendants' stipulation or on this Court's decision in *Boren*. The court expressed concern that "the Nevada Supreme Court is not necessarily consistent in the way that they have historically made decisions" and worried about possible "quirks that the Nevada Supreme Court has found one way or another as to Rule 41(e)." The court said it "would love to have more clarification from them" and invited this Court to "make[] a recalculation or issue[] an order" clarifying the Rule.

Apart from being unnecessary, the district court's decision in its June 12, 2015 Order to adhere to the October trial date is manifestly unfair and unjust. The stay prevented Defendants from taking discovery on the merits until now. Defendants simply cannot begin and complete written discovery, take and defend depositions, comply with all the pre-trial filing requirements, *and* prepare for trial on the merits—in a complex multi-

national case in which Plaintiff seeks tens of millions of dollars—in less than four months. The compressed timeframe is particularly harsh given the far-reaching discovery allowed the Plaintiff by the district court over the almost four years it took to have the jurisdictional hearing this Court ordered when it entered the stay.

"This court has original jurisdiction to issue writs of prohibition and mandamus" and "also all writs necessary or proper to the complete exercise of its appellate jurisdiction." Nev. Const. Art. 6, § 4. Mandamus is the appropriate, and indeed the only, avenue available to Defendants to challenge the district court's unfairly prejudicial and entirely unnecessary trial date before they are forced to try taking discovery and preparing for a complex trial in a breakneck forced march. Moreover, this Petition presents a textbook case for this Court to exercise its supervisory power. The five-year rule was tolled by this Court's 2011 stay order; the district court set the October 2015 trial date because of its expressed concerns that this Court has been unclear about the five-year rule; and the district court has invited this Court to clarify the rules.

II. ISSUE PRESENTED BY THIS WRIT PETITION

Whether the district court (a) committed legal error by concluding that NRCP 41(e)'s five-year rule might not have been tolled during the stay ordered by this Court and (b) abused its discretion by setting an October 2015 trial date that is unfairly prejudicial to Defendants based on that legal error.

III. STATEMENT OF FACTS

A. Plaintiff's Claims.

Plaintiff Steven C. Jacobs was formerly the CEO of SCL, which operates gaming, hotel, and other business ventures in Macau through its

wholly-owned subsidiary, Venetian Macau Ltd. ("VML"). SCL's stock is publicly traded on the Hong Kong Stock Exchange. Las Vegas Sands Corporation ("LVSC") is SCL's majority shareholder.

Jacobs was terminated as SCL's CEO in July 2010. On October 20, 2010, he filed this lawsuit, claiming that LVSC had hired and then wrongfully terminated him. Jacobs asserted only one claim against SCL, alleging that it breached a contractual obligation by refusing to honor Jacobs' attempt to exercise options to purchase 2.5 million shares of SCL stock. The option agreement (which was offered to Jacobs in China) provides that it is governed by Hong Kong law.

In December 2010, SCL moved to dismiss on the ground that it does business exclusively outside the United States and thus is not subject to the jurisdiction of the Nevada courts. After the district court denied the motion, on the ground that SCL was somehow subject to general jurisdiction in Nevada, SCL sought an extraordinary writ in this Court.

On August 26, 2011, this Court issued its Order Granting the Petition for Mandamus. Order Granting Petition for Writ of Mandamus, APP0001–4. This Court directed the district court "to revisit the issue of personal jurisdiction" over SCL "by holding an evidentiary hearing and issuing findings regarding general jurisdiction," while staying all aspects of the underlying action "except for matters relating to a determination of personal jurisdiction." *Id.*, APP0003.[1]

[1] On March 16, 2011, Plaintiff filed a First Amended Complaint adding defamation claims against Sheldon Adelson, the Chairman of both LVSC and SCL, based on comments Mr. Adelson made about Jacobs' claims in this lawsuit. The district court dismissed those claims on June 20, 2011; after the Court entered final judgment on its dismissal, Plaintiff appealed to this Court. This Court reversed and remanded the claims against Mr. Adelson for further proceedings on May 30, 2014.

B. The District Court Allows Plaintiff to Take Jurisdictional Discovery.

On remand, the district court granted Plaintiff's motion for what was supposed to be limited jurisdictional discovery. Order re Plaintiff's Motion to Conduct Jurisdictional Discovery, APP0005–10. In particular, the court allowed Plaintiff to depose four high-ranking officers of LVSC (Sheldon Adelson, Michael Leven, Robert Goldstein, and Kenneth Kay) and to seek 11 broad categories of documents purportedly relating to his jurisdictional claims. *Id.*, APP0006.

Plaintiff then took extensive discovery. In December 2011, Plaintiff issued 24 Requests for Production of Documents ("RFPs") to SCL and LVSC, supposedly based on the 11 categories of documents authorized by the district court. LVSC and SCL produced hundreds of thousands of pages of responsive documents. Plaintiff deposed all four of the LVSC executives he had selected on multiple days. Those depositions were accompanied by motion practice concerning the limits of the stay order this Court issued and whether Plaintiff's questioning was impermissibly straying into merits discovery.

While extensive, discovery was a one-way street. The district court's order authorized only Plaintiff to take jurisdictional discovery. The court refused to permit any Defendant to depose Plaintiff even on jurisdictional issues. On March 19, 2015, just before the jurisdictional hearing, the district court relented and decided that SCL could depose Plaintiff—but only on jurisdictional issues, not on the merits of his claims. By that time, however, the court had (among other things) prohibited SCL from presenting any evidence at the jurisdictional hearing as a sanction for SCL's decision to redact personal information from documents produced from Macau in compliance with Macau's data privacy laws. In light of that

restriction, SCL chose not to proceed with Plaintiff's jurisdictional deposition.

Notwithstanding the stay of the merits entered by this Court in August 2011, the district court permitted Plaintiff to file a Second and then a Third Amended Complaint to reinstate his defamation claim against Mr. Adelson. Plaintiff's Third Amended Complaint also greatly expanded Plaintiff's allegations against SCL, claiming that it conspired with or aided and abetted LVSC's alleged wrongful termination of Jacobs and asserting that SCL and LVSC are both responsible for Mr. Adelson's alleged defamation.[2]

C. The District Court's Scheduling Order.

The district court did not commence the hearing on jurisdiction until April 20, 2015. The hearing concluded on May 7, 2015. On May 22, 2015, the district court entered a Decision and Order finding that SCL was subject to personal jurisdiction in Nevada. The court entered an Amended Decision and Order on May 28, 2015, to address a motion by Plaintiff to correct the order, and to implement corrections the court had made in an electronic version of the Order, but that were lost "due to what the Court's IT staff described as 'operator error.'" SCL has petitioned this Court for a writ of mandamus or prohibition to overturn the district court's finding that it has personal jurisdiction over SCL.

On May 27, 2015, just days after the district court entered its original order on jurisdiction, the court entered an Order Setting Jury Trial

[2] On June 2, 2015, *after* the district court had scheduled the trial for October 2015, Plaintiff sought leave to file a Fourth Amended Complaint that would have added a new defendant (VML). The district court denied leave to add VML given the scheduled trial date in October 2015. It did, however, allow Plaintiff to file a Fourth Amended Complaint, which was filed on June 22, 2015, expanding his claims against SCL yet again.

stating that the case would be tried to a jury beginning October 14, 2015—then only four and a half months away. The order also includes a series of pre-trial deadlines in paragraphs labeled B through L. At that time, SCL's motion to dismiss the Third Amended Complaint remained pending, and LVSC had yet to answer the Third Amended Complaint. 5/27/15 Order Setting Civil Jury Trial, APP0050–56; 5/22/15 Decision & Order, APP0011–49; 5/28/15 Am. Decision & Order, APP0057–95. The district court recognized that issuing a compressed schedule for trial, before the pleadings were even complete, would leave little time for discovery. 5/28/15 Hrg. Tr. at 5–6, APP0100–101. It expressed its frustration that "while we have had a lot of discovery bumps in this case, *the orders from the Nevada Supreme Court have in large part created the issues we are facing here*." *Id*. at 21:12–16, APP0116.

Defendants promptly objected to the Order Setting Trial Date and moved to vacate and reset the trial setting. Def's Obj. and Mot. to Vacate and Reset Trial Date, APP0118–129. Defendants demonstrated that the October 2015 trial date was unnecessary because under *Boren* the five-year rule of NRCP 41(e) was tolled during the stay imposed by this Court in August 2011, a stay that ended up lasting nearly four years. Defendants also showed that the trial date was unreasonable, unfair and unjust because it did not give Defendants time to adequately prepare the case for trial, given the prior stay of all merits discovery. *Id.*

On June 12, 2015, the district court held a Supplemental Conference under Rule 16.1 to address Defendants' objection and motion. At the conference, the court "recognize[d]" that Defendants' analysis "appears to be an appropriate calculation." 6/12/15 Supp. 16.1 Tr. at 4:1–2, APP0182. Further, the court acknowledged this Court's published opinion

in *Boren* (which held that the five-year rule is tolled during the pendency of a judicial stay). *Id*. at 4:6–7, APP0182. In addition, Defendants offered to stipulate that the five-year clock had been tolled during the pendency of the stay (to address Plaintiff's concern that Defendants had not expressly stipulated to tolling of the five-year rule). *Id*. at 26:7–22, APP0204. The stipulation would have extended the five-year rule until July 22, 2019 (*id*. at 26:21, APP0204), and Defendants proposed that trial be postponed only until June 2016.

Nevertheless, the district court was still unsure about whether the five-year rule might ultimately be found to apply, because "the Nevada Supreme Court is not necessarily consistent in the way they have historically made decisions" and because of "quirks" it perceived in which "the Nevada Supreme Court has found one way or the other as to Rule 41(e)." 6/12/15 Supp. 16.1 Tr. at 4:4–9, APP0182. The only specific "quirk" the court identified was "that silly *Meduka* case" (*id*. at 2:22, APP0180), a reference to this Court's unpublished disposition in *Maduka v. Eighth Jud. Dist. Ct.*, No. 57299, 2011 WL 4378796 (Nev. 2011), which is discussed below. Further, the court cited Plaintiff's refusal to accept Defendants' stipulation to tolling during the Court-imposed stay (even though this Court's decision in *Boren* held that such tolling was established without a stipulation).

The district court suggested that defendants might "go up there" (to this Court) and that the Court "might give us a hard and fast rule." 6/12/15 Supp. 16.1 Tr. at 8:10–11, APP0186. For its part, the district court said that it "would love to have more clarification from them" and "would love to see a hard and fast rule" on NRCP 41(e). *Id*. at 8:11–12 & 20–21, APP0186. The court agreed that Defendants could take its statements as

an "invitation . . . to take this to the Supreme Court." *Id*. at 8:15–18, APP0186.

However, pending clarification from this Court, the district court decided "I can't be making a judgment call as to who's right or who's wrong" on the five-year rule. 6/12/15 Supp. 16.1 Tr. at 2:18–20, APP0180. Accordingly, the court stated that its "responsibility" was to complete the trial "before the earliest possible date" on which the five-year rule might expire. *Id*. at 2:17–18, APP0180. The court then entered an order that overruled Defendants' objection and denied their motion to vacate the trial date. Order Denying Defendants' Objection to the Order Setting Civil Jury Trial and Motion to Vacate and Reset Trial Based on Tolling of Five-Year Rule, APP0169–170.

That same day, the district court entered an order setting an aggressive pre-trial discovery schedule. 6/12/15 Business Court Scheduling Order and Amended Order Setting Civil Jury Trial, APP0171–178. That schedule required the parties to make initial Rule 16.1 Disclosures in only 5 days (by June 22) and expert disclosures in a month (by July 17). *Id.*, APP0171. The order also cuts off percipient discovery on August 7, 2015, giving the parties less than 2 months to complete discovery on the merits. *Id.*

As soon as the Court set a trial date, Plaintiff launched an aggressive discovery campaign. On May 29, 2015, Plaintiff served a Request for Production of Documents on LVSC, seeking nearly 70 categories of documents. On June 1, 2015, Plaintiff served a deposition notice on SCL for the deposition of SCL's Independent Director David Turnbull, which Plaintiff scheduled to be taken in Las Vegas on June 17, 2015. On June 3, Plaintiff filed a motion for expedited discovery, asking the

Court to compress the deadlines for document production and depositions provided for in the Nevada Rules of Civil Procedure, on the theory that Plaintiff needed expedited discovery in order to prepare for the October 2015 trial. Finally, on June 15, 2015, Plaintiff served fourteen interrogatories on SCL, along with a Request for Production of Documents seeking over 30 categories of documents.

Defendants objected to Plaintiff's motion for expedited discovery, which the district court denied without prejudice as premature. Defendants also objected to Plaintiff's attempt to take Mr. Turnbull's deposition in Nevada; the district court ultimately ruled that Mr. Turnbull was required to appear for deposition in Hawaii on five days' notice. On June 22, 2015, SCL filed a separate petition for a writ of mandamus on that issue.[3] Meanwhile, LVSC served Requests for Production on Plaintiff seeking over 150 categories of documents.

IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

Extraordinary relief may be awarded where there is no plain, speedy, and adequate legal remedy. NRS 34.170; NRS 34.330. A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also City of Sparks v. Second Jud. Dist. Ct.*, 112 Nev. 952, 954, 920 P.2d 1014, 1015 (1996) (a writ of mandamus will lie to control

[3] In response to SCL's motion, this Court stayed the district court's order regarding Mr. Turnbull's deposition; in light of this Court's June 24 order staying its jurisdictional ruling, on June 25, 2015 the district court stayed all proceedings relating to SCL. The court declined, however, to stay the proceedings as to LVSC and Mr. Adelson.

a discretionary act where the district court's "discretion is abused or is exercised arbitrarily or capriciously").

The district court's decision setting a trial date for October 2015 was manifestly an abuse of discretion. Indeed, the district court refused to exercise any discretion or "mak[e] a judgment call" based on its erroneous misapprehension of the law. 6/12/15 Supp. 16.1 Tr. at 2:18–19, APP0180. The district court's error warrants this Court's immediate review.

The district court itself invited Defendants to seek such review, as it "would love to have more clarification" from this Court. *Id.* at 8:21, APP0186. Further, an extraordinary writ is the only way to correct the district court's error before Defendants are forced to attempt the impossible task of bringing this large, complex case to trial in less than four months, where the stay had prevented them from even beginning discovery until now. This Court should accept the district court's invitation, reaffirm *Boren* to give the court the clarification it claims to need, and vacate the district court's order.

A. The District Court's Order Rests on Legal Error, Not On Any Exercise Of Discretion.

The district court's trial-setting order is not only an abuse of discretion but an abdication of discretion, founded on a clear error of law. The court acknowledged that Defendants' analysis appeared "appropriate" yet expressly refused to "mak[e] a judgment call." *Id.* at 2:18–19, APP0180, 4:1–2, APP0182. Instead, the court insisted that its sole "responsibility" was to get this matter to trial on "the earliest possible time" at which Rule 41(e) might expire. *Id.* at 2:13–18, APP0180, 73:18–21, APP0251. The district court rationalized that it had no choice but to do so, asserting that this Court's "quirks" left the law unclear. *Id.* at 4:6–9, APP0182.

The district court's perception that "the Nevada Supreme Court is not necessarily consistent in the way that they have historically made decisions" on Rule 41(e) is unfounded. *Id.* at 4:4–6, APP0182. In *Boren*, this Court clearly "adopt[ed] the following rule: *Any period during which the parties are prevented from bringing an action to trial by reason of a stay* order shall not be computed in determining the five-year period of Rule 41(e)." 98 Nev. at 5, 638 P.2d at 405 (emphasis added). Indeed, the Court explained, "[f]or a court to prohibit the parties from going to trial and then to dismiss their action for failure to bring it to trial is so obviously unfair and unjust as to be unarguable." *Id*. 98 Nev. at 5–6, 638 P.2d at 405. This Court has since consistently reaffirmed and extended *Boren*. *See Baker v. Noback*, 112 Nev. 1106, 1110-12, 922 P.2d 1201, 1203-1204 (1996) (five-year clock does not run while medical malpractice claim is pending before a screening panel); *Rickard v. Montgomery Ward & Co., Inc.*, 120 Nev. 493, 498, 96 P.3d 743, 747 (2004) (automatic stay in bankruptcy "tolled the five-year period under NRCP 41(e)").[4]

Plainly, the parties here were "prevented from bringing [this] action to trial" by reason of this Court's August 2011 stay order. That order "stay[ed] the underlying action" in all respects "except for matters relating to a determination of personal jurisdiction." Order Granting a Petition for Mandamus, APP0001–4. The stay was in effect for nearly four years, and under the "rule" this Court adopted in *Boren*, that period "shall not be

[4] *Rickard* separately held that upon an erroneous dismissal under NRCP 41(e), a plaintiff would have a "reasonable period of time" to bring the case to trial after remand. In *Carstarphen v. Milsner*, 270 P.3d 1251 (Nev. 2012), the Court held that plaintiffs in that situation would have three years from the date remittitur is filed in district court.

computed in determining the five-year period of Rule 41(e)." 98 Nev. at 5, 638 P.2d at 405.

Contrary to the district court's suggestion (6/10/15 Hrg. Tr. at 8:25–9:15, APP0137–138), *Boren* does not say that tolling due to a stay requires the *entire action* to be stayed. By its express terms, the rule in *Boren* does not require the entire action to be stayed; it is enough that the stay prevent the parties "from bringing an action to trial," and this Court's August 2011 stay of all issues other than jurisdiction indisputably did that. Thus, in *Baker*, this Court held that the five-year rule was tolled for the entire action as to *all* defendants (a medical malpractice case) while the claims against some defendants were before a screening panel, even though a portion of the action (*i.e.*, claims against the non-physician defendants) was not "stayed" by the screening panel.

The district court's reference to "that silly *Meduka* [sic] case" does not alter *Boren*'s command. 6/12/15 Tr. Supp. 16.1 at 2:22, APP0180. For starters, *Maduka* is unpublished; thus, it is not only non-precedential but cannot be cited as legal authority. Nev. S. Ct. R. 123. Moreover, *Maduka* did not involve any court-imposed stay, and its facts are dramatically different from those presented here. *Maduka* involved a medical malpractice case where the parties agreed in open court to extend the five-year rule to a date certain. Due to a number of reassignments (one by Judge Gonzalez), trial did not take place by the stipulated date and the defendant moved to dismiss the case for failure to bring it to trial by the agreed upon date. *Maduka*, 2011 WL 4378796 at *3. The district court denied the motion, but this Court granted the doctor's writ and agreed that the in-court stipulation extended the five-year rule only for the limited period to which the parties agreed, and did not effect a permanent waiver

of the rule. *Id.* Notably, the Court did not find that the parties' stipulation was ineffective; it simply held that the stipulation had expired according to its plain terms.

Here, by contrast, no stipulation was even necessary because of this Court's rule in *Boren*, coupled with this Court's August 26, 2011 Order staying all issues other than personal jurisdiction. Moreover, Defendants *also* offered to stipulate, on the record *and* in writing, that the five-year rule had been tolled under this Court's decision in *Boren*. Thus, Defendants offered the district court a belt in addition to *Boren*'s suspenders. And, unlike the stipulation in *Maduka*, the stipulation offered by Defendants was in no danger of expiring. Defendants' calculations, which the district court acknowledged to be correct, showed that the stipulation would not expire until July 22, 2019. 6/10/15 Def's Objection to Order Setting Civil Jury Trial at 7:17–18, APP0124. Defendants proposed to postpone the trial date to June 2016, more than comfortably within the stipulated extension.

Plaintiff's unreasonable refusal to accept Defendants' stipulation (a telling confirmation that the October 2015 trial date would unfairly prejudice Defendants) is equally irrelevant. *Boren* does not require a plaintiff's consent for a stay to toll the five-year rule. Nor does Rule 41(e). Rule 41(e) is entitled "Want of Prosecution" and is designed to prevent cases from languishing in courts without prosecution so that defendants can expect some finality. This purpose has been confirmed by the Court's prior holding that "it is the plaintiff upon whom the duty rests to use diligence at every stage of the proceeding to expedite his case to a final determination." *Thran v. First Jud. Dist. Ct.*, 79 Nev. 176, 181, 380 P.2d 297, 300 (1963) (internal quotations omitted). The only parties that have a legal interest in invoking Rule 41(e) to dismiss a case for "want of

prosecution" are defendants, and the Defendants here stipulated to toll the five-year rule. Given that the five-year clock was already tolled by this Court's stay, and that Defendants further stipulated that the tolling occurred, the district court abused its discretion when it acquiesced to Plaintiff's self-serving demand to put the trial on "premium rush" and deny Defendants the time needed to conduct discovery and put on the adequate defense that is fundamental to due process.

B. The District Court Has Invited This Court To Exercise Its Supervisory Power And Clarify Rule 41(e)'s Application.

While the district court's manifest abuse of discretion is more than sufficient reason to enter the writ, mandamus relief is also appropriate so the Court may exercise its supervisory power over this case and over district courts in general. This Court issued the August 2011 stay order that prevented the parties from bringing the case to trial. The stay order was correct, and it was necessary to protect SCL's due process rights while the district court considered the threshold issue of jurisdiction. The district court's order used that stay as an excuse for setting a patently unreasonable trial date and denying Defendants the time needed to take and complete discovery and then put on an adequate defense. In this way, the district court's trial-setting order would twist this Court's stay order, which was designed to protect SCL's due process rights, and pervert it into a tool that deprives all three Defendants of due process.

More to the point, this Court adopted the rule regarding extending Rule 41(e) in *Boren*. The district court asserts that *Boren* is unclear because of the Court's unpublished decision in "that silly *M[a]duka* case" that the district court incorrectly thought undermines *Boren*. 6/12/15 Supp. 16.1 Tr. at 2:22, APP0180. Indeed, the district court *invited* this Court's review of her ruling on the five year rule in Rule 41(e), stating that

it "would love to have more clarification from them" and "would love to see a hard and fast rule" on NRCP 41(e). *Id.* at 8:11, 21, APP0186.

As the preceding section demonstrates, this Court has stated the "hard and fast rule" the district court seeks. The court merely found inconsistencies and "quirks" in the rule where there were none. The Court should accept the district court's invitation to again reaffirm *Boren* and eliminate all doubt.

C. This Court's Intervention Is Defendants' Only Available Remedy For The Unjust And Unreasonable October 2015 Trial Date, Which Allows Defendants Less Than Four Months To Take This Complex Case To Trial.

This Court adopted the tolling rule in *Boren* because it would be "so obviously unfair and unjust as to be unarguable" if a court were "to prohibit the parties from going to trial and then to dismiss their action for failure to bring it to trial." 98 Nev. at 5–6, 638 P.2d at 405. The district court's order imposes a trial schedule that is just as "obviously unfair and unjust": after Defendants were prevented from even preparing for trial for nearly four years, they will be forced to undergo a trial in less than four months.

The Court's stay order prevented Defendants from proceeding with discovery on the merits for nearly four years. The district court's trial-setting order, entered just days after the stay expired, requires Defendants to undertake the herculean task of trying to take and complete discovery, and then prepare their defense on dozens of merits issues in less than four months. Moreover, the district court also recently gave Plaintiff leave to file a third and then fourth amended complaint asserting new claims against SCL. Defendants have not even had the time permitted by the rules to complete and file their answers.

The district court's constricted discovery schedule—less than two months—is untenable. Discovery on jurisdiction alone consumed more than three years, and it required LVSC and SCL to produce hundreds of thousands of pages of documents, defend numerous depositions, file and defend against dozens of motions, and file three more writ petitions here (two of which were granted). Further, Defendants were precluded from deposing Plaintiff. The truncated discovery schedule is especially prejudicial to Mr. Adelson, who was only recently haled back into the case by Plaintiff's third amended complaint.

To compound the already unfair prejudice, while the stay prevented Defendants from taking discovery on the merits, it allowed Plaintiff to get a massive head start. The district court allowed Plaintiff to conduct much of his merits discovery in the guise of "jurisdictional" discovery, an unfair advantage illustrated by Plaintiff repeatedly amending his complaint (with the district court's leave) to assert new allegations on the merits even while all proceedings other than jurisdiction were supposed to be stayed. To make matters even worse, the court then allowed Plaintiff to cross-examine LVSC and SCL executives on merits issues at the evidentiary hearing that was supposed to be limited to jurisdiction. The district court's rationale was that Plaintiff's new specific jurisdiction theories—which he did not present to this Court before the stay, but instead unveiled during the stay—overlapped with the merits. The district court's allowance of such abuses (over repeated objections by SCL and LVSC) was contrary to this Court's August 2011 order staying the case on all issues other than general and transient jurisdiction (the only theories Plaintiff presented to this Court before the stay was entered).

The district court has denied Defendants' objection and is locked into its manifestly unfair course. Absent intervention by this Court, Defendants will soon be forced into a trial with nothing even close to due process, in a complex multi-national case with tens of millions of dollars at stake. Mandamus is Defendants' only adequate remedy.

D. The Case Should Be Reassigned.

The district court's unjust order setting an inherently prejudicial trial date is only the most recent in a long history of rulings, comments and other events that create an "objectively reasonable basis for questioning" the court's impartiality. *In re IBM*, 45 F.3d 641, 644 (2d Cir. 1995). Defendants have been forced to seek emergency writ relief from this Court on seven separate occasions, and this Court has granted three writs (with two petitions, plus this one, still pending). In previous Petitions, Defendants have asked the Court to have the case reassigned to a new judge, and they respectfully reiterate that request here.

V. CONCLUSION

Petitioners respectfully request that this Court grant the Petition and enter an order vacating the district court's May 27 and June 12, 2015 orders setting and then refusing to vacate the trial date currently scheduled for October 14, 2015.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
Ryan M. Lower, Bar No. 9108
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Bar No. 267
3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169

HOLLAND & HART LLP
J. Stephen Peek, Bar No. 1758
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

1. I hereby certify that I have read this **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE TRIAL-SETTING ORDER**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. 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.

2. I also certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Palatino 14 point font.

3. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found.

MORRIS LAW GROUP

By:/s/ STEVE MORRIS
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
Ryan M. Lower, Bar No. 9108
900 Bank of America Plaza
300 South Fourth Street
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J. Stephen Peek, Bar No. 1758
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

VERIFICATION

1. I, Steve Morris, declare:

2. I am one of the attorneys, one of the Petitioners herein;

3. I verify that I have read the foregoing **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE TRIAL-SETTING ORDER**; that the same is true my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury of the laws of Nevada, that the foregoing is true and correct.

/s/ STEVE MORRIS
Steve Morris

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE TRIAL-SETTING ORDER** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
PISANELLI BICE PLLC
400 South 7th Street
Las Vegas, NV 89101

Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 26th day of June, 2015.

By: /s/ PATRICIA FERRUGIA