

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
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Tracie K. Lindeman  
Clerk of Supreme Court

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

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

**VOLUME 2 — APP0179-258**

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## **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 **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE TRIAL-SETTING ORDER, VOLUME 2 — APP0179-258** 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

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DATED this 26th day of June, 2015.

By: /s/ PATRICIA FERRUGIA

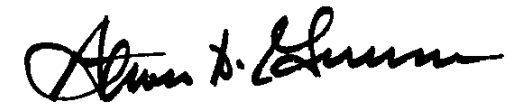
**APPENDIX TO APPENDIX TO PETITION FOR WRIT OF  
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**APPENDIX TO APPENDIX TO PETITION FOR WRIT OF  
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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants  
. . . . .

CASE NO. A-627691

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**SUPPLEMENTAL 16.1 CONFERENCE**

THURSDAY, JUNE 12, 2015

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.  
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
JON RANDALL JONES, ESQ.  
IAN P. MCGINN, ESQ.  
STEVE L. MORRIS, ESQ.

COURT RECORDER:

PATTI SLATTERY  
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, JUNE 12, 2015, 10:41 A.M.

2 (Court was called to order)

3 THE COURT: I scheduled this as a supplemental 16.1  
4 and issue related to the objection -- you can sit down, if  
5 you'd like -- and a discussion about discovery. So it's  
6 basically all the same discussion. I originally -- I went  
7 back through the file, and this is a really old file. The  
8 original status report that Mr. Peek filed April 22nd, 2011,  
9 had a 60-day document production schedule on a rolling  
10 schedule. So that's what I went back to as my controlling  
11 document, because this was the plan prior to the original  
12 stay.

13 So what I'd like to talk about is where we are, how  
14 we get places, and what we do to get you set for trial before,  
15 as I perceive it, the earliest possible time at which Rule  
16 41(e) will expire. And while I understand you have a  
17 difference of opinion, my responsibility is to get it to trial  
18 before the earliest possible date. I can't be making a  
19 judgment call as to who's right or who's wrong on the  
20 decision, because someone's rights may then be extinguished by  
21 my bad call. And I'm not going to make that call because of  
22 what happened in that silly Meduka [phonetic] case.

23 MR. MORRIS: So you're denying the motion?

24 THE COURT: I haven't denied anything yet. I'm  
25 listening. I'm still listening.

1           MR. PEEK: But you just gave us a preview of your  
2 ruling, saying that --

3           THE COURT: Well, you know I read everything and I  
4 think about it, and I went through the file for about an hour  
5 and a half yesterday trying to find stuff about what we had  
6 done in the ancient days of this case. But the reason I asked  
7 for briefing in Granite Gaming, this case, and CityCenter is  
8 after I get specifically called out in Meduka when I was never  
9 the assigned judge in that case I'm not going to be the one  
10 who puts any party at risk by a bad judgment call on my part  
11 as to when Rule 41(e) expires.

12           MR. MORRIS: I appreciate you not wishing to make a  
13 bad judgment call when there's a contest. But in this case  
14 with respect to 41(e) that is -- as we've pointed out, I'm not  
15 telling you something you haven't read, this is really a  
16 defendant's rule to ensure that a case does go to trial, that  
17 it's not neglected. That isn't this case.

18           But, in any event, it isn't a judgment call, I  
19 submit to you, if the defendants for whose benefit that rule  
20 was enacted are amenable to waiving the five year rule or  
21 extending it for either the period of time we say the stay was  
22 in effect or some other time that we could agree on, but, as  
23 you see in your motion, we've asked for -- we've asked  
24 essentially for between now and trial for a year to get ready.

25           THE COURT: No. I understand exactly what you're

1 asking, Mr. Morris. And I recognize the calculation that  
2 you've made appears to be an appropriate calculation. My  
3 concern is -- and you know this, because you've read all the  
4 41(e) cases on stays probably in the last month -- the Nevada  
5 Supreme Court is not necessarily consistent in the way they  
6 have historically made decisions. And while we do have the  
7 case from North Las Vegas, the Boren case, we've had so many  
8 cases over the years that deal with quirks that the Nevada  
9 Supreme Court has found one way or the other as to Rule 41(e).  
10 So my procedure after that Meduka case came down that  
11 specifically criticized the District Court's management of the  
12 cases and getting them to trial was where I have a concern  
13 about whether there is a tolling, a stay, or an extension is  
14 to request briefing from the parties related to that to see if  
15 there is at least a portion of a stay that the parties agree  
16 to. I did that in this case a couple of years ago. I did  
17 three cases at the same time. I did it in CityCenter, did it  
18 in Granite Gaming, and did it in this case. I did them all at  
19 the same time because I had a high level of concern and those  
20 cases had a history with the Nevada Supreme Court, all three  
21 of them.

22 MR. MORRIS: Yes.

23 THE COURT: And for some reason, and I don't  
24 remember, because I never got anything on the record and I  
25 never got anything in writing, I remember being told in this



1 case, Judge, we're not going to file anything, we're just  
2 going to go. It's like, okay. And I don't know if you guys  
3 have a better recollection of that. I've looked in my history  
4 of my events, and the status check that I had set related to  
5 that was taken off calendar.

6 MR. MORRIS: Your Honor, I don't have a recollection  
7 of what you just mentioned at all.

8 THE COURT: I think you weren't here then.

9 MR. MORRIS: Well, that's maybe why I don't have a  
10 recollection.

11 THE COURT: I think you were here at the time we did  
12 the original 16.1, but you weren't here during portions of  
13 that, because Mr. Adelson's case had -- the case against Mr.  
14 Adelson had been dismissed and you were on appeal part of  
15 that.

16 MR. MORRIS: Yes.

17 THE COURT: But I had Mr. Peek here, and I don't  
18 know who was sitting next to Mr. Peek at the time. But I had  
19 Mr. Peek, because he's been here the whole time. He's been  
20 the one --

21 MR. MORRIS: He's had a lot of company in the last  
22 several years. I know that.

23 THE COURT: He's had a variety of people sitting  
24 with him over the last several years.

25 MR. MORRIS: But I want to discuss with you just for

1 a moment more what you said about the -- I'll call it and you  
2 can agree with me -- quirkiness of the Nevada Supreme Court.

3 THE COURT: Mr. Morris, I am not afraid to criticize  
4 their inconsistencies, and I think they know it. I respect  
5 each one of them as an individual, and I respect them as an  
6 institution; but sometimes their decisions aren't consistent.

7 MR. MORRIS: You know, practitioners have that same  
8 view from time to time, too.

9 THE COURT: I've heard that.

10 MR. MORRIS: My point here is for your concern to be  
11 manifested into -- or manifest itself in a quirky decision by  
12 the Supreme Court based on unpublished order given the  
13 circumstances we have here the defendants are amenable to  
14 extending the five-year period. Under these circumstances in  
15 this case your concern is that the plaintiff, who wants to go  
16 to trial, is going to insist on mandatory dismissal of his  
17 case and by October the 14th, 1985 [sic], the earliest  
18 possible date you've identified that the 41(e) -- the five  
19 year rule would run. That's just improbable, and it brings up  
20 a remark that is in their opposition to our objections to the  
21 trial date and request that the trial date be rescheduled.  
22 They remarked -- their remark is -- I find this astonishing,  
23 and Mr. Bice articulated it when he was last here -- that we  
24 are trying to extend this trial date and buy more time so we  
25 can come back in at another time and say the five year rule

1 has run.

2 THE COURT: Well, you understand that's what  
3 happened in the Meduka case. They stipulated to the  
4 extension, they then filed a peremptory challenge and got rid  
5 of the judge I had assigned to hear to hear the med mal case.  
6 That case didn't get reset in time, and the five year rule  
7 ran. And I recognize that parties under Rule 48.1 can file a  
8 peremptory challenge when I make an administrative  
9 reassignment for in that case handling a medical malpractice  
10 case, but I'm not going to be the one who puts parties in a  
11 position of losing their rights because I don't have a valid  
12 stipulation to extend Rule 41(e) to whatever period it is or I  
13 don't have an agreement that there was a tolling for a  
14 specific period of time. And I don't have either of those  
15 things here. And without that, when I had an order from the  
16 Nevada Supreme Court that says, stayed except, I have concerns  
17 given some of their decisions related to cases where one of  
18 the parties has filed bankruptcy but not all that that may not  
19 toll 41(e). And it's just my personal concern from reading  
20 this. And given what happened in Meduka and the specific  
21 language of that decision, I'm not going to take that risk  
22 again.

23 THE COURT: It was not my case. I was the presiding  
24 judge of the Civil Division making sure med mal cases got  
25 tried in a timely fashion according to legislative mandate.

1           MR. MORRIS: So as we disagree about the meaning  
2 "except," why, you didn't mean to say "again."

3           THE COURT: Well, but when I'm mentioned by name in  
4 a case that isn't mine I figure that's again.

5           MR. MORRIS: All right. Well, if that's your --

6           THE COURT: I mean, that's my perception. And  
7 that's why I asked in this case for briefing on the 41(e)  
8 issue long, long ago, because I had concerns. I'm not  
9 foreclosing you from making the argument. You never know.  
10 The Supreme Court might give us a hard and fast rule if you go  
11 up there. I would love to see a hard and fast rule which made  
12 the District Judge's job easier to manage cases where there  
13 have been issues that might result in tolling of 41(e) and  
14 there is not agreement as to what those are.

15           MR. MORRIS: So I will take that as invitation,  
16 which I will accept, to take this to the Supreme Court and  
17 say, decide this issue for us --

18           THE COURT: Sure.

19           MR. MORRIS: -- because we can't agree on it.

20           THE COURT: Mr. Morris, you know it doesn't bother  
21 me. I would love to have more clarification from them.

22           MR. MORRIS: Okay.

23           THE COURT: But I'm going to give everybody a chance  
24 to say anything in case you need anything else before you go  
25 visit those folks in Carson City.

1           Mr. Jones, you're standing up. Did you want to say  
2 anything on this issue?

3           MR. RANDALL JONES: I did.

4           THE COURT: Okay.

5           MR. RANDALL JONES: I did, Your Honor. Let me  
6 collect my stuff here.

7           Before I get to this, since it sounds like we're  
8 sort of segued into the motion we had objecting to trial  
9 setting, I wanted to talk about that in more detail, if I may.

10          THE COURT: Sure. Because that's really the issue  
11 that was primarily briefed, and that issue had to do with the  
12 Rule 41(e) concerns I've expressed repeatedly that I was going  
13 to have to set this trial immediately upon the stay expiring  
14 under the writ, I think that I've done what I said I was going  
15 to do. And either the Supreme Court's going to take a  
16 position or they're not.

17          MR. RANDALL JONES: Understood. Before I do that I  
18 did want to bring up sort of housekeeping issue you raised  
19 with respect to the motion to seal and your concern when we  
20 were here last week.

21          THE COURT: Okay. Hold on. Let me go to that pile.  
22 Okay. Keep going. I gave you a homework assignment; right?

23          MR. RANDALL JONES: You did.

24          THE COURT: Okay.

25          MR. RANDALL JONES: And I thought this would

1 hopefully be relatively simple to dispose of, so I thought I  
2 would talk about that before I forgot about it getting into  
3 the more pithy issues.

4 THE COURT: Okay. I've got that pile now.

5 MR. RANDALL JONES: I was very confident when we  
6 were here that we did not inadvertently put confidential  
7 information into the record. But Mr. McGinn has actually  
8 confirmed that, and I think, if I can, Your Honor, if I could  
9 have him address that, exactly --

10 THE COURT: Sure.

11 MR. RANDALL JONES: -- what happened, and hopefully  
12 this will explain why -- and I appreciate you bringing to our  
13 attention to alert us that if we had inadvertently done that.  
14 but I think we're okay, and I want Mr. McGinn to address that,  
15 if he would.

16 MR. MCGINN: Thank you, Your Honor. If you'd just  
17 look at the motion, there was a thousand pages of the appendix  
18 were filed because there were several exhibits to the appendix  
19 that were not confidential. And so there's a lot of things  
20 that are not confidential that are in --

21 THE COURT: Okay. So there's more than a thousand  
22 pages --

23 MR. MCGINN: Right.

24 THE COURT: -- that you sought to have as part of  
25 the appendix to your --

1 MR. MCGINN: Yes. If you'd --

2 THE COURT: I was unclear on that. Thank you.

3 MR. MCGINN: So Exhibit A to the motion to seal sets  
4 forth all the exhibits that we believe should be confidential.  
5 And I believe we delivered a thumb drive to the Court that had  
6 everything on it, and to opposing counsel.

7 THE COURT: Okay. Hold on. Let me go to Exhibit A.  
8 See why I was confused? All right. So I'm at Exhibit A. And  
9 this includes documents that began at Hearing Exhibit 2002,  
10 and then you have a Bates number, a document descriptor, and  
11 then you have a column in which an indication appears for  
12 confidential.

13 MR. MCGINN: Right.

14 THE COURT: Correct?

15 MR. MCGINN: Yes, that's correct.

16 THE COURT: Okay.

17 MR. MCGINN: And if you've looked at the Appendix 2,  
18 it has that same table, but with all of the exhibits where  
19 there's not a --

20 THE COURT: So what was electronically filed as the  
21 appendix did not include documents that are on this list,  
22 which is Exhibit A.

23 MR. MCGINN: Correct. It just has a place mark.

24 THE COURT: Thank you for clarifying that. When I  
25 saw 1058 I was concerned.

1 MR. MCGINN: Understandable.

2 THE COURT: Okay. Now I have a motion to seal where  
3 I have specifically identified documents that you would like  
4 sealed.

5 MR. RANDALL JONES: Yes, Your Honor. Thank you  
6 for --

7 THE COURT: Did you want to do anything about this?

8 MR. RANDALL JONES: Well --

9 THE COURT: Because you did get an opposition.

10 MR. RANDALL JONES: We can argue it now. I think it  
11 was mostly with the homework issue. I wasn't sure how or when  
12 you wanted to argue it. But I think our motion to seal is  
13 since those were documents that were by order of this Court  
14 not entered into evidence because we were ordered that we  
15 could not enter them into evidence, I would see no reason why  
16 they could not remain sealed pursuant to the order of this  
17 Court, which is exactly what happened with the other documents  
18 that were actually marked as exhibits for the evidentiary  
19 hearing that were not admitted into evidence. They remained  
20 under seal pursuant to the confidentiality --

21 THE COURT: So let me ask you a question. I know  
22 that I didn't admit it into evidence, but you offered it so it  
23 would be part of your record on appeal.

24 MR. RANDALL JONES: That's right, Judge.

25 THE COURT: Okay. So my question is are you asking



1 me to seal it because it's part of my record, whether it's  
2 part of my evidence that I considered, you want it to be part  
3 of your record for the Nevada Supreme Court.

4 MR. RANDALL JONES: That's correct, Your Honor.

5 THE COURT: Okay.

6 MR. RANDALL JONES: Because that was the only --  
7 that's the only way we could get it into the appellate record,  
8 theoretically. And certainly Mr. Jacobs can object and say  
9 that it should not be a part of the record at the appellate  
10 level. That's -- if they want to do that, they are certainly  
11 -- they can do what they think they need to do. But we wanted  
12 to do what we could to preserve our record on appeal. And  
13 certainly it would seem to me they shouldn't be able to have  
14 their cake and eat it, too, and say that these documents  
15 should be unsealed when --

16 THE COURT: So tell me why a notice of a meeting of  
17 board of directors and notice of meeting for audit committee  
18 should be sealed.

19 MR. RANDALL JONES: Well, I guess, Your Honor, on a  
20 case-by-case basis those had been marked as confidential in  
21 the past, some of those records had --

22 THE COURT: Oh, I know they've been marked as  
23 confidential.

24 MR. RANDALL JONES: Right. Some of those -- some of  
25 those documents had business-sensitive information in it;

1 things like a notice would necessarily be.

2 THE COURT: Well, that's why I gave you the homework  
3 assignment, to find out what you really wanted sealed.  
4 Because I thought it was a thousand pages, but now I've been  
5 told it's more.

6 MR. RANDALL JONES: And I apologize. I  
7 misunderstood that.

8 THE COURT: Let me give you another example, and  
9 then we'll do this another day after I give you another  
10 example.

11 MR. RANDALL JONES: Sure. I'm happy to do that. I  
12 understand what you're saying.

13 THE COURT: Hearing Exhibit 2022, LVSC and SCL  
14 shared services agreement, that's already in evidence in an  
15 unsealed fashion. Why would you want it sealed again?

16 MR. RANDALL JONES: Your Honor, I have to tell you  
17 your --

18 THE COURT: I know it's in evidence, because I went  
19 through it.

20 MR. RANDALL JONES: -- points are well taken. You  
21 don't need to give me any more examples. I think I understand  
22 what you want.

23 THE COURT: Okay.

24 MR. RANDALL JONES: I will endeavor to go back --  
25 actually, I will endeavor to have Mr. McGinn go back

1 immediately and --

2 THE COURT: I'm not going to ask Mr. Jones.

3 MR. MCGINN: I'm actually not the one that's working  
4 on this, so we'll have to see with them. And I'm sure we'll  
5 just go through and see -- I believe what was done was  
6 anything that had a confidential marking on it, based upon the  
7 protective order we have to file it under seal. And so the  
8 Court can determine -- or we'll go back and see if anything  
9 was put in the record, then we'll remove it from --

10 THE COURT: How about you tell me what you really  
11 want sealed out of this.

12 MR. MCGINN: Okay. That's what -- I'll have them go  
13 back and do that.

14 THE COURT: As opposed to what you've got here.

15 MR. RANDALL JONES: That's what we'll do.

16 THE COURT: How long do you need?

17 MR. RANDALL JONES: If we could have --

18 MR. MCGINN: Probably a week.

19 MR. RANDALL JONES: I think a week. We could do  
20 that in a week.

21 THE COURT: How about I give you two.

22 MR. RANDALL JONES: Perfect. That would even be  
23 better, Your Honor.

24 THE COURT: Okay. And put it on a Tuesday or  
25 Thursday.

1 THE CLERK: June 25, Thursday, at 8:30.  
2 THE COURT: Does that work.  
3 MR. MCGINN: Yeah.  
4 MR. RANDALL JONES: At what time?  
5 THE COURT: 8:30.  
6 MR. MORRIS: I'm sorry. Say that date again.  
7 THE CLERK: June 25.  
8 MR. MORRIS: Oh. Thank you.  
9 THE COURT: Okay. Any more housekeeping matters  
10 before I go back to the discussion about Rule 41(e) so  
11 everybody has the opportunity to make a full -- make sure that  
12 I consider all of your viewpoints before we go further down  
13 the path?  
14 MR. RANDALL JONES: Not with -- not from me, Your  
15 Honor. I don't know if Mr. Bice --  
16 THE COURT: Mr. Peek, was there anything you wanted  
17 to add related to 41(e)?  
18 MR. PEEK: Yes, Your Honor, there is.  
19 Your Honor, there are a couple of comments that the  
20 Court made that I want to address. And certainly I have been  
21 here the entire time, so I was certainly one who heard the  
22 invitation that you gave to us to brief. I don't know whether  
23 Mr. Jones was here or not. I know that Mr. Jones's firm came  
24 in in the October-November 2012 period of time, so that was  
25 over two years ago. And certainly I don't think -- and what I

1 don't have a recollection of is whether or not we did refuse  
2 the invitation. I know that no briefing was done, but I don't  
3 know if there's --

4 THE COURT: I wasn't trying to say that someone  
5 refused the invitation. I just remember being told I didn't  
6 need to address it, you guys weren't going to deal with it.

7 MR. PEEK: Certainly. And certainly that was at a  
8 time, Your Honor, when none of us knew where we were going to  
9 be on the evidentiary hearing, none of us knew exactly when  
10 that may or may not conclude. But certainly there were some  
11 decisions that were made that delayed that whenever that  
12 invitation to brief that was made. So I don't know how that  
13 fits into your decision making here with respect to the 41(e)  
14 issue that we have raised in our objection. But I just wanted  
15 to at least address that.

16 You referred to the scheduling conference that took  
17 place in April of 2011, and you made mention of the fact that  
18 Las Vegas Sands, through me, just Las Vegas Sands, not Sands  
19 China Limited, in its status report to the Court said that it  
20 thought it could complete its initial disclosures under  
21 Rule 16.1 within 60 days. That certainly, as the Court knows,  
22 was an aspirational goal.

23 THE COURT: That was both you and Ms. Glaser who  
24 told me that it was a joint status report.

25 MR. PEEK: Okay. I do know, however, Your Honor,

1 that neither Ms. Glaser nor I were able within that period of  
2 time --

3 THE COURT: And Mr. Morris on behalf of Mr. Adelson.

4 MR. PEEK: And I understand, Your Honor, where  
5 you're going. There are a lot of things that were said at the  
6 -- both in the status conference and at the actual scheduling  
7 court itself. But I also know, Your Honor, that that 60 days  
8 aspirational goal to make initial disclosures was not met by  
9 Las Vegas Sands. I do know what we did produce within the  
10 period of time before the stay was issued, and I do know that  
11 we only searched certain priority custodians and certain  
12 search terms, and even with that work we were not able to  
13 complete that production, though we did work hard to do it.

14 I also note, Your Honor, if we're going to discuss  
15 what happened at the scheduling conference, that there were a  
16 number of other statements made by both counsel with respect  
17 to when depositions would commence.

18 THE COURT: That was supposed to be in July of that  
19 year.

20 MR. PEEK: That is correct, Your Honor, after the  
21 aspirational goal of production was met.

22 THE COURT: And for the record, that was not current  
23 plaintiff's counsel, that was Mr. Campbell's office at that  
24 time.

25 MR. PEEK: I understand, Your Honor.

1           THE COURT: I understand. I'm just trying to make  
2 sure we're all clear.

3           MR. PEEK: We're all clear on that.

4           THE COURT: Because we do have a transcript of the  
5 hearing to refresh our memories.

6           MR. PEEK: I do know, Your Honor. But I just want  
7 to highlight for purposes of what the parties at least  
8 acknowledged at that time. And while, yes, there are new  
9 counsel, that certainly -- I'm just highlighting. I'm not  
10 suggesting anything other than just to state that there were a  
11 number of statements made with respect to completion of  
12 discovery. We certainly know that we had an 11-month  
13 discovery period at that conference. We know that there were  
14 discussions about when the depositions would commence. We  
15 know that there was a discussion about location of depositions  
16 discussed at that hearing, as well. And we also know that  
17 there was no mention of the documents that Jacobs had in his  
18 possession at that time. And that did not occur, as we know,  
19 until July of 2011, when for the first time mention was made  
20 of the collection that Jacobs had removed from Macau when he  
21 left the premises. So there are a lot of things, Your Honor,  
22 that did occur at that scheduling conference, and I highlight  
23 certainly a couple things, Your Honor, that I think do  
24 militate in favor of a continuation of this trial; that is,  
25 the amount of time it would have taken us to disclose, the

1 amount of time that the Court at least acknowledged it would  
2 take to complete the discovery, and now we're being asked to  
3 do this within a period of two months. And certainly all of  
4 that is stated within the body of the objection, and I don't  
5 think much more need be said other than this is a monumental,  
6 unfair, and unreasonable task that the Court is asking us to  
7 do and that the plaintiff is asking us to do when we have said  
8 to them and to the Court, we will waive the five year rule.  
9 We've said that affirmatively. And, however, the plaintiff  
10 does not accept that offer on our part. They're certainly  
11 well within their right to do so. But I think given what the  
12 Warren case says, irrespective of the unpublished opinions of  
13 the Nevada Supreme Court upon which none of us are allowed to  
14 cite or rely based upon the current rule, as opposed to the  
15 rule as proposed to be amended.

16 THE COURT: I think when I get called out by name in  
17 a decision I can refer to it.

18 MR. PEEK: I understand, Your Honor. So that at  
19 least I think -- because the Court did highlight some of the  
20 statements made by Las Vegas Sand about the 60 days. There  
21 were a lot of things said at that hearing by all of the  
22 parties. And if we're going to highlight at least just the  
23 Las Vegas Sands, I should at least be allowed to respond and  
24 say what else was said by plaintiff's counsel at that hearing,  
25 as well, Your Honor.



1           THE COURT: For the record, right now I'm only  
2 talking about Rule 41(e). As soon as I finish with the record  
3 on Rule 41(e) I'm going to go to what happened with the  
4 aspirational goals that were set in the joint status report  
5 and at the conference. And then I'm going to talk to both  
6 sides, because I have notes as to things that I perceive  
7 needed to be done after that conference by everyone, and the  
8 only thing I can actually prove happened was the ESI protocol.  
9 So I need you guys to tell me stuff, because you don't  
10 necessarily file discovery. And I have the ESI protocol, but  
11 I don't know the answers to other questions, so I was going to  
12 go through those, which may take a little bit of time.

13           MR. PEEK: And the only reason I mentioned it, Your  
14 Honor, is because I wasn't sure whether the Court was  
15 suggesting that that 60 days that we set as an aspirational  
16 goal in our status conference somehow means that we can do a  
17 similar production of documents within the next 60 days.

18           THE COURT: Well, I'm going to ask you that  
19 question. And you're going to tell me an answer about why  
20 it's either appropriate or not appropriate given what you  
21 currently know, and then we're going to talk about it. But  
22 I'm trying to find out from the baseline document that I have,  
23 which is the joint status report and the discussions we had at  
24 the mandatory Rule 16 conference, both of which occurred in  
25 April of 2011, where we currently are.

1           MR. PEEK: And I will certainly address that, Your  
2 Honor, when we -- since we're -- but I'm really focused on the  
3 objection and telling you why I believe, Your Honor, it is  
4 unreasonable and unfair to ask us to do this --

5           THE COURT: And it may be.

6           MR. PEEK: -- and to go to trial on October 14th of  
7 2015.

8           THE COURT: I understand that. I'm focusing right  
9 now on Rule 41(e), which is only a subpart of the objection.

10          MR. PEEK: Understood, Your Honor.

11          THE COURT: I'm then going to go to the other issues  
12 raised by the objection, but I want to hit the 41(e) part,  
13 because that in my mind is the most important factor related  
14 to this issue. Because I understand the herculean task that  
15 all of you will face if you have to go to trial prior to the  
16 earliest expiration of Rule 41(e).

17          MR. PEEK: I agree, Your Honor. But I do think, as  
18 Mr. Morris has said and we have all said, that Boren is  
19 controlling in this case. Thank you.

20          THE COURT: Okay. Mr. Jones, anything else on 41(e)  
21 before I go to Mr. Bice?

22          MR. RANDALL JONES: I don't think I actually said  
23 anything on 41(e), so --

24          THE COURT: I tried to get you to.

25          MR. RANDALL JONES: I thought I -- well, I started

1 to, and then -- but anyway, I guess I would add this, without  
2 trying to belabor the point, to what Mr. Morris and Mr. Peek  
3 have just said. The overriding or overarching concern that I  
4 heard you state both today and on the other day was your  
5 concern that if we go to trial -- we don't go to trial by  
6 October 22nd of this year, then one of the parties' rights  
7 here will be compromised. I presume it goes without saying  
8 that the rights you're concerned about would be the  
9 plaintiff's. Because if the five year rule ran on October  
10 22nd, 2015, the plaintiff would be the party that would be  
11 prejudiced.

12 THE COURT: I think it runs on October 19th, 2015.

13 MR. RANDALL JONES: All right. October 19th. But  
14 if -- and I'd like clarification. If I'm misunderstanding  
15 that, then please correct me. But what I presume you're --

16 THE COURT: The Nevada Supreme Court is very clear  
17 that the District Courts must try the cases within five years  
18 unless there's a stipulation among the parties. While I  
19 certainly understand the remedy is that the plaintiffs could  
20 face dismissal of their case, when I don't have a stipulation  
21 on the record in the Court's minutes or in writing, I have to  
22 comply with Rule 41(e). It's part of my ethical and  
23 professional responsibilities as a judge.

24 MR. RANDALL JONES: So I want to just focus on  
25 something that -- because the remedy -- the reason for the

1 rule, as I understand it -- the rule is not just an arbitrary  
2 rule. I think we hopefully all agree on that. The reason for  
3 the rule, the rationale behind the rule was that a party  
4 should not have to just sit in limbo, a defendant should have  
5 some --

6 THE COURT: That's not my understanding what the  
7 purpose of the rule is. The purposes of the rule is so that  
8 the parties have access to justice in a timely fashion. And  
9 that's the purpose of the rule. And while I certainly  
10 understand that the remedy is plaintiff faces dismissal of  
11 their claim, that's not the sole goal of the rule. There's  
12 other rules that also talk about the District Judges -- in the  
13 Judicial Code of Conduct there's rules that talk about the  
14 judges' responsibility to make sure cases are timely tried.  
15 Unless there's a stipulation in writing, on the record, or in  
16 the court minutes, I've got to comply with 41(e). And I  
17 understand that Mr. Morris has done a calculation, and I  
18 respect the math that he has done. I can't take that risk  
19 under some of the things that have happened with the Nevada  
20 Supreme Court.

21 MR. RANDALL JONES: Your Honor, I'm just trying to  
22 make a record here.

23 THE COURT: I know.

24 MR. RANDALL JONES: And if I would -- I think you  
25 anticipated what I was going to say, but, unfortunately, you

1 didn't anticipate all I was going to say. I was going to  
2 point out the issues as it relates to a defendant. However, I  
3 was not going to short change the plaintiff's aspect of this.  
4 So I think there is a rationale to this rule. It was not  
5 arbitrary. It is ultimately, as you say, access to justice.  
6 And if a defendant is not getting the case resolved and they  
7 have to continue forever and ever in a case, that is  
8 prejudicial, presumably, to a defendant. So it gives some  
9 finality to a defendant, doesn't have to worry about this case  
10 is going to go on forever.

11           Conversely, it allows a plaintiff to get to trial  
12 for the same reasons, that their case isn't sitting out there  
13 in limbo and they can get -- if they are entitled to relief,  
14 that they get that relief at some point in time.

15           So then there's the third component, which you  
16 talked about, is the judge's obligation to enforce the rules.  
17 But I assume that the Court agrees that you don't just enforce  
18 the rules arbitrarily, you enforce the rules as it applies to  
19 the purpose behind the rules, which is that the -- justice  
20 being served. So if we -- hopefully we would all agree on  
21 those ideals.

22           With that said, in this particular case you have to  
23 -- I hope the Court would balance the ideal of getting this  
24 case to trial within five years versus the impact of doing so  
25 on the parties involved. In this case I believe it is

1 patently obvious because of the nature of this case and the  
2 history of this case that trying to get the merits discovery  
3 done in two months is going to be severely prejudicial to the  
4 plaintiffs if not the -- excuse me, to the defendants, if not  
5 the plaintiff himself. But if he wants to make that choice,  
6 that's his choice. But we are objecting to that.

7           And here's the concern I have, Judge. If the rule  
8 is to protect the parties from getting -- in this case the  
9 plaintiff from being summarily denied his right to trial, we  
10 have said on the record we will agree. We have agreed. We  
11 will stipulate. We have stipulated. So there is no chance --  
12 I mean, that was one of their big objections in their  
13 opposition.

14           THE COURT: So what is your proffered stipulation?

15           MR. RANDALL JONES: The stipulation is we agree that  
16 the five year rule has been tolled and it will not expire on  
17 October 19th, 2015, and it has been tolled for the period of  
18 time that the matter was stayed by the -- the action was  
19 stayed by the Supreme Court order. And it has been stayed,  
20 based on our calculations -- excuse me, tolled until  
21 July 22nd, 2019. So now you've heard it both verbally and in  
22 writing.

23           THE COURT: So is that your offer to the plaintiffs  
24 of what you would stipulate to if they stipulated, which is  
25 you would stipulate that the five year rule has been tolled

1 through at least July 22, 2019?

2 MR. PEEK: And, Your Honor, if you're asking not  
3 only Mr. Jones, but Las Vegas --

4 THE COURT: I'm asking all three of you, because you  
5 all signed this -- or you all have your names on this  
6 document.

7 MR. RANDALL JONES: That's correct.

8 THE COURT: And while I recognize there's a footnote  
9 that has that, that's not a stipulation, that's not an offer  
10 of a stipulation, it's not binding on anybody. It's a  
11 footnote somebody put in a pleading.

12 MR. RANDALL JONES: So for the record, Your Honor,  
13 Sands China will so stipulate that the five year rule has been  
14 tolled until July 22nd, 2019, based upon the stay issued by  
15 the Nevada Supreme Court of the action pursuant to Boren  
16 versus North Las Vegas case.

17 THE COURT: Okay. So that's not helping me. Is  
18 Sands China stipulating that the five year rule expires no  
19 earlier than July 22, 2019? Without any explanation, are you  
20 stipulating to it?

21 MR. RANDALL JONES: Yes.

22 THE COURT: Okay. Is Las Vegas Sands stipulating to  
23 that?

24 MR. PEEK: Yes, Your Honor.

25 THE COURT: Is Mr. Adelson stipulating to that?

1 MR. MORRIS: Yes, Your Honor.

2 THE COURT: Okay. So now you've made an offer of a  
3 stipulation. Whether there will be an acceptance or not I  
4 have no idea.

5 MR. RANDALL JONES: All right. So that clears that  
6 up. So now with that stipulation on the record by us there is  
7 no chance of this fear of sandbagging that Mr. Bice raises as  
8 what I can see to be his primary objection to this whole issue  
9 about the trial date on October 14th. And the reason for that  
10 is, Your Honor, later on, no matter what happened, we would be  
11 estopped from denying that stipulation.

12 THE COURT: Which is why I made you say it with no  
13 conditions.

14 MR. RANDALL JONES: And that's why I -- and it took  
15 a while for us all to get there, Your Honor, but I -- your  
16 intent to do this I think was consistent with what we were  
17 trying to say. We just weren't articulating in the way that  
18 you wanted us to. And hopefully that has been done now.

19 THE COURT: We'll see.

20 MR. RANDALL JONES: Well, hopefully it's been done  
21 with respect to what you wanted us to say in connection with  
22 that issue. I don't know what Mr. Bice is going to say,  
23 although I would probably be willing to bet some money that I  
24 could guess. I don't know for sure what he's going to say,  
25 but I have a pretty good idea.



1           Having said that, Your Honor, there are many other  
2 issues related to our objection that --

3           THE COURT: I'm only dealing with the Rule 41(e)  
4 issue, because to me that's the elephant in the room.

5           MR. RANDALL JONES: All right. So with that said --

6           THE COURT: If the day is October 19th, 2015, I have  
7 no choice but to require you to go to trial prior to that day.

8           MR. RANDALL JONES: And you now have the stipulation  
9 that you have requested from Sands China, Las Vegas Sands, and  
10 Mr. Adelson.

11           THE COURT: Right. The problem is Rule 7.50 and I  
12 think other stuff requires the stipulation be between the  
13 parties, so it has to cross the aisle. But I've got one side  
14 making the proffer. So now I at least have an offer, and Mr.  
15 Bice can decide whether to accept or reject the offer of a  
16 stipulation.

17           MR. RANDALL JONES: Thank you. Without waiving my  
18 right to argue other issues related to that, then I --

19           THE COURT: Only on 41(e).

20           MR. RANDALL JONES: -- then I'm fine, Your Honor.

21           THE COURT: Thank you.

22           Mr. Bice, would you like to speak now?

23           MR. BICE: Yes, I would finally, Your Honor. Thank  
24 you.

25           THE COURT: Sorry. I just wanted to get all of

1 their positions on the record before I let you talk.

2 MR. BICE: Where shall I start? I think Mr. Peek  
3 confirmed -- his statements confirm, but they were hedging on  
4 the five year rule. Briefing was asked for, and he admitted  
5 they didn't want to file one because they wanted to wait and  
6 see, as he admitted, well, we didn't know what the status of  
7 the evidentiary hearing was, et cetera. They've been hedging  
8 ever since. And so now they come in -- because the hedging  
9 has now come with some consequences on it for them, they now  
10 come into the court and say, oh, it's really been stayed for  
11 more than three years so we would really -- this is what --  
12 this is what this is really about. This is the Las Vegas  
13 Sands Litigation Playbook Chapter Number 2. We've been  
14 through Chapter Number 1. Chapter 1 was obstruct, deceive,  
15 delay. Now we're to Chapter Number 2, which is, okay, now  
16 we've bought as much delay as we can to this point so now we  
17 need to delay some more. They're trying to do to Mr. Jacobs  
18 what they did to all those contractors years ago, Your Honor,  
19 on the Venetian. They tried to grind everybody. They've got  
20 billions and billions of dollars, let's see if we can't grind  
21 this guy down. That's all this is about. And you saw it from  
22 the testimony of their own witnesses. That's what this is  
23 about, we're going to grind him out, grind him out.

24 I've just got to make a comment about Mr. Peek's  
25 making the statement that at the Rule 16.1 conference and the

1 stipulation there was no mention about the documents in Mr.  
2 Jacobs's possession. I've looked at all the transcripts, and  
3 I would note there was no mention by Mr. Peek of all of the  
4 devices that had been brought to Las Vegas at that point in  
5 time and all the documents that they were secretly reviewing  
6 at that point in time and would later deceive you and us about  
7 them existing. So if he wants to talk about things that  
8 weren't disclosed at that 16.1 conference, I would purchase a  
9 mirror before I start talking about those sorts of things.

10 But, setting that issue aside for just a moment, and  
11 we'll get to it, is I do not believe for one minute that their  
12 proposed stipulation that they are offering is enforceable,  
13 and I don't believe they intend it to be enforceable. And my  
14 client is not required to incur any risk, Your Honor. My  
15 client will incur no risk. Their argument here is a rich one,  
16 you should trust us. Mr. Morris made the -- I wrote it down,  
17 the words, because I thought it was so revealing -- it's  
18 improbable, improbable that Mr. Jacobs's case would face any  
19 consequences . They want us to take on risk as a consequence  
20 of their game playing that they have engaged in for years.  
21 that's what their position is, you should assume the risk  
22 because this will benefit Las Vegas Sands, we need to get rid  
23 of more witnesses, more documents need to go away, it's going  
24 to be much better for us later on when we could have witnesses  
25 come into court -- you already saw it, Your Honor. They claim

1 they can't remember things that were just happening months ago  
2 during the sanctions hearing. Then they claim they can't  
3 remember anything now that's happened about five years ago.  
4 They're trying to grind this case out with this story of,  
5 well, let's get to 2019, won't that be great, we'll have --  
6 everybody will be gone, maybe we'll have some more people die  
7 and we won't have -- we won't have to worry about some of the  
8 facts that we have been struggling to keep secret throughout  
9 this case.

10           So the answer to their question is no, we're not  
11 going to delay this case to 2019, which is what their -- which  
12 is what their game plan is really about. They have given us  
13 so many inconsistent positions on this, well, it was stayed  
14 one year, now it's been stayed three years. All we're going  
15 to face are more maneuvering once they get past the deadline  
16 that they don't want.

17           And I'll give the Court an example of this, and this  
18 ties into this motion about -- this motion is about more than  
19 just the 41(e) issue I get. I will bet the Court -- Mr. Jones  
20 says he's willing to make some wagers. I'm willing to make  
21 some wagers. I will bet -- since this Court lifted -- or this  
22 Court entered its order on the jurisdictional discovery I will  
23 bet the Court not a single consent has been sought by  
24 executives in Macau. I'll bet not a single one has been  
25 sought. I'll bet you not a single search term has been run in

1 the month that they've had. I'll bet the Court that not a  
2 single search term had been run by Las Vegas Sands in that  
3 month that they've had. I'll bet the Court that no documents  
4 by Mr. Adelson -- I'll bet Mr. Adelson has conducted no search  
5 of records in the month that he's had. And I'll put up some  
6 money on that. Like Mr. Jones, if he wants to put up the  
7 money, I'll make the wager. Because there is no intention --  
8 I don't care whether the discovery period was 12 months,  
9 24 months, or 36 months. There is zero intention of  
10 complying. So this motion is that they say is you should  
11 vacate the trial first of all is beyond premature, because  
12 they're not going to comply -- they're complaining about two  
13 or three months' worth of discovery. They haven't done  
14 anything in the last month.

15 And you know what else, and this argument is very  
16 rich about how they haven't been able to do anything, Your  
17 Honor, and they're saying they're the ones who have been  
18 prejudiced. I moved -- let's remember something. Las Vegas  
19 Sands Corporation never had any disputes about jurisdiction.  
20 Sheldon Adelson never had any disputes about jurisdiction. So  
21 when I told the Supreme Court to lift the -- I asked the  
22 Supreme Court to lift that stay that we were the victim of,  
23 guess what Mr. Peek's position was, Your Honor. Oh, no, no,  
24 no, no, no, we need that stay, that stay needs to remain. Mr.  
25 Morris's position was the same. They're not the victims here.

1 They exploited that stay. They abused it and used it for  
2 their advantage and now come to you and say, well, time has  
3 passed, we now need to -- we now want to change positions that  
4 we've prejudiced Mr. Jacobs this long, we need more years now  
5 to grind him out. And that's all that this is about. There  
6 is plenty of time, let's see what good-faith efforts they've  
7 made in the last month since they've know what this trial date  
8 is to get ready for it. And I will tell you it's going to be  
9 zero, because that's what's going to happen. I don't care if  
10 you kicked it out for one year. It's going to be the same  
11 routine over and over. They've made that clear.

12           So, no, we are not going to agree. This five year  
13 rule, contrary to Mr. Morris's position, is not about  
14 protecting just the defendant. It's to protect all of the  
15 parties, and including my client having his day in court,  
16 which they have made sure has not been happening. And it has  
17 been at their insistence that it's not been happening, their  
18 games with us in discovery, their claims that somehow that  
19 stay kept any fact out of evidence that somehow went  
20 ultimately to the merits, as well as jurisdiction. They claim  
21 that that stay somehow insulated those facts.

22           MR. RANDALL JONES: Listen, I've got to object. You  
23 asked me --

24           THE COURT: To what?

25           MR. RANDALL JONES: To the fact that --

1           THE COURT: I let you talk about other stuff besides  
2 41(e).

3           MR. BICE: Absolutely.

4           MR. RANDALL JONES: No, actually, you didn't, Your  
5 Honor. You limited it to 41(e).

6           MR. BICE: He absolutely did. And he's interrupting  
7 me.

8           THE COURT: Guys. Guys. Please remember we're  
9 being polite, we're well mannered, we're acting like our  
10 grandmothers are in the back row.

11          MR. BICE: And I'm the one being interrupted.

12          THE COURT: Wait. Gentlemen.

13          MR. RANDALL JONES: I -- I --

14          MR. MORRIS: I would like to join the objection,  
15 too. This constant ad hominem haranguing and  
16 mischaracterization and vilification of opposing counsel and  
17 their motion is inappropriate and really shouldn't be  
18 tolerated. I would like to get up and tell you some things I  
19 think Mr. Jacobs, Mr. Bice, and Mr. Pisanelli have engaged in  
20 that are reprehensible. But I haven't, and I won't outside  
21 the appropriate process, discovery process, and trial on the  
22 merits process of this Court. It's wasteful, and, frankly,  
23 it's degrading --

24          MR. RANDALL JONES: I would join that objection.

25          MR. MORRIS: -- to have to sit here and listen --

1 THE COURT: [Inaudible].

2 MR. MORRIS: -- to this junk.

3 THE COURT: The objections are overruled. I'm going  
4 to allow Mr. Bice to raise this issue. He previously provided  
5 a copy of the March 28, 2014, reply brief that was filed  
6 related to the stay, the request to lift the stay in the  
7 Nevada Supreme Court, and this issue relates to it and whether  
8 I should run the risk of making a determination that Rule  
9 41(e) won't expire when I clearly do not have a stipulation  
10 between the parties at this time.

11 MR. PEEK: Can we focus -- Your Honor, I'd like --  
12 can we focus on that, as opposed to litigation that occurred  
13 between Las Vegas Sands or at that time Venetian Casino Resort  
14 and Lehr McGovern Bovis?

15 THE COURT: Yeah. Can we not talk about that.  
16 Because I get stopped in the grocery store all the time by  
17 contractors who are still pissed off about that, and it wasn't  
18 even my case.

19 MR. PEEK: I understand, Your Honor. But I tried  
20 that case. I know what the result and the outcome of that  
21 case was, and that case went to trial.

22 THE COURT: Mr. Peek, I understand.

23 MR. PEEK: So we don't need to grind on, as Mr.  
24 Morris says, this vilification of my client and their counsel.

25 THE COURT: Can we not talk about the construction



1 litigation.

2 MR. BICE: Your Honor, I'm going to talk about this  
3 litigant, because this litigant has been --

4 THE COURT: Mr. Bice, can we not talk about the  
5 construction litigation. You can talk about the other ways  
6 that conduct has occurred in this case.

7 MR. BICE: All right, Your Honor. I'll be happy to  
8 do so.

9 THE COURT: Thanks.

10 MR. BICE: But they're coming in to you crying about  
11 the schedule when they opposed the stay. Mr. Peek knew his  
12 client was going to be in this case. He didn't want that stay  
13 lifted. And, by the way, that stay has not stopped him from  
14 -- one day from searching their documents, getting their  
15 documents ready for production. He knew that that stay was  
16 sooner or later going to be lifted relative to his client. He  
17 hasn't been stopped from doing anything in terms of producing  
18 documents. So for them to -- nor has Mr. Morris's client, nor  
19 has Mr. -- Las Vegas -- or, I'm sorry, Sands China been  
20 stopped from doing anything about getting ready.

21 THE COURT: And you mean about their internal  
22 investigation.

23 MR. BICE: Exactly. And I'm quite sure that they  
24 did lots of that. I mean, they claim that they developed  
25 35 different reasons for terminating this individual, and they

1 claim to have done that over -- well, nearly five years ago,  
2 Your Honor. Actually, by this point in time it's nearly five  
3 years ago. One would presume that they had all those records.  
4 Ought to be able to produce them snap quick.

5 So I disagree. We're not going to continue this  
6 attempt to buy four more years so that they can just continue  
7 to waste Mr. Jacobs away and hope more evidence gets lost.  
8 Their motion -- again, my client is not required to assume any  
9 risk. And that's what they're asking you to tell him to do.

10 THE COURT: Thank you.

11 At this point there is no stipulation between the  
12 parties as to an extension of Rule 41(e). Therefore, because  
13 there is no stipulation between the parties, the Court has set  
14 the trial at its earliest possible expiration of Rule 41(e).

15 So if we could now go to the rest of the issues that  
16 you raised in your motion, gentlemen. Because you had other  
17 issues that you raised, and part of that issue is going to be  
18 for me to make a determination as to what discovery I can do  
19 so I can then issue a scheduling order and perhaps an amended  
20 trial setting order.

21 MR. RANDALL JONES: Say that last part again, Your  
22 Honor. I didn't hear you.

23 THE COURT: I'm going to have to issue -- usually my  
24 trial setting orders that are issued are called Scheduling  
25 Order and Trial Setting Order. I didn't issue it in that case

1 this way because I hadn't had an opportunity to talk to you  
2 about the scheduling. This case has previously been deemed  
3 complex, so Rule 2.55 does not apply to this case. But  
4 usually my trial setting order is called Scheduling Order and  
5 Trial Setting Order, but I didn't issue the discovery  
6 scheduling because I hadn't had an opportunity to talk to you  
7 and I wanted to talk to you before I issued a schedule for  
8 your discovery cutoff.

9 MR. RANDALL JONES: Well, in fact I think -- because  
10 we went back and looked. There is no scheduling order, we  
11 agree. And we certainly --

12 THE COURT: No. And there is no requirement for a  
13 scheduling order under Rule 2.55, because you've been exempted  
14 from that because you are a complex case. But I almost always  
15 call my trial setting orders, in order to make sure there's no  
16 confusion under Rule 2.60, a Scheduling Order and Trial  
17 Setting Order.

18 MR. RANDALL JONES: Well, Your Honor, I respectfully  
19 disagree that a scheduling order is required even when a case  
20 is designated complex. But I --

21 THE COURT: The rule specifically says that it can  
22 be under 2.55(b) exempted.

23 MR. RANDALL JONES: Again, I don't want to -- I  
24 certainly understand the Court's position.

25 Your Honor, let me -- and maybe I misunderstood what

1 you were talking about with the Rule 41(e) argument, because I  
2 certainly didn't make all the arguments that I thought were  
3 relevant to that discussion as to why it was prejudicial. But  
4 I understand you're taking this in two pieces. Mr. Bice got  
5 into a lot of other issues that were unrelated to Rule 41(e),  
6 which I thought was inappropriate as it relates to our motion  
7 and your request. But that is what it is. I will tell you --

8 THE COURT: Right. So let's talk about your  
9 objection now.

10 MR. RANDALL JONES: Well, so here's my concern.  
11 This Court has recognized previously with other counsel, Mr.  
12 Williams and Mr. Campbell -- in fact, you had specific  
13 questions. This is at page 8 of the April 22nd, 2011,  
14 transcript where you said, "I'm fine with that. It's just you  
15 put a delay on the start of depositions in your status report,  
16 so I want to ask some questions about why you've structured it  
17 the way you had."

18 And Mr. Williams says down below, "Your Honor, it's  
19 simply -- the deposition start date is simply a reflection of  
20 the efforts we think it's going to take in order to get a  
21 sufficient number of documents produced by both sides in order  
22 to make deposition process meaningful."

23 We agree with Mr. Campbell. And, Your Honor, to  
24 suggest that -- assuming Mr. Bice is going to say, well,  
25 that's different counsel, you even raised that, well, that was

1 another lawyer, I would think everybody in this room would  
2 acknowledge that Mr. Campbell and Mr. Williams are extremely  
3 competent trial lawyers who understand this process and also  
4 had dealt with Mr. Adelson and Las Vegas Sands before, and so  
5 they had history on which to base their decisions, and they  
6 acknowledged the difficulty and the reason they set the  
7 discovery schedule out as long as they did. So they knew way  
8 been then how long it was going to take.

9           Mr. Williams also -- you asked on page 15, "What  
10 disciplines of experts do you think you're going to have, Mr.  
11 Williams."

12           "Mr. Williams: Well, certainly we're going to have  
13 an economist, certainly we're going to have someone with -- an  
14 expert probably in Hong Kong governance or publicly traded  
15 companies in Hong Kong. We're probably going to have someone  
16 perhaps -- involved perhaps in business valuation."

17           And it goes on to say, where you asked Ms. Glaser,  
18 "Have you made a decision as to where depositions are going to  
19 be taken for people who do not reside in the United States?"

20           "Ms. Glaser: Your Honor, what we've done is we have  
21 said to the other side to the extent we can control witnesses  
22 we would agree that that would be in Hong Kong. Obviously  
23 it's undoubtedly pursuant to the Hague Convention, because I  
24 believe that Hong Kong is just to the Hague Convention. To  
25 the extent people -- third parties that we do not control it's

1 somewhat going to be subject to the vagaries of the Chinese  
2 Government, and those are because Macau, for example, is under  
3 Chinese Government auspices, and we're just beginning to look  
4 into this and find out what the specific rules are, which we,  
5 of course, will share with plaintiff's counsel once we get  
6 down to it. But that's what we understand."

7           And you go on to say, quote, "I have two cases right  
8 now pending that involve parties in China. It's very  
9 difficult, and it sometimes will add up to a year to your  
10 discovery in trying to get -- to go through the hoops that are  
11 required to go through if you cannot get cooperation."

12           So the Court acknowledged way back then that it may  
13 add up to a year based on your personal experience with  
14 dealing with depositions in China. So right there, Judge, we  
15 have an --

16           THE COURT: Parties in China. Not depositions in  
17 China, parties in China.

18           MR. RANDALL JONES: Well, discovery in China.

19           THE COURT: Right. I've never had anybody actually  
20 go to China to take a deposition. They've always agreed to do  
21 it someplace else.

22           MR. RANDALL JONES: Well, the point is, Your Honor,  
23 that there are third parties in China that are going to have  
24 to be deposed. We believe that the people that they want to  
25 depose that are employees or relate to any of the SCL-related

1 entities are in China, that they're in China. That's where  
2 they need to have their depositions taken. So -- not to  
3 mention the experts that Mr. Williams acknowledged that they  
4 would likely want to have. We certainly want to have experts.  
5 You can't have experts even really start to do any kind of  
6 analysis until you get the documents, have them be allowed to  
7 review them. And typically, as you know, in almost every case  
8 the experts cannot form a report until the fact discovery is  
9 done, which means not only do the witnesses -- excuse me, the  
10 paper documents have to be produced and explained, the witness  
11 -- the fact witnesses have to be finished so the expert can do  
12 their report based upon the state of the facts. Which they're  
13 required to do. As you know, under Rule 26 they're required  
14 to have a written report. Then you have to exchange those.  
15 The Court can allow rebuttal experts. The whole process  
16 acknowledged way back when, back in 2011, was going to be  
17 complicated because of the fact that we were dealing with this  
18 Chinese company, assuming there was jurisdiction, which we've  
19 now got. No merits discovery has been done. We don't have  
20 any documents from Mr. Jacobs, with the exception I think of a  
21 couple of hundred that he produced at the beginning of this  
22 case, other than Advance Discovery, which essentially was to  
23 turn around and dump back on us all the documents that he  
24 stole from my client. So we don't have any substantive  
25 documents from him whatsoever. So has he complied with his

1 obligations under 16.1 to produce those voluntarily to us?  
2 Certainly -- what's he been doing for the last three years?  
3 Has he collected everything? I haven't seen anything in the  
4 last month from Mr. Jacobs where he said, oh, by the way,  
5 here's thousands of documents that I have in my possession  
6 that you don't have that are relevant to this case. So he  
7 only wants to continue to try to vilify and pillory the  
8 defendants when he has been given a free ride for four and a  
9 half years of having to do anything other than to try to beat  
10 up on our clients and create discovery torts. We would like  
11 some fairness in this process, some kind of even playing field  
12 at least going forward where we can get some discovery from  
13 him. We want to take depositions, a lot of depositions out of  
14 state related to issues for Mr. Jacobs. There are people we  
15 want to take. His former employers, for instance. We want to  
16 get all those documents. I've got a lot of information I need  
17 from Mr. Jacobs. It's going to take presumably Mr. Jacobs  
18 more than 15 days to give us all the documents that he wants.

19           You go on to say at page 26, "All right, Mr.  
20 Campbell. Remember, under Rule 16.1 you have to make a  
21 statement of damages and support that you do. You may need a  
22 little extra time."

23           Now, he's made a statement of damages, but you also  
24 remind him of his obligations under 16.1. You say here at  
25 line 18, "And I don't want anybody to think 16.1 doesn't apply



1 to the extent it has affirmative obligations of document  
2 production." That's to the plaintiff.

3           So, Your Honor, when you look at issues like not  
4 just the fact that we have to produce documents on both sides,  
5 we have to then take depositions of witnesses, we want to be  
6 able to prepare our witnesses, we want to get the documents,  
7 talk to our witnesses about those documents before their  
8 depositions are taken. We want to then be able to read the  
9 documents before we take Mr. Jacobs's deposition. Then we  
10 want to -- once we're done with that process we want to get  
11 our experts up to speed, have them be able to issue a report  
12 and file it, and then look at the expert reports on the other  
13 side. None of that can be done in two months. That's an --

14           THE COURT: But haven't you already hired your Hong  
15 Kong governance issue expert? Because their information was  
16 disclosed as part of the sanctions and jurisdictional  
17 hearings.

18           MR. RANDALL JONES: We had -- we had hired an expert  
19 with respect to the jurisdictional issues, Your Honor, yes.  
20 Whether that expert is the appropriate person on merits, maybe  
21 not. That is a decision we have not made and cannot make at  
22 this stage of the proceedings, because we haven't done the  
23 merits discovery. So sure --

24           THE COURT: I understand what you're saying. But my  
25 question was -- and I'm going to go through this in a minute,

1 which is going to make this hearing last even longer. I have  
2 a list of things that I have as hangers on from the 2011  
3 conference that I need to know what happened. I told Mr. Peek  
4 this. The only thing I know is the ESI protocol was entered.

5 MR. RANDALL JONES: And, Your Honor, I can -- from  
6 my involvement in the case what I understand is we have  
7 produced a massive amount of documents, and Mr. Jacobs has  
8 produced the documents he stole from my client, with the  
9 exception of about 200 other pages that he produced very early  
10 on in the case which are insignificant as it relates to the  
11 merits discovery on Mr. Jacobs.

12 So with respect to your question about the experts,  
13 we had contacted and retained and have listed on our offer of  
14 proof an expert. In fact, we disclosed that pursuant to your  
15 order in a timely fashion with respect to the evidentiary  
16 hearing, but pursuant to your order, obviously we could not  
17 call that expert. So we have someone we could talk to.  
18 Whether he ends up being the proper person for the merits  
19 stage I have no idea and certainly would not really be able to  
20 have any kind of an intelligent conversation with him until we  
21 get the merits discovery going.

22 But, Your Honor, look. You have been doing this a  
23 long time yourself. You understand what you are asking the  
24 defendants to do between now and the next two months. I  
25 believe -- I could be wrong, but I believe you understand the

1 impossible nature of the tasks that you are telling the  
2 parties to accomplish in that time period when you consider  
3 all the facts and when you look at the history of the case  
4 from some extremely competent plaintiff's lawyers, Mr.  
5 Jacobs's lawyers, who acknowledged the same back in 2011, then  
6 I think it begs credulity for Mr. Bice to get up here and  
7 directly contradict his predecessor counsel Mr. Colby Williams  
8 and Mr. Don Campbell and say, whatever they said back then  
9 that was them, they couldn't do it, that's up to them, I don't  
10 know, but I can get it done. And the Court's own comments  
11 about the difficulties of dealing with discovery in places  
12 like China and how it adds, in your experience, a year to the  
13 process, to suggest that we could do this in two months is I  
14 think just on its face is an absurd proposition. It cannot be  
15 done. It is simply an attempt -- you know, Mr. Bice gets up  
16 here. Again, he always wants to hammer the past and say all  
17 these bad things he claims that the defendants have done. But  
18 the fact remains that Mr. Bice's strategy has been clear.

19 And, you know, it's not the first time that I've  
20 seen this strategy employed. If you can't win the case on the  
21 merits, you get them with a discovery tort. And they have  
22 taken that process to its pinnacle. They've become experts at  
23 that process. And that's what they're doing here. And it's  
24 unfair, it's not necessary with the stipulation you now have  
25 on the record, and all it does is serve to set my client up,

1 Las Vegas Sands up, and Mr. Adelson up for further discovery  
2 torts. So since Mr. Bice doesn't want to go to trial on the  
3 merits, what he wants to do is he wants to set our clients up  
4 for an impossible task so he can come back to you and say,  
5 look, they've done it again, Judge, they didn't comply with  
6 this impossible discovery schedule therefore you should  
7 default them or impose such other draconian presumptive  
8 sanctions on the evidence that it's a foregone conclusion that  
9 we'll lose in front of a jury because of the presumptions that  
10 he's going to ask you to invoke if you don't outright default  
11 us. And that's not fair, Judge, and that's not the way the  
12 process should work. It has taken a long time to get here,  
13 because we had writs that were found to be meritorious. And  
14 to punish our clients because the Supreme Court said, we're  
15 going to stay it and we believe these writs are meritorious,  
16 because that's what the rulings say, and then to punish our  
17 clients because of the stay that the Supreme Court found was  
18 meritorious is complete inappropriate, especially in light of  
19 the stipulation that's been proffered today in court.

20 THE COURT: Thank you.

21 MR. RANDALL JONES: And I'll let Mr. --

22 THE COURT: Mr. Peek, Mr. Morris, anything else  
23 you'd like to say in support of the defendants' objection to  
24 the order setting the civil jury trial?

25 MR. MORRIS: Anything in addition?

1 THE COURT: Yes.

2 MR. MORRIS: No, not at 11:45 I don't, no.

3 THE COURT: Okay. Mr. Peek?

4 MR. PEEK: I agree, Your Honor. Nothing further.

5 THE COURT: Okay. Mr. Bice, anything else you'd  
6 like to say in opposition to the defendant's objection to the  
7 order setting civil jury trial?

8 MR. BICE: Yes, Your Honor. As typically happens  
9 with the defendants, I think what doesn't get said largely  
10 says it all. We've heard now -- first of all, it's not two  
11 months. And my client is the one who's afraid of going to  
12 trial on the merits here? Is that what you've seen for the  
13 last five years, it's my client that's afraid of going to  
14 trial on the merits? I will let the Court address itself  
15 about who's afraid to go to trial on the merits of this case.

16 But again, Mr. Jones, lots of words, didn't hear the  
17 name of a single witness that he doesn't have access to,  
18 didn't hear the name of any -- he says, there's a lot of  
19 depositions we're going to take. Not the name of a single  
20 person. Presumably -- he's now had a month. Where are these  
21 on his 16.1 disclosures, his supplemental 16.1 disclosures?  
22 He's telling you he knows the identity of all these witnesses;  
23 yet we haven't heard their names.

24 And he also says we haven't done anything. Well,  
25 that's very interesting, Your Honor. We served since the --

1 both before the evidentiary here -- Mr. Jacobs -- and this is  
2 where Mr. Jones, again, I just assume it's just a  
3 misstatement, because he seems to have forgotten the facts  
4 about what we were told to do. Mr. Jacobs was required to  
5 deposit his electronic devices that he had been using both in  
6 business and personal life with Advance Discovery. As you'll  
7 recall, I entered into an agreement with MTO, who was  
8 representing Sands China at that point in time, to put in  
9 images into those devices so as to avoid further fighting  
10 about it. Which we did. Those were then searched. They had  
11 forever to review them, and they've had them.

12 And by the way, that isn't limited, obviously, to  
13 just the documents that Mr. Jacobs acquired, didn't steal,  
14 acquired while he was in Macau. And so Mr. Jones is just flat  
15 wrong about the facts about what we have produced, which is  
16 not unusual in this case, unfortunately. We have produced  
17 volumes of documents, and we have done it both before, and we  
18 did the last production --

19 THE COURT: So can I ask you a very simple question.

20 MR. BICE: Yes.

21 THE COURT: Do you think it is possible for the  
22 parties to be ready and complete discovery prior to the trial  
23 date I've set for October?

24 MR. PEEK: Prior to what, Your Honor? I didn't hear  
25 the question.

1 THE COURT: The trial I've set in October.

2 MR. BICE: If the parties act in good faith and

3 comply with the discovery rules --

4 THE COURT: Okay.

5 MR. BICE: -- and an appropriate schedule, the

6 answer to that is yes.

7 THE COURT: Can I ask you a couple questions.

8 MR. BICE: Yes.

9 THE COURT: Have the Rule 16.1 disclosures, which

10 include witnesses, documents, and damages statements, been

11 provided by the plaintiff?

12 MR. BICE: Yes.

13 THE COURT: Okay. Do you anticipate any

14 supplementation of that?

15 MR. BICE: Yes.

16 THE COURT: When?

17 MR. BICE: I believe we have been doing

18 supplementations. We've done a third and fourth supplement of

19 our 16.1 disclosure. We did some back in April.

20 MR. SMITH: Second and third.

21 MR. BICE: Second and third. I apologize. Second

22 and third back in April of this year, Your Honor.

23 THE COURT: How many tracks of depositions do you

24 anticipate it would take to get the depositions done prior to

25 the October trial date?

1 MR. BICE: Minimum of two, perhaps three.

2 THE COURT: Do you anticipate there's a need for any  
3 limitation on the time for any of the depositions?

4 MR. BICE: No.

5 MR. RANDALL JONES: I'm sorry, Your Honor, but --

6 MR. PEEK: Your Honor, I'm not hearing your  
7 questions.

8 THE COURT: Sorry. I asked him if he thought there  
9 was any limitation required on the time needed to take any  
10 depositions. And he said no.

11 MR. PEEK: No limitation on time is what he --

12 THE COURT: Just asked him the question. That's  
13 what he said.

14 MR. PEEK: Right.

15 THE COURT: Okay. Thank you, Mr. Bice. Let me go  
16 to the other side. I've got some questions for them. Because  
17 I'm trying to get you guys out of here by noon.

18 MR. BICE: Right.

19 THE COURT: All right. Mr. Jones --

20 MR. RANDALL JONES: Yes, Your Honor.

21 THE COURT: -- understanding that your client has  
22 only recently had the jurisdictional hearing completed, but  
23 prior to the stay they were in the case and subject to the  
24 discovery orders that I had made, do you know if they filed --  
25 ever filed their Rule 16.1 disclosures, including documents



1 and witnesses?

2 MR. RANDALL JONES: I don't recall, Your Honor.  
3 I've -- I know people were looking at that in my office. I  
4 don't recall as we stand here -- or as I stand here. I can  
5 tell you that we are actively in the process of doing all the  
6 discovery we can, including responding to -- contrary to what  
7 Mr. Bice said, by the way -- to the discovery that he has  
8 served. So we are actively out there right now looking for  
9 things and looking -- putting together witness lists and  
10 everything else. So we are doing that.

11 THE COURT: When do you think you will have your  
12 Rule 16.1 disclosures of witnesses, documents done?

13 MR. RANDALL JONES: You know, I hate to say this.  
14 It's somewhat been compartmentalized in our office to try to  
15 -- there's so many things going on. So Mark Jones is probably  
16 a better person to ask that question. I can get an answer by  
17 the end of today, though.

18 THE COURT: I was going to set a deadline before you  
19 leave.

20 MR. RANDALL JONES: Well, that's fine. That's --  
21 that's fine. I -- but, unfortunately, I can't give you a  
22 concrete answer to that as to when I can do that, because I  
23 need to have Mark here to ask him that question. Obviously  
24 the -- I want to try to make sure that we are as complete with  
25 our -- and it's going to be a process. It's going to be I'm

1 sure a rolling process just like what Mr. Bice talked about.

2 THE COURT: Well, but that was why I ordered them to  
3 provide all of their documents prior to the evidentiary  
4 hearing.

5 MR. RANDALL JONES: Understood. Although, as you  
6 know, all of their documents was really essentially the vast  
7 -- I think it was 209,000 pages. Probably 208,000 pages were  
8 documents that Mr. Jacobs stole. But, be that as it may, with  
9 respect to answering your question, Your Honor, as to when we  
10 could file our supplemental -- assuming we have filed one  
11 before -- 16.1 disclosures, I would say we would try to get  
12 that done, the initial one within the week. So a week from  
13 today.

14 THE COURT: Okay. Mr. Peek, your client's  
15 previously filed Rule 16.1 disclosures and witness lists.

16 MR. PEEK: Yes, Your Honor.

17 THE COURT: How many supplements have you done so  
18 far?

19 MR. PEEK: I believe, Your Honor, we have done as  
20 part of the jurisdictional discovery seven or eight  
21 supplemental disclosures.

22 THE COURT: Okay.

23 MR. PEEK: Some documents came from us, some  
24 documents came from Sands China with respect to jurisdictional  
25 discovery.

1 THE COURT: But --

2 MR. PEEK: But with respect to merits discovery,  
3 Your Honor, we filed our initial supplemental disclosure --  
4 or, excuse me, our initial disclosures of witnesses, and we  
5 have also filed an initial disclosure of documents.

6 THE COURT: Okay.

7 MR. PEEK: And we have had some supplements. I  
8 can't tell you exactly what number there are, but those that  
9 were only filed with respect to merits discovery only took  
10 place as of August -- or before August of 2011.

11 THE COURT: Right. They would have been --

12 MR. PEEK: There have been no supplements to merits  
13 discovery, Your Honor, after August 23rd, 2011.

14 THE COURT: Okay. But you did make the original  
15 disclosure that we discussed in April 2011, which should have  
16 included all of the information you had at that time.

17 MR. PEEK: Information with respect to documents, or  
18 information with respect to witnesses?

19 THE COURT: Well, all of the documents and witnesses  
20 required under Rule 16.1.

21 MR. PEEK: Your Honor, you may --

22 THE COURT: Understanding you have to supplement.

23 MR. PEEK: You may recall that the discussion at the  
24 court conference in April of 2011 revolved around --  
25 disclosures that would be relevant and responsive and required

1 by the rule revolved around the agreement with respect to  
2 first ESI protocol and then an agreement with respect to  
3 custodians and search terms. So the parties had discussed at  
4 that Rule 16 conference with you that the disclosures would  
5 come about as a result of an ESI protocol, search terms, and  
6 custodians.

7 THE COURT: No. That wasn't the case at all. In  
8 fact, I had a specific discussion with Ms. Glaser related to  
9 paper documents and the requirement those documents be  
10 provided pursuant to Rule 16.1 separate and apart from the ESI  
11 discovery that was being provided on a rolling schedule.

12 MR. PEEK: I understand what your discussions were  
13 with Ms. Glaser, Your Honor, and we have produced and we did  
14 produce paper documents as part of that initial production  
15 that we made. And we have made initial productions. We have  
16 produced documents.

17 THE COURT: Okay.

18 MR. PEEK: Up until August 23rd or whatever that  
19 date was that the stay was imposed by the Supreme Court, 23rd,  
20 26th. I'm not sure on the exact date.

21 THE COURT: And then it was my understanding that at  
22 the time you also were going to start written merits discovery  
23 shortly after June, somewhere right after our conference and  
24 before June, before the stay went into effect. Did that  
25 happen?

1           MR. PEEK: We did not, Your Honor, send out requests  
2 for production or interrogatories or requests for admissions  
3 in that period of time after June 1 and before August 26th of  
4 2011.

5           THE COURT: Okay.

6           MR. PEEK: Primarily because we were working on  
7 producing documents, negotiating protocols, agreeing on search  
8 terms, and agreeing on custodians.

9           THE COURT: What I'm trying to find out is what --  
10 because, remember, discovery doesn't get filed, so I don't  
11 know what you did. I only know what we talked about. So I'm  
12 trying to find out how far you got down the road before the  
13 stay went into place in August. So --

14          MR. PEEK: That is how far we got down the road,  
15 Your Honor.

16          THE COURT: Do you believe any depositions need to  
17 be limited in time? Not notice time, time for deposition  
18 taking.

19          MR. PEEK: Given my experiences with the other  
20 depositions that have already occurred, Your Honor, yes, I do  
21 believe that there are some depositions that should be limited  
22 in time.

23          THE COURT: Okay. And what do you think that --

24          MR. PEEK: On my side, yes.

25          THE COURT: And what do you think that limitation

1 should be?

2 MR. PEEK: I would have to identify, Your Honor -- I  
3 would have to know what depositions they propose to take  
4 before I could make that assessment. So I'm not here today to  
5 tell you without knowing those witnesses that they propose to  
6 depose.

7 THE COURT: Okay. How many tracks of deposition do  
8 you anticipate need to be done in order to get ready for the  
9 trial in October?

10 MR. PEEK: One, Your Honor. Because there are three  
11 parties, there are trial counsel if we're going to have to try  
12 this case, and in my experience it's best to have trial  
13 counsel at each of those depositions to defend that matter.  
14 So I would say one track, Your Honor, not two, not three, not  
15 four.

16 THE COURT: Then let me ask you the other question  
17 that we discussed during the 2011 Rule 16 conference. The  
18 location of the depositions of people who were related to  
19 either Sands China or Las Vegas Sands who are I'll call them  
20 cooperative whether they're under control or not, there was a  
21 recommendation those depositions occur in Hong Kong. Do you  
22 have any further information you want to share related to  
23 that?

24 MR. PEEK: No, Your Honor, other than to say we  
25 stand by at least what we said at the April conference, that

1 those depositions would take place in Hong Kong. Ms. Glaser  
2 was the one who addressed the issue with respect to Sands  
3 China and said to you then those that we believe will be  
4 cooperative and over whom we may or may not have control we  
5 would produce them in Hong Kong, rather than Macau, because of  
6 the concerns that we all had then about Macau's rules, which  
7 are different than Hong Kong's rules.

8 THE COURT: Okay. Anything else you want to tell me  
9 for my consideration on discovery scheduling?

10 MR. PEEK: Yes, Your Honor. You had said that you  
11 wanted to perhaps have a cutoff of October of 2015. That  
12 certainly does not give us --

13 THE COURT: No, I can't give you a cutoff in October  
14 2015. I've got a trial in October 2015.

15 MR. PEEK: Well, that's what I heard you -- so  
16 that's why I was -- maybe I misheard you, then, Your Honor. I  
17 thought you said --

18 THE COURT: I thought you said to meet the October  
19 trial date. I can't give you a cutoff --

20 MR. PEEK: Okay. And I didn't hear an answer from  
21 the Court as to what -- for Mr. Bice. I thought the inquiry  
22 was when should the cutoff be.

23 THE COURT: I didn't ask him that.

24 MR. PEEK: Okay.

25 THE COURT: I asked him what he needed to do.

1 MR. PEEK: Okay. So there are --

2 THE COURT: Other than depositions.

3 MR. PEEK: There are certainly experts that we will  
4 be calling on similar issues of a valuation of damages,  
5 economics experts, business valuations that would also be  
6 undertaken by us. There are other legal experts that we may  
7 also want to identify and call, Your Honor, with respect to  
8 contractual issues that are raised and framed by the  
9 pleadings. Your Honor, this is not a case that can be  
10 prepared adequately by the defendants within the time frames  
11 that you are now seeking to impose upon us by virtue of your  
12 understanding of Rule 41(e).

13 THE COURT: I understand the difficulties.

14 MR. PEEK: It's not a matter of difficulty, Your  
15 Honor. It is an almost -- it is one, an unfair and  
16 unreasonable task to impose upon Las Vegas Sands to produce --  
17 collect, review, produce, search, all of the things that we  
18 do. There are other areas of inquiry that we're certainly  
19 going to have with Mr. Jacobs that may or may not be able to  
20 be conducted within the similar time frame. I know that there  
21 are not only foreign witnesses in -- when I say foreign I'm  
22 talking about outside the jurisdiction of the United States,  
23 but there are witnesses that are located in the continental  
24 United States, but not in Las Vegas who we would seek to  
25 depose. We've identified some of those witnesses, if not all



1 of those witnesses, that were related to Mr. Jacobs's former  
2 employment, so I know that those are going to be a challenge  
3 to take. We may have objections to some of those witnesses  
4 being deposed. We'll have to certainly have permissions.  
5 We'll have to then get subpoenas out of the jurisdiction from  
6 which we seek to have those depositions taken. We may or may  
7 not have objections.

8           And the notion that somehow there will be motion  
9 practice on discovery that is inappropriate, that is certainly  
10 what Mr. Jacobs has said repeatedly, again, that is saying to  
11 you, well, we know they're going to have motion practice,  
12 don't let them have motion practice, that's going to cut it  
13 off. Well, we are entitled to protect our rights, Your Honor,  
14 under the rules. We have taken writs -- or Sands China has  
15 taken writs. Las Vegas Sands has taken writs. As we said  
16 yesterday, because of the aggressive conduct of Mr. Jacobs,  
17 three of those four writs have been granted, starting with the  
18 one related to jurisdiction, and others, Your Honor, with the  
19 exception of I think the last writ, we had rulings on those,  
20 and those rulings overturned the aggressive position on the  
21 part of Jacobs. So when he says to you this is a matter of  
22 our own making, then he says to you, well, you agreed and said  
23 that you didn't want to go forward with merits discovery when  
24 we asked for it, well, no, we didn't, because we didn't know  
25 what the nature of the case was going to be when the motion

1 and the request was made of the Supreme Court. He made his  
2 motion, the Supreme Court disagreed with him.

3           So, again, when we protect our rights and when the  
4 Supreme Court agrees with us we are somehow vilified,  
5 pilloried, as Mr. Jones said, for exercising our rights under  
6 the law. And, again, that's what he wants to do again. We  
7 know that this is going down the road of seeking discovery  
8 torts, because there is little or no way that I can even  
9 comply with the initial disclosures within the 14 days or even  
10 60 days or even 90 days, Your Honor, given the volume of  
11 documents that I would be required to produce, given the  
12 number of --

13           THE COURT: How is it different now than it was in  
14 April 2011?

15           MR. PEEK: Well, let's look at April 2011. April  
16 2011, are you saying because I said 60 days that somehow I am  
17 bound by that 60 days?

18           THE COURT: Well, no. One would have hoped that  
19 prior to the date that expired prior to the stay that you  
20 would have made those disclosures.

21           MR. PEEK: Your Honor, I attempted to make those  
22 disclosures, and I did make some disclosures --

23           THE COURT: Okay.

24           MR. PEEK: -- in that period of time. But I also  
25 know that from the custodians that they asked us and on which

1 they set priorities I produced documents that I believe that  
2 there were only three custodians out of 30 or 40 custodians  
3 that they had identified, not ones on which I agreed to  
4 search, but ones on which they had identified that I make  
5 searches for purposes of my initial disclosures.

6           There were search terms that they gave us, some of  
7 which we agreed to run, many of which we did not agree. In  
8 fact, I think most of them were overly broad and required and  
9 produced many hits, if you will, Your Honor, that required  
10 review by individuals who were reviewing those documents for  
11 us in that period of time from June -- or actually June 23,  
12 when we reached the ESI protocol, I think that's the date that  
13 it was filed. Let me look --

14           THE COURT: I have it here, so --

15           MR. PEEK: June 23? Yeah.

16           THE COURT: June 23, 2011.

17           MR. PEEK: So it didn't even start, Your Honor,  
18 until after we had reached agreement on an ESI protocol. That  
19 was on June 23rd of 2011. So in that ensuing two-month period  
20 based upon priority custodians and some search terms we were  
21 able to commence production, and we did produce a number of  
22 documents, in the thousands. I know that there will be more.  
23 This case, as the Court knows, has morphed. It may morph even  
24 more if the Court agrees with the motion to amend which is set  
25 for next Thursday for a hearing. And now I'm going to be

1 asked not only to produce documents related to the initial  
2 allegations, the subsequent allegations in the third amended  
3 complaint, and now the fourth amended complaint if the Court  
4 grants that.

5 I know that based upon the requests that they have  
6 submitted to us already there's going to be motion practice on  
7 that. So we haven't even gotten to that stage yet. And to  
8 then say to us, well, I can hear those all in two or three  
9 days -- these are going to be very significant objections,  
10 Your Honor, along the way. And I am, frankly -- as I sit here  
11 at every hearing and have to listen to the vilification not  
12 only of me, but of my client, and as Mr. Bice not only -- he  
13 sort of faces himself to you and to me and looks over at our  
14 table as he's making his personal remarks vilifying myself,  
15 Mr. Jones, and Mr. Morris, as well as my client, it is  
16 inappropriate and unprofessional on his part. And, frankly,  
17 Your Honor, I'm tired of it. We cannot meet the obligations  
18 that the Court would impose upon us within a period of time of  
19 60 or even 90 days and produce documents and take depositions  
20 in an orderly manner that meets the law and meets my due  
21 process rights, as opposed to imposing on us a limited time  
22 within which to do this herculean task or impose upon us two  
23 to three tracks on counsel who will be trying this case, as  
24 opposed to one track and to, as Mr. Bice said, have no  
25 limitation on the time of depositions. Nor will I be able to

1 travel to foreign cities and Hong Kong for whatever period of  
2 time when there is no limitation of time on the depositions,  
3 nor will I be able to travel in the United States to Florida,  
4 to Georgia, to Connecticut, to Chicago to take depositions of  
5 others who have information that will be relevant to this  
6 trial and then also not have time to engage in proper motion  
7 practice. This Court has told me repeatedly that it does not  
8 shorten time on motions for summary judgment.

9 THE COURT: That's correct. I don't.

10 MR. PEEK: So I do not expect you to change that  
11 rule for this case to make an exception in this case --

12 THE COURT: And it's in the order that I'm not going  
13 to.

14 MR. PEEK: -- to this rule. So that means when the  
15 Court is going to be on a holiday for a certain period of that  
16 time that we will be hearing motions for summary judgment,  
17 what, on the eve of trial?

18 THE COURT: No.

19 MR. PEEK: We will be hearing motions in limine on  
20 the eve of trial?

21 THE COURT: No.

22 MR. PEEK: Okay.

23 THE COURT: I've already set all that out in the  
24 trial setting order, Mr. Peek. It'll all be done, with the  
25 exception of some of the motions in limine, prior to

1 September 19th.

2 MR. PEEK: So if we're going to do motions,  
3 dispositive motions, Your Honor --

4 THE COURT: You're going to file them by August -- I  
5 think the date I gave you is August 4th -- August 7th.

6 MR. PEEK: August 7.

7 THE COURT: And the motions in limine --

8 MR. PEEK: And they're going to be heard within,  
9 what, 35 days of that date?

10 THE COURT: They will be heard prior to  
11 September 19th.

12 MR. PEEK: Be heard prior to September 19th. So all  
13 discovery has to be done in order for us to do the dispositive  
14 motions.

15 THE COURT: Well, not all discovery. All percipient  
16 discovery has to be done.

17 MR. PEEK: Okay. So all percipient discovery has to  
18 be done. If we're going to file dispositive motions on or  
19 before August 7th, I would hope that the Court would give us a  
20 little bit of time to be able to review and address and have  
21 all the depositions necessary to be able to file such  
22 dispositive motions at least 15, if not 30 days before the  
23 August 7th hearing -- excuse me, filing date to be able to  
24 meet the Court's deadlines. What you're saying to me is, you  
25 must do all of this discovery on or before July 15th or let's

1 say July 31 and be able to file an appropriate motion for  
2 summary judgment, because we will be filing motions for  
3 summary judgment, Your Honor. This is not something that can  
4 be done in the shortened time that, one, the plaintiffs have  
5 requested, or, two, that your overruling of our objections to  
6 the 41(e) have imposed upon us. Thank you.

7 THE COURT: Thank you.

8 Mr. Morris, is there anything you'd like to say  
9 related to the -- first, did your client ever file the  
10 Rule 16.1 disclosures?

11 MR. MORRIS: No.

12 THE COURT: Okay. How long is it going to take you  
13 to get those on file?

14 MR. MORRIS: Well, we only recently answered. I'd  
15 like to have about two weeks.

16 THE COURT: So if I say 10 days from today, pretty  
17 close?

18 MR. MORRIS: Sure. That's close.

19 THE COURT: Anything else, Mr. Morris, that you want  
20 to add to what your colleagues have added?

21 MR. MORRIS: Other than the fact that I think it's  
22 going to take six to nine months to get through fact  
23 depositions.

24 THE COURT: Okay.

25 MR. MORRIS: And I don't think the schedule you wish

1 to impose for whatever reason may be -- you may have that is  
2 performable. I don't think we can do it.

3 THE COURT: Okay.

4 MR. MORRIS: And I've articulated that, I think, or  
5 we've articulated that in our objections for the trial  
6 setting. We believe that is a substantive denial. It's not  
7 just a procedural accommodation, substantive denial of a  
8 reasonable opportunity to prepare to defend this case on its  
9 merits, which we've not had the opportunity to do and we have  
10 not had the opportunity -- at least my client hasn't had the  
11 opportunity to do any discovery on the merits at all. And  
12 we're about to. I was paying attention to my email here a  
13 moment ago. We're about to serve some of the discovery  
14 requests and interrogatories that Mr. Bice is craving to  
15 receive at least with respect to Mr. Adelson that address  
16 merits. That's going to take a little time, I believe, for  
17 him to respond to. But if he is as quick to do everything as  
18 he asks you to do in this pending motion, just cut everything  
19 in half for response times, I'm sure we'll have no difficulty  
20 in him complying with those requests and answering those  
21 interrogatories. And if that's the case, we are still going  
22 to require additional time, time in addition to what your  
23 schedule, your order tenders to accommodate a reasonable --  
24 and to exercise a reasonable opportunity to conduct discovery.

25 So we've made our record. You have made your



1 position clear. I've told you I will get you our Rule 16.1  
2 disclosures in in 10 days, and whatever decision you make on  
3 this will be yours. Best I can do.

4 THE COURT: Thank you, Mr. Morris.

5 Anything else anybody wants to add before I tell you  
6 what I'm going to do?

7 MR. BICE: Yes, Your Honor. Let me talk just  
8 briefly, if I can, about this issue about the deposition  
9 location, because the deposition locations I think has become  
10 a nice highlight in light of what we had under the MPDPA, as  
11 well as in Hong Kong. You'll remember we had Mr. Fleming  
12 testifying from Hong Kong and claiming that he couldn't even  
13 utter the names of people.

14 THE COURT: That's what he said.

15 MR. BICE: We obviously don't think that that was  
16 accurate, but that's the position that they've taken. Our  
17 position is that all depositions in this case, because they  
18 are subject to jurisdiction here, need to occur on U.S. soil  
19 of any party or witnesses that are under a party's control.

20 And let me just give you a highlight of what's going  
21 to happen. I noticed -- for example, I've already noticed Mr.  
22 Fleming's deposition.

23 MR. SMITH: Turnbull.

24 MR. BICE: Not Mr. Fleming's, Mr. Turnbull's  
25 deposition, you know, the person that Mr. Adelson had said,

1 not for long, about. I've noticed up Mr. Turnbull's  
2 deposition, and it's set for Tuesday.

3 MR. MCGINN: Wednesday.

4 MR. BICE: Is it Wednesday? Yes. Thank you.  
5 It's set for Wednesday.

6 MR. PEEK: And I won't be here, Your Honor.

7 MR. BICE: And the first call I received that -- I  
8 got a call this morning from Mark Jones, a voicemail left for  
9 me, saying that they just wanted us to vacate that. They're  
10 not offering any -- and this is the first I'm hearing of it.  
11 We're not getting offered any alternative dates. And then Mr.  
12 Morris told me just before we started the hearing that he was  
13 going to file a motion. I said, well, do you have an  
14 alternative date; no. In fact, I question whether they've  
15 even spoken to Mr. Turnbull to alert him that his deposition  
16 had been noticed. But this is just an example of what is --  
17 we're going to face, which is why I've asked for these times  
18 periods to be shortened. We're not going to get cooperation.  
19 We understand that. It's -- you know, they've made it clear  
20 on how they're going to conduct themselves. But this just  
21 sort of highlights why we need to have some tight schedules so  
22 that we can get in front of you, as opposed to waiting,  
23 because I did it -- because we didn't have an order from you,  
24 I gave them 15 days' notice for Mr. Turnbull, because I didn't  
25 want him to disappear like some other witnesses have. And to

1 wait then until --

2 MR. RANDALL JONES: Objection, Your Honor.

3 MR. BICE: -- the Friday before --

4 THE COURT: Sustained. Let's not argue about stuff  
5 like that. Let's just -- it's either going to happen or  
6 you're going to do a notice of nonappearance or somebody's  
7 going to file a request for protection.

8 MR. BICE: Well --

9 THE COURT: But I'm not there yet.

10 MR. BICE: Right. But my point is to wait until the  
11 end and then file a motion for protective order and then say,  
12 well, now he's not available and we need to postpone this date  
13 out even further, that's why I'm asking you to accelerate the  
14 time --

15 THE COURT: I understand what you're asking. But  
16 I'm not doing anything about it today.

17 MR. BICE: Okay. So with respect to that, Your  
18 Honor, I am asking that all depositions of all parties and  
19 their witnesses under their control occur on U.S. soil. If  
20 they want to meet halfway, those that are in Asia meet halfway  
21 in Hawaii, I don't think that's particularly efficient, but if  
22 that's how they would like to do it, fine. But the Court has  
23 absolute authority in light of this position that we can't  
24 even utter names when we're in Hong Kong, I don't -- I think  
25 that's all a smoke screen, but that's been their position. So

1 because they are subject to U.S. jurisdiction, those  
2 depositions need to occur on U.S. soil, Your Honor.

3 THE COURT: Okay. Mr. Morris did you want to say  
4 anything else before I finish up this morning here?

5 MR. MORRIS: Yes. Just this. One of the remarks  
6 that was just made about Mr. Turnbull -- Mr. Bice is very  
7 clever and prescient, and he apparently is somewhat  
8 clairvoyant, at least he claims to be. He knows what we have  
9 not done, he knows that we haven't talked to David Turnbull.

10 THE COURT: What you haven't done in the future,  
11 too.

12 MR. MORRIS: He knows and he knows and knows. And I  
13 have -- I have and I'm going to bring it over here today in  
14 just a few minutes, I have a motion to vacate the notice of  
15 his deposition and for entry of a protective order that is  
16 supported by -- it took a while to get this because of the  
17 time differential and the inaccessibility of people, but it's  
18 supported by a declaration of Mr. Turnbull.

19 THE COURT: Amazing.

20 MR. MORRIS: Yes.

21 THE COURT: So I'll see that this afternoon?

22 MR. MORRIS: Yes, you will.

23 THE COURT: Okay. Then I'll sign it and we'll get  
24 it set for next week, and we'll have a discussion about it.

25 MR. MORRIS: Very good.

1 THE COURT: The depo is noticed for Wednesday, so  
2 we'll have to have the hearing on Tuesday.

3 MR. MORRIS: That's fine.

4 THE COURT: Okay.

5 MR. MORRIS: Or have it on Monday, if you want.

6 THE COURT: We could do that, too.

7 MR. BICE: But this is my point, Your Honor.

8 THE COURT: Wait. I'm done listening to you guys  
9 today. I enjoy spending time with you. You're all quality  
10 attorneys. But I need to get you moving. And just fighting  
11 with each other isn't going to help.

12 MR. BICE: All right. See what happens.

13 THE COURT: All right. The parties have previously  
14 had three months to do merit discovery before the Supreme  
15 Court imposed the stay on merits discovery. Whether the  
16 parties did any discovery during that time or not is an item  
17 that you can discuss later.

18 I am going to set a schedule that provides dates  
19 that will allow us to complete discovery in a time that will  
20 meet the trial date which I have set at the earliest possible  
21 date prior to the expiration of 41(e) given the fact there is  
22 no stipulation to extend Rule 41(e).

23 Percipient witness discovery cutoff will be on  
24 August 7th.

25 Expert witness discovery cutoff will be on

1 September 4th.

2 The plaintiff's expert disclosures will be on  
3 July 17th.

4 The defendants' expert disclosures will be on  
5 August 14th.

6 And any Rule 16 disclosures that have not previously  
7 been made, those initial disclosures must be made 10 days from  
8 today.

9 I will issue a scheduling order and amended trial  
10 setting order today so you have those days. If you need to go  
11 someplace else, it will not offend me. But I have to operate  
12 under the assumption as to when the earliest time Rule 41(e)  
13 will expire, since I do not have a stipulation to extend it.  
14 I have an offer of a stipulation, but not an acceptance.

15 MR. MORRIS: So when you're referring to someplace  
16 else, I hope you're referring to up and not down.

17 THE COURT: Well, I don't know. There may be other  
18 places you could acquire relief.

19 MR. PEEK: Your Honor, may I ask the Court to enter  
20 its order on the objections? Because it takes us some time  
21 for the parties to agree on an order. So if the Court would  
22 just enter an order --

23 THE COURT: No. I'm issuing -- I'm just going to  
24 issue an order. The dates are --

25 MR. PEEK: Okay. So it will not only --

1 THE COURT: Dan and I have a form.

2 MR. PEEK: Your Honor, I'm not talking about your  
3 form. I'm talking about the order on the objections, as  
4 opposed to just a scheduling order. I think we should have a  
5 separate --

6 THE COURT: You want an order overruling your  
7 objection?

8 MR. PEEK: Well, I think we have to have something  
9 if we're going to address --

10 MR. MORRIS: If we're going to go in any direction,  
11 we need your -- we need an order on this objection to --

12 THE COURT: I am overruling --

13 MR. MORRIS: -- and motion to vacate and reset trial  
14 date. We need an order on that.

15 MR. PEEK: We need a separate order on that, Your  
16 Honor.

17 THE COURT: I am overruling your objection.

18 MR. PEEK: I know that.

19 THE COURT: Someone send over a one-page order that  
20 says, the Judge talked to us today and overruled the  
21 objection, see the transcript that was an hour and 40 minutes  
22 long.

23 MR. PEEK: Okay.

24 MR. MORRIS: And denied the motion to vacate and so  
25 on and so forth.

1 THE COURT: Yes.

2 MR. MORRIS: Okay.

3 MR. PEEK: And, Your Honor, we will send over such  
4 an order without reviewing --

5 THE COURT: I've made a complete record today.

6 MR. PEEK: -- without review by opposing counsel.

7 THE COURT: As long as it's only one line, the Judge  
8 overruled our objection, here's who was here, here's the day  
9 we were here, see the transcript, I will sign it. If it  
10 includes any findings at all --

11 MR. MORRIS: We'll track the --

12 THE COURT: -- or any conclusions of law, I will not  
13 sign it.

14 MR. MORRIS: We'll track the caption and send it  
15 over. How's that?

16 THE COURT: That's perfect.

17 MR. BICE: Your Honor, can I get one point of  
18 clarification?

19 THE COURT: Yes.

20 MR. BICE: On the experts you said plaintiff's on  
21 August 7?

22 THE COURT: Correct.

23 MR. BICE: And defendants' by September 14 -- or  
24 September 4. September 4; correct?

25 THE COURT: No. I said plaintiff's July 17th,



1 defendants' August 14th.

2 MR. BICE: Oh.

3 THE COURT: The percipient witness discovery cutoff  
4 is August 7th.

5 MR. BICE: Okay.

6 THE COURT: The discovery cutoff for experts is  
7 September 4th.

8 MR. BICE: Here's my -- here was my issue, Your  
9 Honor, on the experts. Do you mean by that -- you mean  
10 opening experts and then rebuttal experts? Because the  
11 defendants here, at least Las Vegas Sands has a counterclaim.

12 THE COURT: Has anyone filed a counterclaim?

13 MR. BICE: Yes, it has.

14 THE COURT: The first date relates to any issues on  
15 which a party bears the burden of proof.

16 MR. BICE: Thank you.

17 THE COURT: So that'll be how I phrase it.

18 MR. BICE: Thank you, Your Honor.

19 THE COURT: Are you the only one with a  
20 counterclaim, Mr. Peek?

21 MR. PEEK: I'm sorry, Your Honor?

22 THE COURT: Are you the only one with a  
23 counterclaim?

24 MR. PEEK: Yes, Your Honor. And --

25 MR. RANDALL JONES: We haven't answered yet, Your

1 Honor, so --

2 THE COURT: Are you going to file a counterclaim?

3 MR. RANDALL JONES: We're considering it, Your

4 Honor. I haven't -- we haven't --

5 THE COURT: Okay.

6 MR. PEEK: Your Honor, can I ask the Court to give

7 us the dates again, because I was trying to write them down,

8 and it was too fast. August 7th is all percipient depositions

9 will be completed.

10 THE COURT: No. That's the percipient discovery

11 cutoff.

12 MR. PEEK: Percipient discovery cutoff. Okay.

13 September 4th was?

14 THE COURT: Expert discovery cutoff.

15 MR. PEEK: By the party who bears the burden.

16 THE COURT: Well, no. That's all the expert depos

17 you want to take. They're all done.

18 MR. PEEK: Oh. All the expert depositions must be

19 done by September 4th.

20 THE COURT: Correct.

21 MR. PEEK: So the disclosure by plaintiff or

22 whichever party bears the burden is July 17th?

23 THE COURT: Correct.

24 MR. PEEK: And the rebuttal is August 14.

25 THE COURT: The responding expert will be

1 August 14th, which then gives you --

2 MR. PEEK: And those depositions must be completed,  
3 if taken, by September 4th.

4 THE COURT: Correct. Dan's going to do an order.  
5 You'll have it by the end of the day.

6 MR. PEEK: But we need to also advise --

7 MR. MORRIS: Could we have our next -- we'll  
8 stipulate to this. We could have our next discovery  
9 conference in Hawaii. That's an accommodation, isn't it?

10 THE COURT: You know, frequently parties have agreed  
11 to take their depositions in these cases in Hawaii because  
12 it's on U.S. soil and everybody has the protections they need  
13 there and it's much closer than Asia. But I have never  
14 compelled it unless there's been a motion filed.

15 MR. MORRIS: Okay. Thank you, Your Honor.

16 THE PROCEEDINGS CONCLUDED AT 12:19 P.M.

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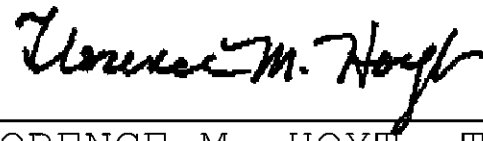
**CERTIFICATION**

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**

  
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