

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

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

17 **FIRST CAUSE OF ACTION**

18 **(Breach of Contract - LVSC)**

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

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

23 50. The Term Sheet provides, in part, that Jacobs would have a 3-year employment term,
24 that he would earn an annual salary of \$1.3 million plus a 50% bonus upon attainment of certain
25 goals, and that he would receive 500,000 LVSC stock options (in addition to the previously awarded
26 75,000 LVSC options) to vest in stages over three years.

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

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

SECOND CAUSE OF ACTION

(Breach of Contract - LVSC and Sands China Ltd.)

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

22 57. On or about May 11, 2010, LVSC caused Sands China to grant 2.5 million
23 Sands China share options to Jacobs. Fifty percent of the options were to vest on January 1, 2011,
24 and the other fifty percent was to vest on January 1, 2012. The grant is memorialized by a written
25 agreement between Jacobs and Sands China.

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

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

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

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

12 **THIRD CAUSE OF ACTION**

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

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

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

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

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

25 **FOURTH CAUSE OF ACTION**

26 **(Tortious Discharge in Violation of Public Policy - LVSC)**

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

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

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

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

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

71. On Tuesday March 15, 2011, oral arguments by the respective counsel of Jacobs, LVSC, and Sands China were presented to the Honorable Elizabeth Gonzalez, Eighth Judicial District Court Judge. These arguments centered upon the motions of LVSC and Sands China to have all of the foregoing causes of action, detailed in this complaint, dismissed as to each of them on the grounds that (1) a necessary and indispensable party had not been named and (2) the Court lacked jurisdiction over Sands China.

72. Following the 90-minute hearing, the Court denied each of the Defendants' motions to dismiss the action. The hearing received widespread attention by members of the media, and particularly by journalists who report on affairs in the business community. Included among those reporters was Ms. Alexandra Berzon, a Pulitzer Prize winning journalist who attended the hearing on behalf of her employer, the Wall Street Journal®. The Wall Street Journal® is generally recognized as one of the most respected and widely read publications in the world, particularly as to matters pertaining to the economy and associated commercial activities and endeavors.

1 73. Following the hearing, the Wall Street Journal® published an article in its online
2 edition styled "Setback for Sands in Macau Suit." That article, which was authored by Ms. Berzon,
3 reported that Adelson had, via e-mail, made the following statements:

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

10 Adelson's comments to the effect that (1) Jacobs was justifiably fired for "for cause" and
11 (2) Jacobs had resorted to "outright lies and fabrications" in seeking legal redress constituted
12 defamation per se.

13 74. All of the offending statements made by Adelson concerning Jacobs and identified
14 in Paragraph 62, *supra*, were (1) false and defamatory; (2) published to a third person or party for
15 the express intent of republication to a worldwide audience; (3) maliciously published by Adelson
16 knowing their falsity and/or in reckless disregard of the truth thereof; (4) intended to and did in fact
17 harm Jacobs' reputation and good name in his trade, business, profession, and customary corporate
18 office; and (5) were of such a nature that significant economic damages must be presumed.

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

23 76. That all the comments and statements by Adelson as detailed in Paragraph 62, *supra*,
24 were made without justification or legal excuse, and were otherwise not privileged because they
25 did not function as a necessary or useful step in the litigation process and did not otherwise serve
26 its purposes.

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

SIXTH CAUSE OF ACTION

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

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

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

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

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

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

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

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

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

5 **PRAYER FOR RELIEF**

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

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

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

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

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

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

16 DATED this ___ day of June, 2014.

17 PISANELLI BICE PLLC

18 By: _____
19 James J. Pisanelli, Esq., Bar No. 4027
20 Todd L. Bice, Esq., Bar No. 4534
21 Debra L. Spinelli, Esq., Bar No. 9695
22 Eric T. Aldrian, Esq., Bar No. 11897
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24 Las Vegas, Nevada 89169

25 Attorneys for Plaintiff Steven C. Jacobs
26
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6 Telephone: (702) 214-2100

Facsimile: (702) 214-2101

7 Attorneys for Plaintiff Steven C. Jacobs

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 STEVEN C. JACOBS,

11 Plaintiff,

12 v.

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

16 Defendants.

17 AND RELATED CLAIMS
18

Case No.: A-10-627691

Dept. No.: XI

RECEIPT OF COPY

19 I HEREBY CERTIFY that a true and correct copy of Plaintiff Steven C. Jacobs' Motion
20 for Leave to File Second Amended Complaint via hand-delivery to the following:

21 HOLLAND & HART

22
23 Date: June 30, 2014

By: J. Stephen Peek

J. Stephen Peek, Esq.

Robert J. Cassity, Esq.

9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

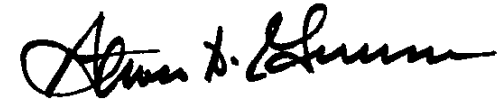
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KEMP, JONES & COULTHARD

Date: 6/30/14

By: J. Randall Jones
J. Randall Jones, Esq.
Mark M. Jones, Esq.
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169



CLERK OF THE COURT

OBJ

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Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**OBJECTION TO PURPORTED
EVIDENCE OFFERED IN
SUPPORT OF DEFENDANT
SANDS CHINA LTD.'S MOTION
FOR SUMMARY JUDGMENT ON
PERSONAL JURISDICTION**

Hearing Date: July 29, 2014

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

Plaintiff Steven C. Jacobs ("Jacobs") objects to evidence proffered by Defendant Sands China Ltd. ("Sands China") in support of its pending Motion for Summary Judgment on Personal Jurisdiction (the "Motion") – namely, the Affidavit of Toh Hup Hoch, also known as Ben Toh (the "Toh Affidavit"). NRCP 56(e) requires that, in a motion for summary judgment:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(Emphasis added); *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) ("Evidence introduced in support of or opposition to a motion for summary judgment must

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LAS VEGAS, NEVADA 89169

1 be admissible evidence."). "It is not sufficient that pleadings be supported by affidavits alleging
2 specific facts; these facts must be made upon the affiant's personal knowledge, and there must be
3 an affirmative showing of his competency to testify to them." *Saka v. Sahara-Nevada Corp.*,
4 92 Nev. 703, 705, 558 P.2d 535, 536 (1976).

5 The Toh Affidavit is both substantively and procedurally improper. First of all, he merely
6 asserts: "I am *informed and believe* and thereon allege SCL has never had any business
7 operations in Nevada, or sales of any goods or services and is prohibited from doing so pursuant
8 to the Non-Competition Deed between LVSC [Las Vegas Sands Corp.] and SCL." (Toh Aff. ¶ 7
9 (emphasis added).) In other words, Toh is simply repeating what someone else – who may or
10 may not have the requisite personal knowledge or competence – supposedly informed Toh about
11 Sands China's operations in Nevada and ability to conduct business here. The Toh Affidavit lacks
12 evidentiary integrity and must be disregarded. *Automatic Radio Mfg. Co. v. Hazeltine Research*,
13 339 U.S. 827, 831 (1950) ("In any event there is nothing available in the record to support the
14 averment, since the affidavit in support thereof was made upon information and belief and the
15 relevant portion, at least, does not comply with Rule 56(e) of the Federal Rules of Civil
16 Procedure."), *overruled in part on other grounds*; *State of Wash v. Maricopa Cnty.*, 143 F.2d 871,
17 872 (9th Cir. 1944) ("One of the supporting affidavits contained statements made on information
18 and belief. These statements should have been disregarded."). Notably, the Toh Affidavit does
19 not address, let alone rebut, the long-developed jurisdictional discovery showing how executives
20 in Las Vegas exercise ultimate control and authority over Sands China's operations. The fact that
21 Toh apparently is unaware of the actual events in Nevada is only part of the problem.

22 But even if the Toh Affidavit had something of substance to offer, it is procedurally
23 improper. NRCP 37(c) provides, in pertinent part, that "[a] party that without substantial
24 justification fails to disclose information required by Rule 16.1 . . . is not, unless harmless,
25 permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so
26 disclosed." And Sands China never disclosed Toh as a potential witness in any of its disclosures
27 for this Court's evidentiary hearing on personal jurisdiction. (See Exs. 1 and 2, Sands China's
28 Discl. & Am. Discl. for Evid. Hr'g, respectively.) Toh has never been identified as a witness on

jurisdiction and was not subject to any form of cross-examination which would only further expose his lack of actual knowledge. Accordingly, the Court should not consider any aspect of the Toh Affidavit.

DATED this 14th day of July, 2014.

PISANELLI BICE PLLC

By: 

James J. Pisanelli, Esq., Bar No. 4027

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Eric T. Aldrian, Esq., Bar No. 11897

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Las Vegas, Nevada 89169

Attorneys for Plaintiff Steven C. Jacobs

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 14th day of July, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **OBJECTION TO PURPORTED EVIDENCE OFFERED IN SUPPORT OF DEFENDANT SANDS CHINA LTD.'S MOTION FOR SUMMARY JUDGMENT ON PERSONAL JURISDICTION** properly addressed to the following:

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EXHIBIT 1

1 PATRICIA L. GLASER
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2 STEPHEN Y. MA
Pro Hac Vice Admitted
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8 Attorneys for Defendant
Sands China, Ltd.

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 STEVEN C. JACOBS,
12 Plaintiff,
13 v.
14 LAS VEGAS SANDS CORP., a Nevada
corporation; SANDS CHINA LTD., a Cayman
15 Islands corporation; DOES I-X; and ROE
CORPORATIONS I-X, inclusive,
16 Defendants.
17

CASE NO.: A627691

Dept. No.: XI

**SANDS CHINA LTD.'S DISCLOSURE OF
WITNESSES AND DOCUMENTS FOR
EVIDENTIARY HEARING RELATING
TO PERSONAL JURISDICTION**

18 LAS VEGAS SANDS CORP., a Nevada
corporation,
19 Cross-Complainant,
20 v.
21 STEVEN C. JACOBS,
22 Cross-Defendants.
23

24 DEFENDANT SANDS CHINA LTD ("SCL") by and through its attorneys of record, Glaser
25 Weil Fink Jacobs Howard Avchen & Shapiro LLP ("Glaser Weil"), hereby submits its
26 DISCLOSURE OF WITNESSES AND DOCUMENTS FOR EVIDENTIARY HEARING
27 RELATING TO PERSONAL JURISDICTION.
28

**SANDS CHINA LTD.'S DISCLOSURE OF WITNESSES AND DOCUMENTS FOR EVIDENTIARY HEARING
RELATING TO PERSONAL JURISDICTION**

1 **I. WITNESSES**

2 Pursuant to the Court's Order issued September 1, 2011, SCL identifies the following
3 witnesses for the evidentiary hearing scheduled to be held beginning on November 21, 2011 (the
4 "Jurisdictional Hearing"):

5 **A. FACT WITNESSES**

6 1. Plaintiff Steven C. Jacobs
7 c/o Pisanelli Bice
8 3883 Howard Hughes Parkway,
9 Suite 300
Las Vegas, Nevada 89169
(702) 214-2100

10 Mr. Jacobs is expected to testify to matters set forth in his affidavit submitted in opposition
11 to SCL's Motion to Dismiss for Lack of Personal Jurisdiction, Or In The Alternative, Failure to Join
12 an Indispensable Party (the "Motion to Dismiss"), which was previously filed with the Court on
13 February 9, 2011.

14 2. Dylan J. Williams
15 Sands China, Ltd.
16 c/o Glaser Weil
17 3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
(702) 650-7900

18 Mr. Williams is expected to testify to facts set forth in support of SCL's Motion to Dismiss,
19 including but not limited to (1) SCL's legal and operational independence from Las Vegas Sands
20 Corp. ("LVSC"), (2) the management and operation of the SCL Board of Directors, (3) the
21 LVSC/SCL Shared Services Agreement, and (4) LVSC/SCL Deed of Non-Compete Undertaking.

22 3. Kevin Clayton
23 Venetian Macau Limited
24 c/o Glaser Weil
25 3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
(702) 650-7900

26 Mr. Clayton is expected to testify to facts set forth in support of SCL's Motion to Dismiss,
27 including but not limited to (1) SCL's legal and operational independence from Las Vegas Sands
28 Corp. ("LVSC"), (2) the management and operation of the SCL Board of Directors, (3) the

1 LVSC/SCL Shared Services Agreement, and (4) LVSC/SCL Deed of Non-Compete Undertaking.

2 4. Sheryl Marin
3 Venetian Macau Limited
4 c/o Glaser Weil
5 3763 Howard Hughes Parkway, Suite 300
6 Las Vegas, Nevada 89169
7 (702) 650-7900

8 Ms. Marin is expected to testify regarding the Inter-Company Accounting Advice
9 transactions involving Venetian Macau Limited ("VML").

10 SCL reserves the right to call as witnesses any additional person who is or has been
11 identified by any other party to this action as a person having knowledge of the facts and
12 circumstances relating to the matter of jurisdiction at issue at the evidentiary hearing. Further, SCL
13 reserves the right to amend and/or supplement this disclosure, including but not limited to witnesses
14 necessary to rebut witnesses or evidence presented by Plaintiff in connection with the Jurisdictional
15 Hearing. By its designation of the above witnesses, SCL does not waive any rights and objections,
16 including but not limited to attorney-client privilege and work product privilege.

17 **B. EXPERT WITNESSES**

18 1. Christopher J. Howe
19 The Anglo-Chinese Investment Company Ltd.
20 c/o Glaser Weil
21 3763 Howard Hughes Parkway, Suite 300
22 Las Vegas, Nevada 89169
23 (702) 650-7900

24 Mr. Howe is expected to provide expert testimony regarding The Listing Rules of The Stock
25 Exchange of Hong Kong Limited (the "HKEx Rules"), including but not limited to requirements
26 under the HKEx Rules of operational independence from foreign affiliates.

27 2. Neal Klegerman
28 Emmel & Klegerman P.C.
c/o Glaser Weil
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
(702) 650-7900

Mr. Klegerman is expected to provide expert testimony regarding corporate governance
issues, including but not limited to the relationship between a parent company and its foreign

1 subsidiaries.

2 SCL reserves the right to call as expert witnesses any additional person who is or has been
3 identified by any other party to this action as a person having knowledge of the facts and
4 circumstances relating to the matter of jurisdiction at issue at the evidentiary hearing. Further, SCL
5 reserves the right to amend and/or supplement this disclosure, including but not limited to expert
6 witnesses necessary to rebut witnesses or evidence presented by Plaintiff in connection with the
7 Jurisdictional Hearing. Additionally, SCL reserves the right to designate and call as additional
8 witnesses any experts who are now or hereinafter designated and have formed opinions with regard
9 to the matters at issue, such persons who are identified as having knowledge of relevant facts, and
10 rebuttal and impeachment witnesses.

11 **II. DOCUMENTS**

12 SCL intends to introduce as evidence the following documents at the Jurisdictional Hearing:

- 13 1. SCL Initial Offering Document dated November 30, 2009, previously attached as
14 Exhibit A to SCL's Motion to Dismiss.
- 15 2. LVSC/SCL Shared Services Agreement dated November 8, 2009.
- 16 3. LVSC/SCL Deed of Non-Compete Undertakings dated November 8, 2009,
17 previously attached as Exhibit B to SCL's Motion to Dismiss.
- 18 4. Section 8 of HKEx Rules, previously attached as Exhibit B to SCL's Reply in
19 support of Motion to Dismiss.
- 20 5. SCL Board of Directors Corporate Governance Guidelines.
- 21 6. SCL Memorandum and Articles of Association dated November 30, 2009.
- 22 7. Affidavit of Steven C. Jacobs in support of Plaintiff's Opposition to SCL's Motion to
23 Dismiss.
- 24 8. Copy of Exhibits 1 through 15 to Plaintiff's Opposition to SCL's Motion to Dismiss.
- 25 9. Affidavit of David Law and attached UPS Record of Delivery, as attached to SCL's
26 Reply in Support of Motion to Dismiss.
- 27 10. Affidavit of Patricia Green, attached to SCL's Reply in Support of Motion to
28 Dismiss.

11. Affidavit of Jennifer Ono, attached to SCL's Reply in Support of Motion to Dismiss.
12. Affidavit of Jason Anderson, attached to SCL's Reply in Support of Motion to Dismiss.
13. Redacted example of correspondence from VML to LV Cage.
14. Redacted example of IAA Transmittal Form.
15. Redacted example of Authorization Letter of Account Holder at VML.
16. Redacted example of Front Money Deposit Slip from VML.
17. Redacted example of Front Money Withdrawal from VML.
18. Redacted example of LV Redemption Voucher.
19. Redacted example of LV Front Money Deposit Voucher.

SCL reserves the right to amend and/or supplement this disclosure regarding documentary evidence, including but not limited to documents necessary to rebut evidence presented by Plaintiff at the Jurisdictional Hearing. SCL further reserves the right to use any document produced by any other party prior to the evidentiary hearing relevant to the issue of general personal jurisdiction over SCL.

DATED this 23rd day of September, 2011

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: 

PATRICIA L. GLASER
Pro Hac Vice Admitted
STEPHEN Y. MA
Pro Hac Vice Admitted
ANDREW SEDLOCK
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Attorneys for Defendant
Sands China, Ltd.

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

CERTIFICATE OF MAILING

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO LLP, and on September 23, 2011, I deposited a true and correct copy of the foregoing SANDS CHINA LTD.'S DISCLOSURE OF WITNESSES AND DOCUMENTS FOR EVIDENTIARY HEARING RELATING TO PERSONAL JURISDICTION via U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to the following:

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, NV 89169

Donald J. Campbell, Esq.
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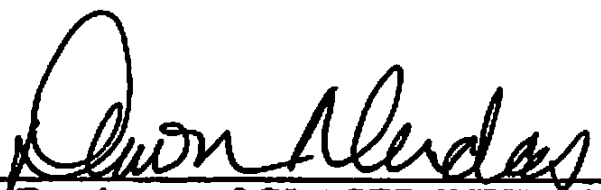

An Employee of GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

EXHIBIT 2

1 PATRICIA L. GLASER
Pro Hac Vice Admitted
2 STEPHEN Y. MA
Pro Hac Vice Admitted
3 ANDREW SEDLOCK
State Bar No. 9183
4 GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP
5 3763 Howard Hughes Parkway, Suite 300
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6 Telephone: (702) 650-7900
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7
8 Attorneys for Defendant
Sands China, Ltd.

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 STEVEN C. JACOBS,
12 Plaintiff,
13 v.
14 LAS VEGAS SANDS CORP., a Nevada
corporation; SANDS CHINA LTD., a Cayman
15 Islands corporation; DOES I-X; and ROE
CORPORATIONS I-X, inclusive,
16 Defendants.
17

CASE NO.: A627691

Dept. No.: XI

**SANDS CHINA LTD.'S AMENDED
DISCLOSURE OF WITNESSES AND
DOCUMENTS FOR EVIDENTIARY
HEARING RELATING TO PERSONAL
JURISDICTION**

18 LAS VEGAS SANDS CORP., a Nevada
corporation,
19 Cross-Complainant,
20 v.
21 STEVEN C. JACOBS,
22 Cross-Defendant.
23

24 DEFENDANT SANDS CHINA LTD ("SCL") by and through its attorneys of record, Glaser
25 Weil Fink Jacobs Howard Avchen & Shapiro LLP ("Glaser Weil"), hereby submits its
26 DISCLOSURE OF WITNESSES AND DOCUMENTS FOR EVIDENTIARY HEARING
27 RELATING TO PERSONAL JURISDICTION.
28

SANDS CHINA LTD.'S AMENDED DISCLOSURE OF WITNESSES AND DOCUMENTS FOR EVIDENTIARY
HEARING RELATING TO PERSONAL JURISDICTION

1 **I. WITNESSES**

2 Pursuant to the Court's Order issued September 1, 2011, SCL identifies the following
3 witnesses for the evidentiary hearing previously scheduled to be held beginning on November 21,
4 2011, and to be rescheduled by the Court (the "Jurisdictional Hearing"):

5 **A. FACT WITNESSES**

6 1. Plaintiff Steven C. Jacobs
7 c/o Pisanelli Bice
8 3883 Howard Hughes Parkway,
9 Suite 300
Las Vegas, Nevada 89169
(702) 214-2100

10 Mr. Jacobs is expected to testify to matters set forth in his affidavit submitted in opposition
11 to SCL's Motion to Dismiss for Lack of Personal Jurisdiction, Or In The Alternative, Failure to Join
12 an Indispensable Party (the "Motion to Dismiss"), which was previously filed with the Court on
13 February 9, 2011.

14 2. Dylan J. Williams
15 Sands China, Ltd.
16 c/o Glaser Weil
17 3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
(702) 650-7900

18 Mr. Williams is expected to testify to facts set forth in support of SCL's Motion to Dismiss,
19 including but not limited to (1) SCL's legal and operational independence from Las Vegas Sands
20 Corp. ("LVSC"), (2) the management and operation of the SCL Board of Directors, (3) the
21 LVSC/SCL Shared Services Agreement, and (4) LVSC/SCL Deed of Non-Compete Undertaking.

22 3. Kevin Clayton
23 Venetian Macau Limited
24 c/o Glaser Weil
25 3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
(702) 650-7900

26 Mr. Clayton is expected to testify to facts set forth in support of SCL's Motion to Dismiss,
27 including but not limited to (1) SCL's legal and operational independence from Las Vegas Sands
28 Corp. ("LVSC"), (2) the management and operation of the SCL Board of Directors, (3) the

1 LVSC/SCL Shared Services Agreement, and (4) LVSC/SCL Deed of Non-Compete Undertaking.

2 4. Sheryl Marin
3 Venetian Macau Limited
4 c/o Glaser Weil
5 3763 Howard Hughes Parkway, Suite 300
6 Las Vegas, Nevada 89169
7 (702) 650-7900

8 SCL reserves the right to call Ms. Marin to testify regarding the Inter-Company Accounting
9 Advice transactions involving Venetian Macau Limited ("VML").

10 SCL reserves the right to call as witnesses any additional person who is or has been
11 identified by any other party to this action as a person having knowledge of the facts and
12 circumstances relating to the matter of jurisdiction at issue at the evidentiary hearing. Further, SCL
13 reserves the right to amend and/or supplement this disclosure, including but not limited to witnesses
14 necessary to rebut witnesses or evidence presented by Plaintiff in connection with the Jurisdictional
15 Hearing. By its designation of the above witnesses, SCL does not waive any rights and objections,
16 including but not limited to attorney-client privilege and work product privilege.

17 **B. EXPERT WITNESSES**

18 1. Christopher J. Howe
19 The Anglo-Chinese Investment Company Ltd.
20 c/o Glaser Weil
21 3763 Howard Hughes Parkway, Suite 300
22 Las Vegas, Nevada 89169
23 (702) 650-7900

24 Mr. Howe is expected to provide expert testimony regarding The Listing Rules of The Stock
25 Exchange of Hong Kong Limited (the "HKEx Rules"), including but not limited to requirements
26 under the HKEx Rules of operational independence from foreign affiliates.

27 2. Neal Klegerman
28 Emmel & Klegerman P.C.
c/o Glaser Weil
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
(702) 650-7900

Mr. Klegerman is expected to provide expert testimony regarding corporate governance
issues, including but not limited to the relationship between a parent company and its foreign

1 subsidiaries.

2 SCL reserves the right to call as expert witnesses any additional person who is or has been
3 identified by any other party to this action as a person having knowledge of the facts and
4 circumstances relating to the matter of jurisdiction at issue at the evidentiary hearing. Further, SCL
5 reserves the right to amend and/or supplement this disclosure, including but not limited to expert
6 witnesses necessary to rebut witnesses or evidence presented by Plaintiff in connection with the
7 Jurisdictional Hearing. Additionally, SCL reserves the right to designate and call as additional
8 witnesses any experts who are now or hereinafter designated and have formed opinions with regard
9 to the matters at issue, such persons who are identified as having knowledge of relevant facts, and
10 rebuttal and impeachment witnesses.

11 **II. DOCUMENTS**

12 SCL intends to introduce as evidence the following documents at the Jurisdictional Hearing:

- 13 1. SCL Initial Offering Document dated November 30, 2009, previously attached as
14 Exhibit A to SCL's Motion to Dismiss: Bates Nos. SCL000001 – SCL000441.
- 15 2. LVSC/SCL Shared Services Agreement dated November 8, 2009: Bates Nos.
16 SCL000442 – SCL000461.
- 17 3. LVSC/SCL Deed of Non-Compete Undertakings dated November 8, 2009,
18 previously attached as Exhibit B to SCL's Motion to Dismiss: Bates Nos.
19 SCL000462 – SCL000481.
- 20 4. Chapter 8 of HKEx Rules, previously attached as Exhibit B to SCL's Reply in
21 support of Motion to Dismiss: Bates Nos. SCL000482 – SCL000485.
- 22 5. SCL Board of Directors Corporate Governance Guidelines: Bates Nos. SCL000486 –
23 SCL000496.
- 24 6. SCL Amended and Restated Memorandum and Articles of Association dated
25 November 30, 2009: Bates Nos. SCL000497 – SCL000541.
- 26 7. Affidavit of Steven C. Jacobs in support of Plaintiff's Opposition to SCL's Motion to
27 Dismiss: Bates Nos. SCL000542 – SCL000547.

- 1 8. Copy of the Declaration of Colby Williams and Exhibits 3 through 15 attached to
- 2 Plaintiff's Opposition to SCL's Motion to Dismiss: Bates Nos. SCL000548 –
- 3 SCL000650.
- 4 9. Affidavit of David Law and attached UPS Record of Delivery, as attached to SCL's
- 5 Reply in Support of Motion to Dismiss: Bates Nos. SCL000651 – SCL000654.
- 6 10. Affidavit of Patricia Green, attached to SCL's Reply in Support of Motion to
- 7 Dismiss: Bates Nos. SCL000659 – SCL000660.
- 8 11. Affidavit of Jennifer Ono, attached to SCL's Reply in Support of Motion to Dismiss:
- 9 Bates Nos. SCL000655 – SCL000656.
- 10 12. Affidavit of Jason Anderson, attached to SCL's Reply in Support of Motion to
- 11 Dismiss: Bates Nos. SCL000657 – SCL000658.
- 12 13. Redacted example of correspondence from VML to LV Cage: Bates Nos.
- 13 SCL000661 – SCL000662.¹
- 14 14. Redacted example of IAA Transmittal Form: Bates No. SCL000663.
- 15 15. Redacted example of Authorization Letter of Account Holder at VML: Bates No.
- 16 SCL000664.
- 17 16. Redacted examples of Front Money Deposit Slip and Front Money Withdrawal from
- 18 VML: Bates No. SCL000665.
- 19 17. Redacted example of LV Front Money Deposit Voucher: Bates No. SCL000666.
- 20 18. Redacted example of correspondence from VML to LV Cage: Bates No.
- 21 SCL000667.
- 22 19. Redacted example of IAA Transmittal Form: Bates Nos. SCL000668.
- 23 20. Redacted example of Authorization Letter of Account Holder at VML: Bates No.
- 24 SCL000669.
- 25
- 26

¹ SCL reserves its rights to exclude the documents listed in Items 13-22 as evidence for the Jurisdictional Hearing given the Court's September 27, 2011 Order regarding documents regarding the Intercompany Accounting Advice ("IAA") transactions in connection with Plaintiff's Motion to Conduct Jurisdictional Discovery.

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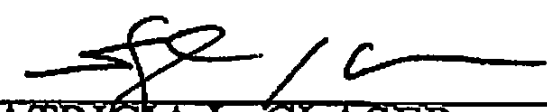
21. Redacted example of Front Money Deposit Slip and Front Money Withdrawal from
VML: Bates Nos. SCL000671.

22. Redacted example of LV Redemption Voucher: Bates Nos. SCL000670.

SCL reserves the right to amend and/or supplement this disclosure regarding documentary
evidence, including but not limited to documents necessary to rebut evidence presented by Plaintiff
at the Jurisdictional Hearing. SCL further reserves the right to use any document produced by any
other party prior to the evidentiary hearing relevant to the issue of general personal jurisdiction over
SCL.

DATED: November 16, 2011

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: 
PATRICIA L. GLASER
STEPHEN Y. MA
ANDREW SEDLOCK
Attorneys for Defendant
Sands China, Ltd.

CERTIFICATE OF MAILING

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO LLP, and on November 16, 2011, I deposited a true and correct copy of the foregoing SANDS CHINA LTD.'S AMENDED DISCLOSURE OF WITNESSES AND DOCUMENTS FOR EVIDENTIARY HEARING RELATING TO PERSONAL JURISDICTION via U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to the following:

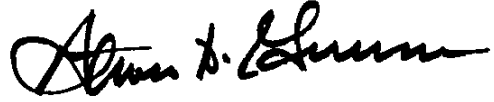
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CLERK OF THE COURT

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10 9555 Hillwood Drive, 2nd Floor
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11 *Attorneys for Las Vegas Sands Corp.
and Sands China, Ltd.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

14 STEVEN C. JACOBS,

15 Plaintiff,

16 v.

17 LAS VEGAS SANDS CORP., a Nevada
corporation; SANDS CHINA LTD., a Cayman
Islands corporation; SHELDON G.
18 ADELSON, in his individual and
representative capacity; DOES I-X; and ROE
19 CORPORATIONS I-X,

20 Defendants.

21 AND ALL RELATED MATTERS.

CASE NO.: A627691-B
DEPT NO.: XI

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE
TO FILE SECOND AMENDED
COMPLAINT**

Date: August 1, 2014
Time: In Chambers

23 Defendants LAS VEGAS SANDS CORP. ("LVSC") and SANDS CHINA LTD.
24 ("SCL") (collectively, "Defendants") oppose Plaintiff Steven C. Jacobs' Motion for Leave to
25 File a Second Amended Complaint. Plaintiff's attempt to amend his pleadings is barred by the
26 Nevada Supreme Court's August 26, 2011, Order Granting Petition for Writ of Mandamus,
27 which not only directed this Court to "revisit the issue of personal jurisdiction" over SCL, but
28

1 also “further direct[ed] that the district court shall stay the underlying action, except for matters
2 relating to a determination of personal jurisdiction, until a decision on that issue has been
3 entered.” *See* Ex. A hereto. As Plaintiff himself has previously recognized, amendments to his
4 complaint are not “matters relating to a determination of personal jurisdiction” and thus cannot
5 be considered by this Court until after the personal jurisdiction issue has been resolved.

6 Defendants requested oral argument on Plaintiff’s motion in their July 1, 2014, notice of
7 intent to file this opposition and reiterate that request now, so the Court may be fully apprised of
8 the parties’ arguments.

9 I.

10 ARGUMENT

11 A. **The Nevada Supreme Court’s Stay Order Remains In Effect**
12 **Notwithstanding Plaintiff’s Efforts To Overturn It.**

13 The Nevada Supreme Court’s August 26, 2011, Order could not be clearer in directing
14 this Court to stay all proceedings in this action except for matters relating to a determination of
15 personal jurisdiction. Plaintiff has twice tried and failed to persuade the Supreme Court to alter
16 that directive.

17 First, approximately one year ago, Plaintiff urged both this Court and the Nevada
18 Supreme Court to permit him to engage in merits discovery as a condition to granting any stay
19 of this Court’s June 19, 2013, Order granting Plaintiff’s Motion to Return Remaining
20 Documents from Advanced Discovery pending a ruling by the Nevada Supreme Court on
21 Defendants’ petition for a writ of prohibition or mandamus. *See* Plaintiff Steve C. Jacobs’
22 Opposition to Motion for Stay Pending Writ Application Or, Alternatively, Countermotion to
23 Lift Merits Stay, filed 6/27/2013 (“Countermotion to Lift Merits Stay”), at 18-20; Opposition to
24 Emergency Motion under NRAP 27(e) to Stay the District Court’s June 19, 2013, Order (Ex. B
25 hereto), at 20. This Court denied Defendants’ motion to stay its June 19, 2013, Order and thus
26 did not reach Plaintiff’s alternative argument for lifting the merits stay. But the Nevada
27 Supreme Court granted Defendants’ motion for a stay of the June 19, 2013, Order and then
28

1 expressly rejected Plaintiff's bid to allow merits discovery to proceed: "We further deny real
2 party in interest's request for relief from the stay of the proceedings below, as this request is
3 outside the scope of the issue pending before us here." Order dated October 1, 2013 (Ex. C
4 hereto).

5 Plaintiff made his second attempt to lift the merits stay in 2014, when SCL filed a
6 motion asking the Nevada Supreme Court to recall its August 2011 mandate in light of the U.S.
7 Supreme Court's decision in *Daimler AG v. Bauman*, 134 S.Ct. 746, 761 (2014). Plaintiff
8 responded by, among other things, filing a Countermotion urging the Nevada Supreme Court
9 once again to lift its merits stay to allow him to embark on merits discovery. *See* Ex. D hereto.
10 In an order entered on May 19, 2014, the Supreme Court declined to recall its mandate, but also
11 denied Jacobs' motion, holding that there was no basis for reconsidering the merits stay it had
12 imposed in 2011:

13 As to Jacobs's request that we direct the district court to vacate the stay imposed by
14 this court's 2011 order, we conclude that Jacobs has not presented any
15 circumstances that compel us to revisit our earlier decision that a stay pending
resolution of the jurisdictional issue is appropriate. As a result, we also deny
Jacobs's countermotion regarding the stay.

16 *See* Ex. E hereto, at 2.

17 There can be no doubt that the stay the Nevada Supreme Court directed this Court to
18 enter in August 2011 remains firmly in place and that the *only* proceedings this Court is
19 empowered to conduct are those relating to a determination of whether the Court has personal
20 jurisdiction over SCL.

21 **B. Plaintiff's Motion For Leave To File A Second Amended Complaint**
22 **Is Precluded By The Merits Stay.**

23 In his proposed Second Amended Complaint, Plaintiff seeks to add a number of new
24 factual allegations, as well as two new claims against SCL, alleging for the first time that SCL
25 somehow conspired with or aided and abetted its parent corporation's supposed wrongful
26
27
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1 termination of his employment. The addition of new allegations and new claims is precisely the
2 kind of merits litigation that is precluded by the Nevada Supreme Court's 2011 stay.¹

3 Indeed, Plaintiff himself has recognized that the merits stay precludes him from
4 amending his complaint. When he opposed Defendants' motion for a stay of this Court's June
5 19, 2013 Order, Plaintiff argued that it was clear that he would ultimately be able to sue SCL in
6 Nevada because he intended to amend his complaint, as soon as the merits stay was lifted, to
7 allege an abuse of process claim. But Jacobs conceded that, "[a]t this point, the merits stay
8 precludes Jacobs from amending his Complaint." He then stated "[b]ut when that is gone, he
9 will be amending his Complaint to assert, among other things, claims for abuse of process
10 against both Sands China and LVSC..." Countermotion to Lift Merits Stay, at 19 n.7. Plaintiff
11 repeated this argument a few weeks later to the Nevada Supreme Court, noting that "[p]resently,
12 the district court views the merits stay as prohibiting Jacobs from amending his complaint, even
13 to augment his claims which would reinforce his theories for jurisdiction." *See* Ex. B hereto, at
14 21 n. 11.

15 Plaintiff does not even attempt to explain what has changed in the last year that would
16 enable this Court to disregard the 2011 stay imposed by the Nevada Supreme Court in order to
17 permit him to amend his complaint. Instead, Plaintiff has chosen simply to ignore the merits
18 stay, arguing his motion for leave to amend as if that stay did not exist. But ignoring the merits
19 stay will not make it disappear. While that stay remains in place, this Court lacks the power to
20 grant Plaintiff leave to amend his complaint.

21 Plaintiff cannot avoid that result by claiming that "augment[ing] his claims" would
22 somehow "reinforce his theories for jurisdiction" over his existing breach of contract claim
23 against SCL. Plaintiff's primary theory—and the only theory he presented to the Nevada
24

25 ¹ Plaintiff's allegations are, in any event, nonsensical. Plaintiff contends that he was employed
26 by LVSC and that LVSC executives masterminded the termination of that employment. His
27 conspiracy and aiding and abetting allegations appear to be based on his unsupported assertion
28 that the LVSC executives who terminated him did so as agents of both LVSC and SCL. Proposed 2d Am. Compl. ¶¶ 38-41. But a person cannot conspire with himself, nor can he aid and abet his own tort. Thus, the actions of LVSC executives cannot possibly provide a basis for a claim that SCL conspired with LVSC or aided and abetted an alleged tort by LVSC.

1 Supreme Court—has always been that there is general or “all purpose” jurisdiction over SCL in
2 Nevada.² By definition, whether general jurisdiction exists does not depend on the nature of the
3 claims asserted. Instead, it depends on whether the defendant in question is “at home” in the
4 jurisdiction and therefore subject to suit on any and all claims, regardless of their nature or
5 where they arose. *See Daimler AG v. Bauman*, 134 S.Ct. 746, 760-61 (2014).

6 For the reasons SCL has articulated, Plaintiff has waived any claim that there is specific
7 jurisdiction over his existing breach of contract claim against SCL. But even if that theory were
8 not waived, adding different claims would not alter the specific jurisdiction analysis with
9 respect to the existing breach of contract claim. It is well settled that specific jurisdiction must
10 be decided on a claim-by-claim basis. *See, e.g., Martin v. Godwin*, 499 F.3d 290 (3d Cir. 2007)
11 (“Because this [specific jurisdiction] analysis depends on the relationship between the claims
12 and contacts [with the forum], we generally evaluate specific jurisdiction on a claim-by-claim
13 basis”). Thus, even if Plaintiff were to assert new claims against SCL as to which this Court
14 clearly had specific jurisdiction,³ the Court would still have to make an independent decision as
15 to whether it has jurisdiction over Plaintiff’s original breach of contract claim. Consequently,
16 allowing Plaintiff to assert new claims would not “reinforce” any of Plaintiff’s current
17 jurisdictional theories, nor would it obviate the need to decide the jurisdictional issue that the
18 Nevada Supreme Court has ordered this Court to revisit.

19 ///

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21 ///

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24 ² Plaintiff apparently is not abandoning his general jurisdiction argument: his proposed Second
25 Amended Complaint alleges, in ¶ 3, that SCL’s “true headquarters are in Las Vegas, where all
26 principle [sic] decisions are made and direction is given by executives acting for Sands China.”

27 ³ The aiding and abetting and conspiracy claims Jacobs seeks to bring against SCL do not meet
28 that description because Jacobs was employed and terminated in Macau. As demonstrated in
SCL’s motion for summary judgment on personal jurisdiction, even if Plaintiff could prove that
the decision to terminate him was made in Las Vegas that would not provide a basis for
exercising personal jurisdiction over SCL on a wrongful termination claim.

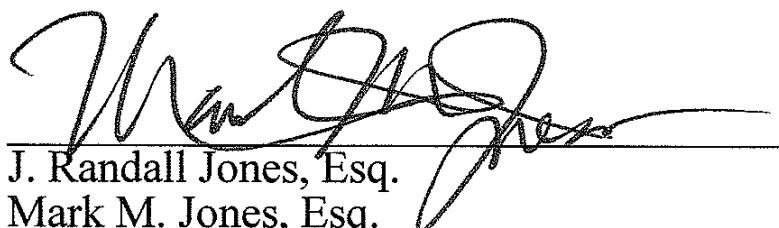
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II.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Leave to File a Second Amended Complaint should be denied.

DATED this 15th day of July, 2014.


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9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Las Vegas Sands Corp. and Sands China, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2014, the foregoing **DEFENDANTS'** **OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** was served on the following parties through the Court's electronic filing system:
ALL PARTIES ON THE E-SERVICE LIST



An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,
Real Party in Interest.

No. 58294

FILED

AUG 26 2011

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

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

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

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

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


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

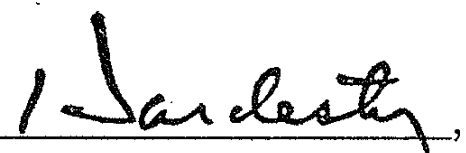
Accordingly, having reviewed the petition, answer, reply, and other documents before this court,¹ we conclude that, based on the summary nature of the district court’s order and the holdings of the cases

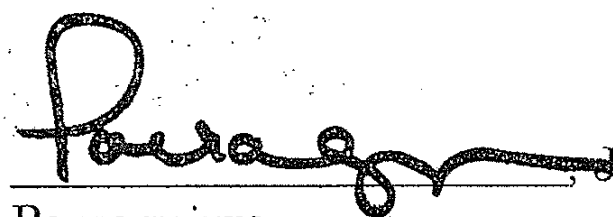
¹Petitioner’s motion for leave to file a reply in support of its stay motion is granted, and we direct the clerk of this court to detach and file the reply attached to the August 10, 2011, motion. We note that NRAP 27(a)(4) was amended in 2009 to permit a reply in support of a motion without specific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

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

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


Saitta, J.
Saitta


Hardesty, J.
Hardesty


Parraguirre, J.
Parraguirre

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

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLC
Campbell & Williams
Eighth District Court Clerk

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a
Nevada corporation, and
SANDS CHINA LTD., a Cayman
Islands corporation,

Petitioners,

vs.

CLARK COUNTY DISTRICT
COURT AND THE HONORABLE
ELIZABETH GONZALEZ,
DISTRICT JUDGE,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case No. 63444

District Court Case No. A627691-B

Electronically Filed

Jul 22 2013 04:04 p.m.

Tracie K. Lindeman

Clerk of Supreme Court

**OPPOSITION TO EMERGENCY
MOTION UNDER NRAP 27(e) TO
STAY THE DISTRICT COURT'S
JUNE 19, 2013, ORDER**

I. INTRODUCTION

Petitioners Las Vegas Sands Corp. ("LVSC") and its subsidiary Sands China Ltd. ("Sands China") (collectively, "Petitioners") have delayed this case for nearly three years by and through long-standing discovery obstruction. Needless to say, this delay has severely prejudiced Real Party in Interest Steven C. Jacobs ("Jacobs"). Petitioners' latest request rests on chants of the buzz words "privilege" and "irreparable harm," cognizant that such serious matters are their best hope for yet another delay. Petitioners also know, as the district court observed, any further stay would again delay the long-overdue evidentiary hearing.¹

In pursuit of their desired stay, LVSC and Sands China need to omit highly problematic facts. They, for instance, need to omit how they have known about Jacobs' possession, intended use, and actual use of the subject documents since the commencement of this case in 2010 (or even before). They similarly need to omit

¹ As the district court warned, this Court's temporary stay caused the vacating of the evidentiary hearing. Accordingly, Jacobs asks this Court for immediate relief against that temporary stay so that this matter may proceed at long last.

1 how the documents in question have been in Jacobs' possession, custody, control,
2 and use since before this case's commencement. And, they need to overlook that
3 they waited at least eight months to suddenly claim that they were privileged and
4 should be inaccessible by Jacobs' counsel. LVSC and Sands China made no
5 attempt to protect their supposed privileges in the face of Jacobs' possession and
6 overt use of the documents for this case.

7 The truth of Petitioners' long inaction is but one reason the district court
8 denied their request for more delay through a stay. Its Order hardly exposed
9 Petitioners to irreparable harm. To the contrary, it protected LVSC and
10 Sands China's interests more than the law warrants in these circumstances. The
11 district court long ago found that the documents Jacobs possessed were not stolen,
12 and had been rightly in his possession since before his July of **2010** firing. Rather
13 than deem Petitioners' knowing inaction a total waiver, the district court protected
14 LVSC and Sands China from the legal consequences of their silence. It did so
15 following authorities that hold that a former executive alleging wrongful
16 termination may discover² and use documents that the executive created, used, and
17 received in the course and scope of his or her duties, even in the face of privilege
18 claims. After all, if Jacobs was not entitled to access the documents, then his actual
19 possession and long-standing adverse use would necessarily effectuate a waiver.

20 In rejecting their requested stay, the district court could not ignore Petitioners'
21 knowing and long-standing inaction over Jacobs' access to and use of documents
22 they belatedly decided they preferred to shield with cries of privilege. As the
23 district court stated, Petitioners failed to present any evidence disputing their
24 obvious awareness of Jacobs' possession and use of the documents. Considering
25 that Petitioners are the ones who would have such evidence, its absence is telling
26 indeed.

27 ² In this case, Jacobs does not seek "discovery" of these documents. They are
28 and have long been in his possession, custody, and control.

1 This lack of evidence is in addition to Petitioners' well-documented record of
2 delay to preclude a fair jurisdictional hearing. That campaign took various forms,
3 including making knowingly false representations about the location and their
4 clandestine review of evidence in an attempt to preclude its production.³ When
5 that would no longer work, Petitioners resorted to objecting on every conceivable
6 ground, including protests of relevance and privilege. To be blunt, there likely are
7 no litigants in this Court's reported decisions who have profited more from
8 misconduct and noncompliance than LVSC and Sands China. Lesser misconduct
9 typically results in the striking of pleadings or evidence. But LVSC and
10 Sands China believe they are above the law; too big, too important, and too
11 influential to play by the rules.

12 It is with this attitude that they ground this action to a standstill. It is a
13 defendant's dream. This case is now nearly three years old with no end in sight. No
14 trial date is set. Witnesses are disappearing (or being fired). The testimony and
15 recollection of witnesses is being lost. The truth of documentary evidence is still in
16 doubt, and in confirmed circumstances, destroyed. The continuing paralysis of this
17 case, which the district court confirmed would necessarily follow from yet another
18 stay, is indefensible. Considering the lengthy history of this matter, it is unrealistic
19 to expect this Court to know or appreciate what the district court has encountered.
20 While a litigant's cries of privilege might typically be accepted as a sufficient
21 predicate for a stay, that knee-jerk reaction should not carry the day here.

22 Nonetheless, should this Court contemplate a stay, it should do so only on
23 terms that alleviate, at least part of, the prejudice to Jacobs; namely, the inability to
24

25 ³ In their Motion, Petitioners bemoan any reference to these events as an
26 "attack" upon themselves and their counsel. (Mot. at 5.) If exposing, reporting, and
27 successfully combating a fraud upon the judicial process – the concealment of
28 evidence and repeated misrepresentations about it – constitutes "attacking" an
opponent, then so be it. No legal system can expect to maintain public confidence
in its outcomes if such acts are tolerated or swept under the rug. Nor can a
profession that holds itself out as guardian of the legal system expect public
confidence or respect if its members are willing to rationalize or trivialize such acts.

1 preserve evidence in a case that is growing stale where witnesses are disappearing
2 and it will be claimed that memories have faded. This Court's original direction to
3 the district court to stay the entirety of the action – including for LVSC when there
4 is no question that it is subject to jurisdiction – has become a tool of delay serving
5 no legitimate ends.

6 When this Court directed the stay's entry, it could not have anticipated
7 Petitioners' admitted misrepresentations as to the location of, their access to, and
8 purposeful nonproduction of evidence that has resulted in a near two-year delay.
9 Whatever the merits of that original stay, events have overtaken it and there is no
10 defensible rationale for inflicting further prejudice upon Jacobs. Accordingly, any
11 stay, even a temporary one, of the district court's June 19, 2013, Order should only
12 be entered upon the condition that merits discovery proceed. The prejudice to any
13 litigant in having to endure a more than three year delay in even the preservation of
14 basic evidence due to a defendant's use of their limitless resources to obstruct
15 should not be condoned by any court.

16 **II. BACKGROUND**

17 **A. Sands China Wants To Dispute Personal Jurisdiction, So Long As** 18 **It Dictates What Evidence Comes To Light.**

19 The district court was hardly writing from a blank slate when it denied
20 Petitioners' stay request. That decision flowed from an extensive record of
21 noncompliance and obstruction. This action has been pending since October 20,
22 2010, when Jacobs filed his complaint after he was fraudulently terminated as part
23 of a misguided attempt to discredit him and prevent him from reporting
24 improprieties of senior LVSC and Sands China executives, including their common
25 chairman, Sheldon G. Adelson ("Adelson"). LVSC responded and asserted a
26 counterclaim. For its part, Sands China claimed that it had no Nevada contacts that
27 would subject it to this state's jurisdiction.
28

1 After the district court found that Sands China had "pervasive" Nevada
2 contacts, (APP000033) Sands China petitioned this Court for writ relief. This Court
3 held that the district court's findings were of a "summary nature" and thus
4 incomplete for review. (*Id.*) Sands China also and simultaneously insisted that it
5 would incur significant financial burdens (up to \$1 million) if it was forced to
6 participate in merits discovery while its personal jurisdiction defense was
7 unresolved. This Court accepted Sands China's assertion and "instruct[ed] the
8 district court to hold an evidentiary hearing on personal jurisdiction, to issue
9 findings of fact and conclusions of law stating the basis for its decision following
10 that hearing, and to stay the action as set forth in this order until after entry of the
11 district court's personal jurisdiction decision." (APP000034.)

12 Although LVSC was not a party to that petition, sought no relief, and did not
13 dispute the district court's jurisdiction over it, this Court directed the stay of Jacobs'
14 entire case, even his claims against LVSC. In other words, despite no dispute as to
15 Jacobs' right to proceed against LVSC with discovery and vice versa, those rights
16 have been frozen.

17 **B. LVSC and Sands China Undermine the Jurisdictional**
18 **Truth-Finding Process.**

19 How Petitioners have used this Court's stay directive to paralyze this case is
20 addressed in Jacobs' Answering Briefs to Petitioners' second and third writ
21 petitions, Case Nos. 62489 and 62994, presently pending before this Court. The
22 records in those proceedings outline the deceit LVSC and Sands China employed to
23 sabotage jurisdictional discovery and any resulting hearing.

24 Briefly, in the face of this Court's directive for an evidentiary hearing on
25 personal jurisdiction, Jacobs sought jurisdictional discovery. Despite LVSC and
26 Sands China's repeated attempts to avoid it, the district court entered its order on
27 March 8, 2012, approving jurisdictional discovery. (*See generally* APP000036-41.)
28 Petitioners had no intention of complying.

1 Confirming their apparent belief that the rules only apply to others, LVSC
2 and Sands China resorted to repeated misrepresentations about the location of and
3 their access to documents, as well as their [non-]compliance with their discovery
4 obligations. As the district court subsequently outlined in its sanctions order of
5 September 27, 2012 ("the September Sanctions Order"), Petitioners undertook a
6 year-long deception to conceal evidence, secretly reviewing evidence they had
7 brought to Las Vegas while repeatedly saying (falsely) that the evidence was in
8 Macau and inaccessible. (APP000049-55.) Petitioners reasserted these
9 misrepresentations month after month during multiple district court hearings
10 (including status checks). (APP000053.)

11 There can be no claim that these misrepresentations were anything but
12 knowing. The purpose, as the district court expressly found, was to avoid evidence
13 coming to light. (APP000054.) And, the jurisdictional discovery Jacobs obtained
14 to date confirms why Sands China and LVSC proffered to keep the truth from
15 view.⁴ They both knew the true nature of Sands China's contacts, particularly those
16 that relate to Jacobs' termination. In fact, despite their best efforts to obstruct by
17 instructing witnesses not to answer questions – instructions the district court
18 repeatedly overruled – Jacobs uncovered how the plan to terminate him was
19 conceived and directed from Las Vegas by executives purporting to act in the name
20 of Sands China. Specifically, Michael A. Leven, a Sands China board member,
21 confirmed that he and Adelson carried out the planning and execution of Jacobs'
22 firing from Las Vegas. (APP000095; APP000072.) Their Nevada activities
23 included the preparation of the initial termination letter while claiming to be acting
24 as Sands China's representatives in Nevada. (APP000067-71.) In fact, they had to

25
26 ⁴ Petitioners reaffirm their lack of remorse for their antics with their claim that
27 the district court has failed to "rein in" Jacobs and his counsel. What they really
28 mean is that the district court should have turned a blind eye to their obstructive
tactics in trying to keep these and other facts secret. Apparently, a court fails to
"rein in" an opponent of these Petitioners whenever it does not tolerate their cheat
to win approach.

1 manufacture fictitious "Sands China" letterhead in Las Vegas in order to print that
2 very letter. (*Id.*) Adelson signed the letter in Las Vegas, claiming to be acting on
3 Sands China's behalf. (*Id.*) The press releases – including those Jacobs maintains
4 are fraudulent – were prepared in Las Vegas by executives again purporting to act
5 as Sands China's representatives. (APP000076-77.) The legal team overseeing the
6 planning and execution of the termination was likewise based in Las Vegas and
7 supposedly acting for Sands China from Las Vegas. (APP000075-77.)

8 Even the subsequent termination letter manufactured after-the-fact to suggest
9 that Jacobs had been terminated for cause (and providing twelve fabricated reasons)
10 was created in Las Vegas. (APP000098-101.) Of course, these are the Nevada
11 contacts admitted by Petitioners' own witnesses relating only to Jacobs' fraudulent
12 termination. These do not even account for the more permanent contacts that the
13 district court knew about when it addressed Sands China's original motion to
14 dismiss.

15 Unfortunately, the district court's September Sanctions Order did not lead to a
16 material change in the course of conduct. Just weeks later, Sands China admitted
17 that, despite the fact that the district court had ordered jurisdictional discovery over
18 a year prior, it had not even begun the search for responsive documents.
19 (APP000059.) Thus, for over a year, Sands China had done nothing but mislead
20 the district court and Jacobs. Attempting to again halt the obstructionism, the
21 district court gave Sands China one last chance before imposing additional
22 sanctions, ordering it "to produce all information within their possession that is
23 relevant to the jurisdictional discovery" by January 4, 2013. (APP000084.)
24 Sands China has attempted to evade the ordered production, claiming that it
25 misunderstood the consequences of the district court's September Sanctions Order,
26 a contention that is the subject of Petitioners' third writ application with this Court,
27 Case No. 62944.

C. Needing To Exclude Jacobs' Own Evidence, Petitioners Belatedly Cry Privilege And Now Prejudice.

The means LVSC and Sands China employed to undermine the district court's ability to hold the ordered evidentiary hearing were as clear as they were improper. Petitioners changed their own internal document policies so as to claim that documents in Macau were now inaccessible. (APP000051.) They failed to mention the existence and location of evidence already in Nevada at the time when they conveniently changed their internal document policy, and hid the information from the district court and Jacobs. (APP000049-55.) This ruse left Petitioners to deal only with the evidence that Jacobs had long confirmed he possessed and intended to use (and has used) in this action. After all, LVSC and Sands China knew that in his role as CEO of all Macau operations, Jacobs would possess volumes of information, including communications with attorneys. The forced revelation that Sands China and LVSC had secretly transported Jacobs' ESI (*e.g.*, a ghost drive of Jacobs' desktop hard drive) to Nevada, some of it even before the litigation commenced, demonstrates that Petitioners have always known what Jacobs possessed.

But there is much more history that LVSC and Sands China omit. Just one month after Jacobs filed this action in 2010, Sands China's then-counsel proclaimed she "ha[d] reason to believe, based on conversations with existing and former employees and consultants of the Company," that Jacobs had "stolen" the documents in his possession and demanded that Jacobs return them. (APP000001-03.) Jacobs disputed the "stolen" assertion, and confirmed his possession of a "multitude" of documents he retained while overseeing LVSC's Macau operations. (APP000004-05.) Jacobs rightfully possessed that information, made no apologies, and made clear he was not giving up his sources of proof.

Because Jacobs would not yield to the stolen-documents mantra, Sands China had to admit what it really wanted. Confirming that they knew what Jacobs

1 possessed, Petitioners focused on three documents that they knew would expose
2 them to serious political and legal problems: three investigative reports on foreign
3 government officials, as well as individuals with whom they were doing business
4 that were suspected of having ties to Chinese organized crime, otherwise known as
5 Triads. (APP000006-08.) They knew what Jacobs had and why he retained the
6 copies.

7 In response and once again, Jacobs affirmed his possession of volumes of
8 documents from his role, and stated unequivocally the he would not surrender any
9 of them. Instead, Jacobs agreed only to return two "originals" of the background
10 investigations, while reiterating that he was keeping copies for use as evidence in
11 this case. (APP000009.)

12 Jacobs reaffirmed that fact yet again in February of 2011, giving LVSC and
13 Sands China further notice (as if they needed it) of his possession of and intent to
14 use his work documents, including communications with the company's legal
15 counsel. Specifically, Jacobs opposed Sands China's original motion to dismiss *by*
16 *attaching and relying upon* his communications with Sands China's in-house
17 counsel, among other things, to demonstrate personal jurisdiction over Sands China.
18 (APP000010-11.) These same communications with counsel were published to this
19 Court as part of Sands China's original writ proceedings. (*See, e.g.,*
20 Case No. 58294, Petitioner's Appx. at SCL000666.) Despite Jacobs' confirmed
21 possession and actual use of his communications with the company's in-house
22 counsel in filed documents, Sands China took no steps to safeguard any supposed
23 privileges or regain possession of any of the documents Jacobs had and confirmed
24 he was using.

25 A few months later, in May of 2011, as part of his initial disclosures pursuant
26 to NRCP 16.1, Jacobs disclosed and identified just some of his communications
27 with LVSC's general counsel, Gail Hyman, as additional evidence in the case.
28 (APP000026.) Again, neither Sands China nor LVSC made any claims of

1 privilege. Indeed, month after month passed with no action from Petitioners – until
2 they needed an excuse to obstruct Jacobs' proof in anticipation of the court-ordered
3 evidentiary hearing. In sum, Petitioners did nothing for at least eight months
4 before they sought any relief to protect their supposed privileges.

5 Tellingly, this Court would know none of these facts by reading Petitioners'
6 portrayal. They prefer instead to pretend that they first learned of Jacobs'
7 possession of supposedly privileged documents through a July 8, 2011, email from
8 Jacobs' then-counsel, Colby Williams, and thereafter acted promptly. Hardly. As
9 Williams made clear, in reviewing additional documents for production, he came
10 across what he thought might be privileged communications that were *unrelated* to
11 the claims at issue in this case. (APP000030-31.) Counsel reaffirmed Jacobs' right
12 and intended usage of all communications relating to the claims at issue, including
13 those with Petitioners' counsel, but was not interested in potentially privileged
14 communications that were irrelevant to this case. And, once again, LVSC and
15 Sands China made no assertions that Jacobs and his counsel could not use
16 documents relating to the claims and defenses in this action, even if they were
17 between Jacobs and Petitioners' counsel. (*Id.*)

18 It was not until Jacobs changed counsel and filed a motion for jurisdictional
19 discovery that Petitioners apparently decided to change their approach belatedly
20 claiming that all of Jacobs' proof was off limits because of privilege. Stated more
21 bluntly, the very communications that LVSC and Sands China knew Jacobs had
22 possessed for over a year, including communications with in-house counsel that he
23 affirmatively used as evidence, were now (belatedly) privileged and off limits to
24 even inspection by Jacobs' new counsel, despite that Jacobs and his prior counsel
25 had been reviewing them with Petitioners' knowledge and inaction.⁵

26
27 ⁵ Despite the offer from Jacobs' prior counsel to allow Petitioners to review
28 Jacobs' records and identify unrelated communications over which they would
claim privilege, Petitioners chose an all-or-nothing approach. They would either

1 **D. The District Court Orders That Jacobs' Counsel May Access**
2 **Jacobs' Documents And Sets The Long-Awaited Evidentiary**
3 **Hearing.**

4 For purposes of responding to Petitioners' stay request, Jacobs will not recite
5 the lengthy history and one-sided procedures created for the Petitioners' benefit,
6 allowing them to review all of Jacobs' documents even *before* his counsel. It
7 suffices to note that Petitioners were given multiple months of one-sided access to
8 Jacobs' records. After extensive briefing, and then rebriefing sought by Petitioners,
9 the district court concluded with its June 19, 2013, Order that Jacobs' new counsel
10 could review Jacobs' documents for purposes of this litigation, including
11 establishing jurisdiction over Sands China. (APP000143.)⁶ In doing so, the
12 district court found that LVSC and Sands China had "failed to sustain their burden
13 of demonstrating that Jacobs cannot review and use documents to which he had
14 access during the period of his employment in this litigation," and likewise had
15 "failed to sustain their burden of demonstrating that they have privileges that would
16 attach to the documents relative to Jacobs' review and use of them in this litigation."
17 (APP000142.)

18 The end effect is that the district court returned the parties to the previous
19 status quo— Jacobs' counsel having access and use of his documents, including
20 Jacobs' communications with company counsel, with Petitioners' knowledge.
21 Despite Petitioners' strident attack on the district court, its Order actually protects
22 them against the legal consequences of their own inaction. The district court did

23 bar access to all communications in Jacobs' possession or none; a strategic decision
24 they appear to now want to blame on the district court instead of taking ownership.

25 ⁶ For one of their lower blows, Petitioners claimed that the district court is
26 responsible for the "emergency" here because it "delayed" the process for the entry
27 of its order. But, the delay stemmed from Petitioners' objection to the form of
28 order, and an unsolicited brief about the form of order. Moreover, when the district
 court quickly set a status conference to address Petitioner's objections (as well as to
 discuss scheduling the evidentiary hearing), *Petitioners* asked for the near
 two-week postponement about which they now complain (which the district court
 originally refused to do but subsequently acquiesced) in order to accommodate the
 vacation of one of the four attorneys who appear as counsel below.

1 not, for instance, hold that Petitioners' delayed claims of privilege – over eight
2 months after they had notice – constituted a complete waiver for all purposes.
3 Instead, the district court preserved their ability to resist disclosure in favor of third
4 parties by holding that there was no waiver by virtue of Jacobs' possession and use
5 of the documents in this litigation.

6 The district court preserved Petitioners' ability to claim privilege as against
7 third parties despite their months of inaction based upon cases holding that former
8 executives may have use of what are claimed to be privileged documents in
9 litigation without it constituting a waiver. The truth is that the district court
10 over-accommodated Petitioners from the consequences of their all-or-nothing
11 position. Indeed, if Jacobs is not among a class of persons entitled to review,
12 access, and use the documents without it constituting a waiver, then Petitioners
13 necessarily waived any claim of privilege since they had known of his possession,
14 review, and use without taking any steps to assert or preserve claims of privilege.

15 With the drawn-out access to Jacobs' own evidence resolved, the
16 district court turned to a prompt scheduling of the long-awaited evidentiary hearing.
17 The district court did not abruptly set the evidentiary hearing so as to make it appear
18 as though it was actually doing something. It has been doing something. Rather,
19 the district court set the date based upon the resolution of the issue and her calendar.
20 The district court noted that if it did not promptly hold the evidentiary hearing,
21 other pending matters precluded its scheduling for the considerable future.

22 Thus, the district court's denial of Petitioners' stay request is not as they
23 crassly wish to portray. As the district court noted, an additional stay delaying
24 access to Jacobs' own documents by his counsel would necessarily result in a
25 postponement of the long-delayed evidentiary hearing. (APP000148.) The
26 prejudice to Jacobs is stark. Almost three years after filing this action, Jacobs is no
27 closer to obtaining a resolution of his legal rights. LVSC and Sands China have
28 manipulated what this Court plainly designed as a *temporary* stay into prolonged

1 paralysis with no end in sight. While that happens, witnesses disappear, memories
2 erode, and more and more evidence fades away.⁷

3 **III. ARGUMENT**

4 **A. The Purpose Of A Stay Is To Promote Justice, Not Reward Those**
5 **Preferring Delay So As To Prejudice Their Opponent.**

6 The district court's denial of a further stay is in accord with this Court's
7 criteria for assessing whether and when a stay is appropriate pending resolution of a
8 petition for extraordinary relief:

- 9 (1) Whether the object of the appeal or writ petition will be defeated
10 if the stay is denied;
11 (2) Whether appellant/petitioner will suffer irreparable or serious
12 injury if the stay is denied;
13 (3) Whether respondent/real party in interest will suffer irreparable
14 or serious injury if the stay is granted; and
15 (4) Whether appellant/petitioner is likely to prevail on the merits in
16 the appeal or writ petition.

17 *Hansen v. Eighth Jud. Dis. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (denying
18 the request for stay). No individual factor predominates, and whether a stay is
19 warranted rests with the court's broad discretion. *See Mikohn Gaming Corp. v.*
20 *McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) ("We have not indicated that
21 any one factor carries more weight than the others, [however,] if one or two factors
22 are especially strong, they may counterbalance other weak factors."). Considering
23 its comprehensive knowledge of the *actual* events leading up to its June 19 Order,
24 as well as the extreme prejudice further delay imposes upon Jacobs, the
25 district court rightly rejected Petitioners' further request for more delay. Jacobs
26 asks this Court to do likewise.

27 ⁷ Again, just as the district court said would happen, the evidentiary hearing
28 has again been postponed due to this Court's temporary stay. (APP000150.) The
continuing prejudice to Jacobs is apparent.

1 ***1. The writ's object does not necessitate an interim stay.***

2 LVSC's and Sands China's stay request turns upon a mischaracterization of
3 the district court's June 19, 2013, Order. The district court did not compel the
4 production of any privileged documents. Nor did it "bust" any privileges as
5 Petitioners passionately proclaim. Every one of the documents at issue is and
6 always has been in Jacobs' possession, custody, and control. All the district court's
7 Order does is permit Jacobs' counsel to review those documents – the same
8 documents that Jacobs' prior counsel was reviewing and affirmatively using in this
9 litigation with Petitioners' knowledge – so as to prepare for the long-delayed
10 evidentiary hearing. (*See* APP000143.)

11 Petitioners whitewash their knowing acquiescence in Jacobs' review,
12 possession, and use of his communications with the company's counsel in this
13 litigation. But the reality is that the district court actually protected them against
14 their own failures. Rather than treating their knowing inaction as the waiver that it
15 is (if Petitioners are right that Jacobs' possession and use is actually prohibited), the
16 district court preserved any other claims of privilege by holding that the documents
17 could not be disseminated outside of Jacobs' legal team. It directed that all of
18 Jacobs' documents are to be maintained as confidential under the terms of the
19 parties' Stipulated Confidentiality Agreement and Protective Order. (*Id.*)

20 Considering what the challenged Order *actually* provides, LVSC and
21 Sands China fail to show that the object of their proffered petition is necessarily
22 defeated absent a stay. *See Hansen*, 116 Nev. at 657, 6 P.3d at 986 (discussing the
23 first factor); *see also Imation Corp. v. Koninklijke Philips Elecs. N.V.*,
24 Civil No. 07-3668 (DWF/AJB), 2009 WL 1766671 (D. Minn. June 22, 2009)
25 (denying motion to stay requiring party to produce otherwise privileged documents
26 because the protective order adequately protected the parties and "[f]urther delay of
27 their production would harm [the respondent] and potentially delay discovery and
28 the proceedings in this action."); *Professionals Direct Ins. Co. v. Wiles, Boyle*,

1 *Burkholder & Bringardner Co., LPA*, 2008 WL 5378362, *1 (S.D. Ohio Dec. 24,
2 2008) (denying stay pending appellate court's decision on party's writ petition
3 regarding the production of privileged documents because if mandamus were
4 ultimately granted, then the privileged documents could be excluded from
5 evidence). The limited relief of the district court's Order and the safeguards
6 imposed alone defeat the need for any further stay.

7 **2. *Petitioners' knowing delays defeat any claim of harm.***

8 For the second prong, Petitioners decree that they face irreparable injury due
9 to the loss of their supposed privileges. But, of course, their real-world conduct
10 belies that belated assertion.

11 Plainly, if Jacobs' possession and use of documents he has long possessed
12 were legitimate grounds for relief, the undisputed pattern of inaction by LVSC and
13 Sands China defeats any claim of harm now. Indeed, the district court addressed
14 this very point during its hearing on Petitioners' motion for stay, explaining:

15 If it was really that your forensic consultant had done an analysis and
16 believed that Mr. Jacobs had stolen information, I would have
17 anticipated sometime in that early time frame [of November 2010] I
18 would have seen a report from the forensic analysis, who would have
19 said, gosh, look, Judge, this is all he stole. To date I still haven't seen
20 it. This is now June 2013.

21 (APP000147.)

22 The law is settled that a party who claims privilege necessarily waives it,
23 involuntarily or even inadvertently, by failing to take reasonable measures "to
24 prevent the disclosure of privileged documents [or to] recover privileged documents
25 once they are disclosed." *Bowles v. National Ass'n of Homebuilders*, 224 F.R.D.
26 246, 253 (D.D.C. 2004). As the Ninth Circuit has admonished, the party claiming
27 the privilege must undertake all efforts "reasonably designed" to preserve an
28 asserted privilege and the privilege is waived if they fail "to pursue all reasonable
means of preserving the confidentiality of the privileged matter." *Accord In re*
Grand Jury (Impounded), 138 F.3d 978, 981 (3rd Cir. 1998) (including as a factor

1 in waiver are "the steps taken by a party to remedy the disclosure and any delay in
2 doing so").

3 The law provides that the failure to take reasonable steps to recover so-called
4 privileged documents that are in the hands of one's adversary constitutes a waiver.
5 *Bowles*, 224 F.R.D. at 253 (Party waives its privilege in "documents, and in all
6 documents of the same subject matter, by failing to take reasonable steps *to recover*
7 *the documents and preserve any privilege once it was aware they were in the*
8 *hands of a party opponent*") (emphasis added). This means that if the adversary
9 announces intent to retain the documents and use them in the case, then a
10 reasonable litigant must obtain prompt judicial relief or else the privilege is gone.
11 *United States v. SDI Future Health, Inc.*, 464 F. Supp. 2d 1027, 1046-47 (D. Nev.
12 2006).

13 This is precisely why LVSC and Sands China omit all of the facts about their
14 studied inaction. To begin, it bears noting that they appear to acknowledge how
15 they knew even *before* Jacobs filed this suit that he possessed "approximately
16 40 gigabytes" of documents from his employment at Sands China, and yet they
17 refuse to explain when, how or from whom they first learned this fact. (Mot. at 1.)
18 The district court specifically referenced Petitioners' silence and not wanting to
19 address the point as one of its bases for denying the stay. (APP000147; *see also*
20 *Reingold v. Wet 'N Wild Nev., Inc.*, 113 Nev. 967, 970, 944 P.2d 800, 802 (1997)
21 ("Where relevant evidence which would properly be part of the case is within the
22 control of the party whose interest it would naturally be to produce it, and he fails to
23 do so, without satisfactory explanation, the jury may draw an inference that such
24 evidence would have been unfavorable to him."), overruled in part on other
25 grounds, *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006).

26 The reason Petitioners chose not to address this point is because it would
27 only reinforce their knowing inaction. Recall, in November of 2010, Sands China's
28 own counsel acknowledged that Jacobs possessed the documents. (APP000001-03.)

1 Jacobs confirmed his intent to use the documents as evidence, attaching his own
2 communications with Sands China's in-house legal counsel; the very category of
3 documents over which Petitioners now claim privilege. (APP000010-11.) The
4 notice to Petitioners repeated itself in May of 2011 when Jacobs disclosed his
5 possession of communications with LVSC's in-house counsel pursuant to
6 NRCP 16.1 as additional evidence.⁸ (APP000026.) A party cannot feign
7 ignorance simply because they cannot reconcile their knowing inaction with the
8 desire to claim privilege after the fact.

9 Petitioners' months of inaction in the face of Jacobs' review and use of his
10 documents, including communications with the company's counsel, undermines any
11 claim of injury or grounds for emergency relief. Indeed, if Petitioners' legal
12 argument were to be accepted – that Jacobs' status as a former executive bestows
13 upon him no right to possess or review the documents – then his long-standing
14 possession and use necessarily constitutes a waiver for all purposes. *United States*
15 *v. de la Jara*, 973 F.2d 746, 750 (9th Cir. 1992) (allowing adverse party to possess
16 documents for six months is a waiver); *In re Grand Jury (Impounded)*, 138 F.3d
17 at 981 (failing to file motion to recover privileged documents for four months is a
18 waiver); *see also Baxter Travenol Labs., Inc. v. Abbott Labs.*, 117 F.R.D. 119, 121
19 (N.D. Ill. 1987) ("Where prior to the assertion of the privilege, the documents have
20 been examined and used by the opposing party, it may be unfair and unrealistic to
21 uphold the privilege.")).

22 **3. Jacobs is the party prejudiced by the continuing delays.**

23 Considering LVSC's and Sands China's inaction, it is apparent which party is
24 actually prejudiced by the continuing delays. Petitioners have now effectively
25 converted what this Court intended to be a *temporary* merits stay into a near
26 two-year reprieve. This action has been pending for nearly three years and Jacobs'

27 ⁸ Confirming what this dispute is actually about, these same documents now
28 conveniently are claimed as privileged on the Petitioners' privilege log, despite the
documents being openly disclosed and used for over a year.

1 rights remain frozen as a consequence of Petitioners' perpetual noncompliance.
2 This Court's precedents have long recognized the prejudice inflicted by such undue
3 delays. *See Skeen v. Valley Bank of Nev.*, 89 Nev. 301, 303, 511 P.2d 1053, 1054
4 (1973) ("*[D]iligent parties are entitled to be protected against interminable delay*
5 *and uncertainty as to their legal rights.*") (emphasis added).

6 The district court confirmed what a further stay would entail – a further delay
7 of the long-postponed evidentiary hearing. Make no mistake about it, delay is what
8 benefits LVSC and Sands China the most. The district court reminded LVSC and
9 Sands China of this end effect, reiterating its prior ruling (one never challenged by
10 Petitioners) that they would not be permitted to examine Jacobs until his counsel
11 was given access to the sources of proof in his possession, custody and control.
12 (APP000107 (district court: "I'm not letting you take his depo until he has his
13 documents.")) This was all the more obvious, as addressed by the district court,
14 since Petitioners were using this process to bar Jacobs' counsel from reviewing even
15 nonprivileged information in Jacobs' documents. Petitioners failed to follow settled
16 practice that legitimate claims of privilege must be redacted from nonprivileged
17 information. As the district court stated, Petitioners would not be afforded yet more
18 advantages through noncompliance. (*See* APP000148.)

19 **4. *Jacobs, not Petitioners, is likely to prevail.***

20 Petitioners' attack on the district court is a case study in irony. The
21 district court chose to protect Petitioners from the legal consequences of their
22 strident position. Again, if Jacobs' status as a former executive who created,
23 received and used the documents in question affords him no right of access, then his
24 long-standing possession, stated intent to use, and actual use ends the debate.
25 LVSC and Sands China waived any claim of privilege. The law affords them no
26 ability to have their cake and eat it too.

27 Despite their rhetoric of how the district court's Order (which actually
28 protects them) is unsupported by law, reality is otherwise. *See, e.g., In re Braniff*,

1 *Inc.*, 153 B.R. 941, 946 (N.D. Fla. 1993) (former executive is entitled to otherwise
2 privileged communications he authored, received or was copied on during his
3 tenure based upon notions of fundamental fairness); *People v. Greenberg*,
4 851 N.Y.S.2d 196, 202 (N.Y. Sup. Ct. 2008) (former executives "are among the
5 class of persons legally allowed to view those privileged communications" and thus
6 granting a motion to compel production of privileged documents so that former
7 executives' counsel could have access to them).

8 This reality is further evidenced by cases where access to privileged
9 communications is most routinely at issue: disputes between a former in-house
10 counsel and the company. *See, e.g., Willy v. Admin. Review Bd.*, 423 F.3d 483, 499
11 (5th Cir. 2005) (finding that a former employee, even if a lawyer, "does not forfeit
12 his rights simply because to prove them he must utilize confidential information.

13 Nor does the client gain the right to cheat the lawyer by imparting confidences to
14 him."); *Kachmar v. SunGard Data Sys., Inc.*, 109 F.3d 173, 182 (3d Cir. 1997)
15 ("[T]he district court may use a number of equitable measures at its disposal
16 'designed to permit the attorney plaintiff to attempt to make the necessary proof
17 while protecting from disclosure client confidences subject to the
18 privilege[, including] the use of sealing and protective orders, limited admissibility
19 of evidence, orders restricting the use of testimony in successive proceedings, and,
20 where appropriate, in camera proceedings."); *Van Asdale v. Int'l Game Tech.*,
21 577 F.3d 989 (9th Cir. 2009) (relying on *Willy* and *Kachmar* and finding that
22 plaintiff-attorney should be allowed to use purportedly privileged documents in
23 action against former employer, based upon the trial court's ability to adequately
24 safeguard the information against unnecessary disclosures above and beyond
25 permitting the plaintiff to use the proof).

26 Plainly, Jacobs' former position as CEO of Sands China is one where he
27 would create and receive communications with the company's counsel, among a
28 host of other people, in order to do his job well and successfully. Thus, if LVSC

1 and Sands China want to claim that Jacobs has no ability to retain and use those
2 communications to prove wrongful termination in violation of public policy, then
3 their knowingly permitting him to do so month after month constitutes a waiver. In
4 reality, if the district court is to be criticized, it is only because it overprotected
5 LVSC and Sands China with its ruling.

6 **B. Any Stay Must Mitigate Against The Protracted Harm And**
7 **Prejudice To Jacobs.**

8 Obviously, Jacobs maintains that no stay is appropriate here. But if this
9 Court believes otherwise, Jacobs asks that it only be entered under circumstances
10 that permit Jacobs to at least partly mitigate the continuing harm to him; namely,
11 that merits discovery proceeds. After all, the law is settled as to a court's ability to
12 impose conditions that will reduce the prejudice to a party aggrieved by a stay. *See,*
13 *Clark v. Clark*, 543 N.W.2d 685, 688 (Minn. Ct. App. 1996) (on considering writ of
14 prohibition to restrain immediate enforcement of court-ordered changing child
15 custody, court noted that the "district court has discretion to place conditions on a
16 stay"); *Home Fire Ins. Co. v. Dutcher*, 67 N.W. 766, 769 (Neb. 1896)
17 ("Inasmuch as the allowing of a stay is wholly a matter of discretion, it follows that
18 the court may, in allowing the stay, affix such conditions as, in its judgment, are
19 necessary for the protection of the parties."); *see also Aspen Fin. Servs. v. Dist. Ct.*,
20 289 P.3d 201, 210 (Nev. 2012) (noting that "a stay [with] an indefinite, and likely
21 protracted, duration . . . would further frustrate the district court's interest in
22 managing its case load and expeditiously resolving the underlying suit given its
23 complexity for").

24 Here, there can be no debate as to the unfair prejudice heaped upon Jacobs by
25 the perpetual delays secured by LVSC and Sands China. Despite commencement
26 of this case in October of 2010, it has gone nowhere, just as LVSC and Sands China
27 desire. Despite the passage of almost three years, there is no prospect of a trial date.
28

1 The testimony of witnesses is not being preserved. Witnesses are disappearing⁹ and
2 for those who can be subsequently located, the passage of time will permit them to
3 claim that their memories have faded, whether real or by desire. This prejudice is
4 exacerbated by Petitioners' admission that they have already lost evidence in this
5 case.¹⁰

6 The perpetuation of the status quo – the indefinite stay of the fact-finding and
7 truth-preserving process – will only exacerbate the prejudice that Jacobs has
8 suffered. Thus, this Court should not consider any further stay absent directing the
9 district court to lift the present stay on merits discovery. Indeed, LVSC does not
10 even dispute that it is subject to this Court's jurisdiction. It can have no objection
11 short of admitting that its real objective is to simply procure more advantage
12 through delay.

13 The same is true for Sands China. The basis for this Court's original directive
14 for a merits stay – conserving judicial and party resources in the face of
15 Sands China's assertion that it had no Nevada contacts – can no longer be uttered
16 with any legitimacy.¹¹ Indeed, the basis for Sands China's request to this Court was

18 ⁹ Jacobs believes that multiple witnesses have either been terminated from
19 LVSC and Sands China or have otherwise departed, which will make accessing
20 them all the more difficult. Indeed, Jacobs believes that two witnesses, the
21 IT Director for LVSC and the IT Director for Sands China, have both been fired
22 since the commencement of this litigation based upon the facts and circumstances
23 that give rise to the claims in this case. And, as recently as last week – on June 25,
24 2013 – LVSC announced the departure of its CFO, Ken Kay (a witness on both
25 jurisdiction and merits).

26 ¹⁰ Petitioners admit that an unknown hard drive from Macau that was brought to
27 the United States has gone missing. They further have been forced to reveal that
28 they scrubbed one of the hard drives used by Jacobs in Macau of all data and only
preserved a ghost image of it. Their own former IT director concedes that this
ghost image was created in such a fashion as to not reveal what documents they
may have deleted from Jacobs' computer before they scrubbed it clean.
(APP000045.)

¹¹ At the end of the day, Sands China will be a party in this case. Presently, the
district court views the merits stay as prohibiting Jacobs from amending his
complaint, even to augment his claims which would reinforce his theories for
jurisdiction. Regardless, when allowed, Jacobs will be amending his Complaint to
assert, among other things, claims for abuse of process against both Sands China

1 its assertion that it would be forced to expend a million dollars in complying with
2 merits discovery. But now Sands China claims to have spent (without providing
3 any evidence, of course) four times that amount. (APP000111.) To be sure,
4 whatever the true amount actually spent, it was not spent to comply with discovery,
5 but rather expended in an attempt to avoid it. Whatever the merits of the original
6 stay, it cannot be seriously suggested that it serves any legitimate purpose now.

7 It has long been the law that "the power to stay proceedings is incidental to
8 the power inherent in every court to control the disposition of the causes on its
9 docket with economy of time and effort for itself, for counsel, and for litigants."
10 *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). But of course the flip side is
11 equally true: That same inherent power justifies the lifting of a stay when the facts
12 so warrant. "Logically, the same court that imposes a stay of litigation has the
13 inherent power and discretion to lift the stay." *Canady v. Erbe Elektromedizin*
14 *GmbH*, 271 F. Supp. 2d 64, 74 (D.D.C. 2002). "When circumstances have changed
15 such that the court's reasons for imposing the stay no longer exist or are
16 inappropriate, the court may lift the stay." *Id.* at 74; *Ho Keung Tse v. Apple, Inc.*,
17 2010 WL 1838691 (N.D. Cal. May 5, 2010) ("A court may lift the stay if the
18
19

20 and LVSC over their long-standing pattern of litigation abuse. Because those
21 actions occurred in the State of Nevada, Sands China will not be able to continue to
22 pretend as though it has no Nevada contacts. *General Refractories Co. v. Fireman's*
23 *Fund Ins. Co.*, 337 F.3d 297, 311 (3rd Cir. 2003) (party can maintain claim for
24 abuse of process because party filed various motions in an effort to obstruct
25 discovery, "knowingly made bogus claims of privilege in response to discovery
26 requests, hid documents, and made misrepresentations to opposing counsel and the
27 court."); *McDonald v. Davis*, Civil No. 2004-93, 2009 WL 580456, at *12
28 (March 5, 2009, D.V.I.) ("Examples of conduct that may constitute an abuse of
process include intentionally withholding critical documents, ignoring court orders,
permitting false testimony at depositions and misrepresenting facts to opposing
counsel and the Court."); *Givens v. Mullikin*, 75 S.W.3d 383, 402 (Tenn. 2002)
(court explained that abuse of process claim lies when "the civil discovery
procedures are used with the specific and malicious intent to weaken the resolve of
the other party" because the opponent "may rightfully claim that the procedures
were being used 'to accomplish some end which is without the regular purview of
the process.'"). Continued delay to debate personal jurisdiction over Sands China is
an exercise in futility.

1 circumstances supporting the stay have changed such that the stay is no longer
2 appropriate.").

3 Moreover, lifting the merits stay comports with well-settled law. Under this
4 Court's jurisprudence, "[o]nce a defendant challenges personal jurisdiction, the
5 plaintiff may proceed to show jurisdiction by one of two distinct processes." *Trump*
6 *v. Eighth Jud. Dist. Ct.*, 109 Nev. 692, 857 P.2d 743 (1993). First, the plaintiff may
7 "prove personal jurisdiction by a preponderance of the evidence" at "a full
8 evidentiary hearing on the personal jurisdiction issue prior to trial." *Id.* at 693, 857
9 P.2d at 744. The second, and "more frequently utilized process" allows "a plaintiff
10 [to] make a *prima facie* showing of personal jurisdiction prior to trial and then
11 prove jurisdiction by a preponderance of the evidence at trial." *Id.* at 692, 857 P.2d
12 at 743.

13 The purpose of this Court's original directive for an evidentiary hearing has
14 been overtaken by events that were the product of Petitioners' long-standing
15 discovery misconduct. There can be no debate about the fact that there is a *prima*
16 *facie* showing of personal jurisdiction. Again, the entire enterprise undertaken to
17 terminate Jacobs was hatched in and carried out from Las Vegas by executives
18 claiming to act for Sands China.

19 Accordingly, if this Court is inclined to delay counsel's access and use of
20 Jacobs' own documents, it should do so only under terms that will provide some
21 level of mitigation for the prejudice Jacobs has suffered by the perpetual delay of
22 this case. There can no longer be any claim for a continued stay of merits
23 discovery, particularly considering that the continued passage of time will only lead
24 to further loss of testimony as witnesses disappear (some involuntarily) and even
25 those that can be found will have diminished memories. If Sands China really
26 wants to continue to debate the district court's personal jurisdiction over it, it can do
27 so at a subsequent evidentiary hearing or at the trial on the merits. But it cannot
28

1 continue to delay resolution of that point so as to obstruct merits discovery in the
2 hopes that more and more evidence will disappear.

3 **IV. CONCLUSION**

4 Sands China has converted what was to be a temporary stay into a permanent
5 reprieve, with it and its parent company, LVSC, benefitting. It is not the
6 district court that has missed the mark here. The district court did not order
7 production of any privileged documents. The documents in question have been in
8 Jacobs' possession, custody, control, and use since before this case commenced.
9 LVSC and Sands China have known about that reality and chose to sit idle. Their
10 choice was hardly one of accident. It seems likely that they consciously chose not
11 to highlight their awareness of what Jacobs possessed, lest their long-kept secret
12 about clandestinely transporting the ESI of Jacobs and other executives might be
13 exposed (and it eventually was).

14 Petitioners have shown no entitlement to yet another stay which inevitably
15 leads to further delay of Jacobs' day in court. No stay is justified, especially given
16 the extreme prejudice to Jacobs. No litigant should have to endure nearly three
17 years of stalling tactics and watch as evidence fades. Thus, if this Court were to
18 consider to a stay, it must be conditioned upon allowing Jacobs to conduct merits
19 discovery and thus preserve evidence so that the truth-finding and preserving
20 purpose of litigation is allowed to work.

21 DATED this 2nd day of July, 2013.

22 PISANELLI BICE PLLC

23 By: /s/ Todd L. Bice

24 James J. Pisanelli, Esq., Bar No. 4027
25 Todd L. Bice, Esq., Bar No. 4534
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Attorneys for Real Party in Interest,
Steven C. Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 2nd day of July, 2013, I caused to be e-filed and sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing **OPPOSITION TO EMERGENCY MOTION UNDER NRAP 27(e) TO STAY THE DISTRICT COURT'S JUNE 19, 2013 ORDER** properly addressed to the following:

Steve Morris, Esq.
MORRIS LAW GROUP
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SERVED VIA HAND-DELIVERY ON JULY 3, 2013

Judge Elizabeth Gonzalez
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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

Respondents,
and

STEVEN C. JACOBS,
Real Party in Interest.

No. 63444

FILED

OCT 01 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

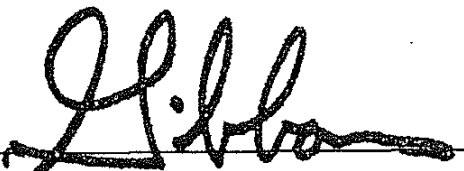
ORDER GRANTING STAY

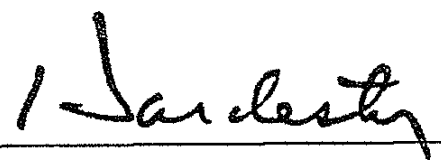
This original petition for a writ of prohibition or mandamus challenges a district court order requiring that certain documents that petitioners contend are privileged be returned to real party in interest for his use in the prosecution of the action below.

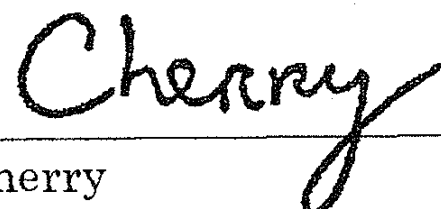
Petitioners have moved this court for a stay of the challenged district court order pending resolution of their writ petition, and this court entered a temporary stay on June 28, 2013, pending receipt and consideration of any opposition and reply. Real party in interest has now opposed the motion for a stay, and petitioners have filed a reply. Having considered the parties' arguments and the documents before us, we conclude that a stay is warranted, pending resolution of this petition. See NRAP 8(c). Accordingly, we stay the June 19, 2013, order directing the return of documents to real party in interest in Eighth Judicial District

Court Case No. A627691, pending further order of this court. We further deny real party in interest's request for relief from the stay of the proceedings below, as this request is outside the scope of the issue pending before us here.

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Cherry

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

EXHIBIT D

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9 *Steven C. Jacobs*

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

11 SANDS CHINA LTD.,

12 Petitioner,

13 vs.

14 THE EIGHTH JUDICIAL DISTRICT
15 COURT OF THE STATE OF
16 NEVADA, IN AND FOR THE
17 COUNTY OF CLARK; AND THE
HONORABLE ELIZABETH GOFF
GONZALEZ, DISTRICT COURT,

18 Respondent,

19 and

20 STEVEN C. JACOBS.

21 Real Party in Interest

Sup. Ct. Case No. 58294

District Court Case No.
A-10-627691

**REAL PARTY IN INTEREST,
STEVEN C. JACOBS' RESPONSE
TO MOTION TO RECALL
MANDATE AND
COUNTERMOTION
REGARDING SAME**

Electronically Filed
Feb 07 2014 02:18 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 **I. INTRODUCTION**

2 Providing no legal standard as the movant, Petitioner Sands China Ltd.
3 ("Sands China") seeks to recall a writ of mandamus issued over two years ago,
4 asserting that a change in law has rendered evidence as to its actual contacts with
5 Nevada irrelevant. If that were true, which it is not, of course, Sands China would
6 presumably so move the district court, where its position could be vetted in the
7 context of the full record. Its refusal to do so is telling indeed.

8 Beyond improperly seeking to evade the district court and the evidence,
9 Sands China also exaggerates the case to which it clings – *Daimler AG v. Bauman*,
10 134 S. Ct. 746 (2014) – continuing its long-rejected attempts at fact avoidance.
11 Jacobs' personal jurisdiction position does not turn on Sands China's false premise
12 that he predicates jurisdiction based solely on the contacts of a corporate affiliate,
13 the issue *Bauman* addresses. Rather, Sands China is subject to Nevada jurisdiction
14 because of its contacts and the contacts of its agents, acting on its behalf, within
15 Nevada.

16 The only legitimate basis for recalling the writ of mandamus is to unravel the
17 false premise upon which Sands China and its parent co-defendant, Las Vegas
18 Sands Corp. ("LVSC"), obtained the resulting stay. The executives controlling
19 Sands China are doing so from Las Vegas, and the entire improper termination of
20 Jacobs was conceived and orchestrated in Las Vegas by these same executives
21 acting as agents of Sands China in Nevada. Sands China and LVSC sought to
22 conceal these facts, which the district court refused to let them get away with. Of
23 course, they both knew the truth when they obtained the stay nearly three years ago.
24 The resulting delays and prejudice to Jacobs are unprecedented. This case is now
25 over three and a half years old. No trial date is set; no date for resolving Sands
26 China's bogus personal jurisdiction defense is set. The testimony and recollection
27 of witnesses is constantly fading, and important witnesses are disappearing and/or
28 being terminated by the Defendants.

1 The basis for this Court to take action is not to disregard the district court's
2 knowledge of the evidence (as Sands China recognizes as its only chance), but it is
3 to cease the prejudice to Jacobs by dispensing with an illegitimate stay and allowing
4 him to conduct discovery so as to stem the continuing loss of merits evidence.

5 **II. LEGAL STANDARD**

6 As the moving party, Sands China declines to cite any legal standard
7 governing its motion. Jacobs does not dispute that this Court has the ability to
8 recall a remittitur and/or mandate under appropriate circumstances. This Court
9 previously had an express rule for doing so. *Wood v. State*, 60 Nev. 139, 104 P.2d
10 187 (1940).

11 And, while not doubting this Court's inherent authority to do so today, Jacobs
12 certainly disputes that Sands China's avoid-the-evidence-at-all-costs approach is a
13 qualifying basis. Rather, under the analogous federal rules: While "[a]ppellate
14 courts have inherent power to recall a mandate upon a showing of 'good cause,' []
15 that power should be exercised sparingly." *Fireison v. Pearson*, 520 A.2d 1046,
16 1054 (D.C. App. 1987) (citing *American Iron & Steel Institute v. EPA*, 560 F.2d
17 589, 592-95 (3d Cir. 1977)); *Greater Boston Television Corp. v. FCC*, 463 F.2d
18 268, 277 (D.C. App. 1971). "Recall of the mandate must be necessary to avoid
19 injustice and it is proper only in the presence of 'exceptional circumstances.'" *Id.*
20 And, while it may be that "[a] supervening change in governing law that calls into
21 serious question the correctness of the court's judgment," could be "[o]ne
22 circumstance that that may justify recall of a mandate" (*Sargent v. Columbia Forest*
23 *Products, Inc.*, 75 F.3d 86, 90 (2d Cir. 1996)), that is not remotely the case here.

24 Rather, the only basis to recall the writ of mandamus is the lack of forthright
25 disclosure by Sands China as to its actual Nevada contacts when it sought the writ
26 in the first instance. It knew the truth and it knew what honest compliance with
27 jurisdictional discovery would reveal, which is why it and LVSC chose to walk the
28 contrary path. The proper relief now should not be that which rewards and

1 perpetuates the impropriety. It should be to end the insufferable and long-abused
2 stay so that Jacobs can at long last attempt to preserve what evidence remains.¹

3 **III. BACKGROUND**

4 **A. This Court Directs a Stay Pending an Evidentiary Hearing.**

5 To understand the failures in Sands China's latest proposal for fact avoidance,
6 this Court should briefly recall how we got here. Jacobs commenced this action on
7 October 20, 2010, claiming breach of contract and tortious termination for
8 attempting to silence him from reporting corporate improprieties of senior
9 executives with LVSC and Sands China, including those entities' common
10 chairman, Sheldon Adelson ("Adelson"). LVSC answered and filed a counterclaim,
11 representing to the court that Jacobs had no contract with LVSC and was instead
12 simply an employee of Sands China. (APP.000099-100.) That false tale would
13 soon unravel.

14 For its part, Sands China disputed personal jurisdiction. The district court
15 disagreed, finding general jurisdiction from "pervasive" Nevada contacts.
16 (APP.000114.) Given the district court's ruling as to general jurisdiction, it did not
17 address or even take up the other applicable grounds, including specific jurisdiction.

18 Sands China thereafter petitioned for the writ of mandamus. Through its
19 August 26, 2011 decision, this Court labeled the district court's findings to be of
20 "summary nature" and incomplete for review. *Id.* At the same time, Sands China
21 protested as to how it faced extreme burdens in complying with discovery that
22 would, it was represented, be a waste in the face of its lacking Nevada contacts.²

23
24 ¹ On May 31, 2013, Jacobs submitted a "Motion for Immediate Lift of Stay"
25 for filing with this Court. The Clerk would not allow Jacobs to file that motion,
asserting that this case was closed and any relief must be sought in the district court.

26 ² As discovery would later show, Sands China's lack of candor to this Court
27 was equally startling. While it sought to pretend that its discoverable documents
28 were all located in Macau, it knew the truth was otherwise. Just like it knew – and
its executives would later have to admit – that Sands China's controlling executives
were based in Las Vegas and from there had planned, orchestrated and undertook
the tortious termination of Jacobs.

1 As such, this Court accommodated Sands China's request for a stay and
2 "instruct[ed] the district court to hold an evidentiary hearing on personal
3 jurisdiction, to issue findings of fact and conclusions of law stating the basis for its
4 decision following that hearing, and to stay the action as set forth in this order until
5 after entry of the district court's personal jurisdiction decision." (APP.000115.)
6 Again, although LVSC was not a party to that writ petition and had no basis for
7 delaying the case, the entire merits of Jacobs' case, even as to LVSC, was stayed
8 and has been ever since.

9 **B. Sands China Opposes Jurisdictional Discovery.**

10 Given this Court's directive, Jacobs sought jurisdictional discovery to present
11 the evidentiary record establishing:

- 12 [1] general jurisdiction based upon what Sands China does here,
13 [2] general jurisdiction based upon the agency role of Las Vegas
14 Sands and what it performs here on behalf of Sands China,
15 [3] specific jurisdiction of what Sands China did here in relation to the
16 causes of action that was presented to [the Court], and, of course,
17 [4] transient jurisdiction of Sands China.

18 (APP.000120.) In a move that would foretell their future maneuvers, Sands China
19 and LVSC objected, claiming that this Court's decision had somehow limited
20 Jacobs to pursuing only general jurisdiction and that "no amount of discovery could
21 or would" establish jurisdiction over Sands China, the same position it regurgitates
22 to this Court today. (APP.000122.) The district court rejected their attempts of
23 depriving Jacobs of his rights to develop the evidentiary record that Sands China
24 claimed was missing as to all potential bases for personal jurisdiction, including
25 general, specific and/or transient.

26 The reasons Sands China and LVSC so vehemently opposed jurisdictional
27 discovery were soon manifest. Their central thesis to the district court proved false.
28 Indeed, LVSC's initial representation – that Jacobs had no contract with LVSC and
instead his only agreement was with Sands China – was a doozy. Apparently,
LVSC had forgotten its representations to the United States Securities and

1 Exchange Commission, as well as to its own shareholders, how Jacobs' employment
2 contract with LVSC stemmed from the negotiated term sheet dated August 3, 2009
3 (the "Term Sheet"). (APP.000001; APP.000087; APP.000090-91.) Indeed,
4 LVSC's COO, Michael Leven ("Leven") was forced to admit that he negotiated and
5 signed Jacobs' Term Sheet on behalf of LVSC after it was approved by Adelson.
6 (APP.000150.) But that was just the tip of the iceberg.

7 Equally egregious was Sands China's lack of candor to both the district court
8 and this Court concerning its Nevada contacts at the time it petitioned for and
9 obtained the stay. After having to fight tooth and nail to pry the facts out of
10 Sands China, jurisdictional discovery revealed how Adelson and Leven were
11 operating Sands China from their executive offices here in Las Vegas. In just one
12 candid email to Sands China's executives in Macau, Leven decreed that although he
13 is always willing to listen to their input, "all final [] decisions are made by sga
14 [Adelson] and las vegas." (APP.000092.)

15 Unremarkably, this included the decision and orchestration of Jacobs'
16 wrongful termination as Sands China's CEO. The evidence and testimony exposed
17 that the very scheme to terminate Jacobs – hastily arranged before a scheduled
18 Board meeting where Jacobs planned to report on the misconduct – was hatched
19 and carried out from Las Vegas by executives claiming to be acting for
20 Sands China. In fact, despite his best word-smithing, Leven had to acknowledge:
21 "The plan – the – the arrangements for carrying out the termination of Steve Jacobs
22 was developed here [in Las Vegas] and executed there [in Macau].").
23 (APP.000151.)

24 In actuality, discovery confirmed that what actually occurred in Macau was
25 minimal, consisting of little more than Leven and other high-ranking executives
26 flying from Las Vegas, landing in Macau and telling Jacobs of what had been
27 preordained in Las Vegas. The substantive events occurred in Las Vegas, including
28 the preparation of the initial termination letter. Indeed, lacking a copy of actual

1 "Sands China" letterhead in Las Vegas, these executives (Adelson and Leven)
2 resorted to manufacturing temporary letterhead in Las Vegas so as to prepare the
3 termination letter. (*See* APP.000134-36.) The press releases – including those
4 making false statements – were drafted in and issued from Las Vegas by executives
5 purportedly acting for Sands China. (APP.000152.) The lawyers overseeing the
6 plan did so from Las Vegas and, again, as agents for Sands China. (APP.000153.)
7 Even the subsequent so-called justification letter – providing the twelve fabricated
8 reasons for Jacobs' termination – was prepared in Las Vegas, albeit after they
9 apparently obtained actual copies of Sands China's letterhead upon which to print it.
10 (*Id.*)

11 Sands China's lack of forthrightness was not limited to what the district court
12 found in the concealment of jurisdictional evidence, it chose that path when it first
13 petitioned this Court for the writ of mandamus. Because the actual events
14 surrounding Jacobs' termination have been unearthed, Sands China resorts to
15 coyness, asserting (in a footnote of all places) that this truth can be ignored because
16 Jacobs somehow waived any specific jurisdiction over Sands China. How he did so
17 prior to jurisdictional discovery or even the district court addressing that issue
18 (since it had relied upon general jurisdiction) is, tellingly, never explained, which is
19 likely why it is relegated to a footnote. Whatever the rationale, Sands China's need-
20 to-avoid-the-evidence approach only serves to highlight the fatal flaw of its motion.

21 **C. Sands China Obstructs the Very Evidentiary Hearing it Sought.**

22 The events that have brought this case to a standstill are detailed in Jacobs'
23 Answering Briefs to the second, third and fourth writ petitions filed by LVSC and
24 Sands China, Case Nos. 62489, 62944, and 63444. There is no need to recite again
25 their underhandedness. Those briefs and the record before the district court expose
26 what they were doing.

27 The district court's inability to conduct an honest evidentiary hearing is the
28 product of that misconduct, not the after-the-fact attempts to divert attention from

1 their misdeeds. Jacobs' entire case, including against LVSC, has been stayed all the
2 while memories fade, witnesses disappear, evidence is lost, and LVSC and
3 Sands China benefit from their lack of disclosure.³

4 It is beyond fair debate that the stay contemplated by this Court is being
5 abused and is a product of illegitimacy. It needs to end. The legal basis for
6 recalling the writ of mandamus is not to avoid the facts as Sands China desires, but
7 to undo the abused stay. If Sands China wants to continue to debate personal
8 jurisdiction, it should do so in the usual course like every other litigant. There is no
9 justification to continue the unparalleled prejudice to Jacobs' rights.

10 IV. ARGUMENT

11 A. *Bauman* Does Not Change the Law of Minimum Contacts.

12 Having been unable to stop the evidence of its Nevada contacts from coming
13 to light, Sands China now proposes a theory where all the facts should be ignored.
14 According to Sands China, the United States Supreme Court has accommodated
15 this unique approach through its recent decision, *Daimler AG v. Bauman*, 134 S. Ct.
16 746 (2014). Hardly. The *Bauman* Court did not dispense with the longstanding
17 precedent that a corporation is subject to jurisdiction in those forums in which their
18 agents act. In fact, the *Bauman* Court said that it "need not pass judgment on
19 invocation of an agency theory in the context of general jurisdiction[.]" *Id.* at 759.

20 In *Bauman*, a group of plaintiffs sued DaimlerChrysler ("Daimler") in the
21 State of California based upon the alleged collaboration between its subsidiary,
22 Mercedes-Benz Argentina ("MB Argentina") and various Argentina terrorist
23 groups. The car sales of one of Daimler's subsidiaries, Mercedes-Benz USA, LLC
24 ("MBUSA"), was the lone connection between Daimler and California. Thus, in

25
26 ³ Indeed, the district court has taken the view that Jacobs cannot even amend
27 his complaint to outline additional claims against both LVSC and Sands China -
28 including those that will reinforce jurisdiction over Sands China - until after the
evidentiary hearing is held. LVSC has filed an answer and counterclaim, and even
it is being protected by a stay despite the fact that it does not dispute that it is
subject to jurisdiction.

1 the face of that fact, the plaintiffs, citing *Doe v. Unocal*, 248 F.3d 915 (9th Cir.
2 2001), urged personal jurisdiction given that selling cars in California is
3 "sufficiently important" to Daimler such that it would have stepped in to perform
4 the tasks for MBUSA were it necessary. *Id.* at 759.

5 The Supreme Court disagreed, and found that a parent corporation's
6 "hypothetical readiness" to perform services on behalf of the subsidiary in the
7 forum state does not, in and of itself, establish general jurisdiction over the parent.
8 *Bauman*, 134 S. Ct. at 759-60. The Court reasoned, "[a]nything a corporation does
9 through an independent contractor, subsidiary, or distributor is presumably
10 something that the corporation would do 'by other means' if the independent
11 contractor, subsidiary, or distributor did not exist." *Id.* at 759. As a result, the
12 Court found that the Ninth Circuit's "hypothetical readiness" test unfairly "subjects
13 foreign corporations to general jurisdiction whenever they have an in-state
14 subsidiary or affiliate" *Id.* at 759-60.

15 The Court explained that for general jurisdiction over a foreign corporation to
16 exist, it "must be fairly regarded as at home" in the forum state. *Id.* at 761. The
17 Court affirmed its prior decisions on this point. The question is, as it has always
18 been, whether the corporation's "affiliations with the State are 'so continuous and
19 systematic' as to render it essentially at home in the form State." *Id.* (quoting *Int'l*
20 *Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Goodyear Dunlop Tires Ops., S.A. v.*
21 *Brown*, 131 S.Ct. 2846 (2011)).

22 Despite that Sands China wishes the law were otherwise, a corporation has
23 always been subject to jurisdiction based upon the acts of its agents in the forum
24 state. As this Court explained long ago: "The contacts of an agent are attributable to
25 the principal in determining whether personal jurisdiction exists." *Trump v. Eighth*
26 *Jud. Dist. Ct. of State of Nev. In & For Cnty. of Clark*, 109 Nev. 687, 694, 857 P.2d
27 740, 745 (1993).

1 Here, Sands China's attempts of fact-avoidance before the district court is as
2 misguided as it is transparent. This is not a case of a foreign parent corporation's
3 "hypothetical readiness" to stand in for its local subsidiary. The evidence exposes
4 how Sands China is *actually* being operated and run by and through its agents in
5 Nevada. Indeed, depositions of both Adelson and Leven demonstrate how they
6 direct the activities and operations of Sands China from Las Vegas, and they
7 claimed to be acting as Sands China's agents whenever they did so.

8 These Nevada activities included everything from approving compensation
9 for Sands China executives to making design decisions for Sands China's casinos.
10 In Leven's words to Sands China's executives in Macau: "input from anyone is
11 expected and listen to [*sic*] but final [] decisions are made by sga [Adelson] and
12 las vegas." (APP.000092.) The examples literally go on and on. Thus, if
13 Sands China wants to continue to debate whether it can be deemed to be "at home"
14 in Las Vegas for purposes of general jurisdiction, on top of the other jurisdictional
15 bases discovery has uncovered, that is a matter for the district court.

16 **B. Jacobs Should be Allowed to Preserve Evidence through Merits**
17 **Discovery.**

18 While Sands China provides no basis to recall the writ of mandamus, there is
19 a basis for this Court's immediate attention, whether by recalling the writ of
20 mandamus for a limited purpose or simply directing the district court: Dispense
21 with the illegitimately-obtained stay that has precipitated unwarranted prejudice and
22 delay. Even if Sands China wants to continue to pretend that it lacks Nevada
23 contacts, there is no need for a stay to do so.⁴ This Court has long recognized that
24 there are two ways to address personal jurisdiction. *Trump v. Eighth Jud. Dist. Ct.*,
25 109 Nev. 687, 857 P.2d 740, 743 (1993). The "more frequently utilized process"
26 allows "a plaintiff [to] make a *prima facie* showing of personal jurisdiction prior to

27 ⁴ Indeed, Jacobs asked LVSC to stipulate to allow merits discovery to proceed,
28 since LVSC does not dispute that it is subject to jurisdiction. Tellingly, it refused,
wanting to continue what was supposed to be a temporary stay.

1 trial and then prove jurisdiction by a preponderance of the evidence at trial."
2 *Id.* at 692, 857 P.2d at 743.

3 Even in the face of the documented obstruction seeking to skew the fact-
4 finding process, enough facts have emerged of a *prima facie* case for personal
5 jurisdiction. If Sands China wants to continue the jurisdiction debate, it can do so
6 at trial, or at a subsequent evidentiary hearing. But Jacobs should be allowed to
7 proceed and preserve evidence. What this Court contemplated as a temporary stay
8 (which has now lasted nearly three years) only serves to perpetuate an injustice.
9 *See Wood*, 60 Nev. at 104, 100 P.2d at 188 (under prior rule, recall of remittitur
10 proper for incomplete knowledge of the circumstances.).

11 **V. CONCLUSION**

12 Sands China's motion is an untenable attempt at avoiding the facts and is
13 legally flawed. The only legal basis for recalling this Court's writ of mandamus is
14 to put an end to the misuse of what was supposed to be a temporary stay. And,
15 accordingly, Jacobs countermoves and asks this Court to do so now.

16 DATED this 6th day of February, 2014.

17 PISANELLI BICE, PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and pursuant to Nev. R. App. P. 25(b) and NEFR 9(d), that on this date I electronically filed the foregoing **REAL PARTY IN INTEREST, STEVEN C. JACOBS' RESPONSE TO MOTION TO RECALL MANDATE AND COUNTERMOTION REGARDING SAME** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex), Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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SERVED VIA HAND-DELIVERY ON FEBRUARY 7, 2014

The Honorable Elizabeth Gonzalez
Eighth Judicial District Court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

DATED this 6th day of February, 2014.

/s/ Kimberly Peets
An employee of Pisanelli Bice, PLLC

EXHIBIT E

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,

vs.

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

No. 58294

FILED

MAY 19 2014

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

ORDER DENYING MOTION TO RECALL MANDATE


On August 26, 2011, this court entered an order granting a petition for a writ of mandamus and directing the district court to hold a hearing to reconsider whether it has personal jurisdiction over petitioner Sands China Ltd. This court further ordered the district court to stay all portions of the proceedings below except those relating to the jurisdictional issue. In the intervening time, the parties have apparently been undertaking discovery relating to the personal jurisdiction issue, which has not yet been resolved by the district court.

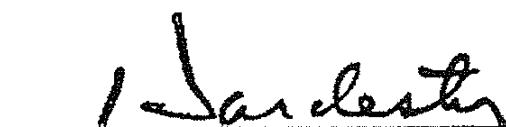
On January 29, 2014, Sands China filed a motion in this court requesting that we revisit our 2011 decision in light of a recent United States Supreme Court opinion, *Daimler AG v. Bauman*, ___ U.S. ___, 134 S. Ct. 746 (2014). Specifically, Sands China contends that *Daimler AG* compels the conclusion that the district court lacks personal jurisdiction over Sands China in this action. Real party in interest Steven C. Jacobs has opposed the motion, and also requests that this court direct the district court to vacate the stay imposed by this court's 2011 order.

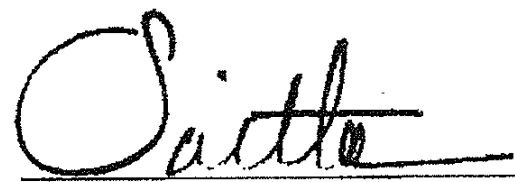
Having considered the parties' arguments and the documents before us, we conclude that, even under *Daimler AG*, factual findings must be made with regard to Sands China's contacts with Nevada in order to resolve the jurisdictional issue. Thus, Sands China's arguments in this regard should be presented to the district court for consideration in conjunction with the personal jurisdiction issue. See *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. ___, ___, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance."). We therefore deny Sands China's motion seeking to have this court reopen this writ proceeding.¹

As to Jacobs's request that we direct the district court to vacate the stay imposed by this court's 2011 order, we conclude that Jacobs has not presented any circumstances that compel us to revisit our earlier decision that a stay pending resolution of the jurisdictional issue is appropriate. As a result, we also deny Jacobs's countermotion regarding the stay.

It is so ORDERED.

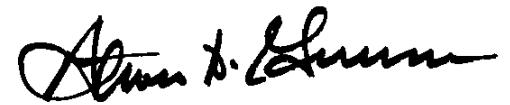

Gibbons, C.J.


Hardesty, J.


Saitta, J.

¹In light of these determinations, we further deny Sands China's March 24, 2014, motion for oral argument.

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



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**RENEWED OBJECTION TO
PURPORTED EVIDENCE OFFERED
IN SUPPORT OF DEFENDANT
SANDS CHINA LTD.'S MOTION
FOR SUMMARY JUDGMENT ON
PERSONAL JURISDICTION**

Hearing Date: July 29, 2014

Hearing Time: 8:30 a.m.

On July 14, 2014, Plaintiff Steven C. Jacobs ("Jacobs") objected to the Affidavit of Toh Hup Hoch, also known as Ben Toh (the "Toh Affidavit"), on the basis that he lacked competence and personal knowledge. Conceding the impropriety of the Toh Affidavit, Defendant Sands China Ltd. ("Sands China") now offers a new "Supplemental Affidavit" from Mr. Toh (the "Supplemental Toh Affidavit") to "clarify" that when he stated he was "informed," what he really meant was that he is "informed by the totality of all the financial records and all related documents, and by [his] personal experience and observations of how the company does business, and where it does business." (Suppl. Toh Aff. ¶ 4.) But Toh's Supplemental Affidavit does not cure the prior problems, and only further confirms the impropriety of his purported testimony.

1 First, Toh's supplemental explanation is nothing but a conclusion. It is incompetent and
2 inadmissible. *Maldonado v. Ramirez*, 757 F.2d 48, 51 (3rd Cir. 1985) ("An affidavit that is
3 essentially conclusory and lacking in specific facts is inadequate to satisfy the movant [or
4 non-movant's] burden."); *Federal Trade Comm'n. v. Publishers Clearinghouse, Inc.*, 104 F.3d
5 1168, 1171 (9th Cir. 1997) ("Conclusory, self-serving affidavit, lacking detailed facts and any
6 supporting evidence, is insufficient to create a genuine issue of material fact.").

7 For the same reason, Toh's failure to identify and produce "all the financial records and
8 related documents" or explain the "personal experience and observations" upon which his
9 information is based, further precludes its admission or consideration. *Goring v. Martinez*, 224
10 Ga. App. 137, 139, 479 S.E.2d 432, 434 (1996) ("While material need not be attached if the
11 affidavit is based upon material that is part of the record and before the court, the affidavit still
12 must specifically identify those documents and failure to do so results in summary judgment.");
13 *see also United States v. Dibble*, 429 F.2d 598, 602 (9th Cir. 1970) (refusing to consider affidavit
14 offered in support of summary judgment because "none of the documents [attached to the
15 affidavit] was authenticated, and all of them were hearsay.").

16 Moreover, the deposition testimony of Sheldon Adelson and Michael Leven make clear
17 where Sands China's business decisions and operations were really taking place, and "a party
18 cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." *Yeager*
19 *v. Bowlin*, 693 F.3d 1076, 1080 (9th Cir. 2012) (describing the "sham affidavit rule"); *Hambleton*
20 *Bros. Lumber Co. v. Balkin Enters., Inc.*, 397 F.3d 1217, 1225 (9th Cir. 2005) ("Under the 'sham'
21 affidavit rule, a party cannot create an issue of fact by an affidavit contradicting his prior
22 deposition testimony.").

23 To that end, Toh's supposedly "informed" opinion as to "how the company does business,
24 and where it does business" is completely inadmissible in addition to being irrelevant for purposes
25 of determining Sands China's principal place of business – its "nerve center." That is to say, the
26 place where day-to-day operations occur is not relevant because a corporation's true nerve center
27 is where the ultimate power to make decisions rests, where that power is exercised and where
28 corporate policy is set. *Hoschar v. Appalachian Power Co.*, 739 F.3d 163, 172-73 (4th Cir.

2014); *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 103 S.Ct. 1181 (2010) (a corporation's principal place of business is where "the corporation's officers direct, control and coordinate the corporation's activities."); *Moore v. Johnson & Johnson*, No. 12-490, 2013 WL 5298573, *7 (E.D. Penn. Sept. 20, 2013) (a corporation's "principal place of business" is not where it pretends it to be, it is where actual and ultimate control is exercised, including where it is exercised by executives of a related entity).

In sum, the Supplemental Toh Affidavit fails no better than the original, particularly given that Sands China has never disclosed Mr. Toh as a potential witness, in addition to the fact that the documents he purportedly reviewed and relied upon for purposes of giving his opinion have never been identified or produced. *See* NRCP 37(c) ("A party that without substantial justification fails to disclose information required by Rule 16.1 . . . is not, unless harmless, permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed.").

DATED this 24th day of July, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 24th day of July, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **RENEWED OBJECTION TO PURPORTED EVIDENCE OFFERED IN SUPPORT OF DEFENDANT SANDS CHINA LTD.'S MOTION FOR SUMMARY JUDGMENT ON PERSONAL JURISDICTION** properly addressed to the following:

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

2 *****

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

5 Petitioner,

6 v.

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

11 Respondents,

12 and

13 STEVEN C. JACOBS,

14 Real Party in Interest.

Case No.: 68265
Electronically Filed
Jul 23 2015 03:19 p.m.
(Consolidated with Case Numbers
68275 and 68305)
Tracie K. Lindeman
Clerk of Supreme Court

**REAL PARTY IN INTEREST
STEVEN C. JACOBS'
SUPPLEMENTAL APPENDIX**

VOLUME II OF XI

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SERVED VIA HAND-DELIVERY ON 07/22/2015

The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

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Amended Business Court Scheduling Order and 2 nd Amended Order Setting Civil Jury Trial, and Pre-Trial and Calendar Call, dated 7/17/2015	IX	SA1922 – SA1930
Complaint, dated 10/20/2010	I	SA0001 – SA0016
Declaration of Todd L. Bice, Esq. in Support of Opposition to Defendant Sands China LTD's Motion for Summary Judgment on Personal Jurisdiction and Countermotion for Summary Judgment, dated 7/14/2014 Filed Under Seal	X & XI	SA2005 – SA2235
Defendant Sands China LTD's Answer to Plaintiff's First Amended Complaint, dated 7/8/2011	II	SA0272 – SA0280
Defendant Sands China LTD's Motion to Dismiss for Failure to State a Claim, dated 4/20/2011	I	SA0172 – SA0189
Defendant Sands China LTD's Motion to Dismiss Third Amended Complaint for Lack of Personal Jurisdiction and Failure to State a Claim, dated 1/12/2015	IV	SA0991 – SA1014
Defendant Sheldon G. Adelson's Opposition to Plaintiff's Motion for Leave to File Third Amended Complaint, dated 10/10/2014	IV	SA0981 – SA0988
Defendants' Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint, dated 7/15/2014	II	SA0610 – SA0666
First Amended Complaint, dated 3/16/2011	I	SA0152 – SA0169
Fourth Amended Complaint, dated 6/22/2015	IX	SA1901 – SA1921

1	Hearing on Plaintiff's Motion for Expedited Discovery, dated 6/10/2015	IX	SA1862 – SA1900
2	Joint Status Report, dated 4/22/2011	I	SA0226 – SA0228
3	Minute Order, dated 12/12/2014	IV	SA0989 – SA0990
4	Minute Order, dated 2/21/2014	II	SA0304
5	Minute Order, dated 5/26/2011	II	SA0262
6	Minute Order, dated 6/9/2011	II	SA0263 – SA0265
7	Minute Order, dated 9/9/2014	III	SA0822
8	Notice of Appeal, dated 7/1/2011	II	SA0266 – SA0268
9	Notice of Entry of Order on Defendant Sands China, LTD's Motion for Summary Judgment on Personal Jurisdiction and Plaintiff's Countermotion for Summary Judgment, dated 8/15/2014	III	SA0817 – SA0821
10			
11	Notice of Filing Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition, dated 5/13/2011	I	SA0229 – SA0230
12			
13	Objection to Purported Evidence Offered in Support of Defendant Sands China LTD's Motion for Summary Judgment on Personal Jurisdiction, dated 7/14/2014	II	SA0591 – SA0609
14			
15	OMITTED	II	n/a
16			
17	OMITTED	II	n/a
18			
19	Opposition to Defendant Sands China LTD's Motion for Summary Judgment on Personal Jurisdiction and Countermotion for Summary Judgment, dated 7/14/2014 Filed Under Seal	X	SA1985 – SA2004
20			
21	Opposition to Defendant Sheldon Adelson's Motion to Dismiss Third Amended Complaint, dated 2/4/2015	IV	SA1015 – SA1032
22			
23	Opposition to Defendants Sands China LTD's and Las Vegas Sands Corp.'s Motion to Dismiss Third Amended Complaint, dated 2/4/2015	IV	SA1033 – SA1048
24			
25	Order Denying Defendant Sands China	II	SA0269 – SA0271
26			
27			
28			

1	LTD's Motion to Dismiss Plaintiff's Second Cause of Action, dated 7/6/2011		
2	Order Denying Defendants' Motion to Dismiss, dated 4/1/2011	I	SA0170 – SA0171
3	Order Denying Motion to Recall Mandate, dated 5/19/2014	II	SA0319 – SA0321
4	Order Denying Petition in part and Granting Stay, dated 4/2/2015	V	SA1216 – SA1218
5	Plaintiff Steve C. Jacobs' Reply in Support of Motion for Leave to File Second Amended Complaint, dated 7/25/2014	III	SA0765 – SA0770
6	Plaintiff Steven C. Jacob's Brief on Sanctions for February 9, 2015 Evidentiary Hearing, dated 2/6/2015	V	SA1078 – SA1101
7	Plaintiff Steven C. Jacobs' Motion for Leave to File a Third Amended Complaint, dated 9/26/2014	IV	SA0898 – SA0924
8	Plaintiff Steven C. Jacobs' Motion for Leave to File Second Amended Complaint, dated 6/30/2014	II	SA0322 – SA0350
9	Plaintiff Steven C. Jacobs' Objection to Defendant Sand China's Appendix to Its Memorandum regarding Plaintiff's Renewed Motion for Sanctions, dated 2/9/2015	V	SA1102 – SA1105
10	Plaintiff Steven C. Jacobs' Objection to Sands China's "Offer of Proof" and Appendix, dated 5/8/2015	IX	SA1854 – SA1857
11	Plaintiff Steven C. Jacobs' Opposition to Sands China LTD's Motion to Seal Exhibits to Its Offer of Proof, dated 5/26/2015	IX	SA1858 – SA1861
12	Plaintiff's Jurisdictional Ex. 100, admitted on 4/30/2015	VII	SA1591
13	Plaintiff's Jurisdictional Ex. 1000, admitted on 5/5/2015	VII	SA1644
14	Plaintiff's Jurisdictional Ex. 1024, admitted on 4/21/2015	VI	SA1390 – SA1391
15	Plaintiff's Jurisdictional Ex. 103, admitted on 4/28/2015	VII	SA1498 – SA1499

1	Plaintiff's Jurisdictional Ex. 1035, admitted on 4/28/2015	VII	SA1499A - SA1499F
2	Plaintiff's Jurisdictional Ex. 1049, admitted on 4/20/2015	VI	SA1387
3	Plaintiff's Jurisdictional Ex. 1062, admitted on 4/21/2015	VI	SA1436 – SA1439
4	Plaintiff's Jurisdictional Ex. 1064, admitted on 4/21/2015	VII	SA1440 – SA1444
5	Plaintiff's Jurisdictional Ex. 1084, admitted on 4/21/2015	VI	SA1407 - SA1408
6	Plaintiff's Jurisdictional Ex. 1097, admitted on 5/1/2015	VII	SA1638 – SA1639
7	Plaintiff's Jurisdictional Ex. 1100 Filed Under Seal	X	SA1931 – SA1984
8	Plaintiff's Jurisdictional Ex. 1142, admitted on 4/21/2015	VI	SA1416
9	Plaintiff's Jurisdictional Ex. 116, admitted on 4/30/2015	VII	SA1632 – SA1633
10	Plaintiff's Jurisdictional Ex. 1163, admitted on 4/21/2015	VI	SA1418 – SA1420
11	Plaintiff's Jurisdictional Ex. 1166, admitted on 4/21/2015	VI	SA1421
12	Plaintiff's Jurisdictional Ex. 1179, admitted on 4/21/2015	VI	SA1422 – SA1425
13	Plaintiff's Jurisdictional Ex. 1185, admitted on 4/21/2015	VI	SA1427 – SA1428
14	Plaintiff's Jurisdictional Ex. 1186, admitted on 4/21/2015	VI	SA1426
15	Plaintiff's Jurisdictional Ex. 1190, admitted on 4/21/2015	VI	SA1429
16	Plaintiff's Jurisdictional Ex. 122, admitted on 4/30/2015	VII	SA1634
17	Plaintiff's Jurisdictional Ex. 1227, identified as SCL00173081, admitted on 5/5/2015	VIII	SA1648 – SA1650
18	Plaintiff's Jurisdictional Ex. 1228, identified as SCL00101583, admitted on 5/5/2015	VIII	SA1651
19	Plaintiff's Jurisdictional Ex. 1229, identified as SCL00108526, admitted on 5/5/2015	VIII	SA1652
20			
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1	Plaintiff's Jurisdictional Ex. 1230, identified as SCL00206713, admitted on 5/5/2015	VIII	SA1653
2			
3	Plaintiff's Jurisdictional Ex. 1231, identified as SCL00210953, admitted on 5/5/2015	VIII	SA1654 – SA1656
4			
5	Plaintiff's Jurisdictional Ex. 1232, identified as SCL00173958, admitted on 5/5/2015	VIII	SA1657 – SA1658
6			
7	Plaintiff's Jurisdictional Ex. 1233, identified as SCL00173842, admitted on 5/5/2015	VIII	SA1659 – SA1661
8			
9	Plaintiff's Jurisdictional Ex. 1234, identified as SCL00186995, admitted on 5/5/2015	VIII	SA1662 – SA1663
10			
11	Plaintiff's Jurisdictional Ex. 1235, identified as SCL00172747, admitted on 5/5/2015	VIII	SA1664 – SA1666
12			
13	Plaintiff's Jurisdictional Ex. 1236, identified as SCL00172796, admitted on 5/5/2015	VIII	SA1667
14			
15	Plaintiff's Jurisdictional Ex. 1237, identified as SCL00172809, admitted on 5/5/2015	VIII	SA1668 – SA1669
16			
17	Plaintiff's Jurisdictional Ex. 1238, identified as SCL00105177, admitted on 5/5/2015	VIII	SA1670
18			
19	Plaintiff's Jurisdictional Ex. 1239, identified as SCL00105245, admitted on 5/5/2015	VIII	SA1671 – SA1672
20			
21	Plaintiff's Jurisdictional Ex. 1240, identified as SCL00107517, admitted on 5/5/2015	VIII	SA1673 – SA1675
22			
23	Plaintiff's Jurisdictional Ex. 1241, identified as SCL00108481, admitted on 5/5/2015	VIII	SA1676
24			
25	Plaintiff's Jurisdictional Ex. 1242, identified as SCL00108505, admitted on 5/5/2015	VIII	SA1677 – SA1678
26			
27	Plaintiff's Jurisdictional Ex. 1243, identified as SCL00110438, admitted on 5/5/2015	VIII	SA1679 – SA1680
28			

1	Plaintiff's Jurisdictional Ex. 1244, identified as SCL00111487, admitted on 5/5/2015	VIII	SA1681 – SA1683
2			
3	Plaintiff's Jurisdictional Ex. 1245, identified as SCL00113447, admitted on 5/5/2015	VIII	SA16384
4			
5	Plaintiff's Jurisdictional Ex. 1246, identified as SCL00113467, admitted on 5/5/2015	VIII	SA1685
6			
7	Plaintiff's Jurisdictional Ex. 1247, identified as SCL00114299, admitted on 5/5/2015	VIII	SA1686 – SA1687
8			
9	Plaintiff's Jurisdictional Ex. 1248, identified as SCL00115634, admitted on 5/5/2015	VIII	SA1688
10			
11	Plaintiff's Jurisdictional Ex. 1249, identified as SCL00119172, admitted on 5/5/2015	VIII	SA1689 – SA1691
12			
13	Plaintiff's Jurisdictional Ex. 1250, identified as SCL00182392, admitted on 5/5/2015	VIII	SA1692 – SA1694
14			
15	Plaintiff's Jurisdictional Ex. 1251, identified as SCL00182132, admitted on 5/5/2015	VIII	SA1695 – SA1697
16			
17	Plaintiff's Jurisdictional Ex. 1252, identified as SCL00182383, admitted on 5/5/2015	VIII	SA1698 – SA1699
18			
19	Plaintiff's Jurisdictional Ex. 1253, identified as SCL00182472, admitted on 5/5/2015	VIII	SA1700
20			
21	Plaintiff's Jurisdictional Ex. 1254, identified as SCL00182538, admitted on 5/5/2015	VIII	SA1701
22			
23	Plaintiff's Jurisdictional Ex. 1255, identified as SCL00182221, admitted on 5/5/2015	VIII	SA1702
24			
25	Plaintiff's Jurisdictional Ex. 1256, identified as SCL00182539, admitted on 5/5/2015	VIII	SA1703
26			
27	Plaintiff's Jurisdictional Ex. 1257, identified as SCL00182559, admitted on 5/5/2015	VIII	SA1704
28			

1	Plaintiff's Jurisdictional Ex. 1258, identified as SCL00182591, admitted on 5/5/2015	VIII	SA1705
2			
3	Plaintiff's Jurisdictional Ex. 1259, identified as SCL00182664, admitted on 5/5/2015	VIII	SA1706
4			
5	Plaintiff's Jurisdictional Ex. 1260, identified as SCL00182713, admitted on 5/5/2015	VIII	SA1707
6			
7	Plaintiff's Jurisdictional Ex. 1261, identified as SCL00182717, admitted on 5/5/2015	VIII	SA1708
8			
9	Plaintiff's Jurisdictional Ex. 1262, identified as SCL00182817, admitted on 5/5/2015	VIII	SA1709
10			
11	Plaintiff's Jurisdictional Ex. 1263, identified as SCL00182892, admitted on 5/5/2015	VIII	SA1710
12			
13	Plaintiff's Jurisdictional Ex. 1264, identified as SCL00182895, admitted on 5/5/2015	VIII	SA1711
14			
15	Plaintiff's Jurisdictional Ex. 1265, identified as SCL00184582, admitted on 5/5/2015	VIII	SA1712 – SA1713
16			
17	Plaintiff's Jurisdictional Ex. 1266, identified as SCL00182486, admitted on 5/5/2015	VIII	SA1714 – SA1715
18			
19	Plaintiff's Jurisdictional Ex. 1267, identified as SCL00182431, admitted on 5/5/2015	VIII	SA1716 – SA1717
20			
21	Plaintiff's Jurisdictional Ex. 1268, identified as SCL00182553, admitted on 5/5/2015	VIII	SA1718 – SA1719
22			
23	Plaintiff's Jurisdictional Ex. 1269, identified as SCL00182581, admitted on 5/5/2015	VIII	SA1720 – SA1721
24			
25	Plaintiff's Jurisdictional Ex. 1270, identified as SCL00182589, admitted on 5/5/2015	VIII	SA1722 – SA1723
26			
27	Plaintiff's Jurisdictional Ex. 1271, identified as SCL00182592, admitted on 5/5/2015	VIII	SA1724 – SA1725
28			

1	Plaintiff's Jurisdictional Ex. 1272, identified as SCL00182626, admitted on 5/5/2015	VIII	SA1726 – SA1727
2			
3	Plaintiff's Jurisdictional Ex. 1273, identified as SCL00182659, admitted on 5/5/2015	VIII	SA1728 – SA1729
4			
5	Plaintiff's Jurisdictional Ex. 1274, identified as SCL00182696, admitted on 5/5/2015	VIII	SA1730 – SA1731
6			
7	Plaintiff's Jurisdictional Ex. 1275, identified as SCL00182721, admitted on 5/5/2015	VIII	SA1732 – SA1733
8			
9	Plaintiff's Jurisdictional Ex. 1276, identified as SCL00182759, admitted on 5/5/2015	VIII	SA1734 – SA1735
10			
11	Plaintiff's Jurisdictional Ex. 1277, identified as SCL00182714, admitted on 5/5/2015	VIII	SA1736 – SA1738
12			
13	Plaintiff's Jurisdictional Ex. 1278, identified as SCL00182686, admitted on 5/5/2015	VIII	SA1739 – SA1741
14			
15	Plaintiff's Jurisdictional Ex. 1279, identified as SCL00182938, admitted on 5/5/2015	VIII	SA1742 – SA1743
16			
17	Plaintiff's Jurisdictional Ex. 1280, identified as SCL00182867, admitted on 5/5/2015	VIII	SA1744 – SA1745
18			
19	Plaintiff's Jurisdictional Ex. 1281, identified as SCL00182779, admitted on 5/5/2015	VIII	SA1746 – SA1747
20			
21	Plaintiff's Jurisdictional Ex. 1282, identified as SCL00182683, admitted on 5/5/2015	VIII	SA1748 – SA1750
22			
23	Plaintiff's Jurisdictional Ex. 1283, identified as SCL00182670, admitted on 5/5/2015	VIII	SA1751 – SA1756
24			
25	Plaintiff's Jurisdictional Ex. 1284, identified as SCL00182569, admitted on 5/5/2015	VIII	SA1757 – SA1760
26			
27	Plaintiff's Jurisdictional Ex. 1285, identified as SCL00182544, admitted on 5/5/2015	VIII	SA1761 – SA1763
28			

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

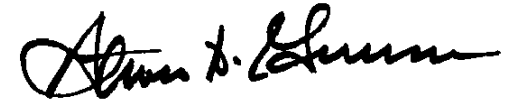
1	Plaintiff's Jurisdictional Ex. 182, admitted on 4/20/2015	VI	SA1227 – SA1228
2	Plaintiff's Jurisdictional Ex. 187, admitted on 4/30/2015	VII	SA1500 – SA1589
3	Plaintiff's Jurisdictional Ex. 188, admitted on 4/20/2015	VI	SA1361 – SA1362
4	Plaintiff's Jurisdictional Ex. 225, admitted on 4/22/2015	VII	SA1496A
5	Plaintiff's Jurisdictional Ex. 238, admitted on 4/20/2015	VI	SA1229 – SA1230
6	Plaintiff's Jurisdictional Ex. 256, admitted on 4/20/2015	VI	SA1231 – SA1232
7	Plaintiff's Jurisdictional Ex. 257, admitted on 4/22/2015	VII	SA1496B- SA1496E
8	Plaintiff's Jurisdictional Ex. 261, admitted on 4/30/2015	VII	SA1609 – SA1628
9	Plaintiff's Jurisdictional Ex. 267, admitted on 4/30/2015	VII	SA1629 – SA1630
10	Plaintiff's Jurisdictional Ex. 270, admitted on 4/22/2015	VII	SA1485 – SA1488
11	Plaintiff's Jurisdictional Ex. 273, admitted on 4/22/2015	VII	SA1445
12	Plaintiff's Jurisdictional Ex. 292, admitted on 4/20/2015	VI	SA1233 – SA1252
13	Plaintiff's Jurisdictional Ex. 378, admitted on 4/30/2015	VII	SA1631
14	Plaintiff's Jurisdictional Ex. 4, admitted on 4/20/2015	VI	SA1219
15	Plaintiff's Jurisdictional Ex. 425, admitted on 4/20/2015	VI	SA1253 – SA1256
16	Plaintiff's Jurisdictional Ex. 437, admitted on 4/20/2015	VI	SA1257 – SA1258
17	Plaintiff's Jurisdictional Ex. 441, admitted on 4/20/2015	VI	SA1259
18	Plaintiff's Jurisdictional Ex. 447, admitted on 4/20/2015	VI	SA1388 – SA1389
19	Plaintiff's Jurisdictional Ex. 476, admitted on 4/20/2015	VI	SA1260 – SA1264
20	Plaintiff's Jurisdictional Ex. 495, admitted on 4/20/2015	VI	SA1265
21	Plaintiff's Jurisdictional Ex. 498, admitted on 4/20/2015	VII	SA1645 – SA1647

admitted on 5/5/2015		
Plaintiff's Jurisdictional Ex. 501, admitted on 4/21/2015	VI	SA1392 – SA1394
Plaintiff's Jurisdictional Ex. 506, admitted on 4/21/2015	VI	SA1395 – SA1399
Plaintiff's Jurisdictional Ex. 508, admitted on 4/20/2015	VI	SA1376 – SA1382
Plaintiff's Jurisdictional Ex. 511, admitted on 4/21/2015	VI	SA1400
Plaintiff's Jurisdictional Ex. 515, admitted on 4/20/2015	VI	SA1383 – SA1386
Plaintiff's Jurisdictional Ex. 523, admitted on 4/21/2015	VI	SA1401 – SA1402
Plaintiff's Jurisdictional Ex. 535, admitted on 4/21/2015	VI	SA1430 – SA1431
Plaintiff's Jurisdictional Ex. 540, admitted on 4/21/2015	VI	SA1432 – SA1433
Plaintiff's Jurisdictional Ex. 543, admitted on 4/21/2015	VI	SA1434 – SA1435
Plaintiff's Jurisdictional Ex. 550, admitted on 4/22/2015	VII	SA1446 – SA1447
Plaintiff's Jurisdictional Ex. 558, admitted on 4/30/2015	VII	SA1607
Plaintiff's Jurisdictional Ex. 561, admitted on 4/30/2015	VII	SA1608
Plaintiff's Jurisdictional Ex. 580, admitted on 4/22/2015	VII	SA1463 – SA1484
Plaintiff's Jurisdictional Ex. 584, admitted on 4/21/2015	VI	SA1403
Plaintiff's Jurisdictional Ex. 586, admitted on 4/21/2015	VI	SA1404
Plaintiff's Jurisdictional Ex. 587, admitted on 4/21/2015	VI	SA1405
Plaintiff's Jurisdictional Ex. 589, admitted on 4/21/2015	VI	SA1406
Plaintiff's Jurisdictional Ex. 607, admitted on 4/21/2015	VI	SA1409 – SA1411
Plaintiff's Jurisdictional Ex. 612, admitted on 4/21/2015	VI	SA1439A
Plaintiff's Jurisdictional Ex. 621, admitted on 4/20/2015	VI	SA1266 – SA1269

1	Plaintiff's Jurisdictional Ex. 624, admitted on 4/20/2015	VI	SA1288 – SA1360
2	Plaintiff's Jurisdictional Ex. 627, admitted on 4/22/2015	VII	SA1461 – SA1462
3	Plaintiff's Jurisdictional Ex. 628, admitted on 4/22/2015	VII	SA1459 – SA1460
4	Plaintiff's Jurisdictional Ex. 638, admitted on 4/22/2015	VII	SA1489 – SA1490
5	Plaintiff's Jurisdictional Ex. 661, admitted on 4/21/2015	VI	SA1412
6	Plaintiff's Jurisdictional Ex. 665, admitted on 4/20/2015	VI	SA1283 – SA1287
7	Plaintiff's Jurisdictional Ex. 667, admitted on 4/22/2015	VII	SA1491 – SA1493
8	Plaintiff's Jurisdictional Ex. 668, admitted on 4/20/2015	VI	SA1270 – SA1277
9	Plaintiff's Jurisdictional Ex. 669, admitted on 4/21/2015	VI	SA1413
10	Plaintiff's Jurisdictional Ex. 670, admitted on 4/22/2015	VII	SA1494 – SA1496
11	Plaintiff's Jurisdictional Ex. 686, admitted on 4/22/2015	VII	SA1453 – SA1456
12	Plaintiff's Jurisdictional Ex. 690, admitted on 4/21/2015	VI	SA1414 – SA1415
13	Plaintiff's Jurisdictional Ex. 692, admitted on 4/20/2015	VI	SA1278
14	Plaintiff's Jurisdictional Ex. 694, admitted on 4/22/2015	VII	SA1448 – SA1452
15	Plaintiff's Jurisdictional Ex. 702, admitted on 4/20/2015	VI	SA1279 – SA1282
16	Plaintiff's Jurisdictional Ex. 722, admitted on 4/22/2015	VII	SA1496F
17	Plaintiff's Jurisdictional Ex. 744, admitted on 4/22/2015	VII	SA1496G-SA1496I
18	Plaintiff's Jurisdictional Ex. 748, admitted on 5/4/2015	VII	SA1640 – SA1641
19	Plaintiff's Jurisdictional Ex. 752, admitted on 4/22/2015	VII	SA1457 – SA1458
20	Plaintiff's Jurisdictional Ex. 782, admitted on 4/30/2015	VII	SA1635 – SA1636
21	Plaintiff's Jurisdictional Ex. 804, admitted on 4/30/2015	VI	SA1417

1	admitted on 4/21/2015		
2	Plaintiff's Jurisdictional Ex. 91, admitted on 4/30/2015	VII	SA1590
3	Plaintiff's Jurisdictional Ex. 955, admitted on 4/28/2015	VII	SA1497
4	Plaintiff's Jurisdictional Ex. 970, admitted on 5/5/2015	VII	SA1642 – SA1643
5	Plaintiff's Motion on Deficient Privilege Log on Order Shortening Time, dated 9/16/2014	IV	SA0855 – SA0897
6	Plaintiff's Motion to Conduct Jurisdictional Discovery, dated 9/21/2011	II	SA0283 – SA0291
7	Plaintiff's Omnibus Response in Opposition to the Defendants' Respective Motions to Dismiss The Fifth Cause of Action Alleging Defamation Per Se, dated 5/23/2011	I	SA0231 – SA0246
8	Plaintiff's Opposition to Sands China LTD's Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Failure to Join an Indispensable Party, dated 2/9/2011	I	SA0017 – SA0151
9	Plaintiff's Opposition to Sands China LTD's Motion to Dismiss his Second Cause of Action (Breach of Contract), dated 5/23/2011	II	SA00247 – SA0261
10	Plaintiff's Reply in Support of Plaintiff's Motion on Deficient Privilege Log on Order Shortening Time, dated 10/3/2014	IV	SA0925 – SA0933
11	Real Party in Interest, Steven C. Jacobs' Reply in Support of Countermotion regarding Recall of Mandate, dated 3/28/2014	II	SA0314 – SA0318
12	Real Party in Interest, Steven C. Jacobs' Response to Motion to Recall Mandate and Countermotion regarding same, dated 2/7/2014	II	SA0292 – SA0303
13	Renewed Objection to Purported Evidence Offered in Support of Defendant Sands China LTD's Motion for Summary Judgment on Personal	II	SA0667 – SA0670

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

OPPS
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Attorneys for Plaintiff
Steven C. Jacobs

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,	)	CASE NO. A-10-627691-C
	)	DEPT. NO. XI
Plaintiff,)	
)	
vs.)	
	)	PLAINTIFF'S OPPOSITION TO
LAS VEGAS SANDS CORP., a Nevada	)	SANDS CHINA LTD.'S MOTION
corporation; SANDS CHINA LTD., a Cayman	)	TO DISMISS HIS SECOND
Islands corporation; SHELDON G. ADELSON,	)	CAUSE OF ACTION (BREACH
in his individual and representative capacity;	)	OF CONTRACT)
DOES I through X; and ROE CORPORATIONS)	
I through X,)	
	)	Hearing Date: June 9, 2011
Defendants.	)	Hearing Time: 9:00 a.m.

Plaintiff Steven C. Jacobs ("Jacobs"), through his undersigned counsel, hereby files his Opposition to Sands China Ltd.'s Motion to Dismiss His Second Cause of Action (Breach of Contract). This Opposition is based on the papers and pleadings on file herein, the exhibits attached hereto, and the Points and Authorities that follow.

....

....



1 POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Unlike the first attempt of Defendant Sands China Ltd. (“SCL”) to escape this action, the
4 company’s latest Motion to Dismiss (“Motion”) is not premised on an alleged lack of personal
5 jurisdiction but, rather, contends that Jacobs’s Second Cause of Action (Breach of Contract) and
6 Fifth Cause of Action (Defamation Per Se) fail to state claims upon which relief can be granted.¹
7 In a nutshell, SCL’s argument as it relates to the Second Cause of Action is that the 2,500,000
8 stock options awarded to Jacobs on July 7, 2010 automatically lapsed under the terms of the
9 applicable Stock Option Grant Letter when Jacobs was terminated just two weeks later on July
10 23, 2010. *See, e.g.*, Mot. at 3:8-20. Because a lapse occurs regardless of whether the termination
11 was “for cause” or not—so contends SCL—there can be no breach of contract in connection with
12 the SCL Options. *Id.* This is clearly wrong.

13
14
15 First, the attachments accompanying the Stock Option Grant Letter upon which SCL so
16 heavily relies expressly state that the option grant will not affect the rights and obligations of the
17 grantee “under the terms of his office and employment.” *See* Mot. at Exh. B, p. 8. Here, Jacobs’s
18 employment was governed by a Term Sheet that provided him with accelerated vesting of all his
19 stock options and a one-year period to exercise the same if his termination was “Not for Cause.”
20 *See* First Amended Complaint (“FAC”) ¶¶ 22; 45. Jacobs has alleged that his termination was
21 “Not for Cause” and that the accelerated-vesting and exercise provisions of the Term Sheet apply
22 to his stock options in SCL. *Id.* at ¶¶ 35-42; 43-48. These allegations are certainly sufficient to
23 state a claim under NRCP 12(b)(5).
24

25
26 ¹ Because SCL, Defendant Las Vegas Sands Corp. (“LVSC”), and Defendant Sheldon G.
27 Adelson (“Adelson”) have all filed similar motions to dismiss the defamation claim, Jacobs has
28 addressed those motions in a separate omnibus response filed concurrently herewith. This
Opposition will thus focus on SCL’s efforts to dispose of the contract claim. LVSC is also named
in the Second Cause of Action, but has not moved to dismiss this claim.



1 Second, SCL's attempt to evade the import of the Term Sheet on the alleged ground that it
2 was not a party to that agreement ignores the fundamental principle that all writings which
3 comprise a single transaction must be read together. *Haspray v. Pasarelli*, 79 Nev. 203, 380 P.2d
4 919 (1963) (recognizing "[t]wo separate writings may be sufficiently connected by internal
5 evidence without any express words of reference of one to the other."). This principle applies
6 even though the writings "were executed on different dates and were not between all the same
7 parties." *TVT Records v. The Island Def Jam Music Group*, 412 F.3d 82, 89 (2d Cir. 2005).
8 Important for our purposes here, "whether multiple writings should be construed as one
9 agreement depends on the intent of the parties," which is normally a fact question for the jury. *Id.*

10
11 Finally, and in addition to the provisions of the Term Sheet, it is hornbook law that
12 wrongfully discharged employees are entitled to seek as damages not only the wages and bonuses
13 they would have been due under the term of their employment, but also any *benefits* attendant
14 thereto. Such benefits include stock options. Thus, courts have routinely permitted wrongfully
15 discharged employees to recover the value of their lost stock options despite the existence of a
16 written stock option plan which states that any unvested options will lapse upon the employee's
17 termination. *See, e.g., Knox v. Microsoft Corp.*, 962 P.2d 839 (Wash. Ct. App. 1998) (reversing
18 grant of summary judgment and holding that wrongfully terminated employee in breach of
19 contract action was entitled to damages for cancellation of unvested stock options), *review*
20 *denied*, 980 P.2d 1280 (Wash. 1999). This principle likewise precludes dismissal here.

21 **II. ARGUMENT**

22 **A. Standard Governing Motions To Dismiss.**

23
24 Her Honor is well versed in the standards governing a motion to dismiss for failure to state a
25 claim upon which relief can be granted pursuant to NRCP 12(b)(5). A motion to dismiss premised
26 on this Rule will not be granted "unless it appears beyond a doubt that the plaintiff could prove no
27
28



1 set of facts which, if accepted by the trier of fact, would entitle him or her to relief.” *Simpson v.*
2 *Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). In this regard, the Court must accept
3 the allegations of the complaint as true. *Hynds Plumbing & Heating Co. v. Clark County Sch.*
4 *Dist.*, 94 Nev. 776, 587 P.2d 1331 (1978). Lastly, the standard of review for a dismissal under
5 NRCP 12(b)(5) “is rigorous as [the] Court must construe the pleading liberally and draw every
6 fair inference in favor of [Plaintiffs].” *Simpson*, 113 Nev. at 190, 929 P.2d at 967.

8 **B. When The Term Sheet And The Stock Option Grant Letter Are Read**
9 **Together, Jacobs Has Clearly Stated A Claim For Relief Against SCL.**

10 Jacobs has alleged that his employment relationship is governed by a written Term Sheet.
11 See FAC at ¶ 22.² The Term Sheet provides Jacobs with (i) an accelerated vesting of his stock
12 options if his termination is “Not for Cause,” and (ii) a one-year right to exercise the options post-
13 termination. See Exhibit 1. Jacobs has alleged that his termination was “Not for Cause” and that
14 the accelerated-vesting and exercise provisions of the Term Sheet apply to his stock options in
15 SCL. See FAC at ¶¶ 35-42; 43-48. Plaintiff respectfully submits that the foregoing allegations
16 are more than sufficient to state a claim under the Rule 12(b)(5) standard set forth above.³

18 SCL understandably seeks to avoid the implications of the Term Sheet by arguing that it
19 is not a party to this contract and, thus, the only agreement it could have breached is the Stock
20 Option Grant Letter. See Mot. at 10:10-16. SCL supports this contention with the statement that
21 “Jacobs has consistently taken the position that the Term Sheet was between himself and LVSC,
22

23 ² A true and correct copy of the Term Sheet was previously provided to the Court as Exhibit
24 13 to Plaintiff’s Opposition to Las Vegas Sands Corp.’s Motion to Dismiss Pursuant to NRCP
25 12(B)(6) and 19 for Failure to Join an Indispensable Party (filed 2/09/11). For convenience,
26 Plaintiff has attached another true and correct copy of the Term Sheet as Exhibit 1 to this
27 Opposition.

28 ³ There is no dispute that the Term Sheet constitutes an enforceable contract as LVSC’s
counsel has previously acknowledged that: “Your Honor, I don’t disagree that the terms [sic]
sheet under this argument that he [Plaintiff’s counsel] makes is an agreement. I’m not trying to
say it’s not an agreement.” See, e.g., SCL’s Request for Judicial Notice (“Reqt.”) at Exh. F, p. 39
(Tr. dated March 15, 2011).



1 not SCL.” *Id.* at 10:12-13 (citing Jacobs’s Opposition to LVSC’s Motion to Dismiss for Failure
2 to Join a Necessary Party). To be clear, Jacobs argued that LVSC is the party to the Term Sheet
3 in the face of LVSC’s contention that Jacobs was an employee of Venetian Macau Limited.
4 (“VML”), not LVSC. Jacobs maintains that position. That does not mean, however, that SCL is
5 free of obligation under the Term Sheet as it relates to stock options in that company.⁴
6

7 The Term Sheet contemplates that Jacobs would be granted stock options in SCL (then
8 referred to as ListCo) in the event there was an initial public offering (IPO) of LVSC’s Macau
9 operations. See Exhibit 1. SCL conducted its IPO in November 2009, Jacobs was granted
10 2,500,000 options in the company on July 7, 2010, and he was terminated on July 23, 2010 before
11 any of the options vested. See Mot. at 10:4 – 11:11; Reqt. at Exhs. B-C. SCL contends there can
12 be no breach of contract based on the foregoing facts because the terms and conditions of the
13 Stock Option Grant Letter state that any unvested options will lapse upon an employee’s
14 termination whether it is “for cause” or not. *Id.* This is a gross oversimplification.
15

16 SCL’s position fails to account for the fact that the Stock Option Grant Letter may not be
17 used to alter the grantee’s rights under the terms of his employment:

18 8.1 **No Rights to Employment:** The grant of Options and these Terms and
19 Conditions shall not form part of any contract of employment between the
20 Company or any subsidiary and any employee *and the rights and obligations of*
21 *any employee under the terms of his office or employment shall not be affected*
thereby

22 See Reqt. at Exh. B, p. 8 (emphasis added). In other words, the stock option grant cannot be used
23 by a grantee to claim he has an employment contract with the company when one does not
24 otherwise exist. Where, however, a grantee does have an employment agreement, its terms and
25 obligations will not be affected by the stock option grant. This is important as applied to Jacobs
26

27 ⁴ Ironically, by the end of his presentation at the hearing on LVSC’s first Motion to
28 Dismiss, LVSC’s counsel was arguing that the Term Sheet was between Jacobs and SCL: “It is a
contract between Jacobs and Listco. Listco became Sands China Limited, which became the
parent of VML, Your Honor.” See Reqt. at Exh. F, p. 41.



1 because the terms of his employment contract provide for accelerated vesting of his stock options
2 in the event he is terminated without cause, *see* Exhibit 1, which is exactly what is alleged in this
3 action.⁵

4 Jacobs contends, therefore, that the Stock Option Grant Letter—insofar as it is being relied
5 upon by SCL to defeat his entitlement to the 2,500,000 options—must be read in conjunction with
6 the Term Sheet. This is true even though the subject writings may not expressly reference each
7 other, *see Harspray v. Pasarelli*, 79 Nev. 203, 208, 380 P.2d 919, 921 (1963) (“[t]wo separate
8 writings may be sufficiently connected by internal evidence without any express words of
9 reference to one another”), were executed on different dates, and may involve different subsets of
10 the parties before the Court. *See TVT Records v. The Island Def Jam Music Group*, 412 F.3d 82,
11 89 (2d Cir. 2005) (“all writings which form a part of a single transaction and are designed to
12 effectuate the same purpose [must] be read together, even though they were executed on different
13 dates and were not all between the same parties.”) (quoting *This is Me, Inc. v. Taylor*, 157 F.3d
14 139, 143 (2d Cir. 1998) (jury was free to find that actress and Broadway producer were personally
15 liable on guarantee contract despite being non-signatories thereto where contract was read
16 together with other writings on the same subject)).

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21 ⁵ Notably, the SCL Equity Award Plan recognizes that the terms of the plan are
22 nonexclusive and that other incentive arrangements may be made:

23 **15. Nonexclusivity of the Plan**

24 Neither the adoption of this Plan by the Board nor the submission of this
25 Plan to the Shareholders of the Company for approval shall be construed as
26 creating any limitations on the power of the Board to adopt such other incentive
27 arrangements as it deems desirable, including, without limitation, the granting of
28 share options otherwise than under this Plan, and such arrangements may be
either applicable generally or only in specific cases.

Reqt. at Exh. D, p. 38. *See also, id.* at p. 16 (authorizing Remuneration Committee to accelerate
exercisability of options notwithstanding previously established vesting dates).



1 While SCL may disagree with the foregoing propositions, this is not summary judgment.
2 It is a Motion to Dismiss under NRCP 12(b)(5), and Jacobs has unquestionably plead a set of
3 facts that would entitle him to relief if ultimately accepted by the jury. *See Simpson, supra*. Even
4 if this was a summary judgment setting, questions as to whether multiple contracts should be
5 construed to be part of the same transaction and whether any party is liable for breach of the
6 contract(s) when so construed are firmly within the province of the jury. *See, e.g., TVT Records,*
7 *supra* (“[w]hether multiple writings should be construed as one agreement depends upon the
8 intent of the parties . . . an issue which is typically a question of fact for the jury.”) (internal
9 quotations omitted); *This Is Me, Inc., supra*, (reversing judgment as a matter of law); *Jack Henry*
10 *& Assoc. v. BSC, Inc.*, 2010 WL 1688757, *3 (W.D.Ky. April 23, 2010) (denying summary
11 judgment “because the issue of whether the parties intended [the agreements] to be construed
12 together as one contract is a question of fact for the jury[.]”); *Pelligrini v. Weiss*, 81 Cal.Rptr.3d
13 387, 404 (Cal. Ct. App. 2008) (“It is a question of fact whether multiple contracts are intended to
14 be elements of one transaction[.]”); *Haspray*, 79 Nev. at 209; 380 P.2d at 922 (parties “should
15 have been permitted to present evidence to show” whether two written documents were intended
16 to constitute one transaction; reversing summary judgment). In light of the foregoing, SCL’s
17 Motion to Dismiss the Second Cause of Action must be denied.
18
19
20

21 **C. The Purported Failure Of Jacobs To Allege That He Signed And Returned**
22 **The Stock Option Grant Letter Does Not Warrant Dismissal.**

23 Though SCL acknowledges that Jacobs has alleged he “performed all of his obligations
24 under the contracts except where excused,” *see* FAC at ¶ 46, it nevertheless contends that the
25 Second Cause of Action should be dismissed because Jacobs failed specifically to “allege that he
26 took the actions required by the Stock Option Grant Letter to accept the option” (*i.e.*, signed and
27 returned the letter). *See* Mot. at 11:18-26. This is nonsensical. Jacobs has alleged that he
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1 performed all contractual obligations except where excused, and the Court is bound to accept
2 those allegations as true. *See Hynds Plumbing, supra*.

3 While SCL's flawed assertion does not require further response, Jacobs would point out
4 for the sake of argument that the Stock Option Grant Letter is dated July 7, 2010 and provided
5 him with "28 days from the date of this letter" to accept the option. *See Reqt. at Exh. B, pp. 1-2*.
6 Jacobs was terminated just 16 days later on July 23, 2010—12 days *before* the 28-day time period
7 expired. It is axiomatic that "any affirmative tender of performance is excused when performance
8 has in effect been prevented by the other party to the contract." *See Cladianos v. Friedhoff*, 69
9 Nev. 41, 45, 240 P.2d 208, 210 (1952). This is a principle that should be all-too-familiar to
10 SCL's corporate parent, LVSC. *See Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v.*
11 *Las Vegas Sands, Inc.*, 244 F.3d 1152, 1160 (9th Cir. 2001) (requiring Las Vegas Sands to pay
12 accrued vacation time to terminated employees even though they may not have reached the
13 required anniversary date where failure to reach the date was excused because Sands prevented
14 employees' performance by closing their workplace) (citing *Cladianos*). Clearly, then,
15 Defendants have not learned from their past mistakes.

16
17
18 **D. Jacobs Is Entitled To Seek Damages For His Lost Stock Options Regardless**
19 **Of Whether They Vested Prior To His Termination.**

20 Not only do the express provisions of the Term Sheet entitle Jacobs to seek his lost stock
21 options in SCL so, too, do general contract principles on damages. It is hornbook law that
22 wrongfully discharged employees are entitled to seek as damages not only the wages and bonuses
23 they would have been due under the term of their employment, but also any *benefits* attendant
24 thereto. Such benefits include stock options. Thus, courts have routinely permitted wrongfully
25 discharged employees to recover the value of their lost stock options despite the existence of a
26 written stock option plan which states that any unvested options will lapse upon the employee's
27 termination.
28



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1 Instructive on this point is *Knox v. Microsoft Corp.*, 962 P.2d 839 (Wash. Ct. App. 1998),
2 *review denied*, 980 P.2d 1280 (Wash. 1999). Knox was employed as an executive with Microsoft
3 for nine years, and Microsoft awarded him stock options on several occasions during his tenure
4 with the company. *Id.* at 840. As part of each option grant, Knox signed an agreement stating
5 that his unvested stock options would lapse if his employment was terminated “for any reason.”
6 *Id.* at 840-42. After being terminated, Knox sued Microsoft for breach of contract. *Id.* at 840.
7 The lower court granted partial summary judgment in favor of Microsoft and precluded Knox
8 from seeking damages attributable to the value of his unvested stock options. *Id.* The jury
9 returned a verdict in Knox’s favor on his other damage components, and Knox appealed the
10 summary judgment ruling on the stock option issue. *Id.*

11
12 The Court of Appeals reversed. In so doing, the court turned to general contract principles
13 emanating from the seminal English common law case of *Hadley v. Baxendale*, 9 Ex. 341, 354,
14 156 Eng. Rep. 145, 151 (1854) for the proposition that a wrongfully terminated employee is
15 entitled “(1) to recover all damages that accrue naturally from the breach [of the employment
16 contract], and (2) to be put into as good a position pecuniarily as he would have been had the
17 contract been performed.” *Knox*, 962 P.2d at 841. Knox argued that he was entitled to pursue
18 damages for the cancellation of his stock options under the foregoing principle. *Id.* Microsoft did
19 not dispute this general premise, but argued that the express terms of the stock option agreements
20 barred application of the principle in Knox’s case. The *Knox* court rejected Microsoft’s position,
21 explaining:
22
23

24 Knox does not dispute that the terms of the option agreements govern the
25 cancellation and early exercise of his options—he is simply seeking the money
26 damages incurred from the cancellation and early exercise of the options, which
27 naturally flowed *from* Microsoft’s breach of his employment contract. As Knox
28 contends, such recovery is necessary to return him to the financial position he
would have been in had the initial wrongful termination not occurred.



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1 In sum, Microsoft has provided no relevant argument or authority
2 supporting its position that the stock option agreements bar recovery for damages
3 arising from the cancellation and early exercise of Knox's options in his wrongful
4 termination case. As such Microsoft has not demonstrated entitlement to
5 judgment as a matter of law on this issue.

6 *Id.* at 842-43. Other courts have likewise upheld the right of a wrongfully discharged employee
7 to recover stock options (or the value thereof) despite the existence of language in a stock option
8 agreement or plan that deems the options lost upon termination.⁶

9 Nevada has also long-endorsed the principles for measuring damages as set forth in
10 *Hadley v. Baxendale*. See, e.g., *Conner v. Southern Nevada Paving, Inc.*, 103 Nev. 353, 356, 741
11 P.2d 800, 801 (1987); *Mackay v. Western Union Telegraph Co.*, 16 Nev. 222, 226 (1881) (both
12 citing *Hadley* with approval). In short, "[c]ompensatory damages are awarded to make the
13 aggrieved party whole and, where contracts are involved, these damages should place the plaintiff
14 in the position he would have been in had the contract not been breached." *Hornwood v. Smith's*
15 *Food King No.1*, 107 Nev. 80, 84, 807 P.2d 208, 211 (1991). In order to restore Jacobs to the
16 position he would have been in had the Term Sheet not been breached and his employment not
17

18 ⁶ See, e.g., *Scully v. US Wats, Inc.*, 238 F.3d 497, 506-07 (3d Cir. 2001) (where employee
19 was wrongfully terminated, employer could not invoke provisions of stock option plan requiring
20 that options could only be exercised during "continued employment" in order to preclude
21 employee's attempted exercise of the options); *Green v. Safeway Stores, Inc.*, 210 F.3d 1237,
22 1243-45 (10th Cir. 2000) (affirming jury award of \$4.4 million in unrealized stock appreciation,
23 including \$1 million attributable to unvested options); *Hardy v. Saliva Diagnostic Sys., Inc.*, 52
24 F.Supp.2d 333, 338 (D.Conn. 1999) (upholding jury award representing value of stock options
25 employee would have received over three-year period but for employer's wrongful discharge
26 despite provisions of stock option agreement stating that options lapsed upon termination for any
27 reason); *Haft v. Dart Group Corp.*, 877 F.Supp. 896, 903 (D.Del. 1995) ("wrongful termination
28 of an employee under a fixed term contract precludes an employer from denying an employee
stock option rights."); *Williamson v. Moltech Corp.*, 690 N.Y.S.2d 628, 629 (N.Y. App. Div.
1999) (construing employee's employment contract and stock option agreement together and
agreeing with lower court that employee's stock option rights would not be terminated in the
event of a wrongful termination despite language of stock option agreement providing that
options cease upon termination); *Bertero v. National General Corp.*, 62 Cal.Rptr. 714, 726-27
(Cal. Ct. App. 1967) (where employer attempted to wrongfully terminate employee, trial court
properly ordered extension of time for employee to exercise stock options with a choice to
employer to pay damages in lieu of such extension).



1 wrongfully terminated, he must be permitted to seek his lost options in SCL or the value thereof.
2 Jacobs has alleged as much in the FAC which, for present purposes, is sufficient to defeat SCL's
3 Motion to Dismiss.

4 **III. CONCLUSION**

5
6 Based on the foregoing, Plaintiff respectfully submits that SCL's Motion to Dismiss to the
7 FAC, and the Second Cause of Action in particular, should be denied in its entirety.

8 DATED this 23rd day of May, 2011.

9 CAMPBELL & WILLIAMS

10
11 By /s/ J. Colby Williams
12 DONALD J. CAMPBELL, ESQ. (1216)
13 J. COLBY WILLIAMS, ESQ. (5549)
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20 *Steven C. Jacobs*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 23rd day of May, 2011, I served via e-mail and U.S. Mail, first
3 class postage pre-paid, a true and correct copy of the foregoing **Plaintiff's Opposition to Sands**
4 **China Ltd.'s Motion to Dismiss His Second Cause of Action (Breach of Contract)** to the
5 following counsel of record:
6

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DECLARATION OF J. COLBY WILLIAMS

STATE OF NEVADA)
).ss
COUNTY OF CLARK)

I, J. Colby Williams, subject to the penalties of perjury of the State of Nevada and the laws of the United States, hereby declare that the assertions in this Declaration are true and correct and are based on my personal knowledge.

1. I am an attorney licensed to practice law in Nevada and am one of the lawyers representing Plaintiff Steven C. Jacobs in the above-captioned matter. I make this declaration in support of Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss His Second Cause of Action (Breach of Contract) in Eighth Judicial District Court Case No. A-10-627691-C (the "Opposition").

2. I am over eighteen years old and am competent to testify in this matter if called upon to do so. The information set forth herein is based on my personal knowledge unless stated on information and belief.

3. A true and correct copy of the document styled "Steve Jacobs, Offer Terms and Conditions" (the "Term Sheet") is attached to the Opposition as Exhibit 1. A true and correct copy of the Term Sheet was previously provided to the Court as Exhibit 13 to Plaintiff's Opposition to Las Vegas Sands Corp.'s Motion to Dismiss Pursuant to NRCP 12(B)(6) and 19 for Failure to Join an Indispensable Party (filed 2/09/11).

4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 23rd day of May, 2011.

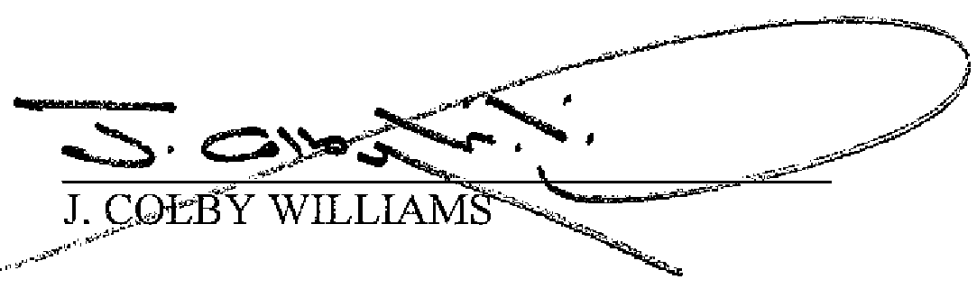

J. COLBY WILLIAMS



EXHIBIT 1

EXHIBIT 1

Steve Jacobs
Offer Terms and Conditions

1. Position: President and CEO Macau, listed company (ListCo)
 - a. Reporting into President and COO LVS or CEO/Chairman LVS
 - b. All staff to be direct reports, including EVP/President, Asia Development
2. Term: 3 years
3. Base Salary and Annual Bonus
 - a. 1.3 M base (USD)
 - b. 50% bonus
 - i. 25% Achieving annual EBITDAR Performance as submitted and approved by the BOD for Macau
 - ii. 25% Individual Objectives to be mutually agreed on an annual basis
4. Equity
 - a. 500,000 options in LVS to be granted date of hire at FMV. Should there be an IPO of Macau, LVS options to be converted at IPO into sufficient numbers of ListCo options such that the aggregate FMV of ListCo at the IPO list price is equal to the aggregate FMV of the LVS stock being converted. Conversion to be tax free.
 - b. Vesting
 - i. 250,000 shares vest Jan 1, 2010
 - ii. 125,000 shares vest Jan 1, 2011
 - iii. 125,000 shares vest Jan 1, 2012
5. Expat package
 - a. 10,000 one time fee to cover moving expense from Atlanta to HK
 - b. Housing Allowance: 12,000 per month, company pays deposits (if required)
 - c. Repatriation: Business airfare for employee and dependants, one 20 foot container, company to pay termination fees (if any)
 - d. Employee agrees to apply for Full Time Resident Status.
6. Expense reimbursement/ Business Travel
 - a. Full reimbursement of expenses necessary to conduct business and in keeping with company and IRS policy
 - b. Business travel: Business class or above subject to prevailing company policy
7. Employee Benefit Plan: Participation in any established plan(s) for senior executives
8. Vacation and Holidays: 4 weeks per annum, with right to carry over should business demands prevent use
9. Change of Control: Provision to accelerate vest and terminate not for cause should Sheldon or Miri not be in control of company
10. Termination:
 - a. For Cause – Standard Language
 - b. Not For Cause – 1 Year severance, accelerated vest. Right to exercise for 1 year post termination.

oh
Amber
8/3/09

A-10-627691-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

May 26, 2011

A-10-627691-B Steven Jacobs, Plaintiff(s)
vs.
Las Vegas Sands Corp, Defendant(s)

May 26, 2011 9:00 AM Motion to Stay

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Damedia Scott

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Campbell, Donald Jude	Attorney
	Krum, Mark G.	Attorney
	Morris, Steve L.	Attorney
	Peek, J. Stephen	Attorney
	Williams, J. Colby	Attorney

JOURNAL ENTRIES

- After arguments by counsel, COURT STATED ITS FINDINGS AND ORDERED, Motion DENIED WITHOUT PREJUDICE.

PRINT DATE: 05/31/2011

Page 1 of 1

Minutes Date: May 26, 2011

SA0262

A-10-627691-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

June 09, 2011

A-10-627691-B	Steven Jacobs, Plaintiff(s)
	vs.
	Las Vegas Sands Corp, Defendant(s)

June 09, 2011 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Sandra Harrell

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Campbell, Donald	Attorney
	Jude	
	Glaser, Patricia	Attorney
	Jacobs, Steven C	Plaintiff
		Counter
		Defendant
	Morris, Steve L.	Attorney
	Peek, J. Stephen	Attorney
	Williams, J. Colby	Attorney

JOURNAL ENTRIES

- STATUS CHECK: TRIAL SETTING...DEFENDANT SANDS CHINA LTD.'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM...DEFENDANT SANDS CHINA LTD.'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM...DEFENDANT LAS VEGAS SAND'S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5)...MOTION TO DISMISS ON BEHALF OF SHELDON ADELSON

Mr. David Fleming also present via video conference.

MOTION TO DISMISS ON BEHALF OF SHELDON ADELSON:

Argument by Mr. Morris regarding defamation claim. Argument by Mr. Campbell. COURT

PRINT DATE: 06/15/2011

Page 1 of 3

Minutes Date: June 09, 2011

SA0263

NOTED, paragraph 62 of amended complaint is basis for 5th cause of action which sights only one statement alleged defamatory (statement to Wall Street Journal). COURT FINDS, single statement absolutely privileged as it relates to the litigation. FURTHER, Nevada Supreme Court decision in Clark County School District v. Virtual Education Software Inc. provides for Court to make legal determination as to application of privilege and for purposes of single statement briefed today, COURT ORDERED, Motion to Dismiss is GRANTED. Court will issue 54b certification regarding Mr. Adelson. Mr. Morris to prepare Order and circulate to counsel for approval as to form and content.

DEFENDANT SANDS CHINA LTD.'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM:

COURT NOTED, it does not typically take judicial notice of anything not already in this court or another court's file, therefore, DECLINES to take judicial notice of Exhibit H of proposed documents (newspaper article).

DEFENDANT SANDS CHINA LTD.'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM:

Argument by Ms. Glaser regarding second claim of breach of contract. Copy of charts used during argument, marked as Court's Exhibits 1 and 2. Argument by Mr. Williams. COURT FINDS, because this is a motion to dismiss, Court cannot make determination today, issue should be renewed on motion for summary judgment, not at motion to dismiss stage.

Ms. Glaser advised she will be filing motion for summary adjudication. Ms. Glaser further advised of privacy act in Macau requiring documents be viewed in Macau and have begun process. Further, documents not allowed to leave Macau, must have stipulation and Court order to remove documents to bring to this litigation. COURT NOTED, will deal with when happens, however, COURT SUGGESTED filing protective order soon.

Upon Court's inquiry, counsel stated ESI search almost worked out. COURT ORDERED, matter SET for Conference Call tomorrow 6/10/11 @ 2:00 pm to verify. Mr. Jones in charge of conference call.

STATUS CHECK: TRIAL SETTING:

Colloquy regarding trial dates. COURT ORDERED, matter SET for Trial.

6/10/11 2:00 PM CONFERENCE CALL: STATUS OF ESI SEARCH

6/1/12 9:00 AM PRE TRIAL CONFERENCE

6/21/12 9:15 AM CALENDAR CALL

6/25/12 1:30 PM JURY TRIAL

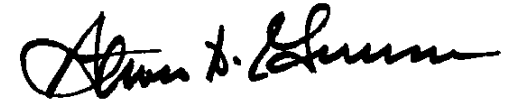
A-10-627691-B

PRINT DATE: 06/15/2011

Page 3 of 3

Minutes Date: June 09, 2011

SA0265



CLERK OF THE COURT

1 NOAS
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11 *Attorneys for Plaintiff*
12 *Steven C. Jacobs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 STEVEN C. JACOBS,
16
17 Plaintiff,

18 vs.

19 LAS VEGAS SANDS CORP., a Nevada
20 corporation; SANDS CHINA LTD., a Cayman
21 Islands corporation; SHELDON G. ADELSON,
22 in his individual and representative capacity;
23 DOES I through X; and ROE CORPORATIONS
24 I through X,

25 Defendants.

) CASE NO. A-10-627691-C
) DEPT. NO. XI
)
)
)

26 **NOTICE OF APPEAL**

27 NOTICE is hereby given that Plaintiff Steven C. Jacobs hereby appeals to the Supreme
28 Court of Nevada from the Orders Granting Motion to Dismiss and Directing Entry of Final
Judgment in Favor of Sheldon G. Adelson [NRCP 54(b)], which was entered in this action on the



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& WILLIAMS
ATTORNEYS AT LAW

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LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
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1 20th day of June, 2011.

2 DATED this 1st day of July, 2011.

3 Respectfully submitted,

4 CAMPBELL & WILLIAMS

5 By /s/ J. Colby Williams

6 DONALD J. CAMPBELL, ESQ. (#1216)

7 J. COLBY WILLIAMS, ESQ. (#5549)

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 1st day of July, 2011, I served via e-mail and U.S. Mail, first
3 class postage pre-paid, a true and correct copy of the foregoing **Notice of Appeal** to the following
4 counsel of record:

5
6 Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLP
7 Patricia Glaser, Esq.
8 Stephen Ma, Esq.
9 3763 Howard Hughes Parkway, Suite 300
10 Las Vegas, NV 89169
11 E-Mail: pglasser@glaserweil.com
12 mkrum@glaserweil.com

13 *Attorneys for Defendant Sands China Ltd.*

14
15 Holland & Hart, LLP
16 J. Stephen Peek, Esq.
17 Justin C. Jones, Esq.
18 3800 Howard Hughes Parkway, 10th Fl.
19 Las Vegas, NV 89169
20 E-Mail: speek@hollandhart.com
21 jcjones@hollandhart.com

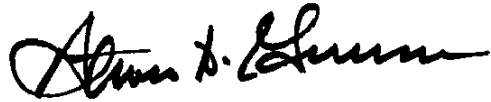
22 *Attorneys for Defendant Las Vegas Sands Corp.*

23
24 Steve Morris, Esq.
25 Morris Peterson
26 300 South Fourth Street, #900
27 Las Vegas, Nevada 89169
28 E-Mail: SM@morrislawgroup.com

Attorneys for Sheldon G. Adelson

s/Lucinda Martinez





CLERK OF THE COURT

1 **ORDR**
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12 *Steven C. Jacobs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 STEVEN C. JACOBS,)	CASE NO. A-10-627691-C
16	)	DEPT. NO. XI
17 Plaintiff,)	
18)	
19 vs.)	
20)	
21 LAS VEGAS SANDS CORP., a Nevada	)	ORDER DENYING DEFENDANT
22 corporation; SANDS CHINA LTD., a Cayman	)	SANDS CHINA LTD.'S MOTION
23 Islands corporation; SHELDON G. ADELSON,	)	TO DISMISS PLAINTIFF'S
24 in his individual and representative capacity;	)	SECOND CAUSE OF ACTION
25 DOES I through X; and ROE CORPORATIONS)	
26 I through X,)	
27	)	Hearing Date: June 9, 2011
28 Defendants.	)	Hearing Time: 9:00 a.m.

21 Defendant Sands China Ltd.'s Motion to Dismiss Plaintiff's Second Cause of Action was
22 heard on June 9, 2011; Plaintiff Steven C. Jacobs having been represented by Donald J. Campbell,
23 Esq. and J. Colby Williams, Esq.; Defendant Las Vegas Sands Corp. having been represented by
24 Stephen J. Peek, Esq.; Defendant Sands China, Ltd. ("Sands China") having been represented by
25 Patricia Glaser, Esq.; Defendant Sheldon G. Adelson having been represented by Steve Morris, Esq.;
26 and the Court having considered all of the papers and pleadings on file herein as well as the oral
27 argument of the parties, hereby enters the following Order:
28



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07-01-11P02:30 RCVD


1 Based on the standards applicable to Rule 12(b)(5) motions, the Court finds that Plaintiff's
2 Second Cause of Action states a claim upon which relief can be granted. Accordingly, Sands
3 China's Motion to Dismiss the Second Cause of Action is DENIED.

4 DATED this 5th day of July 2011.

5
6 
DISTRICT COURT JUDGE

7 Submitted by:

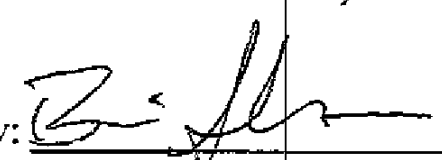
8 CAMPBELL & WILLIAMS

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15 *Steven C. Jacobs*


16 Approved as to form:

17 HOLLAND & HART, LLP

18
19 By:  (NBN 10500)
20 STEPHEN J. PEEK, ESQ. (#1758)
21 JUSTIN C. JONES, ESQ. (#8519)
22 3800 Howard Hughes Pkwy., 10th Fl.
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23 *Attorney for Defendant*
Las Vegas Sands Corp.

GLASER, WEIL, FINK, JACOBS
HOWARD & SHAPIRO, LLP

24 By: 
25 PATRICIA GLASER, ESQ. (*pro hac*)
26 ANDREW SEDLOCK, ESQ. (#9183)
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1 Based on the standards applicable to Rule 12(b)(5) motions, the Court finds that Plaintiff's
2 Second Cause of Action states a claim upon which relief can be granted. Accordingly, Sands
3 China's Motion to Dismiss the Second Cause of Action is DENIED.

4 DATED this ____ day of June, 2011.

5
6 DISTRICT COURT JUDGE

7 Submitted by:

8 CAMPBELL & WILLIAMS

9
10 By: 

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24 *Las Vegas Sands Corp.*

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10
11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 STEVEN C. JACOBS,
14
Plaintiff,

15 v.

16 LAS VEGAS SANDS CORP., a Nevada
17 corporation; SANDS CHINA LTD., a Cayman
Island corporation; DOES I through X; and
18 ROE CORPORATIONS I through X,
19 Defendants.

) Case No.: A-10-627691-C

) Dept. No.: XI

) DEFENDANT SANDS CHINA LTD.'S
) ANSWER TO PLAINTIFF'S FIRST
) AMENDED COMPLAINT

20
21
22 Defendant SANDS CHINA LTD. ("SCL" or "Defendant"), by and through its counsel of
23 record, GLASER WEIL FINK JACOBS Howard, Avchen & Shapiro LLP, hereby answers the
24 allegations as set forth in Plaintiff Steven C. Jacobs' ("Jacobs" or "Plaintiff") First Amended
25 Complaint (the "FAC") as follows:
26

27 ///

28

PARTIES

1. Answering Paragraph 1 of the FAC, SCL lacks sufficient knowledge to either admit or deny the allegations contained therein and, therefore, denies the same.

2. SCL admits the allegations in Paragraph 2 of the FAC.

3. Answering Paragraph 3 of the FAC, SCL admits that it is a Cayman Islands corporation and that Venetian Macau Limited ("VML"), is the holder of a subconcession granted by the Macau government. SCL denies the remaining allegations in Paragraph 3 of the FAC.

4. Answering Paragraph 4 of the FAC, SCL admits that Sheldon G. Adelson ("Adelson") is a citizen of Nevada, that Adelson is the Chairman of the Board and Chief Executive Officer of Las Vegas Sands Corp. ("LVSC"), and that Adelson is the Chairman of the Board of SCL.

5. Answering Paragraph 5 of the FAC, SCL lacks sufficient knowledge to either admit or deny the allegations contained therein and, therefore, denies the same.

6. SCL denies the allegations in Paragraph 6 of the FAC.

JURISDICTION AND VENUE

7. SCL denies the allegations in Paragraph 7 of the FAC.

8. SCL denies the allegations in Paragraph 8 of the FAC.

ALLEGATIONS COMMON TO ALL COUNTS

9. SCL denies the allegations in Paragraph 9 of the FAC.

10. SCL denies the allegations in Paragraph 10 of the FAC.

11. SCL admits the allegations in Paragraph 11 of the FAC.

12. SCL denies the allegations in Paragraph 12 of the FAC.

13. SCL denies the allegations in Paragraph 13 of the FAC.

14. SCL denies the allegations in Paragraph 14 of the FAC.

15. SCL denies the allegations in Paragraph 15 of the FAC.

16. SCL denies the allegations in Paragraph 16 of the FAC.

17. SCL denies the allegations in Paragraph 17 of the FAC.

18. SCL denies the allegations in Paragraph 18 of the FAC.

19. SCL denies the allegations in Paragraph 19 of the FAC.
20. SCL denies the allegations in Paragraph 20 of the FAC.
21. SCL denies the allegations in Paragraph 21 of the FAC.
22. SCL denies the allegations in Paragraph 22 of the FAC.
23. SCL denies the allegations in Paragraph 23 of the FAC.
24. SCL denies the allegations in Paragraph 24 of the FAC.
25. SCL denies the allegations in Paragraph 25 of the FAC.
26. SCL denies the allegations in Paragraph 26 of the FAC.
27. SCL denies the allegations in Paragraph 27 of the FAC.
28. SCL denies the allegations in Paragraph 28 of the FAC.
29. SCL denies the allegations in Paragraph 29 of the FAC.
30. SCL denies the allegations in Paragraph 30 of the FAC.
31. SCL denies the allegations in Paragraph 31 of the FAC.
32. SCL denies the allegations in Paragraph 32 of the FAC.
33. SCL denies the allegations in Paragraph 33 of the FAC.
34. SCL denies the allegations in Paragraph 34 of the FAC.

FIRST CAUSE OF ACTION

(Breach of Contract - LVSC)

35. SCL repeats and realleges each and every response contained in Paragraphs 1 through 34 and incorporates them as though fully set forth herein.

36. SCL denies the allegations in Paragraph 36 of the FAC.
37. SCL denies the allegations in Paragraph 37 of the FAC.
38. SCL denies the allegations in Paragraph 38 of the FAC.
39. SCL denies the allegations in Paragraph 39 of the FAC.
40. SCL denies the allegations in Paragraph 40 of the FAC.
41. SCL denies the allegations in Paragraph 41 of the FAC.
42. SCL denies the allegations in Paragraph 42 of the FAC.

SECOND CAUSE OF ACTION

(Breach of Contract – LVSC and SCL)

43. SCL repeats and realleges each and every response contained in Paragraphs 1 through 42 and incorporates them as though fully set forth herein.

44. SCL denies the allegations in Paragraph 44 of the FAC.

45. SCL denies the allegations in Paragraph 45 of the FAC.

46. SCL denies the allegations in Paragraph 46 of the FAC.

47. SCL denies the allegations in Paragraph 47 of the FAC.

48. SCL denies the allegations in Paragraph 48 of the FAC.

THIRD CAUSE OF ACTION

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

49. SCL repeats and realleges each and every response contained in Paragraphs 1 through 48 and incorporates them as though fully set forth herein.

50. SCL denies the allegations in Paragraph 50 of the FAC.

51. SCL denies the allegations in Paragraph 51 of the FAC.

52. SCL denies the allegations in Paragraph 52 of the FAC.

FOURTH CAUSE OF ACTION

(Tortious Discharge in Violation of Public Policy - LVSC)

53. SCL repeats and realleges each and every response contained in Paragraphs 1 through 52 and incorporates them as though fully set forth herein.

54. SCL denies the allegations in Paragraph 54 of the FAC.

55. SCL denies the allegations in Paragraph 55 of the FAC.

56. SCL denies the allegations in Paragraph 56 of the FAC.

57. SCL denies the allegations in Paragraph 57 of the FAC.

58. SCL denies the allegations in Paragraph 58 of the FAC.

///

///

SCL'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claimed are barred by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claimed are barred by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

Defendant's actions were not the proximate cause of Plaintiff's alleged damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of election of remedies.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of accord and satisfaction.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join an indispensable party to this action.

ELEVENTH AFFIRMATIVE DEFENSE

SCL is not a party to the Term Sheet, and therefore is not a proper party to Plaintiff's breach of contract claim.

TWELFTH AFFIRMATIVE DEFENSE

Any recovery by Plaintiff must be set off or reduced, abated, or apportioned to the extent that any other party's actions caused or contributed to damages awarded to Plaintiff

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred for want or lack of consideration.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff has suffered no damages herein and is seeking to obtain a windfall from this answering Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages herein are excessive, duplicative and/or unconscionable.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to plead any alleged acts or omissions of this answering Defendant sufficient to warrant the consideration of general, special, or compensatory damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff has been paid all amounts due, if any, owed by this answering Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant is not subject to the personal jurisdiction of this Court.

NINETEENTH AFFIRMATIVE DEFENSE

At all times, Defendant acted in good faith.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendant related to a breach of contract fail because no contract exists between Plaintiff and Defendant, or such contract is unenforceable due to Plaintiff's failure to manifest his acceptance of such contract or provide consideration.

TWENTY FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendant related to a breach of contract fail because, to the extent a contract exists, Plaintiff is not entitled to the damages set forth in his Complaint pursuant to the terms of the contract between Plaintiff and Defendant.

TWENTY SECOND AFFIRMATIVE DEFENSE

There is no basis for recovery of costs, attorney's fees or punitive damages by Plaintiff for its defamation claim against SCL.

TWENTY THIRD AFFIRMATIVE DEFENSE

Pursuant to NRCP Rule 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry upon the filing of the Plaintiff's First Amended Complaint and Defendant's Answer to Plaintiff's First Amended Complaint; therefore, Defendant reserves the right to amend this Answer to add additional affirmative defenses as additional facts are discovered.

WHEREFORE, Defendant respectfully requests the following ruling with respect to Plaintiff's claims in the First Amended Complaint on file herein:

1. That Plaintiff's claims against Defendant be dismissed for lack of personal jurisdiction over Defendant;
2. That judgment be entered in favor of this answering Defendant;
2. That Plaintiff's claims against this answering Defendant be dismissed with prejudice;
3. That Defendant be awarded all reasonable attorney's fees and costs expended by Defendant in defending against Plaintiff's claims in this matter;
4. For such other and further relief as the Court deems just and proper.

DATED this 8 day of July, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: _____

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Nevada Bar No. 9183
Stephen Ma, Esq.
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Las Vegas, Nevada 89169

Attorneys for Sands China Ltd.

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD
AVCHEN SHAPIRO LLP and on the 30 day of July, 2011, I deposited a true and correct copy of
the foregoing **DEFENDANT SANDS CHINA LTD.'S ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT** by U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which
first class postage was prepaid and addressed to:

J. Stephen Peek, Esq.
Justin C. Jones, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 S. 7th Street
Las Vegas, NV 89101



An Employee of GLASER, WEIL, FINK
HOWARD AVCHEN & SHAPIRO LLP

Details of filing titled:
Defendant Sands China Ltd.'s Answer To Plai...
for Case Number A627691

E-File ID:	1910218
Lead File Size:	451514 bytes
Date Filed:	2011-07-08 16:02:46.0
Case Title:	A627691
Case Name:	A627691 - Steven Jacobs, Plaintiff(s) vs. Las Vegas Sands Corp, Defendant(s)
Filing Title:	Defendant Sands China Ltd.'s Answer To Plaintiff's First Amended Complaint
Filing Type:	EFO
Filer's Name:	Lance Coburn
Filer's Email:	rcarlos@chrisglase.com
Account Name:	gwfjhs draw down
Filing Code:	ANAC
Amount:	\$ 3.50
Court Fee:	\$ 223.00
Card Fee:	\$ 0.00
Comments:	
Courtesy Copies:	ddudas@glaserweil.com; asedlock@glaserweil.com; pglaser@glaserweil.com; sma@glaserweil.com
Firm Name:	Christensen Glaser et. al.
Your File Number:	06133-001
Status:	Submitted - (I)
Date Accepted:	
Review Comments:	
Reviewer:	
File Stamped Copy:	
Cover Document:	
Lead Document:	SANDS CHINA---Answer to First Amended Complaint.pdf 451514 bytes
Data Reference ID:	



SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
TRACIE K. LINDEMAN, CLERK
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

Telephone
(775) 684-1600

August 26, 2011

Andrew Sedlock
Glaser, Weil, Fink, Jacobs,
Howard, Avchen & Shapiro, LLC
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169

Re: Sands China LTD vs. District Court, No. 58294
District Court Case No. A-10-627691-C

Dear Mr. Sedlock:

Enclosed please find the original and one copy of the Writ of Mandamus and one copy of the order for service upon Judge Elizabeth Goff Gonzalez. Please return the original writ with proof of service attached thereto.

Copies of the writ and order are enclosed for your files.

Sincerely,

Tracie K. Lindeman
Clerk of Court

TKL:lp
Enclosures
cc w/enclosures (writ & order):
Campbell & Williams
Eighth District Court

11-26110

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,

No. 58294

vs.

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

WRIT OF MANDAMUS

TO: The Honorable Elizabeth Goff Gonzalez, Judge of the Eighth
Judicial District Court:

WHEREAS, this Court having made and filed its written decision
that a writ of mandamus issue,

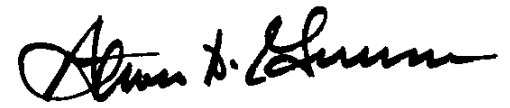
NOW, THEREFORE, you are instructed to hold an evidentiary
hearing on personal jurisdiction, to issue findings of act and conclusions of
law stating the basis for your decision following that hearing and to stay
the action as set forth in the order until after entry of your personal
jurisdiction decision, in the case entitled Steve C. Jacobs vs. Las Vegas
Sands Corp., case no. A-10-627691-C.

WITNESS The Honorables Nancy M. Saitta, James W. Hardesty
and Ron Parraguirre, Associate Justices of the Supreme Court of the State
of Nevada, and attested by my hand and seal this 26th day of August,
2011.



Marie L. Under

Supreme Court Clerk



CLERK OF THE COURT

MOT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF'S MOTION TO CONDUCT
JURISDICTIONAL DISCOVERY**

AND RELATED CLAIMS

Based upon writ relief sought by Defendant Sands China, Ltd. ("Sands China") contesting jurisdiction, the Nevada Supreme Court has directed this Court to hold an evidentiary hearing concerning this Court's jurisdiction over Sands China. In anticipation of that hearing, Plaintiff Steven Jacobs ("Jacobs") seeks jurisdictional discovery so as to forestall any claims by Sands China that the evidence of its pervasive contacts with the State of Nevada are somehow lacking or incomplete. Jacobs has already shown this Court that there is more than good reason to believe that Sands China is subject to general jurisdiction here. Because Sands China could not plausibly (and does not even try to) claim that Jacobs' assertion of personal jurisdiction over Sands China is

1 clearly frivolous, the cases are legion in holding that Jacobs is entitled to conduct expedited
2 jurisdictional discovery in anticipation of the evidentiary hearing.

3 This Motion is based on the attached Memorandum of Points and Authorities and any
4 additional argument this Court chooses to consider.

5 DATED this 21st day of September, 2011.

6 PISANELLI BICE PLLC

7
8 By: /s/ James J. Pisanelli
9 James J. Pisanelli, Esq., Bar No. 4027
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14 Attorneys for Plaintiff Steven C. Jacobs

15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE that the undersigned counsel will appear at Clark County
17 Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 2⁵ day of
18 Oct, 2011, at 9 a.m., in Department XI, or as soon thereafter as counsel may be
19 heard, to bring this **MOTION TO CONDUCT JURISDICTIONAL DISCOVERY** on for
20 hearing.

21 DATED this 21st day of September, 2011.

22 PISANELLI BICE PLLC

23 By: /s/ James J. Pisanelli
24 James J. Pisanelli, Esq., Bar No. 4027
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Attorneys for Plaintiff Steven C. Jacobs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Jacobs will not burden this Court with a full recitation of the facts leading up to this Motion. It suffices to note that Sands China objects to personal jurisdiction in the State of Nevada and convinced the Nevada Supreme Court that an evidentiary hearing concerning the scope of its contacts with this State is warranted. Having fought for such an evidentiary proceeding, Sands China cannot seriously object to expedited jurisdictional discovery which will allow Jacobs to meet his burden and establish a record of Sands China's systematic and pervasive contacts within this State.

Sands China's apparent belief that Jacobs and this Court are limited to whatever evidence they presently possess concerning Sands China's contacts is plainly without merit. Court after court holds that when a defendant seeks an early dismissal on grounds of personal jurisdiction, and the assertion of jurisdiction is not clearly frivolous, then the plaintiff is entitled to conduct jurisdictional discovery prior to any consideration of the jurisdictional objection. And here, Jacobs' claim of personal jurisdiction over Sands China is anything but frivolous.

II. ANALYSIS

Under NRCP 26(a), this Court may order the taking of discovery prior to the filing of a joint case conference report. One of the most oft-cited reasons for permitting early discovery is when a defendant contests a court's personal jurisdiction. The showing needed for a plaintiff to obtain such discovery is quite minimal. All that this Court must conclude to trigger Jacobs' right to such discovery is that his claim of jurisdiction does not appear to be clearly frivolous:

We have explained that if "the plaintiff's claim is not clearly frivolous [as to the basis for personal jurisdiction] - the district court should ordinarily allow discovery on jurisdiction in order to aid the plaintiff in discharging' [his or her] burden".

Metcalf v. Renaissance Marine, Inc., 566 F.3d 324, 336 (3d Cir. 2009) (citations omitted) ("Furthermore, we have found jurisdictional discovery particularly appropriate where the defendant is a corporation."); *Pat Clark Sports, Inc. v. Champion Trailers, Inc.*, 487 F. Supp. 2d 1172, 1179 (D. Nev. 2007) (unless it is clearly shown that discovery will not produce evidence of

1 facts supporting jurisdiction, "court ordinarily should grant discovery regarding jurisdiction where
2 the parties dispute pertinent facts varying on the question of jurisdiction or more facts are
3 needed.").

4 Indeed, while he has already done so, Jacobs need not establish a *prima facie* case of
5 personal jurisdiction in order to obtain discovery. Rather, all he need show is a "colorable basis"
6 for jurisdiction or "some evidence" for believing that jurisdiction exists. *Calix Networks, Inc. v.*
7 *Wi-LAN, Inc.*, 2010 WL 3515759 *4 (N.D. Cal. Sept. 8, 2010); *PowerStation, LLC v. Sorenson*
8 *Research & Dev. Trust*, 2008 WL 5431165, at *2 (D. S.C. Dec. 31, 2008) (where plaintiff offered
9 more than mere speculation and conclusory assertions, jurisdictional discovery warranted as it
10 will "aid this court in determining whether personal jurisdiction exists . . .").

11 Courts recognize that the failure to afford the plaintiff jurisdictional discovery when it
12 appears that claims of jurisdiction are not clearly frivolous constitutes an abuse of discretion. *See,*
13 *e.g., Nuance Cmmcn's, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1237 (Fed. Cir. 2010
14 (reversing district court for "failure to grant plaintiff jurisdictional discovery because such
15 discovery should ordinarily be granted where the facts bearing upon question of jurisdiction are in
16 dispute"); *Patent Rights Protection Group v. Video Game Tech., Inc.*, 603 F.3d 1354, 1372 (Fed.
17 Cir. 2010) (reversing because plaintiff's request for jurisdictional discovery was not based on a
18 mere hunch and thus "discovery may unearth facts sufficient to support the exercise of personal
19 jurisdiction over one or both of the companies."); *Laub v. U.S. Dept. of Interior*, 342 F.3d 1080,
20 1093 (9th Cir. 2003) (district court abused discretion by refusing to grant jurisdictional discovery
21 since such discovery should ordinarily be granted when the jurisdictional facts are contested);
22 *Central States, Se & Sw Area Extension Fund v. Phencorp Reinsurance Co.*, 440 F.3d 870, 877-
23 78 (7th Cir. 2006) (finding that district court erred in denying jurisdictional discovery for claims
24 of general jurisdiction, explaining that "it is not surprising that [the plaintiff] can do little more
25 than suggest" certain minimum contacts given the denial of jurisdictional discovery); *Bower v.*
26 *Wurzburg*, 501 S.E.2d 479, 488 (W.Va. 1998) ("We believe that it is inequitable to require a
27 plaintiff to come forward with 'proper evidence detailing specific facts demonstrating' personal
28

1 jurisdiction, yet deny him or her access to reasonable jurisdiction discovery through which such
2 evidence may be obtained, particularly in a complex case such as this one.").

3 Contrary to Sands China's wishes, the law overwhelmingly supports Jacobs' right to
4 engage in jurisdictional discovery so as to rebut Sands China's attempt at an early exit from this
5 case. Thus, consistent with these numerous authorities, Jacobs requests expedited discovery on
6 the following categories in order to obtain evidence and prepare for this Court's scheduled
7 evidentiary hearing:

8 1. The deposition of Michael A. Leven ("Leven"), a Nevada resident, who
9 simultaneously served as President and COO of Las Vegas Sands Corp. ("LVSC") and CEO of
10 Sands China (among other titles);

11 2. The deposition of Sheldon G. Adelson ("Adelson"), a Nevada resident, who
12 simultaneously served as Chairman of the Board of Directors and CEO of LVSC and Chairman of
13 the Board of Directors of Sands China;

14 3. The deposition of Kenneth J. Kay ("Kay"), upon information and belief a Nevada
15 resident, and LVSC's Executive Vice President and CFO, who, upon information and belief,
16 participated in the funding efforts for Sands China;

17 4. The deposition of Robert G. Goldstein ("Goldstein"), a Nevada resident, and
18 LVSC's President of Global Gaming Operations, who, upon information and belief, actively
19 participates in international marketing and development for Sands China;

20 5. The deposition of an NRCP 30(b)(6) deponent in the event that the above
21 witnesses claim a lack of memory or knowledge concerning activities within their authority;

22 6. Documents that will establish the date, time, and location of each Sands China
23 Board meeting (including the meeting held on April 14, 2010, at 9:00 a.m. Macau Time/April 13,
24 2010, at 6:00 p.m. Las Vegas time), the location of each Board member, and how they
25 participated in the meeting;

1 7. Documents that reflect the travels to and from Macau/China/Hong Kong by
2 Adelson, Leven, Goldstein, and/or any other LVSC's executive for any Sands China related
3 business (including, but not limited to, flight logs, travel itineraries);

4 8. The calendars of Adelson, Leven, Goldstein, and/or any other LVSC executive
5 who has had meetings related to Sands China, provided services on behalf of Sands China, and/or
6 travelled to Macau/China/Hong Kong for Sands China business;

7 9. Documents and/or communications related to Michael Leven's service as CEO of
8 Sands China and/or the Executive Director of Sands China Board of Directors without payment,
9 as reported to Hong Kong securities agencies;

10 10. All documents that reflect that the negotiation and execution of the agreements for
11 the funding of Sands China occurred, in whole or in part, in Nevada;

12 11. All contracts/agreements that Sands China entered into with entities based in or
13 doing business in Nevada, including, but not limited to, any agreements with BASE
14 Entertainment and Bally Technologies, Inc.;

15 12. All documents that reflect global gaming and/or international player development
16 efforts, including efforts lead by Rob Goldstein who, upon information and belief, oversees the
17 active recruitment of VIP players to share between and among LVSC and Sands China properties,
18 player funding, and the transfer of player funds.

19 13. All agreements for shared services between and among LVSC and Sands China or
20 any of its subsidiaries, including, but not limited to, (1) procurement services agreements;
21 (2) agreements for the sharing of private jets owned or made available by LVSC; and
22 (3) trademark license agreements;

23 14. All documents that reflect the flow of money/funds from Macau to LVSC,
24 including, but not limited to, (1) the physical couriering of money from Macau to Las Vegas; and
25 (2) the Affiliate Transfer Advice ("ATA"), including all documents that explain the ATA system,
26 its purpose, how it operates, and that reflect the actual transfer of funds;

1 15. All documents, memoranda, emails, and/or other correspondence that reflect
2 services performed by LVSC (including LVSC's executives) on behalf of Sands China, including,
3 but not limited to the following areas: (1) site design and development oversight of
4 Parcels 5 and 6; (2) recruitment and interviewing of potential Sands China executives; (3)
5 marketing of Sands China properties, including hiring of outside consultants; (4) negotiation of a
6 possible joint venture between Sands China and Harrah's; and/or (5) the negotiation of the sale of
7 Sands China's interest in sites to Stanley Ho's company, SJM;

8 16. All documents that reflect work performed on behalf of Sands China in Nevada,
9 including, but not limited, documents that reflect communications with BASE Entertainment,
10 Cirque de Soleil, Bally Technologies, Inc., Harrah's, potential lenders for the underwriting of
11 Parcels 5 and 6, located in the Cotai Strip, Macau, and site designers, developers, and specialists
12 for Parcels 5 and 6;

13 17. All documents, including financial records and back-up, used to calculate any
14 management fees and/or incorporate company transfers for services performed and/or provided by
15 LVSC to Sands China, including who performed the services and where those services were
16 performed and/or provided, during the time period where there existed any formal or informal
17 shared services agreement;

18 18. All documents that reflect reimbursements made to any LVSC executive for work
19 performed or services provided related to Sands China;

20 19. All documents that Sands China provided to Nevada gaming regulators; and

21 20. The telephone records for cellular telephones and landlines used by Adelson,
22 Leven, and Goldstein that indicate telephone communications each had with or on behalf of Sands
23 China.

1 **III. CONCLUSION**

2 The law affords Jacobs the right to conduct jurisdictional discovery in order to meet his
3 burden of establish Sands China's systematic and pervasive contacts with the State of Nevada. In
4 seeking to obtain a hasty dismissal of this case on jurisdictional grounds, Sands China cannot be
5 heard to protest such discovery: Sands China has placed its contacts with the State of Nevada
6 squarely at issue.

7 DATED this 21st day of September, 2011.

8 PISANELLI BICE PLLC

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16 Attorneys for Plaintiff Steven C. Jacobs
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 21st day of September, 2011, I caused to be sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing **PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY** properly addressed to the following:

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

17 SANDS CHINA LTD.,
18
19 Petitioner,
20
21 vs.

22 THE EIGHTH JUDICIAL DISTRICT
23 COURT OF THE STATE OF
24 NEVADA, IN AND FOR THE
25 COUNTY OF CLARK; AND THE
26 HONORABLE ELIZABETH GOFF
27 GONZALEZ, DISTRICT COURT,
28
29 Respondent,
30
31 and
32
33 STEVEN C. JACOBS.
34
35 Real Party in Interest

Sup. Ct. Case No. 58294

District Court Case No.
A-10-627691

**REAL PARTY IN INTEREST,
STEVEN C. JACOBS' RESPONSE
TO MOTION TO RECALL
MANDATE AND
COUNTERMOTION
REGARDING SAME**

Electronically Filed
Feb 07 2014 02:18 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 **I. INTRODUCTION**

2 Providing no legal standard as the movant, Petitioner Sands China Ltd.
3 ("Sands China") seeks to recall a writ of mandamus issued over two years ago,
4 asserting that a change in law has rendered evidence as to its actual contacts with
5 Nevada irrelevant. If that were true, which it is not, of course, Sands China would
6 presumably so move the district court, where its position could be vetted in the
7 context of the full record. Its refusal to do so is telling indeed.

8 Beyond improperly seeking to evade the district court and the evidence,
9 Sands China also exaggerates the case to which it clings – *Daimler AG v. Bauman*,
10 134 S. Ct. 746 (2014) – continuing its long-rejected attempts at fact avoidance.
11 Jacobs' personal jurisdiction position does not turn on Sands China's false premise
12 that he predicates jurisdiction based solely on the contacts of a corporate affiliate,
13 the issue *Bauman* addresses. Rather, Sands China is subject to Nevada jurisdiction
14 because of its contacts and the contacts of its agents, acting on its behalf, within
15 Nevada.

16 The only legitimate basis for recalling the writ of mandamus is to unravel the
17 false premise upon which Sands China and its parent co-defendant, Las Vegas
18 Sands Corp. ("LVSC"), obtained the resulting stay. The executives controlling
19 Sands China are doing so from Las Vegas, and the entire improper termination of
20 Jacobs was conceived and orchestrated in Las Vegas by these same executives
21 acting as agents of Sands China in Nevada. Sands China and LVSC sought to
22 conceal these facts, which the district court refused to let them get away with. Of
23 course, they both knew the truth when they obtained the stay nearly three years ago.
24 The resulting delays and prejudice to Jacobs are unprecedented. This case is now
25 over three and a half years old. No trial date is set; no date for resolving Sands
26 China's bogus personal jurisdiction defense is set. The testimony and recollection
27 of witnesses is constantly fading, and important witnesses are disappearing and/or
28 being terminated by the Defendants.

1 The basis for this Court to take action is not to disregard the district court's
2 knowledge of the evidence (as Sands China recognizes as its only chance), but it is
3 to cease the prejudice to Jacobs by dispensing with an illegitimate stay and allowing
4 him to conduct discovery so as to stem the continuing loss of merits evidence.

5 **II. LEGAL STANDARD**

6 As the moving party, Sands China declines to cite any legal standard
7 governing its motion. Jacobs does not dispute that this Court has the ability to
8 recall a remittitur and/or mandate under appropriate circumstances. This Court
9 previously had an express rule for doing so. *Wood v. State*, 60 Nev. 139, 104 P.2d
10 187 (1940).

11 And, while not doubting this Court's inherent authority to do so today, Jacobs
12 certainly disputes that Sands China's avoid-the-evidence-at-all-costs approach is a
13 qualifying basis. Rather, under the analogous federal rules: While "[a]ppellate
14 courts have inherent power to recall a mandate upon a showing of 'good cause,' []
15 that power should be exercised sparingly." *Fireison v. Pearson*, 520 A.2d 1046,
16 1054 (D.C. App. 1987) (citing *American Iron & Steel Institute v. EPA*, 560 F.2d
17 589, 592-95 (3d Cir. 1977)); *Greater Boston Television Corp. v. FCC*, 463 F.2d
18 268, 277 (D.C. App. 1971). "Recall of the mandate must be necessary to avoid
19 injustice and it is proper only in the presence of 'exceptional circumstances.'" *Id.*
20 And, while it may be that "[a] supervening change in governing law that calls into
21 serious question the correctness of the court's judgment," could be "[o]ne
22 circumstance that that may justify recall of a mandate" (*Sargent v. Columbia Forest*
23 *Products, Inc.*, 75 F.3d 86, 90 (2d Cir. 1996)), that is not remotely the case here.

24 Rather, the only basis to recall the writ of mandamus is the lack of forthright
25 disclosure by Sands China as to its actual Nevada contacts when it sought the writ
26 in the first instance. It knew the truth and it knew what honest compliance with
27 jurisdictional discovery would reveal, which is why it and LVSC chose to walk the
28 contrary path. The proper relief now should not be that which rewards and

1 perpetuates the impropriety. It should be to end the insufferable and long-abused
2 stay so that Jacobs can at long last attempt to preserve what evidence remains.¹

3 **III. BACKGROUND**

4 **A. This Court Directs a Stay Pending an Evidentiary Hearing.**

5 To understand the failures in Sands China's latest proposal for fact avoidance,
6 this Court should briefly recall how we got here. Jacobs commenced this action on
7 October 20, 2010, claiming breach of contract and tortious termination for
8 attempting to silence him from reporting corporate improprieties of senior
9 executives with LVSC and Sands China, including those entities' common
10 chairman, Sheldon Adelson ("Adelson"). LVSC answered and filed a counterclaim,
11 representing to the court that Jacobs had no contract with LVSC and was instead
12 simply an employee of Sands China. (APP.000099-100.) That false tale would
13 soon unravel.

14 For its part, Sands China disputed personal jurisdiction. The district court
15 disagreed, finding general jurisdiction from "pervasive" Nevada contacts.
16 (APP.000114.) Given the district court's ruling as to general jurisdiction, it did not
17 address or even take up the other applicable grounds, including specific jurisdiction.

18 Sands China thereafter petitioned for the writ of mandamus. Through its
19 August 26, 2011 decision, this Court labeled the district court's findings to be of
20 "summary nature" and incomplete for review. *Id.* At the same time, Sands China
21 protested as to how it faced extreme burdens in complying with discovery that
22 would, it was represented, be a waste in the face of its lacking Nevada contacts.²

23
24 ¹ On May 31, 2013, Jacobs submitted a "Motion for Immediate Lift of Stay"
25 for filing with this Court. The Clerk would not allow Jacobs to file that motion,
asserting that this case was closed and any relief must be sought in the district court.

26 ² As discovery would later show, Sands China's lack of candor to this Court
27 was equally startling. While it sought to pretend that its discoverable documents
28 were all located in Macau, it knew the truth was otherwise. Just like it knew – and
its executives would later have to admit – that Sands China's controlling executives
were based in Las Vegas and from there had planned, orchestrated and undertook
the tortious termination of Jacobs.

1 As such, this Court accommodated Sands China's request for a stay and
2 "instruct[ed] the district court to hold an evidentiary hearing on personal
3 jurisdiction, to issue findings of fact and conclusions of law stating the basis for its
4 decision following that hearing, and to stay the action as set forth in this order until
5 after entry of the district court's personal jurisdiction decision." (APP.000115.)
6 Again, although LVSC was not a party to that writ petition and had no basis for
7 delaying the case, the entire merits of Jacobs' case, even as to LVSC, was stayed
8 and has been ever since.

9 **B. Sands China Opposes Jurisdictional Discovery.**

10 Given this Court's directive, Jacobs sought jurisdictional discovery to present
11 the evidentiary record establishing:

- 12 [1] general jurisdiction based upon what Sands China does here,
13 [2] general jurisdiction based upon the agency role of Las Vegas
14 Sands and what it performs here on behalf of Sands China,
15 [3] specific jurisdiction of what Sands China did here in relation to the
16 causes of action that was presented to [the Court], and, of course,
17 [4] transient jurisdiction of Sands China.

18 (APP.000120.) In a move that would foretell their future maneuvers, Sands China
19 and LVSC objected, claiming that this Court's decision had somehow limited
20 Jacobs to pursuing only general jurisdiction and that "no amount of discovery could
21 or would" establish jurisdiction over Sands China, the same position it regurgitates
22 to this Court today. (APP.000122.) The district court rejected their attempts of
23 depriving Jacobs of his rights to develop the evidentiary record that Sands China
24 claimed was missing as to all potential bases for personal jurisdiction, including
25 general, specific and/or transient.

26 The reasons Sands China and LVSC so vehemently opposed jurisdictional
27 discovery were soon manifest. Their central thesis to the district court proved false.
28 Indeed, LVSC's initial representation – that Jacobs had no contract with LVSC and
instead his only agreement was with Sands China – was a doozy. Apparently,
LVSC had forgotten its representations to the United States Securities and

1 Exchange Commission, as well as to its own shareholders, how Jacobs' employment
2 contract with LVSC stemmed from the negotiated term sheet dated August 3, 2009
3 (the "Term Sheet"). (APP.000001; APP.000087; APP.000090-91.) Indeed,
4 LVSC's COO, Michael Leven ("Leven") was forced to admit that he negotiated and
5 signed Jacobs' Term Sheet on behalf of LVSC after it was approved by Adelson.
6 (APP.000150.) But that was just the tip of the iceberg.

7 Equally egregious was Sands China's lack of candor to both the district court
8 and this Court concerning its Nevada contacts at the time it petitioned for and
9 obtained the stay. After having to fight tooth and nail to pry the facts out of
10 Sands China, jurisdictional discovery revealed how Adelson and Leven were
11 operating Sands China from their executive offices here in Las Vegas. In just one
12 candid email to Sands China's executives in Macau, Leven decreed that although he
13 is always willing to listen to their input, "all final [] decisions are made by sga
14 [Adelson] and las vegas." (APP.000092.)

15 Unremarkably, this included the decision and orchestration of Jacobs'
16 wrongful termination as Sands China's CEO. The evidence and testimony exposed
17 that the very scheme to terminate Jacobs – hastily arranged before a scheduled
18 Board meeting where Jacobs planned to report on the misconduct – was hatched
19 and carried out from Las Vegas by executives claiming to be acting for
20 Sands China. In fact, despite his best word-smithing, Leven had to acknowledge:
21 "The plan – the – the arrangements for carrying out the termination of Steve Jacobs
22 was developed here [in Las Vegas] and executed there [in Macau].").
23 (APP.000151.)

24 In actuality, discovery confirmed that what actually occurred in Macau was
25 minimal, consisting of little more than Leven and other high-ranking executives
26 flying from Las Vegas, landing in Macau and telling Jacobs of what had been
27 preordained in Las Vegas. The substantive events occurred in Las Vegas, including
28 the preparation of the initial termination letter. Indeed, lacking a copy of actual

1 "Sands China" letterhead in Las Vegas, these executives (Adelson and Leven)
2 resorted to manufacturing temporary letterhead in Las Vegas so as to prepare the
3 termination letter. (*See* APP.000134-36.) The press releases – including those
4 making false statements – were drafted in and issued from Las Vegas by executives
5 purportedly acting for Sands China. (APP.000152.) The lawyers overseeing the
6 plan did so from Las Vegas and, again, as agents for Sands China. (APP.000153.)
7 Even the subsequent so-called justification letter – providing the twelve fabricated
8 reasons for Jacobs' termination – was prepared in Las Vegas, albeit after they
9 apparently obtained actual copies of Sands China's letterhead upon which to print it.
10 (*Id.*)

11 Sands China's lack of forthrightness was not limited to what the district court
12 found in the concealment of jurisdictional evidence, it chose that path when it first
13 petitioned this Court for the writ of mandamus. Because the actual events
14 surrounding Jacobs' termination have been unearthed, Sands China resorts to
15 coyness, asserting (in a footnote of all places) that this truth can be ignored because
16 Jacobs somehow waived any specific jurisdiction over Sands China. How he did so
17 prior to jurisdictional discovery or even the district court addressing that issue
18 (since it had relied upon general jurisdiction) is, tellingly, never explained, which is
19 likely why it is relegated to a footnote. Whatever the rationale, Sands China's need-
20 to-avoid-the-evidence approach only serves to highlight the fatal flaw of its motion.

21 **C. Sands China Obstructs the Very Evidentiary Hearing it Sought.**

22 The events that have brought this case to a standstill are detailed in Jacobs'
23 Answering Briefs to the second, third and fourth writ petitions filed by LVSC and
24 Sands China, Case Nos. 62489, 62944, and 63444. There is no need to recite again
25 their underhandedness. Those briefs and the record before the district court expose
26 what they were doing.

27 The district court's inability to conduct an honest evidentiary hearing is the
28 product of that misconduct, not the after-the-fact attempts to divert attention from

1 their misdeeds. Jacobs' entire case, including against LVSC, has been stayed all the
2 while memories fade, witnesses disappear, evidence is lost, and LVSC and
3 Sands China benefit from their lack of disclosure.³

4 It is beyond fair debate that the stay contemplated by this Court is being
5 abused and is a product of illegitimacy. It needs to end. The legal basis for
6 recalling the writ of mandamus is not to avoid the facts as Sands China desires, but
7 to undo the abused stay. If Sands China wants to continue to debate personal
8 jurisdiction, it should do so in the usual course like every other litigant. There is no
9 justification to continue the unparalleled prejudice to Jacobs' rights.

10 **IV. ARGUMENT**

11 **A. *Bauman* Does Not Change the Law of Minimum Contacts.**

12 Having been unable to stop the evidence of its Nevada contacts from coming
13 to light, Sands China now proposes a theory where all the facts should be ignored.
14 According to Sands China, the United States Supreme Court has accommodated
15 this unique approach through its recent decision, *Daimler AG v. Bauman*, 134 S. Ct.
16 746 (2014). Hardly. The *Bauman* Court did not dispense with the longstanding
17 precedent that a corporation is subject to jurisdiction in those forums in which their
18 agents act. In fact, the *Bauman* Court said that it "need not pass judgment on
19 invocation of an agency theory in the context of general jurisdiction[.]" *Id.* at 759.

20 In *Bauman*, a group of plaintiffs sued DaimlerChrysler ("Daimler") in the
21 State of California based upon the alleged collaboration between its subsidiary,
22 Mercedes-Benz Argentina ("MB Argentina") and various Argentina terrorist
23 groups. The car sales of one of Daimler's subsidiaries, Mercedes-Benz USA, LLC
24 ("MBUSA"), was the lone connection between Daimler and California. Thus, in

25
26 ³ Indeed, the district court has taken the view that Jacobs cannot even amend
27 his complaint to outline additional claims against both LVSC and Sands China -
28 including those that will reinforce jurisdiction over Sands China - until after the
evidentiary hearing is held. LVSC has filed an answer and counterclaim, and even
it is being protected by a stay despite the fact that it does not dispute that it is
subject to jurisdiction.

1 the face of that fact, the plaintiffs, citing *Doe v. Unocal*, 248 F.3d 915 (9th Cir.
2 2001), urged personal jurisdiction given that selling cars in California is
3 "sufficiently important" to Daimler such that it would have stepped in to perform
4 the tasks for MBUSA were it necessary. *Id.* at 759.

5 The Supreme Court disagreed, and found that a parent corporation's
6 "hypothetical readiness" to perform services on behalf of the subsidiary in the
7 forum state does not, in and of itself, establish general jurisdiction over the parent.
8 *Bauman*, 134 S. Ct. at 759-60. The Court reasoned, "[a]nything a corporation does
9 through an independent contractor, subsidiary, or distributor is presumably
10 something that the corporation would do 'by other means' if the independent
11 contractor, subsidiary, or distributor did not exist." *Id.* at 759. As a result, the
12 Court found that the Ninth Circuit's "hypothetical readiness" test unfairly "subjects
13 foreign corporations to general jurisdiction whenever they have an in-state
14 subsidiary or affiliate" *Id.* at 759-60.

15 The Court explained that for general jurisdiction over a foreign corporation to
16 exist, it "must be fairly regarded as at home" in the forum state. *Id.* at 761. The
17 Court affirmed its prior decisions on this point. The question is, as it has always
18 been, whether the corporation's "affiliations with the State are 'so continuous and
19 systematic' as to render it essentially at home in the form State." *Id.* (quoting *Int'l*
20 *Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Goodyear Dunlop Tires Ops., S.A. v.*
21 *Brown*, 131 S.Ct. 2846 (2011)).

22 Despite that Sands China wishes the law were otherwise, a corporation has
23 always been subject to jurisdiction based upon the acts of its agents in the forum
24 state. As this Court explained long ago: "The contacts of an agent are attributable to
25 the principal in determining whether personal jurisdiction exists." *Trump v. Eighth*
26 *Jud. Dist. Ct. of State of Nev. In & For Cnty. of Clark*, 109 Nev. 687, 694, 857 P.2d
27 740, 745 (1993).

1 Here, Sands China's attempts of fact-avoidance before the district court is as
2 misguided as it is transparent. This is not a case of a foreign parent corporation's
3 "hypothetical readiness" to stand in for its local subsidiary. The evidence exposes
4 how Sands China is *actually* being operated and run by and through its agents in
5 Nevada. Indeed, depositions of both Adelson and Leven demonstrate how they
6 direct the activities and operations of Sands China from Las Vegas, and they
7 claimed to be acting as Sands China's agents whenever they did so.

8 These Nevada activities included everything from approving compensation
9 for Sands China executives to making design decisions for Sands China's casinos.
10 In Leven's words to Sands China's executives in Macau: "input from anyone is
11 expected and listen to [*sic*] but final [] decisions are made by sga [Adelson] and
12 las vegas." (APP.000092.) The examples literally go on and on. Thus, if
13 Sands China wants to continue to debate whether it can be deemed to be "at home"
14 in Las Vegas for purposes of general jurisdiction, on top of the other jurisdictional
15 bases discovery has uncovered, that is a matter for the district court.

16 **B. Jacobs Should be Allowed to Preserve Evidence through Merits**
17 **Discovery.**

18 While Sands China provides no basis to recall the writ of mandamus, there is
19 a basis for this Court's immediate attention, whether by recalling the writ of
20 mandamus for a limited purpose or simply directing the district court: Dispense
21 with the illegitimately-obtained stay that has precipitated unwarranted prejudice and
22 delay. Even if Sands China wants to continue to pretend that it lacks Nevada
23 contacts, there is no need for a stay to do so.⁴ This Court has long recognized that
24 there are two ways to address personal jurisdiction. *Trump v. Eighth Jud. Dist. Ct.*,
25 109 Nev. 687, 857 P.2d 740, 743 (1993). The "more frequently utilized process"
26 allows "a plaintiff [to] make a *prima facie* showing of personal jurisdiction prior to

27 ⁴ Indeed, Jacobs asked LVSC to stipulate to allow merits discovery to proceed,
28 since LVSC does not dispute that it is subject to jurisdiction. Tellingly, it refused,
wanting to continue what was supposed to be a temporary stay.

1 trial and then prove jurisdiction by a preponderance of the evidence at trial."
2 *Id.* at 692, 857 P.2d at 743.

3 Even in the face of the documented obstruction seeking to skew the fact-
4 finding process, enough facts have emerged of a *prima facie* case for personal
5 jurisdiction. If Sands China wants to continue the jurisdiction debate, it can do so
6 at trial, or at a subsequent evidentiary hearing. But Jacobs should be allowed to
7 proceed and preserve evidence. What this Court contemplated as a temporary stay
8 (which has now lasted nearly three years) only serves to perpetuate an injustice.
9 *See Wood*, 60 Nev. at 104, 100 P.2d at 188 (under prior rule, recall of remittitur
10 proper for incomplete knowledge of the circumstances.).

11 **V. CONCLUSION**

12 Sands China's motion is an untenable attempt at avoiding the facts and is
13 legally flawed. The only legal basis for recalling this Court's writ of mandamus is
14 to put an end to the misuse of what was supposed to be a temporary stay. And,
15 accordingly, Jacobs countermoves and asks this Court to do so now.

16 DATED this 6th day of February, 2014.

17 PISANELLI BICE, PLLC

18 By: /s/ Todd L. Bice

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and pursuant to Nev. R. App. P. 25(b) and NEFR 9(d), that on this date I electronically filed the foregoing **REAL PARTY IN INTEREST, STEVEN C. JACOBS' RESPONSE TO MOTION TO RECALL MANDATE AND COUNTERMOTION REGARDING SAME** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex), Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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SERVED VIA HAND-DELIVERY ON FEBRUARY 7, 2014

The Honorable Elizabeth Gonzalez
Eighth Judicial District Court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

DATED this 6th day of February, 2014.

/s/ Kimberly Peets
An employee of Pisanelli Bice, PLLC

A-10-627691-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

February 21, 2014

A-10-627691-B Steven Jacobs, Plaintiff(s)
vs.
Las Vegas Sands Corp, Defendant(s)

February 21, 2014 3:00 AM Status Check: Briefing on Five-Year Rule

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court reviewed status report filed 2/24/14.

CLERK'S NOTE: A copy of the above minute order was placed in the following attorney folder(s):
James Pisanelli, Esq. (Pisanelli Bice); Jon Randall Jones, Esq. (Kemp, Jones & Coulthard, LLP); J.
Stephen Peek, Esq. (Holland & Hart, LLP); Samuel Lionel, Esq. (Lionel Sawyer).

PRINT DATE: 02/26/2014

Page 1 of 1

Minutes Date: February 21, 2014

SA0304

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD., a Cayman Islands
corporation,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
Mar 28 2014 09:18 a.m.

Tracie K. Lindeman

Clerk of Supreme Court

Case Number: 58294

District Court Case Number
A627691-B

**REPLY IN SUPPORT OF
MOTION TO RECALL
MANDATE AND
OPPOSITION TO
COUNTERMOTION
TO LIFT STAY**

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INTRODUCTION

Jacobs' Response gives short shrift to the important legal issues raised by Petitioner SCL's Motion to Recall the Mandate, instead treating it as an invitation to launch yet another baseless, ad hominem attack on SCL, its co-defendant, Las Vegas Sands Corp. ("LVSC"), and their counsel. When he finally purports to address the merits of SCL's Motion, Jacobs completely misses the mark. Contrary to his argument, *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), represents a substantial change in the law governing the assertion of general jurisdiction over foreign corporations. Under *Bauman*, it does not matter how many contacts SCL may have with Nevada; because SCL is not "at home" here, principles of due process preclude Nevada from exercising general jurisdiction over SCL. Under these circumstances, the stunningly costly jurisdictional discovery that the district court ordered was all wasted effort and there is no need for an evidentiary hearing before SCL is dismissed from the litigation.

Jacobs' countermotion to lift the partial stay imposed by this Court so that he can immediately begin pursuing merits discovery should be denied. As this Court recognized in August 2011, sound principles of judicial economy require the jurisdictional issue to be resolved first.

ARGUMENT

I. *Bauman* Is Dispositive.

Jacobs acknowledges that a "supervening change in governing law" is one of the circumstances that may justify recalling the mandate. Jacobs' Resp. at 2. But then he mistakenly asserts that *Bauman* does not represent a change in the law with respect to general jurisdiction. In fact, *Bauman* represents a fundamental shift away from a "contacts" analysis toward a

presumption that general jurisdiction will ordinarily be limited to those forums in which the company is incorporated or has its principal place of business.

Before *Bauman*, the general view was that a corporation was subject to suit in any jurisdiction in which it was doing business. Indeed, general jurisdiction was often referred to as "doing business" jurisdiction. 134 S.Ct. at 761. *Bauman* specifically rejects this expansive view of general jurisdiction, holding that it is *not* enough that a corporation has "continuous and systematic contacts" with the forum state. *Id.* Instead, the Court stressed that the contacts must be not only "continuous and systematic" but of such a magnitude as to render a corporate defendant "essentially at home in the forum State." *Id.* (internal quotations omitted).

Bauman also stresses that a corporation will ordinarily be deemed "at home" *only* in jurisdictions in which it is incorporated or has its principal place of business. In a footnote, the Court stated that it was not "foreclos[ing] the *possibility* that in an *exceptional* case . . . a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 761 n. 19 (emphasis added). But the Court found it unnecessary to explore that possible exception because Daimler's activities in California "did not approach that level." *Id.*

In reaching that conclusion, the Court assumed that "Daimler's activities in California" included the activities of its U.S. subsidiary (Mercedes Benz USA or "MBUSA"). *Id.* at 760. MBUSA had "multiple California-based facilities" and was the largest supplier of luxury vehicles

in California, with 10% of its U.S. sales in California and 2.4% of Daimler's worldwide sales. *Id.* at 752. But even when those substantial contacts with California were attributed to Daimler, the Court concluded that they did not approach the level at which it would have to analyze whether the German entity could be deemed "at home" in California and therefore subject to general jurisdiction there.

In his Response (at 7-8), Jacobs notes that the *Bauman* Court said it "need not pass judgment on invocation of an agency theory in the context of general jurisdiction," *id.* at 759, and argues that the law with respect to attributing the actions of an agent in the forum to a non-resident defendant remains unchanged. But the only reason *Bauman* did not decide the agency issue is that the Court held that, even after attributing the contacts of its purported agent to Daimler, due process prohibited the assertion of general jurisdiction over Daimler in California. Furthermore, the Court clearly indicated its reluctance to apply agency principles to the general jurisdiction context, noting that "[a]gency relationships . . . may be relevant to the existence of *specific* jurisdiction. . . . It does not inevitably follow, however, that similar reasoning applies to *general* jurisdiction." *Id.* at 759 n. 13.¹

Just as in *Bauman*, the Court in this case does not have to decide whether actions that LVSC or its executives may have undertaken on behalf of SCL in Nevada should be attributed to SCL because even if their

¹ *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 702 (1993), which Jacobs cites (at 8) for the proposition that the contacts of an agent are attributable to the principal in determining whether personal jurisdiction exists, was a specific jurisdiction case.

activities are attributed to SCL, SCL's activities in Nevada do not approach the level at which SCL could even arguably be found to be "at home" in Nevada. To repeat: *it is undisputed that SCL is a Cayman Islands corporation, that its stock is traded on the Hong Kong Stock Exchange, and that all of its operations are located outside of the United States.* Under *Bauman*, these indisputable facts preclude the exercise of general jurisdiction over SCL in Nevada.

Jacobs argues that SCL should bring *Bauman* to the attention of the district court and ask that court to decide the jurisdictional issue in the first instance. But the district court correctly believes itself bound under this Court's August 2011 Order to hold an evidentiary hearing before it can rule on the issue of jurisdiction — even though *Bauman* demonstrates that such a hearing is wholly unnecessary. Given the enormous costs SCL and LVSC have already borne as a result of unnecessary jurisdictional discovery, the fact that the only jurisdictional issue left is a legal one, and the lengthy delay since the issuance of this Court's Order, SCL respectfully submits that a recall of the mandate is the proper course to follow.

II. Jacobs' Complaints About Discovery Are Groundless.

Jacobs spends much of his Response trying to re-write history and accusing SCL and LVSC of concealing jurisdictional facts. For example, Jacobs argues (at 3) that because the district court found general jurisdiction over SCL, "it did not address or even take up the other applicable grounds, including specific jurisdiction." But this ignores the fact that, until this Court issued its August 2011 Order, Jacobs argued *only*

general and transient jurisdiction. He *never* claimed — either in the district court or this Court — that there was specific jurisdiction over SCL.

The omission of a specific jurisdiction argument was not an accident; instead, it was a recognition that specific jurisdiction does not lie on the only claim that Jacobs alleges against SCL — for alleged breach of an options agreement that is governed by Hong Kong law and that was entered into, to be performed and allegedly breached in Macau, where (as Jacobs admits) his termination occurred. Response at 5. Jacobs argues that discovery shows that the internal decision to terminate him as SCL's CEO was made while SCL's Chairman happened to be in Las Vegas. But even if that is true, it would be entirely irrelevant to the specific jurisdiction analysis, which focuses on where the contract was negotiated, where it was to be performed, and what law the parties chose to govern its enforcement. *See, e.g., Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009).²

Jacobs also accuses SCL and LVSC of concealing their true relationship, which supposedly demonstrates that there is general jurisdiction over SCL in Nevada. But *Bauman* makes clear that the kinds of contacts Jacobs sought to discover — whether SCL had an agency relationship with LVSC or purchased goods and services, either directly or

² Jacobs tries to conceal the fatal flaw in his specific jurisdiction argument by suggesting that he is pursuing a wrongful termination claim against SCL in addition to his breach of contract claim. But that is not true: his wrongful termination claim is against LVSC alone, who he claims was his employer. Jacobs contends that LVSC lied about its relationship with Jacobs. But LVSC's position is and always has been that Jacobs' employer was Venetian Macau Ltd. ("VML"), which is SCL's operating subsidiary. *See* Jacobs APP 101-02. Jacobs chose not to sue VML.

indirectly, from Nevada — are entirely irrelevant to the question of whether SCL is subject to general jurisdiction in Nevada. Indeed, even before *Bauman*, LVSC's alleged "control" of SCL from Nevada or SCL's supposed principal/agent relationship with LVSC were insufficient to subject SCL to suit here.

III. Jacobs' Countermotion Should Be Denied.

Jacobs characterizes the stay this Court imposed as the "product of illegitimacy," which the defendants then supposedly abused by refusing to agree to Jacobs' suggestion that the parties should simply disregard this Court's Order. Response at 7. Contrary to Jacobs' argument, SCL did not somehow hoodwink this Court into staying proceedings while the jurisdictional issue was decided. This Court properly chose to impose a blanket stay of any further merits discovery in order to spare SCL the enormous cost of submitting to merits discovery if it turned out that there was no personal jurisdiction over SCL. This Court no doubt believed that the district court would act swiftly to implement this Court's Order to hold an evidentiary hearing and make findings and conclusions on jurisdiction. That the proceedings were delayed is attributable to Jacobs' ever-increasing demands for jurisdictional discovery and not to any flaw in the Court's decision to stay any other proceedings until the jurisdictional issue is resolved.

That decision was right in August 2011 and remains correct today: the jurisdictional issue should be resolved first before the case proceeds on the merits.

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **REPLY IN SUPPORT OF MOTION TO RECALL MANDATE AND OPPOSITION TO COUNTERMOTION TO LIFT STAY** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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Attorneys for Steven C. Jacobs, Real Party in Interest

I further certify that I caused a copy of the aforementioned document to be hand delivered, in a sealed envelope to the addressee(s) shown below:

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

Respondent

DATED this 25th day of February, 2014.

By: /s/ Fiona Ingalls

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15 *Steven C. Jacobs*

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

17 SANDS CHINA LTD.,

18 Petitioner,

19 vs.

20 THE EIGHTH JUDICIAL DISTRICT
21 COURT OF THE STATE OF
22 NEVADA, IN AND FOR THE
23 COUNTY OF CLARK; AND THE
24 HONORABLE ELIZABETH GOFF
25 GONZALEZ, DISTRICT COURT,

26 Respondent,

27 and

28 STEVEN C. JACOBS.

Real Party in Interest

Sup. Ct. Case No. 58294

District Court Case No.
A-10-627691

**REAL PARTY IN INTEREST
STEVEN C. JACOBS' REPLY IN
SUPPORT OF COUNTERMOTION
REGARDING RECALL OF
MANDATE**

Electronically Filed
Mar 28 2014 09:19 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 The point of Real Party in Interest Steven C. Jacobs' ("Jacobs")
2 Countermotion is a simple one. Had Petitioner Sands China Ltd. ("Sands China")
3 been candid with this Court as to its contacts with the State of Nevada back in
4 August 2011, and had this Court known that Sands China and its co-defendant,
5 Las Vegas Sands Corp. ("LVSC"), would for years engage in what the district court
6 found to be "willful and intentional conduct with an intent to prevent [Jacobs]
7 access to information discoverable for the jurisdictional proceedings," there would
8 have never been a stay issued. That stay has become a tool of delay and obstruction
9 benefitting two intransigent defendants and simultaneously inflicting undue
10 prejudice upon Jacobs.

11 This is precisely why Jacobs filed the Countermotion, asking the Court to
12 recall its mandate for an evidentiary hearing and allow Jacobs to prove
13 Sands China's personal jurisdiction at trial, in accordance with Nevada law. *Hansen*
14 *v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 655, 6 P.3d 982, 985 (2000) ("[O]nce the
15 personal jurisdiction issue has been initially raised, the district court need not
16 resolve it completely until trial."). Predictably, Sands China responds with the
17 spurious position that if the mandate is not recalled in its favor (*e.g.*, recall of the
18 mandate and dismissal of the claims against it), the stay should remain in place. In
19 other words, Sands China admits that it intends to continue to misuse the stay
20 unless it can obtain an indefensible dismissal. Unremarkably, there is no law to
21 support such an absurd outcome.

22 It has long been the law that "the power to stay proceedings is incidental to
23 the power inherent in every court to control the disposition of the causes on its
24 docket with economy of time and effort for itself, for counsel, and for litigants."
25 *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). But of course the flip side is
26 equally true: That same inherent power justifies the lifting of a stay when the facts
27 so warrant. "Logically, the same court that imposes a stay of litigation has the
28

1 inherent power and discretion to lift the stay." *Canady v. Erbe Elektromedizin*
2 *GmbH*, 271 F. Supp. 2d 64, 74 (D.D.C. 2002).

3 "When circumstances have changed such that the court's reasons for
4 imposing the stay no longer exist or are inappropriate, the court may lift the stay."
5 *Canady*, 271 F.Supp.2d at 74. "A court may lift the stay if the circumstances
6 supporting the stay have changed such that the stay is no longer appropriate."
7 *Ho Keung Tse v. Apple, Inc.*, 2010 WL 1838691, *1 (N.D. Cal. May 5, 2010).

8 Here, there can be little debate that the circumstances supporting the Court's
9 stay mandate on August 26, 2011, have changed and that the stay is no longer
10 appropriate. Even the sanitized evidence produced during jurisdictional discovery
11 confirms that in addition to general jurisdiction, Sands China is subject to specific
12 jurisdiction given that the planning and execution of Jacobs' termination was carried
13 out from Las Vegas. Sands China obviously knew this fact when it erroneously
14 told the district court and then this Court that it had no contacts with this forum.
15 And that is also why it obstructed evidence during jurisdictional discovery. The
16 false pretense upon which the mandate was predicated is reason, in and of itself, for
17 this Court to lift the stay.

18 But there is more. The last two years have shown that Sands China and
19 LVSC have used the stay to prejudice Jacobs all the while they obstructed
20 jurisdictional discovery. The district court has already sanctioned Sands China and
21 LVSC once, and has taken steps to impose additional sanctions against Sands China
22 for continuing to delay and obstruct the very jurisdictional process that it
23 necessitated. The pleadings of other litigants have been stricken for far less
24 misconduct than that perpetrated by Sands China and LVSC. The prejudice caused
25 by Sands China's and LVSC's delay tactics cannot be ignored, as witnesses have
26 already admitted that their memories are "fading" related to Jacobs' wrongful
27 termination.

1 This Court established long ago that "diligent parties are entitled to be
2 protected against interminable delay and uncertainty as to their legal rights." *Skeen*
3 *v. Valley Bank of Nevada*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973); *see also*
4 *Eliades-Ledstrom v. Eighth Jud. Dist. Ct.*, 124 Nev. 1464, 238 P.3d 809 (2008)
5 (ruling that "district court did not abuse its discretion in denying Ledstrom's stay
6 motion, particularly in light of the prejudice that they would suffer if an indefinite
7 stay were granted."). Jacobs has been diligent and is entitled to such protection.
8 This Court should immediately lift its stay mandate and allow Jacobs to proceed
9 with preserving evidence through merits discovery and prosecuting this case. This
10 action has now been pending for three and a half years, and no merits discovery has
11 occurred because of the abusive misconduct of LVSC and Sands China.

12 DATED this 4th day of March, 2014.

13 PISANELLI BICE PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and pursuant to Nev. R. App. P. 25(b) and NEFR 9(d), that on this date I electronically filed the foregoing **REAL PARTY IN INTEREST, STEVEN C. JACOBS' REPLY IN SUPPORT OF COUNTERMOTION** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Courts E-Filing system (Eflex), Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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SERVED VIA HAND-DELIVERY ON MARCH 5, 2014
The Honorable Elizabeth Gonzalez
Eighth Judicial District Court, Dept. XI
Regional Justice Center
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DATED this 4th day of March, 2014.

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

No. 58294

FILED

MAY 19 2014

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

ORDER DENYING MOTION TO RECALL MANDATE


On August 26, 2011, this court entered an order granting a petition for a writ of mandamus and directing the district court to hold a hearing to reconsider whether it has personal jurisdiction over petitioner Sands China Ltd. This court further ordered the district court to stay all portions of the proceedings below except those relating to the jurisdictional issue. In the intervening time, the parties have apparently been undertaking discovery relating to the personal jurisdiction issue, which has not yet been resolved by the district court.

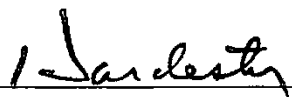
On January 29, 2014, Sands China filed a motion in this court requesting that we revisit our 2011 decision in light of a recent United States Supreme Court opinion, *Daimler AG v. Bauman*, ___ U.S. ___, 134 S. Ct. 746 (2014). Specifically, Sands China contends that *Daimler AG* compels the conclusion that the district court lacks personal jurisdiction over Sands China in this action. Real party in interest Steven C. Jacobs has opposed the motion, and also requests that this court direct the district court to vacate the stay imposed by this court's 2011 order.


Having considered the parties' arguments and the documents before us, we conclude that, even under *Daimler AG*, factual findings must be made with regard to Sands China's contacts with Nevada in order to resolve the jurisdictional issue. Thus, Sands China's arguments in this regard should be presented to the district court for consideration in conjunction with the personal jurisdiction issue. See *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. ___, ___, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance."). We therefore deny Sands China's motion seeking to have this court reopen this writ proceeding.¹

As to Jacobs's request that we direct the district court to vacate the stay imposed by this court's 2011 order, we conclude that Jacobs has not presented any circumstances that compel us to revisit our earlier decision that a stay pending resolution of the jurisdictional issue is appropriate. As a result, we also deny Jacobs's counter-motion regarding the stay.

It is so ORDERED.

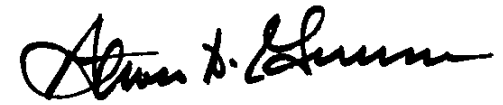

Gibbons, C.J.


Hardesty, J.


Saitta, J.

¹In light of these determinations, we further deny Sands China's March 24, 2014, motion for oral argument.

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



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'
MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Hearing Date:

Hearing Time:

Plaintiff Steven C. Jacobs ("Jacobs") requests leave to file the proposed Second Amended Complaint attached hereto as Exhibit A. The proposed pleading adds only some of the claims which Jacobs previously informed this Court he intends to add. Specifically, it does not include the additional claims that Jacobs intends to add as to Sheldon G. Adelson ("Adelson"). After this Court's June 10, 2014, status check, Adelson filed a Petition for Rehearing before the Nevada Supreme Court thereby delaying issuance of the remittitur. Adelson has taken the position that this Court does not have jurisdiction as of yet to permit Jacobs to add additional claims against him. Accordingly, as of right now, Jacobs limits his amendments to assert two additional claims against Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China"), as well as a new claim

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1 for aiding and abetting tortious discharge in violation of public policy against Sands China. Upon
2 the Supreme Court's issuance of the remittitur as to Adelson, Jacobs will then seek to add his
3 additional claims against Adelson personally.

4 As the Court will glean from the proposed Second Amended Complaint, the additional
5 claims against LVSC and Sands China arise from the same set of operative facts; namely, the
6 wrongful scheme to terminate Jacobs. Since as of this point, there has been no permitted merits
7 discovery, the amendment can in no way prejudice the Defendants. But at the same time, the
8 proposed amendment confirms the facts developed during jurisdictional discovery which exposed
9 the true scheme in terminating Jacobs. As the law favors such amendments, Jacobs' motion for
10 leave should be granted.

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

15 DATED this 30th day of June, 2014.

16 PISANELLI BICE PLLC

17 By: /s/ Todd L. Bice
18 James J. Pisanelli, Esq., Bar No. 4027
19 Todd L. Bice, Esq., Bar No. 4534
20 Debra L. Spinelli, Esq., Bar No. 9695
21 Eric T. Aldrian, Esq., Bar No. 11897
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23 Las Vegas, Nevada 89169

24 Attorneys for Plaintiff Steven C. Jacobs
25
26
27
28

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the ⁰¹ day of AUGUST, 2014, at ^{CHAMBERS} .m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF STEVEN C. JACOBS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** on for hearing.

DATED this 30th day of June, 2014.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice

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Attorneys for Plaintiff Steven C. Jacobs

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT BACKGROUND

Jacobs filed this action against Defendants LVSC and Sands China on August 20, 2010, alleging that LVSC wrongfully terminated his employment as the CEO of Sands China. In response, both Defendants filed separate motions to dismiss. While LVSC's motion was based upon its assertion that Jacobs had failed to join a necessary and indispensable party, Sands China argued that all claims against it should be dismissed for lack of personal jurisdiction or, alternatively, for failure to join a necessary and indispensable party. This Court denied both motions during a March 15, 2011, hearing. Sands China thereafter sought and obtained a writ of mandamus from the Nevada Supreme Court, which has effectively brought Jacobs' wrongful termination action to a standstill until this Court holds an evidentiary hearing on Sands China's personal jurisdiction.

Through this Motion, Jacobs seeks leave to add two additional claims against these already-named Defendants based upon the facts and circumstances of Jacobs' tortious discharge: (1) civil conspiracy against both LVSC and Sands China; and (2) aiding and abetting tortious discharge against Sands China.¹ Specifically, the new claims are based on the fact that Sands China, a majority-owned subsidiary of LVSC, entered into an unlawful conspiracy with LVSC and otherwise assisted LVSC in connection with its wrongful termination of Jacobs in violation of public policy. In other words, the proposed claims arise from the very same conduct that gave rise to the claims that Jacobs asserted against these same Defendants. The proposed Second Amended Complaint does not alter the scope of the dispute or what the parties will ultimately have to prove (or disprove) at trial. The Motion should be summarily granted.

¹ As Jacobs' counsel explained during the June 10, 2014, status conference, given the Nevada Supreme Court's recent decision in *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282 (2014), he also intends to add a new claim against LVSC's and Sands China's co-Chairman, Sheldon G. Adelson, in his personal capacity for tortious discharge in violation of public policy. See *Phillips v. Montana Educ. Ass'n*, 187 Mont. 419, 425, 610 P.2d 154, 158 (1980) ("Where an officer or director acts with the intent to harm the plaintiff, he is personally liable."). To delay that from happening (by delaying the issuance of a remitter), however, Adelson has now petitioned the Supreme Court for a rehearing on its May 30, 2014, decision. Jacobs will thus move this Court for additional leave to add that new claim against Adelson once the Nevada Supreme Court disposes of his silly Petition.

1 **II. DISCUSSION**

2 **A. Leave to Amend Should Be Freely Given.**

3 The Nevada Rules of Civil Procedure provide that a party may amend its pleading by
4 agreement or with the court's leave. NRCP 15(a). In the latter circumstance, "*leave to amend*
5 *should be freely given when justice requires*," *Weiler v. Ross*, 80 Nev. 380, 382, 395 P.2d 323,
6 323 (1964) (emphasis added), and "this mandate is to be heeded," *Marschall v. City of Carson*, 86
7 Nev. 107, 112, 464 P.2d 494, 498 (1970) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

8 The grant or denial of a motion for leave to amend is addressed to the trial court's "sound
9 discretion." *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000); *Nev. Bank of Commerce*
10 *v. Edgewater, Inc.*, 84 Nev. 651, 653, 446 P.2d 990, 991 (1968). However, it is an abuse of that
11 discretion and inconsistent with the spirit of the Nevada Rules of Civil Procedure for the court to
12 deny leave without any justifying reason. *Adamson v. Bowker*, 85 Nev. 115, 120, 450 P.2d 796,
13 800 (1969). "In the absence of any apparent or declared reason – such as undue delay, bad faith or
14 dilatory motive on the part of the movant . . . undue prejudice to the opposing party by virtue of
15 allowance of the amendment, futility of amendment, *etc.* – the leave sought should, as the rules
16 require, be 'freely given.'" *Id.* at 121, 450 P.2d at 800 (quoting *Foman*, 371 U.S. at 182).

17 **B. Jacobs is Entitled to Amend His Complaint.**

18 The instant request is straightforward and unremarkable. Jacobs simply seeks to add two
19 new claims against the two named Defendants based upon the facts and circumstances stemming
20 from his wrongful termination.

21 Defendants LVSC and Sands China will not be prejudiced by the proposed amendment.
22 Because of Sands China's objection to this Court's personal jurisdiction, all discovery related to the
23 merits of Jacobs' wrongful termination claim have been put on hold for almost three years. In fact,
24 Sands China has not yet even answered Jacobs' Complaint. As such, allowing Jacobs to amend his
25 pleading to add new claims based upon his wrongful termination will not prejudice Defendants in
26 the least.

27 Specifically, Jacobs seeks to add claims for civil conspiracy against LVSC and Sands China,
28 as well as a claim for aiding and abetting tortious discharge against Sands China. These claims

1 grow out of the same facts and circumstances that spawned Jacobs' original complaint. They are
2 simply additional legal theories predicated upon the same events. The only party that has been
3 prejudiced by the delay facilitated by the Defendants in Jacobs. Jacobs' underlying claims have
4 been stalled for three years due to Sands China's delay tactics, with LVSC riding the coattails of its
5 subsidiary's ill-gotten stay. The entire predicate for that stay – Sands China's assertion that it had
6 no contacts in Nevada and it would be too onerous to participate in discovery in the United States
7 – has already been proven as a fiction. Much of the discovery that Sands China claimed was going
8 to be too burdensome and onerous to produce in the United States was already here and simply
9 concealed. At the same time, what jurisdictional discovery Jacobs was able to pry out of
10 Sands China has only confirmed its true Nevada contacts.

11 **III. CONCLUSION**

12 Nevada has a long-standing policy favoring the amendment of pleadings. The policy is
13 even more important where, as here, the plaintiff is simply adding new related claims against
14 existing defendants. Jacobs respectfully requests that this Court grant him leave to file the proposed
15 Second Amended Complaint attached hereto as Exhibit A.

16 DATED this 30th day of June, 2014.

17 PISANELLI BICE PLLC

18 By: /s/ Todd L. Bice

19 James J. Pisanelli, Esq., Bar No. 4027

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25 Attorneys for Plaintiff Steven C. Jacobs
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27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 30th day of June, 2014, I caused to be served via hand-delivery and the Court's E-Filing system true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** properly addressed to the following:

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EXHIBIT A

ACOM

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Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

SECOND AMENDED COMPLAINT

AND RELATED CLAIMS

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

PARTIES

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

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

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

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

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

JURISDICTION AND VENUE

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

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

COMMON ALLEGATIONS

LVSC's Dysfunction and Infighting

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

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

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

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

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

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

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

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

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

26 **LVSC Hires Jacobs to Run Its Macau Operations**

27 17. It is in this poisonous environment that Jacobs enters the LVSC picture. Even before
28 Leven became LVSC's President and COO, he had reached out to Jacobs to discuss potential COO

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

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

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

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

24 21. Notwithstanding that Jacobs would be spending the majority of his time in Macau
25 focusing on LVSC's operations in that location, he was also required to perform duties in Las Vegas
26 including, but not limited to, working with LVSC's Las Vegas staff on reducing costs within the
27 company's Las Vegas operations, consulting on staffing and delayed opening issues related to the
28

1 company's Marina Bay Sands project in Singapore, and participating in meetings of LVSC's Board
2 of Directors.

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

7 23. On or about August 4, 2009, Jacobs received LVSC's "Offer Terms and Conditions"
8 (the "Term Sheet") for the position of "President and CEO Macau[.]" The Term Sheet reflected the
9 terms and conditions of employment that had been negotiated by Leven and Jacobs while Jacobs
10 was in Vegas working under the original consulting agreement with LVSC and during his
11 subsequent trips back to Las Vegas. With Adelson's express approval, Leven signed the Term Sheet
12 on or about August 3, 2009, and had his assistant, Patty Murray, email it to Jacobs who was then in
13 Macau. Jacobs signed the Term Sheet accepting the offer contained therein and delivered a copy
14 to LVSC. LVSC's Compensation Committee approved Jacobs' contract on or about August 6,
15 2009. LVSC thereafter filed a copy of the Term Sheet with the United States Securities and
16 Exchange Commission, disclosing it as Jacobs' employment contract with LVSC.

17 **Jacobs Saves the Titanic**

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

25 25. Due in large part to the success of its Macau operations under Jacobs' direction,
26 LVSC was able to raise over \$4 billion dollars from the capital markets, spin off its Macau
27 operations into a new company – Sands China Limited – which became publicly traded on the
28 Hong Kong Stock Exchange in late November 2009, and restart construction on a previously stalled

1 expansion project on the Cotai Strip known as "Parcels 5 and 6." Indeed, for the second quarter
2 ending June 2010, net revenue from Macau operations accounted for approximately 65% of LVSC's
3 total net revenue (*i.e.*, \$1.04 billion USD of a total \$1.59 billion USD).

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

8 27. Jacobs' success was repeatedly confirmed by Board members of LVSC as well as
9 those of the new spinoff, Sands China. When Leven was asked in February 2010 to assess Jacobs'
10 2009 job performance, he advised: *"there is no question as to Steve's performance[,] the Titanic*
11 *hit the iceberg[,] he arrived and not only saved the passengers[,] he saved the ship."*
12 Unremarkably, Jacobs received a full bonus in 2009 and no more than three months later, May,
13 2010, he was awarded an additional 2.5 million stock options in Sands China. The options had an
14 accelerated vesting period of less than two years.

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

18 **Jacobs' Confrontations with Adelson**

19 29. Jacobs' success was in spite of numerous ongoing debates he had with Adelson,
20 including Adelson's insistence that as Chairman of both LVSC and Sands China, and the primary
21 shareholder, he was ultimately in charge, including on day-to-day operations as well as such minute
22 issues as carpeting, room design, and the choice of paper towel dispensers to be used in the men's
23 room. As Leven would remind Jacobs, both orally and in writing, Adelson was in charge and the
24 substantive decisions, including such things as construction in Macau, were controlled and made in
25 Las Vegas:

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

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

- 4 a. Demands that Jacobs use improper "leverage" against
5 senior government officials of Macau in order to obtain
6 Strata-Title for the Four Seasons Apartments in
7 Macau;
8 b. Demands that Jacobs threaten to withhold Sands China
9 business from prominent Chinese banks unless they
10 agreed to use influence with newly-elected senior
11 government officials of Macau in order to obtain
12 Strata-Title for the Four Seasons Apartments and
13 favorable treatment with regards to labor quotas and
14 table limits;
15 c. Demands that secret investigations be performed
16 regarding the business and financial affairs of various
17 high-ranking members of the Macau government so
18 that any negative information obtained could be used
19 to exert "leverage" in order to thwart government
20 regulations/initiatives viewed as adverse to LVSC' s
21 interests;
22 d. Demands that Sands China continue to use the legal
23 services of Macau attorney Leonel Alves despite
24 concerns that Mr. Alves' retention posed serious risks
25 under the criminal provisions of the United States code
26 commonly known as the Foreign Corrupt Practices Act
27 ("FCPA"); and
28 e. Demands that Jacobs refrain from disclosing truthful
and material information to the Board of Directors of
Sands China so that it could decide if such information
relating to material financial events, corporate
governance, and corporate independence should be
disclosed pursuant to regulations of the Hong Kong
Stock Exchange. These issues included, but were not
limited to, junkets and triads, government
investigations, Leonel Alves and FCPA concerns,
development issues concerning Parcels 3, 7 and 8, and
the design, delays and cost overruns associated with
the development of Parcels 5 and 6.

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

27 32. When Jacobs objected to and/or refused to carry out Adelson's illegal demands,
28 Adelson repeatedly threatened to terminate Jacobs' employment. This is particularly true in

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

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

26 34. One such suspicious entity was WDR, LLC, a wholly-owned subsidiary set up by
27 LVSC at the apparent behest of Robert Goldstein. When Jacobs raised that entity and certain
28 transactions with Sands China's then-existing CFO, he similarly considered the transactions

1 involving WDR as suspicious and expressed concerns over potential money laundering. Of course,
2 Jacobs would be fired before he could further pursue the matter. When LVSC's then-existing CFO,
3 Ken Kay, was asked about WDR at a deposition, he professed to have no knowledge of WDR or
4 what purpose it would serve. But, just a few months after Kay was questioned about WDR, Leven
5 quietly had the entity dissolved.

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

17 36. Following these meetings, Jacobs re-raised the issue about the need to advise the
18 Sands China Board of the delays and cost overruns associated with the development of Parcels 5
19 and 6 in Macau so that a determination could be made of whether the information must be disclosed.
20 Jacobs also raised the need to disclose LVSC's involvement with Triads and the implications of
21 Adelson's desire to grow Sands China's junket business in Macau, as well as Adelson's rehiring of
22 Leonel Alves, given Jacobs' and others' FCPA concerns. Once again, Adelson reminded Jacobs
23 that he was both the chairman and the controlling shareholder and that Jacobs should "do as I
24 please." This was consistent with Adelson's attitudes and Jacobs' belief that Adelson considered
25 himself untouchable. Indeed, on a prior occasion when Jacobs had voiced his concern over how
26 Nevada's gaming regulators might view Adelson's actions, Adelson scoffed at the suggestion,
27 informing Jacobs that he (Adelson) controlled the regulators, not the other way around.

28

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

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

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

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

20 40. Promptly thereafter, the team that Adelson had placed in charge of overseeing the
21 sham termination – Leven, Kenneth Kay (LVSC's CFO), Irwin Segal (LVSC/Sands China Board
22 member), Gayle Hyman (LVSC's general counsel), Daniel Briggs (LVSC's VP of investor
23 relations), Ron Reese (LVSC's VP of public relations), Brian Nagel (LVSC's chief of security),
24 Patrick Dumont (LVSC's VP of corporate strategy), and Rom Hendler (LVSC's VP of strategic
25 marketing) – left Las Vegas and went to Macau in furtherance of the scheme.

26 41. On the morning of July 23, 2010, Jacobs attended a meeting with Leven and Siegel,
27 which had been represented to him (albeit falsely) as pertaining to the upcoming Sands China Board
28 meeting. During the meeting, Leven unceremoniously advised Jacobs that he was being terminated

1 effective immediately. When Jacobs asked whether the termination was purportedly "for cause" or
2 not, Leven responded that he was "not sure" but that the severance provisions of the Term Sheet
3 would not be honored. Leven then handed Jacobs the letter drafted by LVSC's attorneys and signed
4 by Adelson advising him of the termination.

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

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

16 44. Because Leven had not been able to persuade Jacobs to resign, the next play from
17 the Adelson playbook went into effect – fabricating purported cause for the termination. Once
18 again, this aspect of the plan was also carried out in Las Vegas by executives professing to act for
19 both LVSC and Sands China. Indeed, this time they prepared a false letter in Las Vegas and put it
20 on Venetian Macau, Ltd. letterhead and identified twelve manufactured "for cause" reasons for
21 Jacobs' termination. Transparently, one of the purported reasons is an attempt to mask one of
22 Adelson's personal transgressions: The letter absurdly claimed that Jacobs exceeded his authority
23 and failed to keep the companies' Boards of Directors informed of important business decisions.
24 Not surprisingly, not only are the after-the-fact excuses a fabrication, they would not constitute
25 "cause" for Jacobs' termination even if they were true, which they are not.

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

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