IT IS ORDERED, ADJUDGED AND DECREED that Venetian Macau Limited's Peremptory Challenge of Judge is precluded by SCR 48.1, and thus stricken.

IT IS FURTHER ORDERED that any request to stay proceedings must be presented to Judge Gonzalez, as she has jurisdiction over this case.

IT IS SO ORDERED.

DATED: October 26, 2015

THE HONORABLE MARK R. DENTON
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

PISANELLI BICE PLLC

By: _____
James J. Pisanelli, Esq., #4027
Todd L. Bice, Esq., #4534
Debra L. Spinelli, Esq. #9695
Jordan T. Smith, Esq., #12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Plaintiff Steven C. Jacobs

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

C. Jacobs Fails to State a Claim Against VML upon Which Relief Can Be Granted

While the allegations in the FAC pertaining to VML are scant (*see* FAC ¶¶ 4, 25, 46, 54, 56, 58, 61, 64, 67, 68), Jacobs nonetheless brings three causes of action against VML (*see id.* ¶¶ 50-68). In his first cause of action, Jacobs claims VML breached his Term Sheet by mischaracterizing his termination as "for cause," thus denying Jacobs certain compensation to which he claims he is entitled. *See id.* ¶¶ 50-58. Jacobs' second cause of action alleges VML somehow breached the Term Sheet when LVSC and SCL allegedly denied his demand to exercise SCL stock options, which plaintiff alleges were granted under a separate written agreement signed after the Term Sheet. *See id.* ¶¶ 59-64. Finally, Jacobs' third cause of action against VML alleges VML should be liable for breach of the covenant of good faith and fair dealing due to the alleged "conduct of LVSC" and Mr. Adelson. *See id.* ¶¶ 65-68. The allegations in the FAC cannot support these claims against VML. *See* Nev. R. Civ. P. 12(b)(5).

As a preliminary matter, all three causes of action – which seek to impose obligations on VML – depend on Jacobs' contention that LVSC "assigned the terms and conditions of Jacobs' employment with LVSC to both VML and Sands China." *See id.* ¶¶ 25, 54, 61 and 68. The general rule in Nevada is that "personal services contracts are not assignable absent consent." *HD Supply Facilities Maintenance, Ltd. v. Bymoen*, 125 Nev. 200, 205, 210 P.3d 183 (2009). When seeking leave to file the FAC, Jacobs claimed he was unaware of the alleged assignment of the Term Sheet until the SCL jurisdictional hearing in this litigation. Mot. to Amend at 5 ("Evidence presented at the jurisdictional hearing [regarding SCL] . . . provided that LVSC transferred or assigned the contract to both Sands China and VML."). Given that Jacobs was unaware of the purported assignment until the jurisdictional hearing, he certainly could not have consented earlier, and there could not have been a valid assignment of the Term Sheet. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) ("[T]he court may take into account matters of public record, orders, items present in the record of the

---

Tecnicas, 2012 WL 3860598 (E.D. Ark. Sept. 5, 2012) (defendant assumed contract with resident of forum, for delivery of machinery to forum).

case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted.").

Having relied on his claim he was unaware of the assignment to support his late addition of VML, Jacobs cannot now reverse position. *See NOLM, LLC v. Cnty. of Clark*, 120 Nev. 736, 743 (2004) (judicial estoppel prevents party from taking two inconsistent opinions where one position has already been successfully asserted to the Court). Without assignment of the Term Sheet, all of Jacobs' claims against VML must fail. VML could not have breached a contract to which it was not a party.

In addition to this critical flaw that permeates all three of Jacobs' causes of action against VML, his second cause of action also plainly fails to state a claim against VML. Jacobs' second cause of action alleges: (1) LVSC caused SCL to grant stock options to Jacobs (FAC ¶ 60); (2) Jacobs made proper demand to LVSC and SCL to honor his right to exercise the options (*id.* ¶ 63); and (3) LVSC and SCL rejected his demand (*id.*). While none of these allegations concern VML, Jacobs nonetheless alleges VML should be held liable for this purported breach. It is clear such an empty cause of action must fail—nothing in the FAC provides a basis to hold VML liable for this alleged breach.

Jacobs' second cause of action also depends on his contention the May 11, 2010 grant of 2.5 million Sands China share options was controlled by the Term Sheet agreement between Jacobs and LVSC, such that these stock options should have had an accelerated vest if he was terminated "Not for Cause." *See* FAC ¶ 61. However, the Term Sheet predated the alleged written agreement memorializing the May 11, 2010 option grant by almost a year. *See* FAC ¶¶ 24, 60. The Term Sheet makes no reference to the May 11, 2010 option grant. *See* Toh Decl. ¶ 19, Ex. 1. Rather, the May 11, 2010 grant contains its own termination provisions, which eliminate his right to unvested options upon termination for any reason. *See id.* ¶ 19, Ex. 2 at 9. Jacobs concedes he was terminated on July 23, 2010. FAC ¶ 43. He also concedes none of the 2.5 million share options in Sands China were set to vest until January 1, 2011. FAC ¶ 60. Thus, under the clear terms of the May 11, 2010 grant, he is not entitled to any of the 2.5 million Sands China share options because he was terminated several months before any of

these options were scheduled to vest.[4] He has alleged no colorable basis as to why the Term Sheet would control the terms of a share options granted by SCL almost a year later, with an express termination provision directly contrary to the rule he is arguing was in force. This claim fails as a matter of law.

Jacobs' third cause of action for breach of the implied covenant of good faith and fair dealing also fails to state a claim against VML. This cause of action is premised on a laundry list of LVSC's and Mr. Adelson's purported conduct, but none of this conduct is even alleged to have involved VML. *See* FAC ¶ 67. Breach of the implied covenant of good faith and fair dealing requires some evidence of "bad faith" on the part of a party to the contract. *See, e.g., Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 1046, 862 P.2d 1207, 1209 (1993). Not only has Jacobs failed to establish VML is a party to the contract, but he has failed to allege any actions by VML that could constitute bad faith or any "wrongful act . . . committed [by VML] during the course of [the] contractual relationship." *Id.* At most, Jacobs vaguely refers to VML's "wrongful conduct" (*see* FAC ¶ 67), but he provides no explanation as to what VML's supposedly wrongful conduct was. Moreover, this cause of action is entirely unclear as to what "agreements between Jacobs and LVSC" this covenant purportedly attaches. *See* FAC ¶ 67. For all these reasons, this claim fails as a matter of law.

---

[4] On a motion to dismiss, the Court may consider the Term Sheet and May 11, 2010 stock option grant. Even though the documents were not attached to plaintiff's complaint, where the complaint "refers extensively to the document or the document forms the basis of the plaintiff's claim," the incorporation by reference doctrine allows the Court to consider these documents when ruling on a motion to dismiss. *See, e.g., United States v. Ritchie*, 342 F.3d 903 (9th Cir. 2003); *Baxter v. Dignity Health*, 131 Nev. Adv. Op. 76 (2015) ("where the complaint incorporates by reference a preexisting affidavit of merit . . . and no party contests the authenticity of the affidavit or its date, the affidavit of merit may properly be treated as part of the pleadings in evaluating a motion to dismiss."); *Breliant*, 109 Nev. At 847 (relying on federal court case for the proposition that the "court may consider document incorporated by reference into the complaint") (citing *Berk v. Ascott Inv. Corp.*, 759 F. Supp. 245, 249 (E.D. Pa. 1991)). *See also Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) ("We have previously recognized that federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules."). Here, the Term Sheet and May 11, 2010 option grant provide the entire basis for Jacobs' second cause of action.

D. Jacobs Should Be Judicially Estopped from Making Claims Against VML that Are Directly Contrary to Positions He Previously Relied on Successfully Before the Court

Plaintiff's position in his FAC is flatly inconsistent with the position he took in opposition to LVSC's motion to dismiss for failure to join VML as an indispensable party. *See* February 9, 2011 Jacobs' Opposition to LVS Motion to Dismiss, on file herein, at 14-15. Jacobs expressly asserted before the Court that "VML is not a party to Jacobs' employment agreement or the nonqualified stock option agreement." *Id.* Jacobs affirmatively **refused** to name VML as a defendant, telling the Court that he was ready, willing and able to proceed in VML's absence. The Court ultimately sided with Jacobs and denied LVSC's motion.

Jacobs' new claims against VML are directly contrary to his previous assertions. He now seeks to hold VML liable for purported violations of the very contracts to which he claimed VML was not a party. Judicial estoppel applies where "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." *NOLM*, 120 Nev. at 743 (internal quotations and citations omitted). As the United States Supreme Court has long held, "'[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position . . . .'" *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895)).

The purpose of the judicial estoppel doctrine is to prevent parties from doing exactly what Jacobs seeks to do here—"prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire*, 532 U.S. at 749 (internal quotation and citation omitted). There can be no dispute Jacobs has asserted two inconsistent positions before the Court and that he succeeded in asserting the first when the Court denied LVSC's motion to dismiss. Judicial estoppel should preclude Jacobs from reversing his position now that it suits him to do so.

IV.

CONCLUSION

Jacobs' Fifth Amended Complaint fails to set forth any basis for personal jurisdiction over VML. Such jurisdiction does not exist. VML is a Macau-based company with operations based entirely in Macau. VML has no employees, revenue, property, or license to engage in gaming activities in Nevada. Plaintiff's causes of action against VML are based entirely on alleged breaches of a contract that was executed by VML in Macau and performed in Macau. There is no basis for the Court to exercise jurisdiction over VML, especially in this "transnational context" where "exorbitant exercises of all-purpose jurisdiction" pose "risks to international comity."

While the FAC can be dismissed for want of jurisdiction alone, Jacobs' complaint also plainly fails to state a claim against VML upon which relief can be granted. Jacobs seeks to hold VML liable for breaches of a contract to which it was not a party, actions allegedly perpetrated solely by parties other than VML, and for a violation of terms that are plainly not part of a contract. On their face, these allegations must be dismissed.

Lastly, Jacobs should be judicially estopped from making his new claims against VML when these claims are directly to those on which he previously relied to defeat LVSC's motion to dismiss.

For the foregoing reasons, VML respectfully requests the Court dismiss the first, second and third causes of action in Jacobs' FAC, as against VML.

DATED this 21st day of October, 2015.

CARBAJAL & MCNUTT, LLP

/s/ Dan McNutt
DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
625 South Eighth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
Venetian Macau Ltd.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that pursuant to NRCP 5(b) and EDCR 8.05 on the 21st day of October, 2015, I caused service of the foregoing **VENETIAN MACAU LTD.'S MOTION TO DISMISS THE FIRST, SECOND, AND THIRD CAUSES OF ACTION AGAINST VENETIAN MACAU, LTD. IN PLAINTIFF'S FIFTH AMENDED COMPLAINT** to be made by depositing a true and correct copy of same in the United States Mail, postage fully prepaid, addressed to the following and/or via electronic mail through the Eighth Judicial District Court's E-Filing system to the following at the e-mail address provided in the e-service list:

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
sm@morrislawgroup.com
rsr@morrislawgroup.com

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
speek@hollandhart.com
rcassity@hollandhart.com

Michael E. Lackey, Jr., Esq.
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
mlackey@mayerbrown.com

J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
jrj@kempjones.com
mmj@kempjones.com

James Pisanelli, Esq.
Todd Bice, Esq.
Debra Spinelli, Esq.
Jordan Smith, Esq.
PISANELLI BICE PLLC
400 South 7th Street, Third Floor
Las Vegas, Nevada 89101
jjp@pisanellibice.com
tlb@pisanellibice.com
dls@pisanellibice.com
jts@pisanellibice.com
Attorney for Plaintiff

/s/ Lisa A. Heller
Employee of Carbajal & McNutt, LLP

Exhibit A

Dan McNutt
Nevada Bar No. 7815
drm@cmlawnv.com
Matthew Wolf
Nevada Bar No. 10801
mcw@cmlawnv.com
CARBAJAL & MCNUTT
625 South 8th Street
Las Vegas, Nevada 89101

Attorneys for Venetian Macau Limited

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 G. ADELSON, an individual; VENETIAN MACAU LIMITED, a Macau corporation; DOES I-X; and ROE CORPORATIONS I-X, Defendants. AND ALL RELATED CLAIMS.	CASE NO.: A627691-B DEPT NO.: XIII **DECLARATION OF TOH HUP HOCK IN SUPPORT OF VENETIAN MACAU LTD.'S MOTION TO DISMISS THE FIRST, SECOND, AND THIRD CAUSES OF ACTION AGAINST VENETIAN MACAU LIMITED IN PLAINTIFF'S FIFTH AMENDED COMPLAINT**

DECLARATION OF TOH HUP HOCK IN SUPPORT OF VENETIAN MACAU LIMITED'S MOTION TO DISMISS

1. I am the Executive Vice President and Chief Financial Officer of Venetian Macau Limited, a Macau corporation ("VML"), incorporated in Macau, with its principal place of business in Macau. I make this declaration on behalf of VML based on my personal knowledge of the company's operations and records and on information I have gathered from my VML colleagues which I believe to be accurate. If called and sworn as a witness, I could and would testify competently hereto.

2. VML is a resort and gaming operations company located in Macau that develops and owns integrated resorts in Macau. VML's principal place of business is Macau, and VML is incorporated in Macau.

3. VML holds a subconcession from the Macau Government that allows it to own and operate casinos and gaming areas in Macau.

4. Except for a small amount of stock that must be held by an individual in Macau to satisfy Macanese regulatory requirements (10%), VML is and has been a wholly-owned subsidiary of Sands China Ltd. ("SCL") since SCL's initial public offering in November 2009.

5. SCL is a Hong Kong Stock Exchange company, with its principal place of business in Macau. Approximately 30% of SCL's stock is publicly traded on the Hong Kong Stock Exchange. The remainder is indirectly owned by Las Vegas Sands Corp. ("LVSC").

6. VML maintains separate bank accounts from its parent companies. VML has no bank accounts or other assets located in Nevada.

7. VML is adequately capitalized and able to pay all of its debts from the revenues it generates. In 2014, VML had operating profit of over $2.6 billion and net profit of over $2.65 billion from its Macanese operations.

8. VML observes corporate formalities in relation to SCL and LVSC.

9. VML has never owned, controlled, or operated any business in Nevada. VML does not own or lease any property in Nevada.

10. VML's Macanese subconcession only permits gaming activities within Macau. Neither it, nor its parent (SCL), nor any of VML's own subsidiaries conducts any gaming operations in Nevada, nor do they derive any revenue from operations in Nevada. A non-competition agreement with LVSC prevents VML from doing business in Las Vegas (just as it prevents LVSC from doing business in Macau).

11. All of the billions of dollars in revenues that VML's gaming and resort operations generate annually derive from its operations in Macau. VML does not pay taxes in Nevada and only pays taxes in Macau.

12. VML has over 25,000 employees, none of whom reside in Nevada and all of whom live and work in and around Macau. VML has never had any office in Nevada.

13. VML has its own Board of Directors and keeps its own minutes of the meetings of its Board and Board Committees. Four of VML's five board members reside in Macau or Hong Kong (with Robert G. Goldstein being the one exception). Of these board members, only two serve as board members for SCL (and Mr. Goldstein for LVSC). VML Board meetings are held in Macau or Hong Kong; no Board meetings are held in Nevada.

14. VML maintains its own separate and independent corporate and accounting records.

15. VML does not share any employees with LVSC.

16. VML has complete control over its routine, day-to-day activities. VML controls its business strategies and operations, and enters into its own contracts. VML also controls its own hiring and firing decisions, though SCL Board approval may be required for some senior management positions.

17. Before SCL's IPO, VML was an indirect wholly owned subsidiary of LVSC.

18. When Plaintiff Steven Jacobs was originally hired, he was designated the CEO of VML.

19. Attached as Exhibit 1 is a true and correct copy of Jacobs' "Offer Terms and Conditions."

20. Attached as Exhibit 2 is a true and correct copy of the May 11, 2010 option grant from SCL to Jacobs.

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

Executed on October 22, 2015 at Macau.

Toh Hup Hock

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.

ok
8/13/09

Exhibit 2

Exhibit 8
Date 8-26-15 DY
Witness QUARTIERI VOLUME I
C. Lewis #497

SANDS CHINA LTD.

(Incorporated in the Cayman Islands with limited liability)
(the "**Company**")

WRITTEN RESOLUTION OF THE REMUNERATION COMMITTEE OF THE BOARD OF DIRECTORS OF THE COMPANY (THE "COMMITTEE")

Written resolution of the Committee dated May 10, 2010.

1. STOCK OPTION GRANT

1.1 **IT IS NOTED THAT** the Company wishes to grant options to purchase shares in the Company to Mr. Steven Craig Jacobs, the Chief Executive Officer and Executive Director of the Company ("**Mr. Jacobs**"), in recognition of his contribution and to encourage continuing dedication.

1.2 **IT IS NOTED THAT,** the Committee has determined that it wishes to grant Mr. Jacobs options to purchase 2,500,000 shares in the Company on May 11, 2010.

1.3 **IT IS HEREBY RESOLVED** by the Committee and approved by the Independent Non-Executive Directors that Mr. Jacobs be granted options to purchase 2,500,000 shares in the Company on May 11, 2010.

1.4 **IT IS HEREBY RESOLVED** by the Committee and approved by the Independent Non-Executive Directors that the exercise price per share of each option granted hereunder shall be either the official closing price of the Company's shares as stated in the daily quotation sheets of the Stock Exchange of Hong Kong Limited (the "**Stock Exchange**") on May 11, 2010, or the average of the official closing price of the Company's shares as stated in the daily quotation sheets of the Stock Exchange for the 5 business days immediately preceding the date of grant, whichever is higher.

1.5 **IT IS HEREBY RESOLVED** by the Committee and approved by the Independent Non-Executive Directors that the validity period of the options granted hereunder shall be ten (10) years.

1.6 **IT IS HEREBY RESOLVED** by the Committee and approved by the Independent Non-Executive Directors that the options granted hereunder to Mr. Jacobs shall and do hereby vest in accordance with the following schedule:

January 1, 2011	January 1, 2012
50%	50%

[Remainder of page intentionally left blank]

SJ000198

8

PA1115

David Turnbull

Independent Non-executive Director and
Chairman of the Remuneration Committee

Iain Bruce

Independent Non-executive Director and
member of the Remuneration Committee

Jeffrey Schwartz

Non-executive Director and
member of the Remuneration Committee

Chiang Yun

Independent Non-executive Director

David Turnbull

Independent Non-executive Director and
Chairman of the Remuneration Committee

Iain Bruce

Independent Non-executive Director and
member of the Remuneration Committee

Jeffrey Schwartz

Non-executive Director and
member of the Remuneration Committee

Chiang Yun

Independent Non-executive Director

SJ000200

PA1117

David Turnbull

Independent Non-executive Director and
Chairman of the Remuneration Committee

Iain Bruce

Independent Non-executive Director and
member of the Remuneration Committee

Jeffrey Schwartz

Non-executive Director and
member of the Remuneration Committee

Chiang Yun

Independent Non-executive Director

金沙中国
Sands China Ltd

July 7, 2010

JACOBS, Steven Craig
Present

Dear Mr. Jacobs,

Share Option Grant

I am glad to advise that in consideration of your contribution and continued services to Sands China Ltd. ("Company"), the Company has granted to you (subject to your acceptance) an option to subscribe for shares in the Company (the "Option") on the following terms:

1. Total Number of Shares

   2,500,000 shares of the Company ("Shares")

2. The Subscription Price

   HK$11.83 per Share

3. The Option Period

   The Option is exercisable in accordance with the following vesting scale, subject to the Option Terms and Conditions appended to this letter, as in force from time to time.

Time Period	Percentage of Option Exercisable
From 1 January 2011	50%
From 1 January 2012	100%

   If you decide to exercise the Option, you are required under the Option Terms and Conditions to give a notice of exercise to the Company (a form of which is appended to this letter as Appendix I).

   The Option will lapse on 11 May 2020, to the extent it has not been exercised.

4. Conditions of the Grant

   The Option is subject to the Option Terms and Conditions appended to this letter as Appendix II, as in force from time to time.

5. Acceptance of the Option

   If you wish to accept this offer of the Option, please sign the duplicate copy of this notice and return it (together with remittance of HK$1.00) to Joey Cheong (Venetian P1_LG, Human Resources –

Compensation & Benefits Office) of the Company, within 28 days of the date of this letter. If **Joey Cheong** does not receive the letter and amount (in accordance with this paragraph) within 28 days, you shall be deemed to have declined the grant of the Option.

Save as mentioned above, you are required to hold the Option on terms on which it is granted and to be bound by the provisions as set out in this letter. The Option is personal and is not transferable.

By order of the Board

Toh Hup Hock
Executive Vice President & Chief Financial Officer
Sands China Ltd.

I hereby accept the offer of the grant of the Option (as defined above) and enclose HK$1.00 in cash/by cheque.

Signature of: JACOBS, Steven Craig
Date :

Received by
Date:

金沙中国
Sands China Ltd

APPENDIX I

NOTICE OF EXERCISE

SANDS CHINA LTD.

To: Chief Executive Officer of Sands China Ltd. (the "Company")
Copy: Mr. Luis Nuno Mesquita de Melo, General Counsel of the Company

I, being the holder of an Option (the "Option") to subscribe for shares ("Shares") in the Company that was granted to and accepted by me in accordance with the grant letter from the Company dated _____ (the "Grant Letter"), by this notice exercise that Option in respect of _____[1] Shares in the Company subject to that Option in accordance with the Option Terms and Conditions (as appended to the aforesaid grant letter). I confirm that I am vested in my Option as to the shares being purchased hereunder.

[Please tick the appropriate box below:]

☐ I hereby request the issue to me of _____ Shares in accordance with the Option Terms and Conditions and hereby enclose HK$_____[2] in cash/by cheque[3], which is the remittance (the "Remittance") for the full amount of the aggregate subscription price for the Shares in respect of which this notice is given.

☐ I hereby request the issue to me of _____ Shares in accordance with the Option Terms and Conditions and hereby enclose Shares valued at the Fair Market Value at the time the Option is exercised equal to the exercise price of _____[4], which is for the full amount of the aggregate subscription price for the Shares in respect of which this notice is given.

I agree to accept the Shares on the terms of the Memorandum and Articles of Association of the Company.

Signature .....

Name (in capitals) .....

Address .....

.....

.....

Date .....

---

[1] Please insert the number of Shares in respect of which you are exercising the Option. Please send this notice of exercise together with the Remittance to Chief Executive Officer of Sands China Ltd., copying the General Counsel.

[2] Please insert the relevant amount (Number of Shares x Subscription Price).

[3] Please delete as appropriate.

[4] Please insert the relevant amount (Number of Shares x Fair Market Value).

金沙中国
Sands China Ltd.

APPENDIX II

OPTION TERMS AND CONDITIONS

The Company adopted an Equity Award Plan on November 8, 2009 (the "Plan"). The provisions of the Plan are hereby incorporated herein by reference. Except as otherwise expressly set forth herein, the Grant Letter shall be construed in accordance with the provisions of the Plan and any capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan. The Committee shall have the final authority to interpret and construe the Plan and the Grant Letter and to make any and all determinations under them, and its decision shall be binding and conclusive upon the Participant and his legal representative in respect of any questions arising under the Plan or the Grant Letter.

Set forth below are extracts of relevant provisions of the Plan. These extracts are provided for your convenience only. Please refer directly to the Plan for a complete list of terms and conditions. Should there be any variation between the terms listed below and those in the Plan, the Plan shall prevail.

1. EXERCISABILITY OF THE OPTIONS

1.1 Each Option shall be exercisable only by a Grantee during the Grantee's lifetime, or, if permissible under applicable law, by the Grantee's legal guardian or representative.

1.2 An Option may be exercised in whole or in part in the manner as set out in Clauses 2.1 and 4 by the Grantee (or his legal personal representative(s)) giving notice in writing to the Company (a form of which is appended as Appendix I to the Grant Letter) stating that the Option is thereby exercised and specifying the number of Shares to be subscribed. Each such notice must be accompanied by a remittance for the full amount of the aggregate Subscription Price for the Shares in respect of which the notice is given. The Option Price shall be payable (i) in cash and/or Shares valued at the Fair Market Value at the time the Option is exercised (including by means of attestation of ownership of a sufficient number of Shares in lieu of actual delivery of such shares to the Company); (ii) in the discretion of the Committee, either (A) in other property having a fair market value on the date of exercise equal to the Option Price or (B) by delivering to the Committee a copy of irrevocable instructions to a stockbroker to deliver promptly to the Company an amount of loan proceeds, or proceeds from the sale of the Shares subject to the Option, sufficient to pay the Option Price or (iii) by such other method as the Committee may allow. Notwithstanding the foregoing, in no event shall you be permitted to exercise an Option in the manner described in clause (ii) or (iii) of the preceding sentence if the Committee determines that exercising an Option in such manner would violate any other applicable law or the applicable rules and regulations of any securities exchange or inter dealer quotation system on which the securities of the Company or any Subsidiaries are listed or traded.

2. EFFECT OF TERMINATION OF EMPLOYMENT ON THE OPTIONS

2.1 Subject as hereinafter provided in the Equity Award Plan, the Option may be exercised by the Grantee at any time or times during the Option Period (subject to such vesting scale as set out in the grant letter above) provided that:-

(i) **Death/Disability**: if the Grantee's employment with the Company and its subsidiaries terminates on account of the Grantee's death or by the Company or any subsidiary due to disability, the unvested portion of the Option shall expire on the date of termination and the

vested portion of the Option shall remain exercisable by the Grantee through the earlier of (A) the expiration of the Option Period or (B) one year following the date of termination on account of death or disability;

(ii) Termination Other than due to Death/Disability or for Cause: if the Grantee's employment with the Company and its subsidiaries is terminated for any reason other than on account of the Grantee's death or by the Company or any subsidiary due to disability or for cause, the unvested portion of the Option shall expire on the date of termination and the vested portion of the Option shall remain exercisable by the Grantee through the earlier of (A) the expiration of the Option Period or (B) ninety (90) days following such termination;

(iii) Termination for Cause: if the Grantee's employment with the Company and its subsidiaries is terminated by the Company or any subsidiary for cause, both the unvested and the vested portions of the Option shall terminate on the date of such termination;

(iv) General Offer: if a general offer, whether by way of a takeover offer, share repurchase offer or scheme of arrangement or otherwise in like manner is made to all the holders of Shares, or all such holders other than the offeror and/or any person controlled by the offeror and/or any person acting in association or concert with the offeror, the Company shall use all reasonable endeavours to procure that such offer is extended to all the Grantees on the same terms, with appropriate changes, and assuming that they will become, by the vesting and exercise in full of the Options granted to them (whether or not they have become exercisable), shareholders of the Company. If such offer (other than a scheme of arrangement) becomes or is declared unconditional or such scheme of arrangement is formally proposed to the shareholders of the company, a Grantee shall, notwithstanding any other terms on which his Options were granted, be entitled to exercise his Option (to the extent not already exercised) to its full extent or to the extent specified in the Grantee's notice to the Company in exercise of his Option at any time up to the close of such offer or the record date for entitlements under a scheme of arrangement. Subject to the above, an Option (to the extent not already exercised) will lapse automatically on the date on which such offer closes or the record date for entitlements under a scheme of arrangement;

(v) Winding up of the Company: in the event a notice is given by the Company to its members to convene a general meeting for the purposes of considering, and if thought fit, approving a resolution to voluntarily wind-up the Company, the Company shall on the same date as or soon after it despatches such notice to each of its shareholders give notice thereof to all Grantees and thereupon, each Grantee (or in the case of his death, his legal personal representative(s)) shall be entitled to exercise all or any of his Options (to the extent not already exercised) at any time not later than two business days prior to the proposed general meeting of the Company referred to above by giving notice in writing to the Company, accompanied by a remittance for the full amount of the aggregate Subscription Price for the Shares in respect of which the notice is given, whereupon the Company shall as soon as possible and, in any event, no later than the business day immediately prior to the date of the proposed general meeting, allot the relevant Shares to the Grantee credited as fully paid and register the Grantee as holder thereof;

(vi) Restructuring/Amalgamation: if a compromise or arrangement between the Company and its members or creditors is proposed for the purposes of a scheme for the restructuring of the

Company or its amalgamation with any other companies pursuant to the laws of the jurisdiction in which the Company was incorporated, the Company shall give notice to all the Grantees of the Options on the same day as it gives notice of the meeting to its members or creditors summoning the meeting to consider such a scheme or arrangement and any Grantee may by notice in writing to the Company accompanied by a remittance for the full amount of the aggregate Subscription Price for the Shares in respect of which the notice is given (such notice to be received by the Company not later than two business days prior to the proposed meeting), exercise the Option to its full extent or to the extent specified in the notice and the Company shall as soon as possible in any event no later than the business day immediately prior to the date of the proposed meeting, allot and issue such number of Shares to the Grantee which falls to be issued upon on such exercise of the Option credited as fully paid and register the Grantee as a holder thereof. With effect from the date of such meeting, the rights of all Grantees to exercise their respective Options shall forthwith be suspended. Upon such compromise or arrangement becoming effective, all Options shall, to the extent that they have not been exercised, lapse. If for any reason such compromise or arrangement does not become effective and is terminated or lapses, the rights of Grantees to exercise their respective Options shall with effect from the date of the making of the order by the relevant court be restored in full as if such compromise or arrangement had not been proposed by us.

3. **TRANSFERABILITY**

No Option may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Grantee other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any of its subsidiaries; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

4. **RIGHTS OF SHAREHOLDER**

The Shares to be allotted and issued upon the exercise of an Option will not carry voting rights until completion of the registration of the Grantee (or any other person nominated by the Grantee) as the holder thereof. Subject to the aforesaid, Shares allotted and issued on the exercise of Options will rank pari passu and shall have the same voting, dividend, transfer and other rights, including those arising on liquidation as attached to the other fully paid Shares in issue on the date of issue, save that they will not rank for any dividend or other distribution declared or recommended or resolved to be paid or made by reference to a record date falling on or before the date of issue.

5. **LAPSE OF OPTION**

An Option shall lapse automatically and not be exercisable (to the extent not already exercised) on the earliest of:-

(i) the expiry of the Option Period;

(ii) the expiry of any of the periods referred to in Clause 1.3 (i), (ii), (iii), (iv) and (v);

(iii) the date on which the scheme of arrangement of the Company referred to in Clause 1.3 (vi) becomes effective;

(iv) subject to Clause 1.3 (v), the date of commencement of the winding-up of the Company; or

(v) the date on which the Board shall exercise the Company's right to cancel the Option at any time after the Grantee commits a breach of Clause 1.1 or the Options are cancelled in accordance with Clause 6.

6. REORGANISATION OF CAPITAL STRUCTURE

In order to prevent substantial enlargement or dilution of a Grantee's rights in a manner consistent with the purposes of the Equity Award Plan, the committee administering the Equity Award Plan ("Committee") shall make an equitable adjustment or substitution to the number, price or kind of a Share or other consideration subject to such scheme or as otherwise determined by the Committee to be equitable (i) in the event of changes in the outstanding Shares or in the capital structure of the Company by reason of share or extraordinary cash dividends, share splits, reverse share splits, recapitalization, reorganizations, mergers, consolidations, combinations, exchanges, or other relevant changes in capitalization occurring after the date of grant of any Option or (ii) in the event of any change in applicable laws or any change in circumstances which results in or would result in any substantial dilution or enlargement of the rights granted to, or available for, participants, or which otherwise warrant equitable adjustment because it interferes with the intended operation of the Equity Award Plan, provided however, that the manner of any such equitable adjustment shall be determined by the Committee in its sole discretion in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("Listing Rules") and their decision shall be final and conclusive and binding on the Company and the Grantees.

Notwithstanding the above, in the event of any of the following:

(i) the Company is merged or consolidated with another corporation or entity and, in connection therewith, consideration is received by shareholders of the Company in a form other than shares or other equity interests of the surviving entity;

(ii) all or substantially all of the Company's assets are acquired by another person;

(iii) the reorganization or liquidation of the Company; or

(iv) the Company shall enter into a written agreement to undergo an event described in paragraphs (i), (ii) or (iii) above,

then the Committee may, in its discretion and upon at least 10 days advance notice to the affected persons, cancel any outstanding Options and cause the holders thereof to be paid, in cash or Shares, or any combination thereof, the value of such Options based upon the price per Share received or to be received by other shareholders of the Company in the event.

7. CANCELLATION OF OPTIONS

The Committee may, to the extent consistent with the terms of the Equity Award Plan, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Option theretofore granted or the associated option agreement, prospectively or retroactively, provided that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would impair the rights of any Grantee or any holder or beneficiary of any Option

theretofore granted shall not to that extent be effective without the consent of the affected Grantee, holder or beneficiary; and provided further that, without shareholder approval, no amendment or modification may reduce the Subscription Price of any Option.

8. MISCELLANEOUS

8.1 No Rights to Employment: The grant of Options and these Terms and Conditions shall not form part of any contract of employment between the Company or any subsidiary and any employee and the rights and obligations of any employee under the terms of his office or employment shall not be affected thereby. No Grantee shall have any additional rights to compensation or damages in consequence of the termination of such office or employment for any reason as a result of the grant of an Option to him.

8.2 No Legal or Equitable Rights: These Terms and Conditions shall not confer on any person any legal or equitable rights (other than those constituting the Options themselves) against the Company directly or indirectly or give rise to any cause of action at law or in equity against the Company.

8.3 Governing Law: These Terms and Conditions and Options granted hereunder shall be governed by and construed in accordance with Hong Kong law.

DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, Nevada 89101
Telephone: (702) 384-1170
Facsimile: (702) 384-5529
drm@cmlawnv.com
mcw@cmlawnv.com

Attorneys for Defendant
Venetian Macau Limited

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 G. ADELSON, an individual; VENETIAN MACAU LTD., a Macau corporation; DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED CLAIMS.

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

VENETIAN MACAU LIMITED'S LAWFUL OPPOSITION TO JACOBS' EX PARTE MOTION TO STRIKE ITS RULE 48.1 PEREMPTORY CHALLENGE

Hearing Date: 10.26.15
Hearing Time: 8:30 a.m.

I.

INTRODUCTION

Plaintiff Steven C. Jacobs ("Jacobs") seeks to deprive Venetian Macau Limited ("VML") of its right to "one change of judge by a peremptory challenge" under Nevada Supreme Court Rule 48.1. Jacobs added VML to this case as a defendant under an amended complaint approved by the challenged judge on September 18, 2015, four years and five months after having persuaded the same judge *in this case* that VML is not a necessary or an indispensable party and should not be a defendant "for the simple reason that it is not a party to any of the contracts at issue." February 9, 2011 Jacobs' Opposition to LVS Motion to Dismiss,

on file herein.[1] Jacobs contends that because Judge Elizabeth Gonzalez has already ruled on contested matters in this case during the past several years she cannot now be displaced, but he fails to point out that VML was not a party to any of those contested matters as a result of his hostility to VML being added as a party in 2011.

This is VML's first opportunity to exercise its *right* to make a peremptory challenge. Jacobs, however, dismisses the significance of this fact by asserting that dicta in *Gallen v. Eighth Jud. Dist. Ct.*, 112 Nev. 209, 213, 911 P.2d 858, 860 (1996) overcomes the controlling rule established by the Supreme Court in *State ex rel Moore v. Fourth Jud. Dist Ct.*, 77 Nev. 357, 363, 364 P.2d 1073 1077 (1961). In *Moore*, the Supreme Court held that a new party, such as "an intervener has the same right of recusation as has any one of the original parties." The Supreme Court reaffirmed the *Moore* holding in *Tradewinds Bldg. & Devel., Inc. v. Eighth Jud. Dist. Ct.*, 2013 WL 3896543 *1, in which the Court cited *Moore* for the proposition that "interveners could file a peremptory challenge even though a contested hearing had occurred because they had lacked standing to challenge a judge under the statutory predecessor to SCR 48.1 until they formally joined the action." If the *Gallen* dicta had the force that Jacobs claims, then the Supreme Court in *Tradewinds* (13 years after *Gallen* was decided) would not have cited *Moore* as authority confirming a newly-added party's *right* to challenge the judge when no original party on the added party's side has exercised that right.

The Emergency Motion to nullify VML's exercise its SCR 48.1 right to "one change of judge" after being added as a party to this case should be denied.

---

[1] VML is challenging service and jurisdiction via separate motions. By filing this motion, VML is not consenting to the jurisdiction of this Court, and intends to contest jurisdiction and service at the appropriate time.

II.

ARGUMENT

1. VML Has Satisfied The Requirements Of Rule 48.1 In Exercising Its Peremptory Challenge.

Nevada Supreme Court Rule 48.1 sets forth the procedure for a peremptory challenge. It states, *inter alia*, "In any civil action pending in a district court, which has not been appealed from a lower court, each side is entitled, **as a matter of right**, to one change of judge by peremptory challenge." Rule 48.1 (emphasis added).[2] This peremptory challenge must be filed either (1) "[w]ithin 10 days after **notification to the parties** of a trial or hearing date;" or (2) "[n]ot less than 3 days before the date set for the hearing of any contested pretrial matter, whichever occurs first." *Id.* (emphasis added). These rules impose deadlines for exercising peremptory challenges upon **existing parties** to a litigation, and reasonably tie those deadlines to events for which **existing parties** will receive notice.

Here, VML filed its peremptory challenge on October 16, 2015. Pursuant to Rule 48.1, VML is "entitled, as a matter of right," to this peremptory challenge. *Id.* VML did not previously receive any notification of a trial or hearing date, as it has not been a party to the action. Nor had any hearing been scheduled for any contested pretrial matter involving VML. Thus, VML satisfied the time constraints imposed by Rule 48.1, and did not waive its right to exercise a peremptory challenge.

2. Case Law Makes Clear A New Party May Exercise A Rule 48.1 Right Where No Prior Party On The Same Side Of The Litigation Has Exercised This Right.

Jacobs' motion to strike is premised on an untenable concept: that a new party cannot exercise an existing right because it did not do so before becoming a party to the case. Here, no prior party has made a peremptory challenge, and thus the right still exists. Before now,

---

[2] Jacobs argues that the peremptory is not allowed because an appeal has already been taken in this action. *See* Mot. at 7. But Rule 48.1 does not eliminate the right to file a peremptory if there is an appeal **up** from the district court to a higher court. It instead eliminates the right when there is an appeal from a lower court up to the district court. Rule 48.1 (peremptory challenge is permitted "in a civil action . . . which has not been appealed from a lower court"). As the court in *Turnipseed* held, "lower courts are defined by statute and include family courts, justices' courts, and municipal courts." 116 Nev. at 1030. This case is plainly not before the

however, VML could not have made such a challenge because it had no standing to do so—just as any stranger cannot freely file peremptory challenges in cases in which he is not involved. Given the absurdity of Jacobs' proposed interpretation of Rule 48.1, it is no surprise it has been rejected by Nevada courts.

The Nevada Supreme Court addressed a nearly identical situation in *State ex rel Moore v. Fourth Jud. Dist. Ct.*, 77 Nev. 357, 363-64, 364 P.2d 1073, 1077 (1961). There, the court allowed an intervenor to file a peremptory challenge even after the judge had considered contested matters between the other parties because the intervenor did not have standing to challenge the judge until it became a party. *Id.* Like the party in *Moore*, VML has only recently been named as a party in this action and did not previously have standing to file a peremptory challenge.

In VML's situation, however, fairness even more strongly dictates allowing a peremptory challenge. VML is not an intervenor that voluntarily stepped into the case. VML was instead involuntarily brought into the litigation by Jacobs. If Jacobs wanted to avoid the situation about which he now complains, he could have sought to bring VML in at the outset of the case, or not at all.[3] Jacobs cannot now deprive VML of its peremptory right, based on a situation of his own making.

The rule set forth in *Moore* has been repeatedly recognized by Nevada courts. In *Turnipseed v. Truckee-Carson Irrigation Dist.*, 116 Nev. 1024, 1031, 13 P.3d 395, 399 (2000), the Supreme Court found that a party that intervened several years from the initial action was permitted a peremptory challenge. The court cited *Moore* for the proposition that "an intervening party was not precluded from filing an affidavit to disqualify the judge despite the fact that there had been an earlier motion to set the cause for trial because the intervenors did not become 'parties' to the action until their motion for intervention was granted." *Id.* (citing *Moore*, 77 Nev. at 363).

---

district court on appeal from any of these "lower courts," so this argument fails.

[3] As discussed *infra* at 7-8, Jacobs argued strenuously that VML did not belong in the case five years ago, when it was just getting started and Defendant Las Vegas Sands Corporation

More recently, in *Tradewinds Bldg. & Dev. Inc. v Eighth Judicial Dist. Ct.*, No. 61796, 2013 Lexis 1097, 2013 WL 3896543, at *1 (2013), the court relied, in part, on *Moore* to allow a party to file a peremptory challenge less than three days before a contested hearing (as required by Rule 48.1) because it was the "first opportunity it had to file a challenge," following the case's reassignment to a new judge.

Similarly, in *Carr-Bricken v. First Interstate Bank*, 105 Nev. 570, 573, 779 P.2d 967, 969 (1989), the court distinguished a party's attempt to exercise a peremptory challenge after the party filed a new counter-claim and reiterated that *Moore* "authorized a peremptory challenge" by a party who "was new to the action." *Id.* Here, VML is "new to the action" and *by right* is entitled to exercise this challenge under SCR 48.1 to change the judge.

The policy behind Rule 48.1 supports *Moore* and its progeny. "Peremptory challenges are mechanisms designed to insure a fair tribunal by allowing a party to disqualify a judge thought to be unfair or biased." *Smith v. Eighth Judicial Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 852 (1991) (internal quotation and citation omitted). A party added to a case after proceedings are underway has the same reason for concern about fairness and bias of judicial officers as do parties who are present at the inception of a case. There is no good reason to empower a plaintiff to deny a newly-added defendant its Rule 48.1 right, particularly when, as in this case, the plaintiff successfully contended years ago the newly-added defendant does not belong in the case.[4]

In this context, it is worthwhile to consider that Jacobs has not cited a single case in which a court denied a new party its right to a peremptory challenge, and forced that party to litigate before a judge challenged as Rule 48.1 prescribes when no party on the same side of the litigation has already exercised that right. Jacobs relies on *Gallen v. Eighth Jud. Dist. Ct.*, 112 Nev. 209, 213, 911 P.2d 858, 860 (1996) to mistakenly argue "if one side does not exercise its peremptory challenge, it is forever waived by all parties on the same side, even those that are later added to the case." Mot. at 7. But *Gallen* does not stand for that proposition, and the

---

sought dismissal because of Jacobs' failure to include VML in the case.

language from *Gallen* that Jacobs relies on to establish it is pure dicta. In that case, the defendant (King) voluntarily dismissed his third-party complaint against newly-added Gallen immediately after Gallen filed his peremptory challenge. *See Gallen,* 112 Nev. at 211, 911 P.2d at 859. The court upheld the dismissal and thus had no reason to rule on the motion to strike the peremptory challenge because Gallen was no longer a party to the case. The ruling did not force Gallen to litigate the case in front of a judge Gallen had challenged under Rule 48.1, as striking VML's challenge would.

Gallen's dicta does not disturb the rule announced in *Moore*, 77 Nev. at 363-64, 364 P.2d at 1077, or the cases relying upon *Moore*, which are binding precedent. Tellingly, this dicta from *Gallen* has not been cited by *any* court, whereas *Moore*'s holding has been cited in at least five other cases, including three decided after *Gallen*. *See Tradewinds*, 2013 WL 3896543 at *1 (Nev. July 23, 2013) (13 years following *Gallen* and citing *Moore* for the "holding that intervenors [i.e., newly-added parties] could file a peremptory challenge even though a contested hearing had occurred because they had lacked standing to challenge a judge under the statutory predecessor to SCR 48.1 [former subsection 5 of NRS 1.230] until they formally joined the action"); *Turnipseed*, 116 Nev. at 1031, 13 P.3d at 399 (2000) (same); *Smith*, 107 Nev. at 678, 818 P.2d at 852 (same); *Carr-Bricken*, 105 Nev. at 573, 779 P.2d at 969 (noting *Moore* "authorized a peremptory challenge to a judge by an intervening party, who, unlike appellant, was new to the action"); *Mundt v. Nw. Explorations, Inc.*, 963 P.2d 265, 269 (Alaska 1998) (citing *Moore* for its holding "that an intervenor has the same right to disqualify a judge as any other party"). Moreover, the present case is distinguishable because Gallen, after being added to the action by defendant King's third party complaint, voluntarily joined the plaintiff's motion to dismiss King's counterclaim, thus waiving his right to a Rule 48.1 challenge. *See Gallen*, 112 Nev. at 211, 911 P.2d at 859.

VML, as a newcomer to this action, is entitled by controlling Nevada law to exercise a peremptory challenge, "as a matter of right."

---

[4] *See infra* at 7-8.

3. Jacobs Engineered The Circumstances He Now Claims Warrant Denying VML Its Peremptory Challenge Right.

Jacobs argues that VML should be precluded from making a peremptory challenge due to length of time the case has been pending, and prior litigation activity in this case. These are circumstances of Jacobs' own making. Close to five years ago, Jacobs succeeded in arguing to the former judge in this case that VML is not a necessary party to this case. *See* February 9, 2011 Jacobs' Opposition to LVS Motion to Dismiss, on file herein. He should not now be permitted to change his tune and deny VML's Rule 48.1 right to a peremptory challenge, based on an alleged "water under the bridge" theory, when he effectively engineered the current situation by convincing the former judge that VML should not be a party to this case.[5] *See NOLM, LLC v. Cnty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (judicial estoppel prevents party from taking two inconsistent opinions where one position has already been successfully asserted to the Court).

CONCLUSION

For the foregoing reasons, VML respectfully requests the Court deny plaintiff's motion to strike VML's peremptory challenge.

DATED this 23rd day of October, 2015.

CARBAJAL & MCNUTT, LLP

/s/ Dan McNutt
DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
625 South Eighth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
Venetian Macau Ltd.

---

[5] Jacobs' suggestion that much of this case has already been litigated before Judge Gonzalez is misleading. The majority of issues related to the merits of this case – including most of fact and expert discovery, summary judgment motions, and trial – all remain to be litigated.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that pursuant to NRCP 5(b) and EDCR 8.05 on the 23rd day of October, 2015, I caused service of the foregoing **VENETIAN MACAU LIMITED'S LAWFUL OPPOSITION TO JACOBS' EX PARTE MOTION TO STRIKE ITS RULE 48.1 PEREMPTORY CHALLENGE** to be made by depositing a true and correct copy of same in the United States Mail, postage fully prepaid, addressed to the following and/or via electronic mail through the Eighth Judicial District Court's E-Filing system to the following at the e-mail address provided in the e-service list:

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
sm@morrislawgroup.com
rsr@morrislawgroup.com

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
speek@hollandhart.com
rcassity@hollandhart.com

Michael E. Lackey, Jr., Esq.
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
mlackey@mayerbrown.com

J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD
3800 Howard Hughtes Parkway, 17th Floor
Las Vegas, Nevada 89169
jrj@kempjones.com
mmj@kempjones.com

James Pisanelli, Esq.
Todd Bice, Esq.
Debra Spinelli, Esq.
Jordan Smith, Esq.
PISANELLI BICE PLLC
400 South 7th Street, Third Floor
Las Vegas, Nevada 89101
jjp@pisanellibice.com
tlb@pisanellibice.com
dls@pisanellibice.com
jts@pisanellibice.com
Attorney for Plaintiff

/s/ Lisa Heller
Employee of Carbajal & McNutt, LLP

RPLY
James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 214-2100
Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

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; VENETIAN MACAU LTD., a Macau corporation; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XIII

REPLY IN SUPPORT OF MOTION TO STRIKE UNLAWFUL PEREMPTORY CHALLENGE OF JUDGE

Hearing Date: October 26, 2015

Hearing Time: 9:00 a.m.

Defendant Venetian Macau, Ltd. ("VML") claims that it is a "new party" to the action which somehow "revived" its sides ability to file a peremptory challenge under SCR 48.1. For this, VML claims that *Moore v. Fourth Jud. Dist. Ct.*, 77 Nev. 357, 361, 364 P.2d 1073, 1076 (1961) establishes "controlling" Nevada authority, despite the express contrary ruling in *Gallen v. Eighth Jud. Dist. Ct.*, 112 Nev. 209, 213, 911 P.2d 858, 860 (1996) several decades later. (Opp'n at 2.) Unremarkably, *Moore* does not state what VML claims. *Moore* did not involve a "peremptory" challenge against the judge under SCR 48.1. That case involved a challenge against a judge for

"cause" under NRS 1.230.[1] VML disingenuously claims that a challenge for cause by a "party" against a judge is the same as a peremptory challenge by a "side." Not so.

There is a fundamental distinction between a challenge for "cause" as opposed to a "peremptory" challenge, as the Nevada Supreme Court has recognized in the analogous case of jury challenges. Challenges for cause are a matter of constitutional right, because they concern **a party's** right to a neutral fact finder. Peremptory challenges are a matter only of legislative favor. *State v. McClear*, 11 Nev. 39, 53 (1876). *Moore* involved a challenge against a judge for bias by an intervening party. That is wholly different than a peremptory challenge of a judge which is only afforded to "sides" – regardless of the number of parties per side – under the terms of SCR 48.1. VML's suggestion that *Moore* involved a "nearly identical situation" is flat wrong. In *Moore* the judge was challenged for "cause", which the Court recognized is afforded to any *party* by filing an "affidavit alleging that the judge before whom the action is to be tried had a bias or prejudice. . . ." 77 Nev. at 1076, 364 P.2d at 361. (emphasis added). As noted in *Turnipseed v. Truckee-Carson Irr. Dist.*, 116 Nev. 1024, 1031, 13 P.3d 395, 399 (2000), what *Moore* provided was that "an intervening party was not precluded from ***filing an affidavit to disqualify a judge*** despite the fact that there had been an earlier motion to set the cause for trial because the interveners did not become party's to the action until their motion for intervention was granted." (emphasis added).[2]

VML confirms its lack of substance when its only response to *Gallen* is to call the Court's decision "dicta." Hardly. In that case, the Court addressed and rejected the very argument that VML makes here: that the addition of a party to the case "revives" the ability of one "side" to file a peremptory challenge even though that side had forfeited the ability to make a challenge under SCR 48.1.[3] As the Nevada Supreme Court held in *Gallen*, even adding a party does not "revive" that

---

[1] VML claims that SCR 48.1 replaces NRS 1.230, the statute at issue in *Moore*. It did no such thing. These are distinct grounds for replacement of a judge.

[2] Of course, challenges for cause under NRS 1.230 and 1.235 belong to "parties" and are not limited to "sides."

[3] VML's assertion that new parties have the right to file a peremptory challenge is also in contravention of the rule which provides that each "side" only has one. Thus, the fact that VML is added after its co-defendants (i.e. its side) forfeited any ability to file a peremptory challenge is hardly remarkable. Again, peremptory challenges are a matter of legislative grace only, unlike challenges for cause. The fact that VML's co-defendants did not exercise any peremptory challenge

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

side's right to a peremptory challenge, once it was waived by the other parties to that "side." And so it is for VML.

Tellingly, VML specifically ignores the express terms of SCR 48.1(5). Its silence is an admission. In *Morrow v. Eighth Jud. Dist. Ct.*, 294 P.3d 411, 413-14 (2013), the Court noted that SCR 48.1 must be followed pursuant to its plain language. The Court observed that the peremptory challenge must be issued "before ***any*** hearing is commenced or ***any*** ruling is made on the contested matter . . . ." (emphasis added).

VML truly outdoes itself in misstating the law when it cites *Carr-Bricken v. First Interstate Bank*, 105 Nev. 570, 779 P.2d 967 (1989) and *Tradewinds Bldg. & Dev. Inc. v. Eighth Jud. Dist. Ct.*, 2013 WL 3896543 (Nev. 2013)[4]. Each of those cases contradicts VML. In *Tradewinds*, the party had a right to file a peremptory challenge because the action was assigned to a new judge by way of consolidation, and the Supreme Court expressly noted that SCR 48.1(9) expressly authorizes issuance of a new peremptory challenge under such circumstances. *Id.* at * 1. In *Carr-Bricken* the Court explained that a peremptory challenge was not allowed because a counterclaim is not a "separate" action and thus there are not new "sides" providing for the exercise of a peremptory challenge. 105 Nev. at 573, 779 P.2d at 969; *see also Jeaness v. Second Jud. Dist. Ct.*, 97 Nev. 218, 219-20, 626 P.2d 272, 273 (1981) (failure to file within the time structures of Rule 48.1 results in the waiver of any right to make a peremptory challenge).

Regardless of VML's characterization of itself as a new party to this action – in contrast to the actual evidence presented during the jurisdictional hearing conducted by Judge Gonzalez – the fact remains that VML's "side" of the case waived any ability to exercise a peremptory challenge. The trial date has long been set and multiple pre-trial hearings conducted. SCR 48.1(3). Moreover, SCR 48.1(5) precludes any peremptory challenge against any judge that has entered a ruling. If VML chooses to challenge Judge Gonzalez for cause under NRS 1.230 – the statutory means for challenging a judge at issue *Moore* – then it needs to follow the statute, file the required affidavit and face the consequences of filing such a challenge for an improper purpose. That VML is

---

precludes VML from doing so now, particularly since Judge Gonzalez has entered numerous rulings on numerous contested matters.

[4] An un-citable, unpublished decision. SCR 123.

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

unwilling to do so, cognizant that the Supreme Court has already rejected this very same maneuvering by its side, is dispositive.

This case must be immediately remanded to Judge Gonzalez as the law requires.

DATED this 23rd day of October, 2015.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Plaintiff Steven C. Jacobs

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 23rd day of October, 2015, I caused to be served via the Court's E-Filing system true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' REPLY IN SUPPORT OF MOTION TO STRIKE UNLAWFUL PEREMPTORY CHALLENGE OF JUDGE** to the following:

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
speek@hollandhart.com
rcassity@hollandhart.com

J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
r.jones@kempjones.com
m.jones@kempjones.com

Michael E. Lackey, Jr., Esq.
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
mlackey@mayerbrown.com

James Ferguson, Esq.
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
jferguson@mayerbrown.com

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
sm@morrislawgroup.com
rsr@morrislawgroup.com

Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, NV 89101
drm@cmlawnv.com
mcw@cmlawnv.com

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, THIRD FLOOR
LAS VEGAS, NEVADA 89101

Electronically Filed
10/28/2015 11:07:33 AM

CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, vs. LAS VEGAS SAND CORP., et al., Defendants. ---------- AND ALL RELATED CLAIMS	CASE NO. A627691 DEPT. XIII **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE, MARK R. DENTON, DISTRICT COURT JUDGE

MONDAY, OCTOBER 26, 2015

PLAINTIFF STEVEN C. JACOBS' EMERGENCY MOTION TO STRIKE UNLAWFUL PEREMPTORY CHALLENGE OF JUDGE; ORDER SHORTENING TIME

APPEARANCES:

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

For Venetian Macau Ltd.: DANIEL R. MCNUTT, ESQ.
MATTHEW C. WOLF, ESQ.

APPEARANCES CONTINUED ON PAGE 2

For Las Vegas Sands Corp. and Sands China Ltd.:	STEPHEN J. PEEK, ESQ.
For Sheldon Adelson:	STEVE L. MORRIS, ESQ.
For Sands China Ltd.:	MARK M. JONES, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

LAS VEGAS, NEVADA, MONDAY, OCTOBER 26, 2015, at A.M.

THE COURT: Page 15, Steven Jacobs versus Las Vegas Sands Corp.

MR. BICE: Good morning, Your Honor, Todd Bice and Jordan Smith on behalf of Steven Jacobs.

MR. MCNUTT: Good morning, Your Honor, Dan McNutt and Matt Wolf on behalf of Venetian Macau Ltd.

MR. PEEK: Good morning, Your Honor, Stephen Peek on behalf of Las Vegas Sands and the Sands China Ltd, and we're just stepping out to get Mr. Morris.

THE COURT: Okay.

Okay, other appearances.

MR. MORRIS: Good morning, Your Honor.

THE COURT: All right, you're stating your appearances?

MR. JONES: Your Honor, Mark Jones on behalf of Sands China Ltd.

MR. MORRIS: Steve Morris on behalf of Sheldon Adelson.

THE COURT: Okay.

MR. BICE: Good morning, Your Honor, Todd Bice on behalf of Mr. Jacobs.

THE COURT: All right, its Plaintiff Steven C. Jacobs' emergency motion to strike unlawful peremptory challenge of judge.

MR. BICE: Correct.

THE COURT: Okay.

MR. BICE: Your Honor, there's a lot of history on this case that, of course, the Court is not familiar with but another judge in the court house is very familiar with the lengthy history on this case and that judge has been the subject of ongoing

efforts by the Defendants to remove her from that case in light of some sanctions, rulings that have been entered against the Defendants for discovery misconduct and some other misconduct. I think there have been no less than three writs at the Supreme Court where they have asked. At the last Supreme Court argument that we had when they raised this issue about removal of the judge the Chief Justice told them that they should not use their limited time for oral argument on that exercise and to move on.

What I would submit is what you have now is this peremptory challenge filed by VML -- and there's a whole history about who VML really is in front of Judge Gonzalez and evidence presented about what VML really isn't that was also presented in front of Judge Gonzalez and why VML was added to the case when they were added. But of course, the issue for you today is is that VML claims that because it is -- it claims that it is a new, quote, party to the action that being added as a party revives a peremptory challenge and a Rule 48.1, and it does not.

The fundamental problem with VML's position, Your Honor, is that it misunderstands the rule, the difference between challenges for cause of a judge and a challenge -- and a peremptory challenge. Challenge for cause under the statute, 1.225 and -- through 235, because one deals with the Supreme Court justices and one deals with the district court judges, is it belongs to parties. And in fact, the statute says in the *Moore* decision, upon which they are relying almost exclusively, emphasize the word "party" and that's why in that particular --

THE COURT: That case involved an affidavit of prejudice too; right?

MR. BICE: Exactly. Right; a challenge for cause, not a challenge -- a peremptory challenge. What Rule 48.1 says there is no right of a party to a peremptory challenge, it is to a side. And if that side waives the peremptory

challenge or if that side exercises a peremptory challenge, the fact that you add other parties to that same side later on doesn't revive either a new peremptory challenge or revive the non-exercised peremptory challenge which was waived by the side of which they are a party -- of which they are a participant. And that's exactly, Your Honor, what the *Gallen* decision from the Nevada Supreme Court said and that is exactly, Your Honor, -- I found interesting and I should have picked up on this in our reply brief, but the *Turnipseed* they rely upon, if you look at the *Turnipseed* decision, that was an intervening party, and the Supreme Court goes into a lengthy analysis about Rule 48. sub 5 about whether it applied in that case because the word -- they focus on the words "in the action." Well, it's very interesting, if -- my colleagues over here were right that it revives the right by addition of a new party, well the Supreme Court would have needed none of that analysis. The opinion goes on and on and on -- analyzing why sub 5 didn't preclude the peremptory challenge in that case. But, according to Mr. McNutt, by the sheer addition of a new party, in that case it was an intervenor, that somehow revived the right.

Obviously, that's not true. That's not what *Gallen* provides, nor is that what the *Turnipseed* decision provides. And more fundamentally, that's what 48.1 sub 5 expressly precludes. It says in no ambiguous term -- no -- there's no ambiguity in the Rule, no peremptory challenge may be exercised against a judge that has heard any contested matter or entered any ruling and that is exactly what is going on here. They have been trying to forum shop in light of the district court's intimate familiarity with the conduct that has gone on in this case and this is just another round of forum shopping that the statute precludes -- or that the rule precludes, Your Honor.

THE COURT: Okay.

MR. BICE: I thank the Court.

THE COURT: Mr. McNutt.

MR. MORRIS: Your Honor, I'd like to make a point of order here. I was the person who, on September 1st, presented the argument with respect to the reassignment of this case to another judge in the Supreme Court. I did not -- I was not present when Mr. Bice heard what was not said by the Chief Justice which he just referred to. The Chief Justice did not say, move on, we do not wish to consider or we're not going to consider this reassignment. That's the first request we made. What the Chief Justice said was, because their arguments were split between me and another gentleman, that you're running out of your assigned time and you should save some time for rebuttal. That's what he said.

THE COURT: Thank you.

MR. BICE: I'll let the transcript speak for itself as to what he really said, Your Honor.

MR. MORRIS: And --

THE COURT: All right.

MR. MORRIS: -- it will. I'll be happy to submit it to you.

THE COURT: Okay, thank you.

MR. MCNUTT: Good morning, sir, Dan McNutt on behalf of newly added party Venetian Macau Ltd. which I may refer to sometimes here as VML.

Your Honor, we're here under a set of facts that are entirely the product, the fault or the result of the strategic decision making of Mr. Jacobs and his counsel. VML is coming into this case as a new party. It has not been in this case yet. It's coming in four and a half years into this case which, at the outset, sounds

like an awfully long time. If the Court looks at the record, the Court will realize that not much has transpired in four and a half years other than some jurisdictional discovery.

48.1 -- and Mr. Bice purposely recited this and did it well -- does afford each side an opportunity for a peremptory challenge. Where Mr. Bice goes astray on behalf of his client is he says that he's asking -- or I'm asking you to, quote, revive a right. I do not need revival. That right has survived in this case since its inception. It has never been used and it is still here based upon the case law from *Moore* in 1961 --

THE COURT: *Moore* was a case involving and affidavit of prejudice; wasn't it?

MR. MCNUTT: It was, Your Honor, and we know from *Nevada Direct Pay TV* in 1986 that the Nevada Supreme Court looks at NRS 1 --

THE COURT: What do we know from *Gallen versus Eighth Judicial District Court* which was 1996?

MR. MCNUTT: I'll tell what we know from *Gallen*. This is what we know from *Gallen*, we know that after *Gallen* *Moore* has been cited in three 48.1 cases. The dicta in *Gallen* has never been cited in any case regarding 48.1. I'll tell you what *Gallen* has been cited for and then we'll go on to the facts of *Gallen*.

Gallen has been cited for the proposition that it stands for. The holding in *Gallen* -- this is an NRCP 41(a)(1) case and that is what has been cited. *Gallen's* been cited two times in Nevada since 1996 in one unpublished federal court case and one unpublished state court case for NRCP 41(a)(1). It's been cited and briefed four times to the Supreme Court, never for 48.1, never for SCR 48.1, only for Nevada Rules of Civil Procedure 41(a)(1).

And, Your Honor, if you look at *Gallen* that's what the holding of that case is. *Gallen* is an NRCP 41 case. If you look at the structure of the -- opinion, the court goes through what happened -- and it's a little bit of a confusing fact pattern but David Allen & Associates is a law firm. Mr. Gallen is a lawyer/employee. David Allen sues Defendant King through counterclaims back against David Allen & Associates. And then, -- and this is critical, Your Honor, he files a third-party complaint against Mr. Gallen individually. Mr. Gallen avails himself of the peremptory challenge, move to strike, and -- well, excuse me, not move to strike. What Mr. King does in response is dismisses voluntarily, under NRCP 41(a)(1), the third-party complaint rendering moot the peremptory challenge. And the Supreme Court in their decision on page 3 -- no that -- page 3 of my printout, it's actually on page 211, they come to the determination: We have determined that extraordinary relief is not warranted. And then this is critical, Your Honor, specifically -- they say -- NRCP 41(a)(1) provides that a Plaintiff may unilaterally dismiss an action at any time before the Defendant has filed an answer or motion for summary judgment. Quote: We conclude that *Gallen* has been dismissed from the underlying action. That is the holding, Your Honor. That is what has been cited in subsequent cases. The NRCP 41 -- and again, no published cases whatsoever.

Now, since 1996, we have three cases all of which discuss NRCP -- excuse me, SCR 48.1. We've got *Tradewinds* in 2013; we've got the Alaska Supreme Court case *Mundt* in 1998; and in between we've got *Turnipseed* in 2000, and all of those cite back critically to *Moore* and *Smith*, *Smith* coming -- earlier in 1991, *Carr-Bricken* in 1989, back to *Moore* in 1961. And, Your Honor, *Tradewinds* clearly says that the statutory predecessor of SCR 48.1 is NRS 1. *Smith* refers and -- excuse me, *Nevada Pay TV* says that we can look at NRS 1 because its, quote,

virtually indentical. And I say indentical because that was the -- typo that was in the Supreme Court's opinion. So, there's no question that *Moore* is the statutory -- excuse me, the NRS 1 analysis in *Moore* is the statutory predecessor to SCR 48, and so we can look at the *Moore* case and its progeny which then analyze SCR 48.1 up through the present day.

Your Honor, one case is the *Smith* case. And in that case in 1991 the facts of that case show that we had -- that case had gone the whole way through trial. A final judgment had been entered and then a peremptory challenge was upheld. And the Supreme Court said in *Smith* they said that this court uses a standard of review of reasonableness under the facts and circumstances of each case. That's the Supreme Court's standard of review for peremptory challenges based upon the peculiar facts and circumstances in this case. This case seems old because its four and a half years old, but we have not been through dispositive motions, motions in limine, a trial, let alone have had a final judgment entered. So under the analysis of *Smith*, this case is technically in its infancy. If the Court looks at that standard and then thinks about the flexible approach that the Supreme Court has used in interpreting 48.1, the answer here today is that this peremptory challenge is valid and that the motion to strike must be dismissed.

Your Honor, -- and I would like to back up to one point in terms of the procedural history where I said at the outset that we are here as a design of the Plaintiffs. In 2010, Mr. Peek filed a motion on behalf of LVSC to dismiss for lack to add an indispensable party. That motion was not just thoroughly opposed, it was vehemently opposed. This is the opposition itself [holds up pleading]. And there's a couple of very notable quotes in here: number one, VML is not a necessary party; number two, VML is not an indispensable party; number three, even if LVSC and

VML are co-obligors on the contract to Mr. Jacobs they are not a necessary party. That's what Plaintiffs said in 2011 --

THE COURT: They didn't say they weren't on the same side though; --

MR. MCNUTT: -- and they --

THE COURT: -- right?

MR. MCNUTT: -- prevailed. No, they didn't say that, Your Honor. They didn't have --

THE COURT: Okay.

MR. MCNUTT: -- to say that. But, let's talk about the same side. Again, the revival language, which is in quotes all through the reply brief, is in apropos because we are talking about a right that existed for a side. It's undisputed it has never been used by anybody sitting on the defense side. It still exists.

THE COURT: The side has waived it; hasn't it?

MR. MCNUTT: How has my side --

THE COURT: There were things that came on before the Court that were heard which then caused the right to peremptorily challenge the judge to be waived; right?

MR. MCNUTT: That's right, Your Honor, and *Carr-Bricken*, the *Smith* case, *Tradewinds*, and *Turnipseed* all deal with, in various forms, issues that were contested matters. The best example, Your Honor, is *Smith*. You want to talk about a contested matter? Final judgment was entered and the Supreme Court said that under their standard of review that peremptory challenge was to be upheld.

And, Your Honor, the statutory construct of 48.1 foreshadows this flexible approach that the Supreme Court endorses. 48.1 §5 critically uses the word "may." A notice of peremptory challenge may not be filed. It does not say "shall not

be filed." Why? Because of the Supreme Court cases that interpret 48.1. There has to be some flexibility. This is not a statute that should be rigidly constructed that the only way you get it is within one certain time window and nobody else will ever be able to get it even if Plaintiffs tactically choose to not bring in a party until later on. That's the abuse of the other side of the rule. I can choose -- under their reading, I can chose not to bring in a party, have some time pass, have a contested hearing, got cha, then bring in a new party -- and the *Carr-Bricken* case talks about once a new party comes into the case. The *Smith* case, the *Turnipseed* case, all of them deal with when a new party comes into the case they have not waived anything, because quite frankly, Your Honor, and quite obviously, you cannot waive something -- you cannot have standing to waive something or avail yourself of a right in litigation until you become a party. Well, that right existed before my side had been served -- excuse me, my -- client had been served --

THE COURT: Okay.

MR. MCNUTT: -- and I joined that side. That right has survived and VML, a new party to this case, is availing itself of that right. There's nothing in the cases that they've cited -- *Morrow* is unhelpful to them. All of the cases that they cite -- and I know that they didn't cite any cases in their motion. They're all cited in their reply brief, but none of those cases assist them at all.

And, Your Honor, it's true, we stand here and they say -- I think their one word sentence was "hardly." We say its dicta. "Hardly" they say. And yet, how do we determine what is dicta? Well, --

THE COURT: Well, we know that it's in -- there are two sections in the *Gallen* case, Roman numeral I and Roman numeral II. Roman numeral II is: *Gallen* had no right to exercise a peremptory challenge. We know that, so that sounds like its -- its

sort of difficult to construe that as being dicta as a heading --

MR. MCNUTT: And yet its --

THE COURT: -- a separate heading in the case --

MR. MCNUTT: -- not in their holding.

THE COURT: -- that addresses an issue.

MR. MCNUTT: It's not in the holding of the case, Your Honor. They say: We conclude that *Gallen* has been dismissed from the underlying action therefore extraordinarily relief is not warranted. It was moot.

Now, do I credit the law clerk or the judge that wrote this decision for completeness, the fact that it went up on the issue of 48.1? I credit them for completeness. Were I grading this? I credit that. Having said that, the point of dicta is it is not essential to the holding. And, Your Honor, what's the best objective evidence of what *Gallen* stands for? What has it been cited for since? It has been cited in, again, two unpublished cases, one state and one federal here in Nevada, for NRCP 41(a)(1). It has never been cited, even in simple briefing to the Supreme Court, for SCR 48.1.

Your Honor, I would submit to you that that's the best objective evidence. You don't have to take my word for it. Look at what the Supreme Court has done with this case. And conversely, look at what the Supreme Court has done 17 years after *Gallen*. Seventeen years after *Gallen*, in *Tradewinds* in 2013, they are endorsing *Moore*. Four years after *Gallen* they endorse *Moore* in *Turnipseed*. Two years after *Moore*, in 1998, the Alaska Supreme Court endorsed *Moore* and *Smith* in the *Mundt* case.

So, Your Honor, that's the best evidence that you have that *Moore* and its progeny stand for the proposition, number one, that we say they do; and two, are

binding on this Court with respect to this decision that this peremptory challenge has survived to the present day. My client, which is a newly added party, is availing itself of that right and we ask this Court to strike -- or excuse me, to deny the motion to strike.

THE COURT: Okay, thank you.

MR. BICE: Your Honor, I doubt that the Supreme Court is too concerned over the grade that Counsel would give them on opinion writing.

But what I would say is this, the *Gallen* decision -- he says it's not cited too often, but I would submit it's probably because nobody is quite as brazen as these Defendants in their disregard for the law. Although the Defendants like to tell the Court how that case in front of Judge Gonzalez has been in its infancy, we've attached some of the documents, lengthy evidentiary rulings, about sanctions and misconduct and concealing the evidence which is pervasive in that case. And that's why they have been forum shopping for a different judge for at least three prior writ proceedings and that's all that is currently going on in this matter now with this new party VML, the same party that has been producing documents in this case from its inception -- and why it was added when it was added. Judge Gonzalez knows exactly why that happened and the timing of it because of admissions that were made by one of the board members for Sands China at the jurisdictional hearing. So, to pretend that they don't know why VML was added when VML was added is just simply trying to take advantage of the fact that the Court doesn't know the facts because the Court didn't hold the evidentiary hearing and hear it, which is of course exactly what 48.1 sub 5 precludes is trying to switch the judge by way of peremptory challenge after the judge learns certain bad facts and has made certain rulings in the case that you do not like as that side of the case.

So, with respect to *Gallen*, *Gallen* specifically discusses the peremptory challenge issue, 'cause remember what was going on. There were multiple parties on that side, on the Plaintiff side of the case, and that's why the Supreme Court addressed the peremptory challenge because the question, of course, was, well who should the case be in front of? Should the case -- regardless of what's -- whether Mr. Gallen remained in the case or not, the question survived as to, well, who should the case be in front of? Should it be in front of the judge that had it before the exercise of the peremptory challenge or after the peremptory challenge? So, contrary to the arguments of counsel that somehow the Supreme Court just went off on some wild tangent is just simply wrong. They addressed the question of where the case properly belonged and they pointed out that the side, in that case the Plaintiffs, the side had waived any ability to exercise a peremptory challenge under the rule and the addition of a new party doesn't change that fact.

And I love this argument now about, well, *Moore* -- *Moore* is really the controlling case even though *Moore* involved a challenge for cause under that statute which belongs to a party and not a side. This is why the Supreme Court has a rule, I suspect, that you're not allowed to be citing these unpublished decisions which is what he hangs his hat on is because, as the justices say, those opinions get prepared and they don't get vetted thoroughly. So now he's seizing on this -- words in the *Tradewinds* unpublished decision in violation of the rule which says 48.1 was the, quote, predecessor to NRS 1.230. Well, that's just flat wrong and we all know that. 1.230 has existed for years, Your Honor. That's the -- challenge for cause of a Supreme Court justice just like -- and by the way, peremptory challenges don't even apply to Supreme Court justices so it's just -- it's an absurd statement. They know it but this is what happens when you try and use unpublished decisions

to then use and take them out of context.

And what the Supreme Court really said in *Tradewinds* is? You know why they were allowed to exercise a peremptory challenge later, Your Honor? Because the rule says so. What the -- that case was reassigned by way of consolidation. And under 48.1 sub 9 the rule has been amended to say that if the case gets reassigned to a new judge by any means other than exercising of a peremptory challenge, there's a new right to a peremptory challenge and that's all that *Tradewinds* involved. The case had been consolidated into another case which the Supreme Court said, well, that's reassigning the case. And so therefore, under sub 9, the peremptory challenge was proper. That's all that the court is saying there.

And in *Turnipseed*, *Turnipseed* is -- he cites that as proving his position. It completely contradicts his position. *Turnipseed* specifically points out that the reason that the peremptory challenge was accepted in that case, even though it was a new party, is because there had been no ruling on any contested matter in that action.

If Mr. McNutt was right, his reading of the rule that somehow any new party gets to -- gets a right of peremptory challenge even though it's been waived and even though the rule precludes it, *Turnipseed* would have been a one sentence decision. It would have been, according to him, it should have simply cited *Moore*, and said: Oh, new party, new right -- which of course the court did not say at all. They go on page after page of analyzing why the peremptory challenge was proper in that case but only because there had not been a ruling in a pretrial matter. The rule expressly forecloses this sort of forum shopping and I ask the Court to grant --

THE COURT: All right.

MR. BICE: -- our motion and return the case to where it belongs.

THE COURT: All things considered, I'm persuaded by the motion and it's granted. Please submit a proposed order.

MR. BICE: I have a proposed order right now, Your Honor.

THE COURT: All right.

MR. MCNUTT: Your Honor, I would ask that you would stay the proceedings allowing us time to take this up to the Supreme Court on a writ.

THE COURT: Well, I'm granting the motion. That means it goes back to Department 11 and you can ask her to entertain that.

MR. BICE: Thank you, Your Honor.

THE COURT: Are you submitting the order now did you say?

MR. BICE: Well, I have -- I've given it to them to look at. It's just a simple order saying that the motion is granted.

[Colloquy between counsel]

THE COURT: All right, I'll be in -- just give it to the clerk once it's been --

[Colloquy between counsel]

MR. BICE: Well, presumably this is a VML issue.

MR. MCNUTT: Your Honor, I'd like to look at the order and then --

THE COURT: Yeah. Fine.

MR. MCNUTT: -- I'll let Mr. Bice know; how about that?

MR. BICE: I'll -- I'm going to submit it today, Your Honor.

THE COURT: Okay, very well.

MR. BICE: All right, thank you.

THE COURT: Court's in recess.

MR. PEEK: Your Honor, before you leave the bench --

[Colloquy between counsel]

MR. MCNUTT: Your Honor, let me readdress something. Are you suggesting that you're denying the request for stay or that you are simply not considering it?

THE COURT: I'm not considering it. I'm not going to deny it. It should be -- the motion for stay should be made to the -- it goes right back to the other department and that's where the motion should be made.

MR. MCNUTT: Thank you, Your Honor.

THE COURT: Okay, thank you.

MR. BICE: Thank you, Your Honor.

[Proceedings concluded at 9:46 a.m.]

* * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
Eighth Judicial District Court Dept. XIII

ORDR
James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. No. 4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 214-2100
Facsimile: (702) 214-2101

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.

AND RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XIII

ORDER STRIKING PEREMPTORY CHALLENGE OF JUDGE

Hearing Date: October 26, 2015

Hearing Time: 9:00 a.m.

Before the Court is (1) Plaintiff Steven C. Jacobs' ("Jacobs") Emergency Motion to Strike Unlawful Peremptory Challenge of Judge; (2) Venetian Macau Limited's Opposition to Jacobs' Motion to Strike its Rule 48.1 Peremptory Challenge; and (3) Plaintiff's Reply in Support of Motion to Strike Unlawful Peremptory Challenge of Judge. This matter having come before the Court for hearing:

Kong; (2) two Executive Directors (Jacobs, who was SCL's Chief Executive Officer and President, and Stephen Weaver ("Weaver"), who was Chief Development Officer), both of whom were based in Macau; and (3) the Chairman and Non-Executive Director (Adelson) and two Non-Executive Directors (Jeffrey Schwartz and Irwin Siegel ("Siegel")), who were also members of the LVS Board and who were based in the United States. Leven served as a Special Adviser to the SCL Board.

43. During the relevant period, all of the in-person SCL Board meetings were held in either Hong Kong or Macau. The Board did not meet in Nevada. While certain board members attended board meetings remotely, the meetings were hosted in Hong Kong.

44. SCL listed Macau in its public filings as its principal place of business and head office. It also had an office in Hong Kong. SCL never described Nevada as its principal place of business and, prior to Jacobs termination, never had an office in Nevada.[17]

45. Prior to Jacobs termination, senior management of SCL: Jacobs, Weaver, the Chief Financial Officer (Toh Hup Hock, also known as Ben Toh), and the General Counsel and Corporate Secretary (Luis Melo) -- were all headquartered in Macau.

46. Although SCL insists that everything changed in terms of corporate control after the closing of the IPO – with Leven going so far as to claim that before the IPO he was the boss, and after the IPO he ceased being the boss – the evidence indicates otherwise.

---

believe that the activities of Adelson in Las Vegas as Chairman of SCL are significant for determination of specific jurisdiction.

[17] Leven's business card as Special Adviser to SCL indicated his address was a Las Vegas address. Following Jacobs termination, Leven became interim CEO of SCL. He retained his office location in Las Vegas and all contact information at LVS during the entire duration of his term as Interim CEO.

47. This was not an ordinary parent/subsidiary relationship. On paper, neither Adelson nor Leven were supposed to be serving as "management" of SCL. Adelson's role was that of SCL's Board Chairman. Leven's role was, on paper, supposed to be that of "special advisor" to the SCL Board.

48. Internal emails and communications confirmed that Adelson's and Leven's roles of management largely continued unchanged after the IPO. Even SCL's other Board members internally referred to Leven as constituting SCL's "management." As Leven would confirm in one internal candid email, one of Jacobs' supposed problems is that he actually "thought" he was the CEO of SCL, when in fact, Adelson was filling that role just as he had before the IPO. Other internal communications confirm that Jacobs was criticized for attempting to run SCL independently because for LVS, "it doesn't work that way."

49. As Ron Reese ("Reese") (LVS's VP of public relations) would acknowledge, one of the supposed problems with Jacobs was that he thought he was the real CEO of SCL when in fact there is, and only has been, one CEO of the entire organization, and that is, and always has been, Adelson.

50. After the IPO, Adelson, Leven, and LVS continued to dictate large and small-scale decisions.

51. As internal documents show, even compensation for senior executives, including Jacobs, were ultimately dictated by Adelson.

52. Even though disagreements with Adelson had begun to surface, Jacobs was awarded 2,500,000 options in SCL on May 10, 2010 "in recognition of his contribution and to encourage continuing dedication." These options were granted by SCL under a Share Option Grant as one of the plans to which Jacobs was eligible. Consistent with its ultimate control and

direction, it was up to Leven and Adelson to approve the 2.5 million SCL options for Jacobs in SCL, which they did on May 4, 2010.

53. Jacobs was entitled to participate in any company "plans" that were available for senior executives. This included any stock option plans. If the IPO had not occurred, Jacobs would have participated in the LVS stock option plan. However, Leven explained that since the IPO was successful and Jacobs was overseeing the Macau operations, Section 7 of the Term Sheet was fulfilled by Jacobs' participation in the stock option plan for SCL. According to Leven, Jacobs participated in the SCL option plan because SCL had assumed the obligations to fulfill the terms of Jacobs' employment under the Term Sheet.

54. On or about July 7, 2010, when Jacobs was still SCL's CEO, Toh Hup Hock, in his capacity as SCL's CFO, sent Jacobs a letter from Macau regarding the stock option grant[18] that the Remuneration Committee of the SCL Board made to Jacobs.

55. The Option Terms and Conditions provided to Jacobs stated that the stock option agreement would be governed by Hong Kong law.

56. The stock option award to Jacobs of 2.5 million options in SCL are tied to and intertwined with the terms and conditions of the Term Sheet that the parties negotiated and agreed to in Nevada.

57. As Leven confirmed, the vesting of those 2.5 million options in SCL were expressly accelerated under the terms of the Term Sheet should Adelson and/or his wife lose control of LVS or should Jacobs be terminated without proper cause. SCL reasonably foresaw being subject to suit in Nevada having awarded Jacobs 2.5 million in stock options where the vesting was controlled by the Term Sheet with LVS and that SCL, according to Leven, assumed.

---

[18] There is conflicting evidence as to whether Jacobs could elect stock options in LVS rather than in SCL.

58. Prior to the IPO, on November 8, 2009, LVS entered into a Shared Services Agreement with SCL through which LVS agreed to provide certain services and products to SCL.

59. LVS and SCL entered into a Shared Services Agreement pursuant to which each company agreed to provide the other with certain services at competitive rates. The services performed related to compensation and continued employment do not appear to fall within the scope of that agreement.

60. The Shared Services Agreement was signed by Jacobs, and was disclosed in SCL's IPO documents.

61. The services to be provided under the Shared Services Agreement are defined as Scheduled Products and Services. The agreement defines those as:

> . . . any product or service set out in the Schedule hereto the same as may from time to time be amended by written agreement between the Parties and subject to compliance with the requirement of the Listing Rules applicable to any amendment of this Agreement.

62. The Schedule attached to the Shared Services Agreement provided the following types of services were available to be shared (excerpted are relevant portions) and identified the method of compensation for those services:

Service/Product	Provider	Recipient	Pricing	Payment Terms	2009 US$$	2010 US$$	2011 US$$
Certain administrative and logistics services such as legal and regulatory services, back office accounting and handling of telephone calls relating to hotel reservations, tax and internal audit services, limited treasury functions	Members of Parent Group	Members of Listco Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the Parent Group and the hours	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of	4.7 million	5.0 million	8.3 million

and accounting and compliance services.			worked by such employees providing such services to the Listco Group	dispute, within 30 days of resolution of dispute.			
Certain administrative and logistics services such as legal and regulatory services, back office accounting and handling of telephone calls relating to hotel reservations, tax and internal audit services, limited treasury functions and accounting and compliance services.	Members of Listco Group	Members of Parent Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the Listco Group and the hours worked by such employees providing such services to the Parent Group	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute, within 30 days of resolution of dispute.	3.0 million	3.0 million	3.0 million

63. Shared services agreements are a common method by which affiliated companies achieve economies of scale.

64. Here, although SCL asserts that all of the services provided by LVS employees were rendered for SCL pursuant to the Shared Services Agreement, there is no evidence that the parties' observed any formalities,[19] which would permit the Court to determine which, if any, services were provided pursuant to the Shared Services Agreement.[20]

---

[19] SCL 00193427, a redacted email dated February 10, 2010, evidences the adoption of a procedure for payment of vendor expenses for certain Parcel 5/6 construction related vendors from Macau. The email anecdotally indicates the invoices would be sent to Macau with a copy to Las Vegas, reviewed in Las Vegas, approved for payment in Las Vegas, and then sent to Macau for payment. This policy was apparently adopted after the threshold for intercompany billings in the SCL IPO was exceeded. SCL00199830.

65. SCL advised HKSE that implementation agreements would be used in conjunction with the Shared Services Agreement.[21]

66. When questioned during the evidentiary hearing about the mechanism for requesting or paying for service under the Shared Services Agreement, Adelson was unable to provide any evidence of the processes used to obtain services under that agreement.[22]

67. The facts and circumstances giving rise to Jacobs' ultimate termination were directed and controlled from Las Vegas. Despite internal praise from the Board members of

---

[20] SCL00171443, redacted minutes of VML Compliance Committee dated February 22, 2010, reflect that because of the Shared Services Agreement a tracking system had been established to record the execution of each individual agreement and that individual implementation agreements would have to be drawn up for each service category. The Court has been unable to locate any further references in the evidence admitted at the hearing regarding the actual implementation and utilization of services pursuant to the Shared Services Agreement.

[21] The letter states in pertinent part:

> It is envisaged that from time to time, and as required, an implementation agreement for a particular type of product or service will be entered into between LVS Group and members of the Group under which the LVS Group provides the relevant products or services to the group or *vice versa*. Each implementation agreement shall set out the details of the material terms and conditions which shall include:
> a) the relevant Scheduled Products and Services to be provided;
> * * *
> c) the time(s) at which, or duration during which, the relevant Scheduled Products and Services are to be provided;
> d) the pricing for the Scheduled Products and Services to be provided, determined in accordance with the provisions of the Shared Services Agreement; and,
> e) payment terms (including where applicable, terms providing for deducting or withholding taxes).

SCL00106303.

[22] The Court reviewed the redacted documents contained in Exhibit 887A to determine if there was any support for SCL's position that the Shared Services Agreement was the method by which LVS employees were utilized by SCL rather than the agency analysis performed by the Court.

SCL (except Adelson) for Jacobs, Leven claims that in June of 2009 he had had enough of Jacobs and wanted him fired. Adelson and Leven began undertaking what one email labeled as the "exorcism strategy" to terminate Jacobs. The actions to effectuate Jacobs' termination were carried out from Las Vegas,[23] including the ultimate decision to terminate Jacobs, the creation of fictitious SCL stationary to draft a termination notice, the preparation of press-releases regarding Jacobs' termination, and the handling of legal leg-work to effectuate the termination.

68. According to Adelson and Leven, they were acting on behalf of SCL in Nevada when undertaking these activities, and they were doing so with SCL's knowledge and consent. They coordinated with legal and non-legal personnel – including Gayle Hyman (LVS's general counsel) and Reese – in LVS to carry out the plan to terminate Jacobs. Other LVS personnel were involved and acted in Nevada, including under the Shared Services Agreement between SCL and LVS.

69. Adelson and Leven made the determination to terminate Jacobs subject to approval of the SCL board at the next scheduled meeting.

70. From Nevada, Leven and Adelson informed the SCL Board of Adelson's decision to terminate Jacobs after the decision was already made. An emergency telephone conference was held regarding the termination of Jacobs and to have the SCL Board ratify the decision.

71. Jacobs was not and is not a resident of Nevada. When he served as SCL's CEO, he was headquartered in Macau and lived in Hong Kong.

72. Subsequently, Leven, Kenneth Kay (LVS's CFO), Siegel, Hyman, Daniel Briggs (LVS's VP of investor relations), Reese, Brian Nagel (LVS's chief of security), Patrick Dumont (LVS's VP of corporate strategy), and Rom Hendler (LVS's VP of strategic marketing) – left Las

---

[23] This effort was described by Leven as an effort to "put ducks in a row".

Vegas and went to Macau to effectuate Jacobs' termination. Before they even left Las Vegas, Jacobs' fate had been determined.

73. On July 23, 2010, Leven met with Jacobs in Macau. At that meeting, Leven advised Jacobs he was terminated. Jacobs was given the option of resigning, which he refused. Jacobs inquired whether the termination was "for cause" and Leven responded that he was "not sure," but he indicated that the Term Sheet would not be honored.

74. Jacobs was SCL's CEO until he was terminated on or about July 23, 2010.

75. When Jacobs was terminated, he was in Macau.

76. Adelson named Leven Acting CEO and an Executive Director subject to approval of the SCL board at the next scheduled meeting and pending the appointment of a permanent replacement.

77. The SCL Board approved the termination and Leven's interim appointment.

78. The SCL Board appointed two new officers to serve as SCL's President and Chief Operating Officer (Edward M. Tracy) and Executive Vice President and Chief Casino Officer (David R. Sisk); both based in Macau. At the same time, Siegel, was appointed the Chairman of two newly formed committees (the Transitional Advisory Committee and the CEO Search Committee) and spent the majority of his time in Macau to carry out his duties.

79. After Jacobs' termination, Adelson and LVS began crafting a letter outlining Jacobs' supposed offenses for his "for cause" termination. The participants in this endeavor were Adelson himself, Leven and perhaps, Siegel. These actions were again carried out and coordinated in Nevada.

80. A number of the alleged 12 reasons for Jacobs' termination involve actions Jacobs carried out representing SCL while in Nevada.

81. After Jacobs was terminated, Leven replaced Jacobs as CEO of SCL. Leven did not enter into any employment agreement with SCL. He served in that capacity under the employment agreement that he had with LVS. While in Las Vegas, Leven served as the acting SCL CEO from his LVS headquarters in Las Vegas. SCL authorized and approved of Leven serving as its CEO from Las Vegas. As CEO, Leven was responsible for SCL's day-to-day operations.

82. After becoming Acting CEO, Leven, on documents with a Las Vegas Sands Corp. heading, issued an "Approval and Authorization Policy" for the Operations of "Sands China Limited."

83. Here, there is no evidence that the Shared Services Agreement was the basis for the activities of Leven, Adelson, Hyman, Reese, and Foreman.

84. SCL's activities through LVS employees in Nevada are substantial, have been continuous since the IPO, and are systematic.

85. In October 2010, the SCL Board had the same composition, except that the two Executive Directors were Toh Hup Hock, SCL's CFO (who had previously replaced Weaver as an Executive Director) and Leven. Toh Hup Hock resided in Macau; Leven continued to be based in Las Vegas, but traveled to Macau as necessary.

86. Jacobs filed his initial Complaint against SCL and LVS on October 20, 2010.

87. On October 27, 2010, Leven was personally served with a copy of the Summons and Complaint while acting as SCL's CEO and physically present in Nevada.

88. Reese, an LVS employee, began a public relations campaign regarding Jacobs' lawsuit on behalf of LVS and SCL from Nevada.

89. On March 15, 2011, Adelson, through Reese, issued a statement to a reporter for the Wall Street Journal that Jacobs' alleges to be defamatory. The statement is as follows:

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

90. Adelson acknowledges that he made this statement on behalf of himself, LVS, and SCL. SCL published a statement to the media from Nevada that gives rise to the claim for defamation.

91. Based upon the evidence, Adelson's statement can be attributed to SCL because it claims that it is responsible for Jacobs' termination. The statement was made and issued in Nevada. If proven defamatory, this would be an additional basis for jurisdiction in Nevada.

92. Any finding of fact stated hereinabove that is more appropriately deemed a conclusion of law shall be so deemed.

III.
CONCLUSIONS OF LAW

93. The Court is faced with allegations of general jurisdiction, specific jurisdiction and transitory jurisdiction over SCL.[24]

A. GENERAL JURISDICTION

94. The Court has to evaluate the contacts by SCL and make determinations as to whether SCL is at home in Nevada for the general jurisdiction analysis. Little guidance has been provided to the Court to assist in the determination of the appropriate factors to consider in determining whether SCL is at home in Nevada.

---

[24] The Court has made separate findings and conclusions on each type of jurisdiction alleged by Jacobs to enable the parties to seek a more full appellate review if they choose.

95. General or "all-purpose" jurisdiction gives a court the power "to hear any and all claims against" a defendant "regardless of where the claim arose." Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S.Ct. 2846, 2851 (2011).

96. A court has general jurisdiction over a foreign corporation only if it is "essentially at home" in the forum. *See id.*; 134 S.Ct. at 758 n.11.

97. "'A court may exercise general jurisdiction over a foreign company when its contacts with the forum state are so continuous and systematic as to render [it] essentially at home in the forum State.'" 328 P.3d at 1156-57.

98. "Typically, a corporation is 'at home' only where it is incorporated or has its principal place of business." 328 P.3d at 1158.

99. The Supreme Court in Daimler AG did not rule out that "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." 134 S. Ct. at 761 n.19.

100. "The test for general jurisdiction, depends on an analysis of the Due Process Clause and its requirement that a foreign corporation's "continuous ***corporate operations*** within a state [be] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 134 S.Ct. at 754.

101. In Daimler AG, the U.S. Supreme Court held that corporations may be sued under a general jurisdiction theory if their affiliations with the forum are so "'continuous and systematic as to render them essentially at home in the forum State.'" 134 S.Ct. at 754.

102. Here, SCL has designated Macau as its principal place of business. All of SCL's holdings are located in Macau. SCL's executive officers, including Jacobs, were based in Macau until July 2010 when Jacobs was terminated.

103. The SCL Board, which included three independent directors who reside in Hong Kong, met in either Macau or Hong Kong.

104. SCL is not incorporated in Nevada and does not hold its board meetings in Nevada.

105. While a significant amount of direction over the activities of SCL comes from its Chairman in Las Vegas, as well as others employed with LVS, for purposes of general jurisdiction these pervasive contacts appear to be irrelevant following Daimler.[25]

106. The Nevada Supreme Court, after Daimler, has indicated that an agency theory of general jurisdiction is still viable. In Viega, the Court cited a California case that found that the agency theory "supports a finding of general jurisdiction" and noted that "the [United States] Supreme Court has recognized that agency *typically* is *more useful* to a specific jurisdiction analysis." 328 P.3d at 1163 n.3 The Court did not indicate that the agency theory of general jurisdiction is no longer available.[26]

---

[25] At the time of the Court's original decision denying the motion to dismiss, Daimler had not been decided. This has resulted in a substantial change in the evaluation of jurisdiction over foreign companies. While the Court recognizes that there are pervasive contacts, these contacts alone are insufficient to exercise general jurisdiction over a foreign company.

[26] In trying to reconcile the concepts of alter ego and agency for general jurisdictional inquiries, the Nevada Supreme Court wrote:

> But corporate entities are presumed separate, and thus the mere "existence of a relationship between a parent company and its subsidiaries is not sufficient to establish personal jurisdiction over the on the basis of the subsidiaries minimum contacts with the forum. . . . Unlike with the alter-ego theory, the corporate identity of the parent company

107. SCL made extensive use of agents -- employees of LVS -- in conducting its business. Under Viega, the analysis of the contacts and actual activities of these agents are relevant both for an evaluation of whether general jurisdiction is appropriate and, if not, whether specific jurisdiction over SCL is appropriate.

108. Jacobs' operative Third Amended Complaint asserts causes of action against SCL for Breach of Contract; Aiding and Abetting Tortious Discharge in Violation of Public Policy; Civil Conspiracy related to Tortious Discharge in Violation of Public Policy; and Defamation.[27]

> is preserved under the agency theory; the parent nevertheless" is held for the acts of the [subsidiary] agent" because the subsidiary was acting on the parent's behalf.

328 P.3d at 1157 (internal citations omitted).

[27] The jurisdictional allegations related to SCL in the Third Amended Complaint are:

> 3. Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and is 70% owned by LVSC. Sands China is publicly traded on the Hong Kong Stock Exchange. While Sands China publicly holds itself out as being headquartered in Macau, its true headquarters are in Las Vegas, where all principle decisions are made and direction is given by executives acting for Sands China.
>
> * * *
>
> 6. Each Defendant is the agent of the other Defendants such that each Defendant is fully liable and responsible for all the acts and omissions of all of the other Defendants as set forth herein.
>
> 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.
>
> 8. Venue is proper in this Court pursuant to NRS 13.010 *et seq*. because the material events giving rise to the claims asserted herein occurred in Clark County, Nevada.
>
> * * *
>
> 38. In or about July 2010, Adelson directed executives from LVSC in Las Vegas, Nevada to begin the process of terminating Jacobs. This process which would be referred to as the "exorcism strategy," was planned and carried out from Las Vegas and included (1) the creation of fictitious Sands China letterhead upon which a notice of termination was prepared, (2) preparation of the draft press releases with which to publicly announce the termination, and (3) the handling of all legal-related matters for the termination. Again, all of these events took place in Las Vegas, ostensibly by agents acting for both LVSC and Sands China.
>
> 39. Indeed it was LVSC in-house attorneys, claiming to be acting on behalf of Sands China, who informed the Sands China Board on or about July 21, 2010, about Adelson's decision to

The location of activities related to these allegations is important to the Court's analysis of jurisdiction.

109. LVS operates SCL the same way as it operated its Macau operations before the IPO. Despite the appointment of a Board, any change in the location of ultimate decision-making authority, direction, or control was not material after the IPO.

110. Here, Adelson and LVS assert an extraordinary amount of control over SCL. The parties do not dispute that LVS is subject to general jurisdiction in Nevada, has systematic and

---

terminate Jacobs, and directed the Board members to sign the corporate documents necessary to effectuate Jacobs termination. These same attorneys promised to explain the basis for the termination to the Board members during the following week's board meeting (after the termination took place). Predictably, as Adelson is all-controlling, he took action first and then decreed how the Board thereafter reacted.

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

* * *

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

* * *

71. In an attempt to cover their tracks and distract from their improper activities Adelson, LVSC and Sands China have waged a public relations campaign to smear and spread lies about Jacobs. . . .

The Court has not considered these allegations as true, but weighs the evidence related to these allegations for purposes of this decision.

continuous contacts with Nevada, and is at home in Nevada. Adelson and LVS's control over SCL goes far beyond the ordinary relationship of parent to subsidiary.[28]

111. The Court refuses to adopt a test under which a company that properly obtains available services from an affiliate through a shared services agreement, without further contacts, becomes subject to jurisdiction in the affiliate's home state.

112. Even though Jacobs and others at SCL were permitted to provide recommendations, the decisions — large and small — were ultimately made by Adelson and LVS in Las Vegas.

113. The attitude of Adelson and other LVS executives towards Jacobs' efforts to maintain independent entities could be construed as a "purposeful disregard of the subsidiary's independent corporate existence." Sonora Diamond Corp. v. Superior Court, 83 Cal. App. 4th 523, 542, 99 Cal. Rptr. 2d 824, 838 (2000).

114. SCL's own operations in Nevada through agents (separate and apart from those agreed to under the Shared Services Agreement) are so substantial and of such a nature as to render it essentially at home in Nevada even though it is not incorporated in Nevada and does not have casino operations in Nevada. Jacobs and other SCL executives routinely conduct business in Nevada. All major decisions were made in Nevada on behalf of SCL, including contracts for the purchase of goods and services.

115. The activities of LVS employees – as SCL's agents outside of the Shared Services Agreement - were continuous and significant enough to render SCL "at home" in Nevada.

---

[28] Based upon the limited evidence currently before it, the Court is faced with two potential conclusions: either, that SCL is so dominated by LVS and its Chairman that it's independent existence is a sham or alternatively, that the Board of SCL has made a conscious decision to allow its agents in Las Vegas significant control over SCL's operations and governance. Given the presumption of separateness, the Court finds the better course in this situation, based upon the evidence currently before it, is the latter conclusion.

116. Jacobs argues that LVS exercised control over SCL from Las Vegas. While the separate corporate identities of LVS and SCL cannot be ignored, the actions of those on behalf of SCL in Nevada are important to the jurisdictional analysis.

117. The evidence demonstrates that Adelson, in his capacity as SCL's Chairman, and Leven, as Acting CEO, controlled SCL from Las Vegas. Both were in Las Vegas transacting business for SCL with the knowledge and apparent consent of the Board of SCL. While Leven was special advisor and acting CEO, his SCL business cards showed Nevada as his contact location for SCL. The same was true of Mr. Adelson.

118. In Daimler AG, the Court explained that the general jurisdiction test the Due Process Clause requires—which limits all-purpose jurisdiction to the forums where the corporation is "at home"—raises a simple question that can be "resolved expeditiously at the outset of the litigation" without the need for "much in the way of discovery." 134 S.Ct. at 762 n.20. The complicated and intensely fact-specific arguments demonstrate the uniqueness of this case.

119. This is the "exceptional case" where "a corporation's operations in a forum other than its formal place of incorporation or principal place of business [are] so substantial and of such a nature as to render the corporation at home in that State." 134 S.Ct. at 761 n.19. In deciding whether this test is met, the "inquiry does not 'focu[s] solely on the magnitude of the defendant's in-state contacts.'" *Id.* at 762 n.20. "General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide." *Id.*

120. Taken alone SCL's purchases of goods and services from entities headquartered in Nevada, including LVS, for use in Macau do not provide a basis for concluding that SCL was "at home" in Nevada.

121. SCL had the right to control how LVS employees performed the services on SCL's behalf; the Board apparently did not exercise that right to control, but deferred to the Chairman and Special Adviser.

122. The actions LVS employees undertook in Nevada as SCL's agent, when compared to SCL's activities in their entirety, were "so substantial and of such a nature" that SCL should be deemed to be "at home" in Nevada.

123. Based upon the governing law, and all of the evidence presented in the record, the Court finds that based upon the conduct of LVS acting as SCL's agent, SCL is subject to general jurisdiction in Nevada. The evidence is sufficient to support this finding by a preponderance of the evidence without considering the adverse evidentiary inference imposed by the Court's March 6, 2015 Order.

124. The activities of LVS employees – as SCL agents outside of the Shared Services Agreement – were continuous and significant enough to render SCL "at home" in Nevada.

125. A review of Exhibit 887A and the adverse inference imposed by the Court's March 6, 2015 Order, the Court finds that SCL has failed to rebut the inference that each of the documents improperly redacted[29] under the MDPA contradict SCL's denials of personal

---

[29] The redactions made to the documents – eliminating all names and other identifying information about identities – casts doubt as to fairness and thoroughness of the entire search, vetting and production process. Because many of the search terms were in fact names, the veracity and completeness of the search cannot be tested against the documents that were flagged for production as SCL has made it impossible for Jacobs to know the identity of any of the names in the redacted documents. Thus, because several of the search terms are in fact names of people, the search terms themselves are redacted. Such a process is ripe for abuse and fails to meet the standards of fairness for discovery in a Nevada court. Because in many instances the actual search terms are redacted, Jacobs cannot himself even run searches against the redacted documents. Adelson himself confirmed that redacted documents are effectively useless in terms of evidentiary value, particularly emails since those contain the identity of the sender, recipient and other names, all of which SCL has redacted and made inaccessible.

jurisdiction and support Jacobs' assertion of personal jurisdiction over SCL.[30] These inferences simply provide additional evidentiary support for the Court's conclusions.

B. SPECIFIC JURISDICTION

126. A court will find a defendant subject to specific jurisdiction where:

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

Arbella Mut. Ins. Co., 122 Nev. 509, 513, 134 P.3d 710, 712-13 (2006).

127. "[A] plaintiff may establish personal jurisdiction over a nonresident defendant "by attributing the contacts of the defendant's agent with the forum to the defendant". 109 Nev. at 694.

128. "Corporate entities are presumed separate. And thus, indicia of mere ownership are not alone sufficient to subject a parent company to jurisdiction based upon its subsidiary's contacts." 328 P.3d at 1158.

129. "[T]he control at issue must not only be of a degree 'more pervasive than . . . . common features' of ownership, '[i]t must veer into management by the exercise of control over the internal affairs of the subsidiary and the determination of how the company will be operated on a day-to-day basis,' such that the parent has 'moved beyond the establishment of general

---

[30] Exhibit 887A contains the remaining redacted documents for which replacement copies have not been produced. A review of those documents demonstrates that the activities of SCL and LVS were assisted by use of a Macau shared drive, "the M drive", hosted in Las Vegas. While the degree of redactions prevents the Court from identifying the individuals involved in the discussions, (SCL00182755) the existence of that shared drive is additional evidence of the level of activity in Nevada and control of its agent that SCL could, if it chose, exercise.

policy and direction for the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy." 328 P.3d at 1159.

130. Specific jurisdiction is proper only "where the cause of action arises from the defendant's contacts with the forum." Dogra v. Liles, 129 Nev. Adv. Rep. 100, 314 P.3d 952, 955 (2013). "Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant 'purposefully avails' himself or herself of the protections of Nevada's laws, or purposefully directs her conduct towards Nevada, and the plaintiff's claim actually arises out from that purposeful conduct." *Id.*

131. Where "separate claims are pled, specific personal jurisdiction must independently exist for each claim and the existence of personal jurisdiction for one claim will not provide the basis for another claim." Wright & Miller, 5B Fed. Prac. & Proc. Civ. § 1351, at 46 n.30. Jacobs has met his burden of showing specific jurisdiction with respect to each of his claims against SCL.

Breach of Contract

132. Jacobs claims that he performed the services of SCL's CEO pursuant to an employment agreement with the parent, LVS. Evidence adduced at the evidentiary hearing appears to support a claim that the Term Sheet was later assigned and assumed by SCL as part of the IPO. The assignment and assumption of a contract from a Nevada company subjects SCL to jurisdiction for a dispute stemming from that contract and the services provided under it. Since Jacobs would be subject to suit in Nevada pursuant to that agreement, SCL is similarly subject to suit in Nevada by having assumed the obligations that flow from that agreement.

133. Newly-formed legal entities are subject to personal jurisdiction in the forum where the entity's promoter enters into contracts, which the legal entity later ratifies and accepts.

134. The fact that the Term Sheet was negotiated and agreed to in Nevada would further subject SCL to personal jurisdiction due to the conduct of SCL's incorporator, LVS.

135. In Burger King Corp. v. Rudzewicz, 471 U.S. 462, 479, 105 S. Ct. 2174, 2185, (1985) the U.S. Supreme Court emphasized the "need for a highly realistic approach that recognizes that a contract is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." 471 U.S. at 479. "It is these factors—prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing—that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum. "*Id.*

136. Here, all of these factors demonstrate that there is specific jurisdiction over Jacobs's breach of contract claim. The negotiations, consequences, terms, and parties' course of dealing arising from the option grant are all primarily connected to Nevada. The facts related to the termination are intimately related to the breach of the option grant.

137. A nonresident company may subject itself to jurisdiction by accepting the benefits of an employment agreement.

138. The use of correspondence and telephone calls to forum-based offices during contract negotiations are examples of the sort of contact that can give rise to jurisdiction.

139. Jacobs has sued SCL for failure to honor the award of options to him, a claim that grows directly out of his services provided to SCL pursuant to the Term Sheet with LVS. SCL purposefully availed itself of the laws of Nevada by accepting the services of Jacobs' pursuant to the Nevada-based Term Sheet. When accepting the benefits that Jacobs was providing pursuant

to a Nevada contract, SCL could reasonably foresee being hailed into a Nevada court should a dispute arise related to terms of his employment under the Nevada contract.

140. The Share Option Agreement was offered to Jacobs for the services he provided to SCL pursuant to the Term Sheet.

141. The Share Option Grant and the Term Sheet are intertwined and interrelated. The Share Option Grant was made in fulfillment of the terms and conditions of the Term Sheet.

142. Adelson, Leven, and other LVS executives participated in the decision to extend the Share Option Grant. This process involved a number of emails and calls to and from Nevada to resolve the terms of the options and SCL's executive stock option plan.

143. Jacobs alleges that the decision to breach the Share Option Grant was made by Adelson and LVS executives from Nevada. Jacobs' breach of contract cause of action arises from this action within the forum.

144. The parties' disputes as to whether Jacobs engaged in certain activities outside of Nevada, and whether he then reported those activities to the Chairman in Nevada – disputes that also go to the merits of the case – affect the basic conclusion that Jacobs claim arose in Nevada.

145. The acts of employees of LVS, as agent of SCL, related to compensation and termination of Jacobs and SCL's assumption of the Nevada negotiated Term Sheet support the conclusion that specific jurisdiction is appropriate over the breach of contract claim.

146. Where the Court has personal jurisdiction over one contract, the Court may exercise jurisdiction over intimately related contracts even though the parties are not identical.

Conspiracy and Aiding and Abetting

147. The jurisdictional analysis for aiding and abetting is similar to the jurisdictional assessment for conspiracy claims.

148. The elements of jurisdiction for either conspiracy or aiding and abetting are:

(1) a conspiracy . . . existed;
(2) the defendant was a member of that conspiracy;
(3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state;
(4) the defendant knew or had reason to know of the act in the forum state or that acts outside the forum state would have an effect in the forum state; and
(5) the act in, or effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy.

Carsanaro v. Bloodhound Techs., Inc., 65 A.3d 618, 636 (Del. Ch. 2013) .

149. Jacobs has presented sufficient evidence to show jurisdiction over SCL on his conspiracy and aiding and abetting claims.

150. While wearing their SCL "hats," Adelson and Leven formulated the strategy to terminate Jacobs. Many of their own acts, purportedly done on behalf of SCL, were undertaken within Nevada.

151. To carry out the plan, they utilized the services of LVS employees within Nevada to draft press releases, obtain the SCL Board's "approval" after the decision had been made, and handled other legal matters related to the termination so that Jacobs would not discover his looming termination.

152. These were substantial acts in furtherance of Jacobs' firing and would give rise to jurisdiction over SCL had SCL taken these acts within the forum. SCL knew of LVS's acts in the forum to complete Jacobs' termination and assented to them.

153. The acts in Nevada, and the effects felt therein, were directly foreseeable and attributable to the alleged conspiracy.

154. Jacobs' causes of action for conspiracy and aiding and abetting arise directly out of SCL's and its co-conspirators' purposeful contact with the forum and conduct targeting the forum.

155. The evidence has shown that SCL purposefully directed its conduct towards Nevada.

156. The acts of LVS and SCL related to Jacobs alleged wrongful termination support the conclusion that specific jurisdiction is appropriate over the Aiding and Abetting Tortious Discharge in Violation of Public Policy and Civil Conspiracy related to Tortious Discharge in Violation of Public Policy claims.

Defamation

157. A corporation can be liable for the defamatory statements of its executives acting within the scope of their authority.

158. Jacobs has presented sufficient evidence that Adelson's statements are attributable not only to himself, but also SCL.

159. Jacobs' cause of action arises out of Adelson's statement that he made and published in Nevada concerning Jacobs' claims in Nevada.

160. "In judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.'" Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 775 (1984). "The victim of a libel, like the victim of any other tort, may choose to bring suit in any forum with which the defendant has certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* at 780-81. The reputation of a libel victim may suffer harm outside of his or her home state. *Id.* at 777. Defamatory statements hurt the target of the statement and the readers of the statement. *Id.* at 776.

161. Specific jurisdiction over SCL on Jacobs defamation claim hinges on his assertion that Adelson was speaking not only for himself and LVS, but also for SCL, when he made the

allegedly defamatory statement. Adelson's inconsistent testimony on this issue during the evidentiary hearing provides substantial evidentiary support for Jacobs allegations.

162. The fact that Mr. Adelson's statement was published in Nevada through *The Wall Street Journal* is enough to support specific jurisdiction over SCL.

Reasonableness

163. "Whether general or specific, the exercise of personal jurisdiction must also be reasonable." Emeterio v. Clint Hurt and Associates, Inc., 114 Nev. 1031, 1036, 967 P.2d 432, 436 (1998).

164. Once the first two prongs of specific jurisdiction have been established, (purposeful availment/direction and that the cause of action arises from that purposeful contact/targeting the forum) "the forum's exercise of jurisdiction is *presumptively reasonable.* To rebut that presumption, a defendant 'must present a *compelling* case' that the exercise of jurisdiction would, in fact, be unreasonable." Roth v. Garcia Marquez, 942 F.2d 617, 625 (9th Cir. 1991).

165. Courts look at a number of factors to analyze whether exercising jurisdiction would be reasonable, including:

> (1) the burden on the defendant of defending an action in the foreign forum,
> (2) the forum state's interest in adjudicating the dispute,
> (3) the plaintiff's interest in obtaining convenient and effective relief,
> (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and
> (5) the shared interest of the several States in furthering fundamental substantive social policies.

967 P.2d at 436.

166. Application of these factors confirms that it is reasonable to require SCL to litigate this contract dispute in Nevada.

167. SCL will not suffer any burden defending this action in Nevada. The evidence indicates that SCL utilized LVS for substantial activities related to the issues involved in the allegations related to the merits of this matter. SCL's executives routinely travel to Nevada and conduct business in Nevada on a systematic and continuous bases. Continuing contacts with the forum indicate that litigating in Nevada do not constitute a burden. 942 F.2d at 623. "[U]nless such inconvenience is so great as to constitute a deprivation of due process, it will not overcome clear justifications for the exercise of jurisdiction." *Id.*

168. Nevada has an interest in resolving disputes over contracts and torts that center upon Nevada and relate to activities in the forum. Although a non-resident, Jacobs has an interest in obtaining convenient and effective relief. SCL cannot plausibly argue that it would be more convenient for Jacobs to litigate outside of the United States. *See id.* at 624.

169. The interstate – and global – judicial systems' interest in efficient resolution weighs in favor of exercising jurisdiction. This matter has been pending in Nevada courts for almost five years. Judicial economy would be served by continuing this litigation in Nevada. Significant time and judicial resources of the Court and the parties will have been wasted if Jacobs is required to reinstate this litigation in another forum. The social policies implicated by claims of wrongful termination in violation of public policy militate in favor of retaining jurisdiction.

170. SCL has not made a compelling case that exercising jurisdiction over it would be unreasonable.

171. While Nevada civil litigation rules are likely to impose obligations on SCL that are in tension with SCL's obligations under the foreign law of the jurisdiction where it operates,

including its obligations under the MDPA, the free flow of information that occurred between SCL and LVS prior to the litigation ameliorate that concern.

Adverse Inference

172. Without taking into consideration the adverse evidentiary inferences imposed by the Court's March 6, 2015 Order, Jacobs has established specific personal jurisdiction over each of his claims against SCL by a preponderance of the evidence.

173. If the Court were to consider the adverse evidentiary inference imposed by the Court's March 6, 2015 Order, the case for exercising specific jurisdiction is even stronger.

C. TRANSIENT JURISDICTION

174. In Burnham v. Superior Court of California, 495 U.S. 604, 619 (1990), the United States Supreme Court reaffirmed the principle that "jurisdiction based on physical presence alone constitutes due process" and that it is "fair" for a forum to exercise jurisdiction over anyone who is properly served within the state.

175. Nevada has adopted the in-state service rule for non-resident defendants. *See* NRS 14.065(2). The Nevada Supreme Court has held that "[i]t is well-settled that personal jurisdiction may be asserted over an individual who is served with process while present within the forum state." Cariaga v. Eighth Judicial Dist. Court of State, 104 Nev. 544, 762 P.2d 886, 887 (1988). It also noted that "[t]he doctrine of 'minimum contacts' evolved to extend the personal jurisdiction of state courts over non-resident defendants; it was never intended to limit the jurisdiction of state courts over persons found within the borders of the forum state." *Id.*

176. Leven was served with process while in Nevada acting as SCL's CEO and while carrying out SCL's business from the office identified on his SCL business card. Leven was not served with process during a temporary or isolated trip. To the contrary, Leven was served with

process in the state where SCL had duly authorized him to serve as CEO. Accordingly, due process is satisfied and, even if other basis for jurisdiction did not exist, this Court may exercise jurisdiction over SCL on the basis of transient jurisdiction.

177. The Nevada Supreme Court instructed this Court to consider whether there was transient jurisdiction over SCL if it concluded that there was no general jurisdiction. It is undisputed that Jacobs served his complaint on Leven, who was then SCL's Acting CEO, while he was in Nevada.

178. Serving a complaint on a senior officer of a corporation in the forum without more does not confer jurisdiction over the corporation.

179. While the U.S. Supreme Court held in Daimler AG that it violates due process to exercise general jurisdiction over a foreign corporation based solely on the fact that its agent is present and doing business on behalf of the foreign corporation in the forum, the significant business being done on behalf of SCL by Leven with SCL's knowledge and consent supports transient jurisdiction.

180. Any conclusion of law stated hereinabove that is more appropriately deemed a finding of fact shall be so deemed.

IV.

ORDER

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Defendant Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party is denied.

Dated this 28th day of May, 2015.

ELIZABETH GONZALEZ
District Court Judge

Certificate of Service

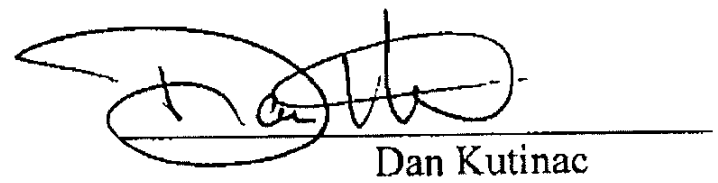
I hereby certify, that on the date filed, this Order was served on the parties identified on Wiznet's e-service list.

J. Stephen Peek, Esq. (Holland & Hart)

Randall Jones (Kemp Jones Coulthard)

Steve Morris (Morris Law)

James J. Pisanelli, Esq. (Pisanelli Bice)



Dan Kutinac

MQUA
DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, Nevada 89101
Telephone: (702) 384-1170
Facsimile: (702) 384-5529
drm@cmlawnv.com
mcw@cmlawnv.com

Attorneys for Defendant
Venetian Macau Ltd.

Electronically Filed
10/19/2015 03:29:30 PM

CLERK OF THE COURT

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 G. ADELSON, an individual; VENETIAN MACAU LTD., a Macau corporation; DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED CLAIMS.

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

VENETIAN MACAU LTD.'S MOTION TO QUASH SERVICE OF SUMMONS

Defendant Venetian Macau, Ltd. ("VML"), by and through its counsel of record, Daniel R. McNutt of the law firm of CARBAJAL & MCNUTT, hereby submits its Motion to Quash Service of Summons (the "Motion").

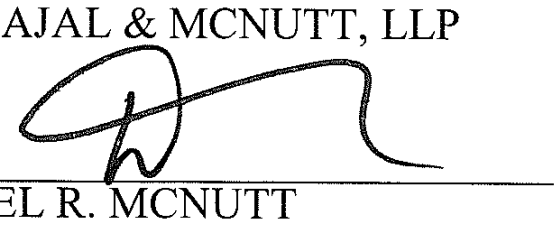
///

///

This Motion is made and based upon the Motion, points and authorities contained herein, the declaration of Robert Goldstein, and all other pleadings and papers on file herein, together with any oral argument.

DATED this 19th day of October, 2015.

CARBAJAL & MCNUTT, LLP



DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
625 South Eighth Street
Las Vegas, Nevada 89101

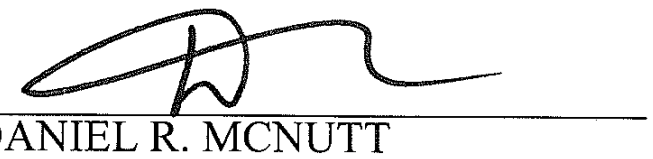
Attorneys for Defendant
Venetian Macau Ltd.

NOTICE OF MOTION

PLEASE TAKE NOTICE that this Motion will be brought on for hearing before the Court on the 23 day of November, 2015, at 9:00 a.m., before the above-entitled Court, or as soon thereafter as counsel may be heard.

DATED this 19th day of October, 2015.

CARBAJAL & MCNUTT, LLP



DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
625 South Eighth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
Venetian Macau Ltd.

MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION

Plaintiff Steven C. Jacobs ("Jacobs") purports to have effected service on Venetian Macau, Ltd. ("VML") on or about October 1, 2015 by delivering a summons and complaint to Robert Goldstein at his personal residence in Las Vegas, Nevada. VML is a registered Macao limited liability company that is licensed by the Government of Macao to conduct gaming operations in Macao. VML is not present, or a registered or unregistered corporation, in Nevada. Mr. Goldstein is not VML's agent for service of summons. Moreover, Mr. Goldstein was not in Nevada as a representative of VML and was not conducting any business for VML in Nevada at the time of service. For these reasons, service on VML was not proper and this Court must quash service of summons and dismiss the action.

II.
BACKGROUND

Plaintiff filed his Fifth Amended Complaint ("FAC") on September 18, 2015. The Clerk of the Court issued summons on September 23, 2015, and plaintiff purported to serve Robert Goldstein on October 1, 2015. Mr. Goldstein received the summons at his home in Las Vegas, Nevada. Declaration of Robert Goldstein ("Goldstein Decl.") ¶ 8 attached hereto as Exhibit A. Mr. Goldstein resides in Nevada, where he carries out his duties and responsibilities for Las Vegas Sands Corporation ("LVSC") as the President and Chief Operating Officer. *Id.* at ¶ 4. Although he is on the board of directors for VML, the VML board has never convened in Nevada to address VML matters. *Id.* at ¶ 5. VML does not conduct any business or operations in Nevada, nor has it ever done so. *Id.* at ¶¶ 5, 7.

III.

ARGUMENT

1. It Is Well Settled that the Resident Director of a Foreign Corporation Cannot Be Served with Process in an Action Against the Corporation If It Is Not Doing Business in the State.

The meaning of the plain language of Nevada's service Rule 4(d)(2) is confirmed by settled Supreme Court precedent: a resident director of a foreign corporation cannot be validly served with process in an action against the corporation if the corporation is not doing business in the state. *Toledo Railways & Light Co. v. Hill*, 244 U.S. 49, 53 (1917). In *Toledo*, the plaintiff attempted to serve an Ohio corporation in New York by delivering a summons to the director and vice president of the corporation who lived in New York. *Id.* at 50. The Supreme Court, however, held "that the person upon whom the summons was served, although concededly an officer of the corporation, had no authority whatever to transact business for or represent the corporation in the state of New York." *Id.* at 51. This case may be analyzed in the same way: although Mr. Goldstein lives in Nevada, VML does not own, control or operate any business in the state of Nevada. Thus, delivery of a summons to Mr. Goldstein does not constitute service on VML, which is not present in Nevada.

This long-established principle is grounded in the same due process concerns that inform courts' decisions to limit personal jurisdiction over out-of-state parties, and this principle has been repeatedly reaffirmed by courts across this nation. For example, in *Am. Indem. Co. v. Detroit Fid. & Sur. Co.*, 63 F.2d 395 (5th Cir. 1933), the Fifth Circuit held that "[a] corporation . . . is not to be found elsewhere for purposes of service in the mere temporary presence of an agent or even an officer . . . although he is present on corporate business . . . ***nor though the officer resides where served if the corporation is not doing business there***." *Id.* at 396 (emphasis added). Similarly, in *Grimes v. Maryland State Fair, Inc.*, 230 F.2d 825 (D.C. Cir. 1956), the District of Columbia Circuit upheld the district court's order quashing service of

summons on the resident director of a foreign corporation when the corporation was not doing business in the District of Columbia and was not the corporation's agent. *Id.* at 825. These Supreme Court and federal circuit cases establish that Mr. Goldstein's presence in Nevada does not and cannot subject VML to service of process.

Analogous state and federal district court cases reach the same conclusion. In *Hurley v. Wells-Newton Nat. Corp.*, 49 F.2d 914 (D. Conn. 1931), the court analyzed whether service of process in Connecticut was proper on a defendant incorporated in Delaware with its principal place of business in New York where plaintiff served the defendant's Vice President and Treasurer "at his usual place of abode" in Connecticut. *Id.* at 915. The court held that "the mere Connecticut residence of the treasurer of defendant" would not "necessarily subject the defendant to process here," and thereafter vacated the attempted service of process. *Id.* at 919-20. The Supreme Court of Puerto Rico applied a similar rule in *Peguero y otros v. Hernandez Pellot*, No. CE-93-716, 1995 WL 905624 (P.R. Nov. 14, 1995). Relying on *Toledo*, 244 U.S. 49, *supra*, the court held "[s]ervice of process on . . . [a] corporation's president, while he is within the state's boundaries in activities unrelated to the corporation, is not . . . personal service of the corporation within the state's territorial boundaries." *Id. See also Brewer v. De Camp Glass Casket Co.*, 139 Tenn. 97, 201 S.W. 145, 148 (1918) ("Indeed, we do not see how the corporation could have been brought before the court by service upon the resident directors in Tipton county, since it does not appear from the bill that it was at that time doing any business in Tennessee").

Accordingly, separate and apart from the plain language of Nevada Rule of Civil Procedure 4(d)(2), it is well established under independent United States Supreme Court and other state and federal precedents that a resident director of a foreign corporation cannot be

validly served when the corporation does not conduct business in the state and the director is not in the state for the purpose of doing any business on behalf of that corporation.

2. The Attempted Service of Summons Was Improper Under The Plain Language of Nevada Rule of Civil Procedure 4(d)(2).

Nevada Rule of Civil Procedure 4(d)(2) governs service on an unregistered foreign entity. Rule 4(d)(2) states: "If the suit is against an unregistered foreign entity or association ***that has an officer, general partner, member, manager, trustee or director within this state***, [service must be] to such officer, general partner, member, manager, trustee or director." While Mr. Goldstein resides in Nevada, he was not in Nevada as a representative of VML. Thus, VML, does not "ha[ve] an officer . . . [or] director within [Nevada]" for purposes of service under Rule 4(d)(2). For service of process on such an entity to be valid, the entity must be "doing business in the state." *See* NRS 14.020.1.

VML has never done business or conducted operations in Nevada. Goldstein Decl. at ¶ 5. Mr. Goldstein was not in Nevada in his capacity as a director of VML, nor has the VML board of directors ever convened in Nevada to address VML matters. Goldstein Decl. at ¶¶ 5, 7.

In *Midland Pac. Ry. Co. v. McDermid,* 91 Ill. 170 (1878), the Illinois Supreme Court interpreted a service statute with language similar to Nevada Rule of Civil Procedure 4(d)(2). The Illinois service statute allowed service of process on corporations "by leaving a copy of the process with any clerk, secretary, superintendent, general agent, cashier, principal director, engineer, conductor, station agent or any agent of said company found in the county." *Id.* at 172. Although this statute allowed service on one of the aforementioned people "found in the county"—much like Rule 4(d)(2), which permits service on specified people "within [the] state"—the court nonetheless determined that service on the superintendent of the corporation who was in the county when served was not acceptable because the superintendent was only "passing through the county" and "***was not at the time in [the] county upon any business of***

defendants." *Id.* at 173 (emphasis added). The court held that "[i]t was certainly never intended that service could be had on a foreign corporation by leaving a copy of the process with any officer or agent of the company that might chance to pass through the State on his private business. Had the legislature intended to so provide, it would certainly have used more apt words to express that intention." *Id. See also Cook Assocs., Inc. v. Lexington United Corp.*, 87 Ill. 2d 190, 200, 429 N.E.2d 847, 851 (1981) (citing *Midland*, 91 Ill. 170, to hold "personal service upon an officer of the company who was physically present in this State as a visitor, for example, did not confer jurisdiction over the nonresident [corporation.")

Similarly here, the language of Rule 4(d)(2) is clear—VML must have a director within the state if plaintiff wishes to effect service through this person, *and* the foreign company must be doing business here. *See* NRS 14.020.1. To read Rule 4(d)(2) as allowing service on a person regardless of whether he is representing VML would disregard the plain language that service on such person is proper only if the "unregistered foreign entity . . . has . . . [a] director within [the] state" and the entity is doing business here. Nev. R. Civ. P. 4(d)(2); *see also* NRS 14.020.1. It is not enough that a VML director resides in Nevada —rather, the director must be residing here on behalf of VML to further its business here to effect valid service on that person.

"It is well established that when the statute's [or rule's] language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (internal quotation and citation omitted). *Weddell v. Stewart*, 129 Nev. __, 261 P.3d 1080 (2011) (the "rules of statutory construction apply to court rules"). It is the court's duty "to give effect, if possible, to every clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (internal quotation and citation omitted); *Williams v. United Parcel Service*, 129 Nev. __, 302 P.3d 1144, 1147 (2013) (statutes are "read as a whole, with effect given to each word and

phrase"). To "interpret" the statute to allow service on VML through Mr. Goldstein would render the language requiring service be effected on a director acting as a representative of the corporation legally meaningless and contrary to law. *Hobbs v. State*, 127 Nev. Adv. Op. 18, 251 P.3d 177, 179 (2011) ("[w]e avoid statutory interpretation that renders language meaningless or superfluous"). If the Nevada legislature had wanted to confer the ability to serve any director regardless of whether the director is doing business for the corporation,[1] it could easily have clearly so stated when drafting the statute. To read the Rule so broadly as to validate service on Mr. Goldstein "would result not in a construction of the statute, but, in effect, an enlargement of it by the court . . . ." *See Lamie*, 540 U.S. at 534 (internal quotation, citation and alteration omitted). Courts "have no authority to substitute [their] views for those expressed . . . in a duly enacted statute." *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 626 (1978).

Thus, under the plain language of Rule 4(d)(2), Mr. Goldstein cannot be served for VML because VML "has" no "officer, general partner, member, manager, trustee or director within this state" furthering VML's interests or activities within the state.

CONCLUSION

Rule 4(d)(2) does not and cannot confer on plaintiff the right to serve Mr. Goldstein on behalf of VML. Here, as in the cases discussed above, Mr. Goldstein was served in Nevada but VML has no business, operations or any "officer, general partner, member, manager, trustee or director within this state." Nor was Mr. Goldstein in the state at the time he was served to perform any business on behalf of VML. Thus, there has been no valid service on VML "within [the] state" under Rule 4(d)(2).

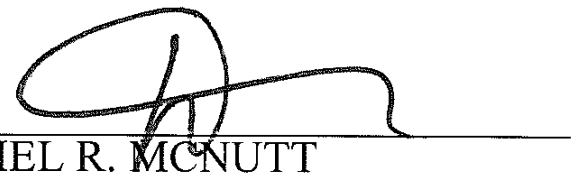
---

[1] Though, as explained *supra*, established Supreme Court authority would prevent them from authorizing such broad service.

For the foregoing reasons, VML respectfully requests the Court quash Jacobs' service of summons and dismiss the action.

DATED this 19th day of October, 2015.

CARBAJAL & MCNUTT, LLP



DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
625 South Eighth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
Venetian Macau Ltd.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that pursuant to NRCP 5(b) and EDCR 8.05 on the 19th day of October, 2015, I caused service of the foregoing **VENETIAN MACAU LTD.'S MOTION TO QUASH SERVICE OF SUMMONS** to be made by depositing a true and correct copy of same in the United States Mail, postage fully prepaid, addressed to the following and/or via electronic mail through the Eighth Judicial District Court's E-Filing system to the following at the e-mail address provided in the e-service list:

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
sm@morrislawgroup.com
rsr@morrislawgroup.com

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
speek@hollandhart.com
rcassity@hollandhart.com

Michael E. Lackey, Jr., Esq.
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
mlackey@mayerbrown.com

J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD
3800 Howard Hughtes Parkway, 17th Floor
Las Vegas, Nevada 89169
jrj@kempjones.com
mmj@kempjones.com

James Pisanelli, Esq.
Todd Bice, Esq.
Debra Spinelli, Esq.
Jordan Smith, Esq.
PISANELLI BICE PLLC
400 South 7th Street, Third Floor
Las Vegas, Nevada 89101
jjp@pisanellibice.com
tlb@pisanellibice.com
dls@pisanellibice.com
jts@pisanellibice.com
Attorney for Plaintiff

Employee of Carbajal & McNutt, LLP

Exhibit A

Dan McNutt
Nevada Bar No. 7815
drm@cmlawnv.com
Matthew Wolf
Nevada Bar No. 10801
mcw@cmlawnv.com
CARBAJAL & MCNUTT
625 South 8th Street
Las Vegas, Nevada 89101

Attorneys for Venetian Macau, Ltd.

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 G. ADELSON, an individual; VENETIAN MACAU LTD., a Macau corporation; DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED CLAIMS.

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

DECLARATION OF ROBERT GOLDSTEIN IN SUPPORT OF VENETIAN MACAU LTD.'S MOTION TO QUASH SERVICE OF SUMMONS

DECLARATION OF ROBERT GOLDSTEIN IN SUPPORT OF VENETIAN MACAU, LTD.'S MOTION TO QUASH

1. I am the President and Chief Operating Officer of Las Vegas Sands Corp., a Nevada corporation ("LVSC"), headquartered in Las Vegas, Nevada. I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently hereto.

2. Venetian Macao Ltd., a Macao limited liability company ("VML"), is an indirect affiliate of LVSC. VML is an integrated resort-casino, licensed by the Government of Macao that does business exclusively in Macao.

3. I am one of five directors of VML. I am not an officer or employee of VML. I am the only VML director who lives and works in the United States.

4. I reside and principally work in Las Vegas, Nevada as the President and Chief Operating Officer of LVSC. I have continuously resided and worked here since 1995. My residence in Nevada has nothing to do with VML's business.

5. To my knowledge, VML has never done business or conducted operations in Nevada, nor has the VML board of directors convened in Nevada to address VML matters.

6. From time to time I travel to Macao and elsewhere in Asia on business related to the Asian affiliates of LVSC, which include VML.

7. I do not live in Nevada to carry out any board duties of VML. During the time that I have been a director of VML (and to the best of my knowledge before), VML has had absolutely no business, operations or employees in Nevada.

8. On October 1, 2015, I was confronted by a process server in the driveway of my home in Las Vegas. I identified myself to him as Robert Goldstein, and as I did so he handed me a summons and a complaint that names VML as a defendant in a lawsuit commenced in Las Vegas by Steven Jacobs in October 2010.

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

Executed on October 16, 2015 at Las Vegas, Nevada.

Robert Goldstein.

MDSM
DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, Nevada 89101
Telephone: (702) 384-1170
Facsimile: (702) 384-5529
drm@cmlawnv.com
mcw@cmlawnv.com

Attorneys for Defendant
Venetian Macau Ltd.

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 G. ADELSON, an individual; VENETIAN MACAU LTD., a Macau corporation; DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED CLAIMS.

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

VENETIAN MACAU LTD.'S MOTION TO DISMISS THE FIRST, SECOND, AND THIRD CAUSES OF ACTION AGAINST VENETIAN MACAU, LTD. IN PLAINTIFF'S FIFTH AMENDED COMPLAINT

Defendant Venetian Macau, Ltd. ("VML"), by and through its counsel of record, Daniel R. McNutt of the law firm of CARBAJAL & MCNUTT, hereby submits its Motion to Dismiss the First, Second and Third Causes of Action Against Venetian Macau, Ltd. in Plaintiff's Fifth Amended Complaint (the "Motion").

///

///

This Motion is made and based upon the Motion, the points and authorities contained herein, the declaration of Toh Hup Hock, and all other pleadings and papers on file herein, together with any oral argument.

DATED this 21st day of October, 2015.

CARBAJAL & MCNUTT, LLP

/s/ Dan McNutt
DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
625 South Eighth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
Venetian Macau Ltd.

NOTICE OF MOTION

PLEASE TAKE NOTICE that this Motion will be brought on for hearing before the Court on the 23 day of NOVEMBER, 2015, at 9:00A.m., before the above-entitled Court, or as soon thereafter as counsel may be heard.

DATED this 21st day of October, 2015.

CARBAJAL & MCNUTT, LLP

/s/ Dan McNutt
DANIEL R. MCNUTT
Nevada Bar No. 7815
MATTHEW C. WOLF
Nevada Bar No. 10801
625 South Eighth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
Venetian Macau Ltd.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff improperly attempts to bring Venetian Macau Ltd. ("VML") into court in Nevada, despite VML's lack of connection to this State. VML is a Macau-based company, which has thousands of employees working solely in Macau, revenues generated solely from resort and gaming activities in Macau, and a license to engage in gaming activities only in Macau. VML has no employees in Nevada, earns no revenue in Nevada, has no property in Nevada, and is not licensed to engage in gaming activity in Nevada. Plaintiff seeks to hold VML liable for breach of a contract performed in Macau, and not in Nevada. Under well-established case law, there is no basis for this court to exercise jurisdiction over VML. Plaintiff's claims against VML should thus be dismissed.

In addition, Plaintiff's three causes of action against VML all fail to state a claim upon which relief can be granted. Plaintiff alleges that VML is liable for breach of a contract to which VML is not a party (and the implied covenant of good faith that plaintiff claims runs with that contract). Plaintiff bases these theories on the premise that VML was assigned the contract at issue. But under Nevada law, valid assignment of a personal services agreement requires consent of the plaintiff at the time of the assignment. Plaintiff has already claimed in this case that he did not know about the assignment for years. There is thus no way he could have consented to the assignment. The law does not permit him to change his story at this point, to manufacture valid assignment. All three claims must, accordingly, be dismissed on this independent ground.

Plaintiff's second claim for breach of contract also fails because it attempts to import the terms of an agreement allegedly reached in 2009 (referred to in the FAC as the "Term Sheet") into an agreement allegedly signed in 2010.[1] But the 2010 agreement nowhere references the 2009 agreement, and includes provisions directly contrary to what plaintiff seeks to import from

---

[1] VML treats the allegations in the FAC as true only for the purposes of this motion to dismiss.

the 2009 agreement. Plaintiff's third claim, for breach of the implied covenant of good faith and fair dealing, also falls short as a matter of law, as it fails to even allege any wrongdoing on the part of VML.

Finally, Jacobs is estopped from making his arguments as to VML's liability on the contract or implied covenant claim, as he argued a contrary position in opposition to LVSC's 2010 motion to dismiss for failure to join an indispensable party. There, Jacobs explicitly argued that "VML is not a party to Jacobs' employment agreement or the nonqualified stock option agreement." Jacobs confirmed that he was ready, willing and able to proceed in VML's absence. Ultimately, the Court held in favor of Jacobs and denied LVSC's motion. Having successfully relied on this argument, Jacobs should be judicially estopped from doing an about-face on his position now that it suits him to do so.

For these reasons and those set forth below, VML respectfully submits that plaintiff's Fifth Amended Complaint ("FAC") should be dismissed in its entirety.

II.

BACKGROUND

A. Facts Related to VML

VML is a resort and gaming operations company located in Macau. Declaration of Toh ("Toh Decl.") ¶ 2 attached hereto as Exhibit A. Macau is a Special Administrative Region ("SAR") of the People's Republic of China, located 37 miles southwest of Hong Kong. FAC ¶ 12. VML's principal place of business is Macau. *Id.* at ¶ 2. VML is incorporated in Macau. *Id.* at ¶ 2. VML holds a subconcession from the Macau Government that allows it to own and operate casinos and gaming areas in Macau. *Id.* at ¶ 3. VML develops and owns integrated resorts in Macau. *Id.* at ¶ 2. Except for a small amount of stock that must be held by an individual in Macau to satisfy Macanese regulatory requirements (10%), VML is and has been a wholly-owned subsidiary of Sands China Ltd. ("SCL") since SCL's initial public offering in November 2009. *Id.* at ¶ 4. SCL is a Hong Kong Stock Exchange company, with its principal place of business in Macau. *Id.* at ¶ 5. Approximately 30% of SCL's stock is publicly traded

on the Hong Kong Stock Exchange. *Id.* at ¶ 5. The remainder is indirectly owned by LVSC. *Id.* at ¶ 5.

VML maintains separate bank accounts from its parent companies. *Id.* at ¶ 6. VML has no bank accounts or other assets located in Nevada. *Id.* at ¶ 6. VML is adequately capitalized and able to pay all of its debts from the revenues it generates. *Id.* at ¶ 7. In 2014, VML had operating profit of over $2.6 billion and net profit of over $2.65 billion from its Macanese operations. *Id.* at ¶ 7.

VML has never owned, controlled, or operated any business in Nevada. *Id.* at ¶ 9. VML does not own any property in Nevada. *Id.* at ¶ 9. VML's Macanese subconcession only permits gaming activities within Macau. *Id.* at ¶ 10. Neither it, nor its parent (SCL) nor any of VML's own subsidiaries conducts any gaming operations in Nevada, nor do they derive any revenue from operations in Nevada. *Id.* at ¶ 10. Indeed, a non-competition agreement with LVSC prevents VML from doing business in Las Vegas (just as it prevents LVSC from doing business in Macau). *Id.* at ¶ 10. All of the billions of dollars in revenues that VML's gaming and resort operations generate annually derive from its operations in Macau. *Id.* at ¶ 11. VML does not pay taxes in Nevada and only pays taxes in Macau. *Id.* at ¶ 11.

VML has thousands of employees, none of whom reside in Nevada and all of whom live and work in and around Macau. *Id.* at ¶ 12. VML has never had any office in Nevada. *Id.* at ¶ 12.

VML has its own Board of Directors and keeps its own minutes of the meetings of its Board and Board Committees. *Id.* at ¶ 13. VML maintains its own separate and independent corporate and accounting records. *Id.* at ¶ 14. VML Board meetings are held in Macau or Hong Kong; no Board meetings are held in Nevada. *Id.* at ¶ 13.

VML does not share any employees with LVSC. *Id.* at ¶ 15. VML has control over its business strategies and operations. *Id.* at ¶ 16. VML has control over its own hiring and firing decisions, though SCL Board approval may be required for some senior management positions. *Id.* at ¶ 16. VML enters into its own contracts. *Id.* at ¶ 16.

B. Plaintiff's Allegations and Theories, and Facts Related Thereto

When Plaintiff Steven Jacobs was originally hired, he was designated the CEO of VML. *Id.* at ¶ 18. Jacobs' theory is that he entered into a "Term Sheet" with LVSC that constituted a binding agreement. *See* FAC ¶ 24. Jacobs alleges that, at the time of SCL's IPO, nearly four months after Jacobs began working in Macau as VML's CEO, LVSC assigned the Term Sheet to SCL and VML, which supposedly assumed whatever obligations were set forth in that Term Sheet. *See id.* at ¶¶ 25, 54. In seeking leave to file the FAC, Jacobs claimed that he first became aware of the alleged assignment/assumption during the jurisdictional hearing, even though he was named the CEO of SCL when the IPO was completed. *See* Mot. for Leave at 5 ("Evidence presented at the jurisdictional hearing [regarding SCL] . . . provided that LVSC transferred or assigned the contract to both Sands China and VML."). Although he claims that the terms of his employment were assigned to both SCL and VML, he continues to insist that LVSC alone was his employer. *See, e.g.,* FAC ¶¶ 69-72.

In Count I of his complaint, plaintiff alleges the Term Sheet guaranteed him certain compensation in the event that he was terminated without cause. *Id.* at ¶¶ 52-53. He claims LVSC in fact terminated him without cause and seeks to hold LVSC, SCL and VML each jointly and severally liable for breach of contract. *Id.* at ¶¶ 56-58.

In Count II, plaintiff alleges the Term Sheet also informed the provisions of a stock option agreement that Jacobs claims to have entered into with SCL and that SCL breached its contractual obligations by refusing his demand that the vesting of those options be accelerated after he was terminated. *Id.* at ¶¶ 59-64. Plaintiff does not allege VML was a party to the Stock Option Agreement, nor does he allege any basis on which it could be held liable for SCL's alleged breach. *See id.* Nevertheless, plaintiff alleges that VML is liable for SCL's alleged breach of the Stock Option Agreement. *See id.*

Finally, in Count III, plaintiff alleges LVSC, SCL and VML all violated an implied covenant of good faith and fair dealing in their "agreements," though plaintiff does not identify

which agreements were supposedly violated, nor does he allege what VML—as opposed to LVSC or SCL—supposedly did that violated such an implied covenant.[2] *Id.* at ¶¶ 65-68.

The FAC is essentially silent on the question of personal jurisdiction over VML. Jacobs claims there is jurisdiction but does not explain whether he is claiming VML is subject to general jurisdiction in Nevada. *See id.* at ¶ 8. Nor does Jacobs explain how or why there would be specific jurisdiction over VML here with respect to contracts that were to be performed entirely in Macau and that were allegedly breached in Macau when Jacobs was terminated there and when SCL refused his demand to exercise options to purchase SCL stock on the Hong Kong Stock Exchange. *See id.* The only indication plaintiff gives of his intention to argue that there is general jurisdiction over VML in Nevada is his allegation in paragraph 4 of the FAC that VML "purports to be an indirect operating subsidiary of Sands China. However, from its inception, VML has been treated as little more than an incorporated division of Defendant LVSC, with VML's board not actually governing its affairs, but merely signing and undertaking any actions as directed by LVSC." *Id.* at ¶ 4.

III.

ARGUMENT

A. There Is No Basis For Asserting General Jurisdiction Over VML

1. *VML Is Not "At Home" In Nevada*

General or "all-purpose" jurisdiction gives a court the power "to hear any and all claims against" a defendant "regardless of where the claim arose." *Goodyear Dunlop Tires Operations, S.A. v. Brown,* 131 S.Ct. 2846, 2851 (2011). A court has general jurisdiction over a foreign corporation only if it is "essentially at home" in the forum when the complaint was filed and served. *See id.*; *Daimler AG v. Bauman*, 134 S.Ct. 746, 758 n.11 (2014) (this test requires the defendant to be "comparable to a domestic enterprise in that State"). "Typically, a

---

[2] Plaintiff alleges that SCL aided and abetted LVSC's alleged wrongful discharge of Jacobs in violation of public policy and that LVSC and SCL conspired to wrongfully discharge him. No such claims are asserted against VML. Nor does plaintiff allege that VML is liable on the defamation claim he has asserted against Mr. Adelson, LVSC and SCL.

corporation is 'at home' only where it is incorporated or has its principal place of business." *Viega GmbH v. Eighth Judicial Dist.*, 130 Nev. Adv. Rep. 40, 328 P.3d 1152, 1158 (2014).

Here, plaintiff affirmatively alleges that VML is incorporated in Macau. There can be no doubt that it also has its principal place of business in Macau, where all of its business interests are located. Under those circumstances, VML is not "at home" in Nevada and there is a strong presumption that it cannot be sued here on claims unrelated to the forum.

Although the Supreme Court in *Daimler* noted that in an "exceptional case" a foreign corporation might be subject to general jurisdiction in a forum other than its formal place of incorporation or principal place of business, that is only if its contacts with the forum, when measured against its national and global activities, are "so substantial and of such a nature as to render the corporation 'at home' in that State." *Daimler*, 134 S. Ct. at 761-62 and n.19. Whether that standard is met should not entail a complicated factual analysis; as the Supreme Court observed, it is "hard to see why much in the way of discovery would be needed to determine where a corporation is at home." *Id.* at 762 n.20. The Court stressed that this demanding standard is particularly important in the "transnational context" where "exorbitant exercises of all-purpose jurisdiction" pose "risks to international comity." *Id.* at 761-63.

The facts here present nothing close to the "exceptional case" for finding VML at home in Nevada under *Daimler*. In *Daimler*, the Court cited as an example of the "exceptional case" the Court's decision in *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437 (1952). *See id.* at 761 n. 19. In *Perkins*, the foreign company ceased its operations in the foreign country, moved its president to the forum state, where it kept an office, maintained its files, and oversaw the company's activities. *See id.* at 755-56 (citing *Perkins*, 342 U.S. at 448). Here, by contrast, all of VML's operations take place in Macau, VML is incorporated in Macau, VML's employees are located in Macau, all of VML's revenue comes from operations in Macau, and VML's offices are in Macau. This is clearly not the "exceptional case" to which the Supreme Court referred in *Daimler*.

2. *There Is No Agency Theory after Daimler*

In litigating the issue of general jurisdiction over SCL over the course of more than four years, plaintiff has offered and then discarded a remarkable array of different theories as to why a company based in Macau should nevertheless be deemed "at home" in Nevada. In finding general jurisdiction over SCL, this Court adopted plaintiff's "reverse agency" theory, holding that SCL presented the "exceptional" case in which a foreign corporation could be subject to general jurisdiction in a state other than its formal place of incorporation or principal place of business because LVSC and its employees acted as SCL's "agents" in Nevada. This Court held LVSC's activities on behalf of SCL in Nevada were so "continuous and significant" as to "render SCL 'at home' in Nevada." May Order ¶¶ 114-17; 122.

This ruling cannot be squared with *Daimler*, where the U.S. Supreme Court reversed a Ninth Circuit decision adopting the very same kind of agency theory. In *Daimler*, the Ninth Circuit had held the "contacts" of a California subsidiary could be imputed to its foreign parent because the subsidiary effectively operated as the parent's "agent" within the state. 139 S. Ct. at 759-60. Because the "agent" subsidiary admitted it was subject to general jurisdiction in California, the Ninth Circuit held the foreign parent/principal was as well. In reversing this holding, the Supreme Court noted that the agency theory leads to an impermissibly "sprawling" jurisdictional view because it subjects companies to general jurisdiction "whenever they have an in-state subsidiary or affiliate." *Id.* at 760. The Court added that such "overbreadth" is not remedied by a "separate inquiry" into the level of "control" exercised by the parent over the subsidiary. *Id.* at 760 n.15. The Court further held that even if the subsidiary's contacts could be imputed to the parent, this alone would not be sufficient to establish general jurisdiction. *Id.* at 760. Rather, a court has to decide whether the foreign corporation's in-state "contacts," when compared with its global operations, are so substantial as to make the corporation "essentially at home" in the forum state. *Id.* at 761-62.

Although plaintiff persuaded this Court to find general jurisdiction over SCL based on a "reverse agency" theory, plaintiff quickly abandoned that theory before the Nevada Supreme Court, and went back to the claim that SCL was controlled by LVSC and Mr. Adelson from Las

Vegas and therefore should be deemed to be "at home" here. *See* Transcript of Oral Argument, 9/1/15, at 25-29.

The Ninth Circuit's recent decision in *Ranza v. Nike, Inc.*, 793 F.3d 1059 (9th Cir. 2015), confirms that under *Daimler* an agency theory cannot be the basis for asserting general jurisdiction over a foreign subsidiary. In *Ranza*, the plaintiff alleged that Nike's Oregon contacts should be imputed to Nike's Dutch subsidiary ("NEON") because 20-27 NEON employees were typically working at Nike's headquarters in Oregon at any time, NEON employees averaged 47 trips a month to Oregon, and NEON entered into contracts in which the U.S. parent allegedly agreed to perform certain tasks as NEON's agent in the U.S. *Id.* at 1069. The Ninth Circuit rejected this argument, noting that in light of *Daimler* "[t]he agency test is . . . no longer available to Ranza to establish jurisdiction over NEON." *Id.* at 1071.

The Court then held the plaintiff could only use the parent company's Oregon contacts if she was able to show the foreign subsidiary was merely an "alter ego" of the parent. *Id.* The Court stressed, however, that the alter ego test—which plaintiff has not alleged as to VML, and has never attempted to satisfy with respect to SCL—is a very difficult test to meet. "To satisfy the alter ego test, a plaintiff must make out a prima facie case (1) that there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) that failure to disregard their separate identities would result in fraud or injustice." *Id.* at 1073 (internal quotation marks and brackets omitted). The same test applies under Nevada law. *See Viega GmbH*, 328 P.3d at 1162 (the corporate veil cannot be disregarded for jurisdictional purposes unless the plaintiff can show "such unity of interest and ownership that in reality no separate entities exist and failure to disregard the separate identities would result in fraud or injustice") (Pickering, J., concurring).

"'[T]he corporate cloak is not lightly thrown aside' . . . the alter ego doctrine is an exception to the general rule recognizing corporate independence." *Truck Ins. Exchange v. Palmer J. Swanson, Inc.*, 189 P.3d 656, 660 (Nev. 2008) (quoting *LFC Mktg. Group, Inc. v. Loomis*, 116 Nev. 896, 903–04, 8 P.3d 841, 846 (2000)). "A mere showing that one corporation is owned by another, or that the two share interlocking officers or directors is insufficient to

support a finding of alter ego." *Bonanza Hotel Gift Shop, Inc. v. Bonanza No. 2*, 596 P.2d 227, 229 (Nev. 1979). It must be shown that the subsidiary corporation "'is so organized and controlled, and its affairs are so conducted that it is, in fact, a mere instrumentality or adjunct of another corporation.'" *Id.* (quoting *Savage v. Royal Properties, Inc.*, 417 P.2d 925, 927 (Ariz. 1966)).

In addition, the party seeking to pierce the veil must demonstrate that adherence to the fiction of a separate entity would, under the circumstances, sanction a fraud or promote injustice. *See Ecklund v. Nev. Wholesale Lumber Co.*, 562 P.2d 479, 480 (Nev. 1977). The Nevada Supreme Court has held "[s]ome factors to be considered when determining if a unity exists in an alter ego analysis include, but are not limited to, commingling of funds, undercapitalization, unauthorized diversion of funds, treatment of corporate assets as the individual's own, and failure to observe corporate formalities." *Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 808, 963 P.2d 488, 497 (Nev. 1998).

3. *Plaintiff Has Not Alleged, and Cannot Show, Alter Ego*

Plaintiff's conclusory allegations in the FAC do not come close to meeting his burden of making a prima facie showing that all of the corporate veils between LVSC and SCL should be pierced. In *Ranza*, the Ninth Circuit held that the plaintiff had not met her burden with respect to the first prong of the analysis because she had not shown that the parent dictated every facet of the subsidiary's business, from broad policy decisions to routine matters of day-today operation. *Id.* at 1073. The Court stressed that the "unity of interest and ownership" prong of the test was *not* met by evidence that showed only "an active parent corporation involved directly in decision-making about its subsidiaries' holdings, but each entity observes all of the corporation formalities necessary to maintain corporate separateness." *Id.* (internal quotation marks and brackets omitted). The Court acknowledged that Nike was "heavily involved in NEON's operations":

> Nike exercises control over NEON's overall budget and has approval authority for large purchases; establishes general human resource policies for both entities and is involved in some hiring decisions; operates information tracking systems all of its subsidiaries utilize; ensures the Nike brand is marketed consistently throughout the

> world; and requires some NEON employees to report to Nike supervisors on a "dotted-line" basis.

Id. at 1074. This, however, was not enough when "NEON, however, sets its own prices for its licensed Nike products, takes and fulfills orders for its licensed products using its own inventory, negotiates its own contracts and licenses, makes routine purchasing decisions without Nike's consultation and has its own human resources division that handles day-to-day employment issues, including hiring and firing decisions." *Id.* The Court also stressed that the plaintiff had presented:

> no evidence [that] Nike and NEON fail to observe their respective corporate formalities. Each entity leases its own facilities, maintains its own accounting books and records, enters into contracts on its own and pays its own taxes. Each has separate boards of directors, and Ranza has been able to identify only one director who served on both company's boards simultaneously. Some employees and management personnel move between the entities, but that does not undermine the entities' formal separation. *See Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (holding there was no alter ego relationship where some directors for one entity had sat on the board of the other). Ranza has presented no evidence that NEON is undercapitalized, that the two entities fail to keep adequate records or that Nike freely transfers NEON's assets, all of which would be signs of a sham corporate veil.

Id.

The same analysis applies here. VML, SCL and LVSC all observe corporate formalities. Toh Decl. at ¶ 8. VML maintains its own accounting books and records, enters into contracts on its own and pays its own taxes. *Id.* at ¶¶ 14-16. Plaintiff cannot show that VML is undercapitalized. *See id.* at ¶ 7. As in *Ranza*, VML shares only one director with LVSC. *Id.* at ¶ 13. VML has complete control over its routine, day-to-day activities; develops its own strategies; and controls its own business operations. *Id.* at ¶ 16. While LVSC may be involved in VML's operations on a general level to ensure the Sands trademark and LVSC's investment is fully protected, that involvement is not nearly enough to meet the first prong of the alter ego test—much less the "fraud" prong.

Indeed, Jacobs cannot possibly meet the requirements to make an alter ego showing under the second prong since he was the CEO of both VML and SCL and thus knew exactly who he was dealing with. Whatever the rule may be in situations in which third parties might

be confused about which entity they were dealing with, that rule cannot apply here. That is particularly true given that there is no question that LVSC has sufficient resources to pay any judgment. Thus, the failure to disregard VML's separate identity cannot possibly lead to any injustice.

B. Plaintiff Cannot Show Specific Jurisdiction Over VML

Specific jurisdiction is proper only "where the cause of action arises from the defendant's contacts with the forum." *Dogra v. Liles*, 129 Nev. Adv. Rep. 100, 314 P.3d 952, 955 (2013) (internal quotations omitted). "Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant 'purposefully avails' himself or herself of the protections of Nevada's laws, or purposefully directs her conduct towards Nevada, and the plaintiff's claim actually arises out from that purposeful conduct." *Id.* *See also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (a forum can assert specific jurisdiction "over an out-of-state defendant who has not consented to suit there" only if the defendant has "'purposefully directed' his activities at residents of the forum").

In a breach of contract case, the factors courts typically consider in deciding whether there is specific jurisdiction include the degree to which the defendant does business in the state, whether the contract chooses the law of the forum state, and whether contract duties were to be performed in the forum. *See Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009) (listing factors and holding that communications with the forum state did not provide a basis for specific jurisdiction where the contract was negotiated and was to be performed elsewhere and did not choose the forum state law); *see also Stone v. State of Texas*, 76 Cal. App. 4th 1043, 1048 (1999) ("Due process requires a 'substantial connection' between the contract at issue and the forum state"). In *Burger King*, the U.S. Supreme Court emphasized the "need for a highly realistic approach that recognizes that a contract is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." 471 U.S. at 479 (internal quotations omitted). "It is these factors—prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing—that must be evaluated

in determining whether the defendant purposefully established minimum contacts within the forum." *Id.*

In ruling on SCL's motion to dismiss for lack of jurisdiction, this Court held that plaintiff's breach-of-contract claim provided a basis for specific jurisdiction over SCL in light of the following findings:

1. Plaintiff and LVSC negotiated an employment agreement (the "Term Sheet Agreement") in Nevada;

2. SCL thereafter "assumed" LVSC's obligations under the agreement; and

3. LVSC and SCL then breached the agreement.

Order ¶¶ 132-46. The Court further found that SCL "purposefully availed itself" of Nevada's laws by accepting plaintiff's services under the employment agreement (¶ 139), notwithstanding the undisputed fact that plaintiff's services were rendered *in Macau*, not Nevada.

We assume that plaintiff will seek to transfer this rationale to VML. But even if the Court must accept as true, for purposes of the motion to dismiss, plaintiff's claim that LVSC's obligations under the Term Sheet were somehow transferred to VML, that would not be enough to sustain a finding of specific jurisdiction. There is no allegation or evidence showing that the claimed breaches of contract arose from VML's "purposeful" conduct *in Nevada*. Plaintiff does not allege, nor could he allege, that VML either negotiated any agreement in Nevada or performed any contractual obligations in Nevada. *See Dogra v. Liles*, 129 Nev. Adv. Op. 100, 314 P.3d 952, 955 (2013) (specific jurisdiction is proper only "where the cause of action arises from the defendant's contacts with the forum"). This Court held in its May 2015 ruling that a foreign company can subject itself to specific jurisdiction by simply "*accepting the benefits* of an employment agreement." Order, ¶ 137 (emphasis added). But this assertion is wrong. The law is clear that a passive act such as "accepting benefits" cannot satisfy the jurisdictional requirement that the foreign corporation "*affirmatively directs conduct*" in the forum state. *Viega*, 328 P.3d at 1157 (emphasis added). This is particularly true when the contract at issue called for the "benefits" to be accepted *outside the forum* (*i.e.*, in Macau).

In a breach of contract case, the determination of "purposeful" conduct focuses on the non-resident corporation's *affirmative* acts in the forum, such as (1) the extent to which it conducted or solicited any long-term business in the forum state; (2) the extent to which it will perform its contractual duties in the forum state; and (3) its "actual course of dealing" with the opposing party. *Burger King Corp.*, 471 U.S. at 475-76; *Consulting Eng'rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009). Courts also look to whether the contract chooses the law of the forum state. *Geometric*, 561 F.3d at 278. There are no such factors here and thus the Court lacks specific jurisdiction over VML on plaintiff's contract claims. VML did not solicit or conduct any business in Nevada or maintain any offices or employees in the state. In addition, the negotiations of the alleged employment agreement, while purportedly occurring in Nevada, involved only LVSC, and *not* VML. *See* FAC ¶ 24. Therefore, the negotiations between plaintiff and LVSC could not and did not constitute a "purposeful availment" of Nevada law *by VML*. Moreover, Jacobs' May 11, 2010 stock option grant offered by SCL explicitly states the "Terms and Conditions and Options granted hereunder shall be governed by and construed in accordance with Hong Kong law." *See* Toh Decl. ¶ 20, Ex. 2 at 12. Thus, to the extent either contract has a choice of law provision, neither designates the law of Nevada.

Furthermore, the parties' performance of the alleged contract did not take place in Nevada. Rather, plaintiff (who is ***not*** a Nevada resident) provided his services to VML (and SCL) in Macau, where he was VML's President and CEO from August 2009 through July 2010. *See* FAC ¶¶ 1, 24, 43. Thus, *if* VML "accepted the benefits" of Plaintiff's services under the Term Sheet, as plaintiff now claims, it did so *in Macau*, and not in Nevada. Consequently, even under an "accepting the benefits" theory, the Court does not have specific jurisdiction over VML.[3]

---

[3] The two cases plaintiff has previously cited in support of this proposition are inapposite, as they involve situations in which the plaintiff was a resident of the forum and/or in which performance was to occur in the forum, as opposed to the instant case, in which plaintiff was not and is not a resident of Nevada (*see* FAC ¶ 1), and in which performance was to occur in Macau. *See, e.g., Jet Wine & Spirits, Inc. v. Bacardi & Co.*, 298 F.3d 1 (1st Cir. 2002) (defendant assumed contract with plaintiff, which was based in forum, and contract gave plaintiff the right to distribute beverages in forum); *Ritter Disposables, Inc. v. Protner Nuev*

IN THE SUPREME COURT OF THE STATE OF NEVADA

VENETIAN MACAU LTD., a Macau corporation,

Petitioner,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE MARK R. DENTON, DISTRICT JUDGE, DEPT. 13,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number:

District Court Case Number A627691-B

APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDER STRIKING VENETIAN MACAU LTD'S PEREMPTORY CHALLENGE

Volume V of V
(PA997 – 1158)

CARBAJAL & MCNUTT
Daniel R. McNutt, Bar No. 7815
Matthew C. Wolf, Bar No. 10801
625 South Eighth Street
Las Vegas, NV 89101

Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of CARBAJAL & MCNUTT; that, in accordance therewith, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDER STRIKING VENETIAN MACAU LTD'S PEREMPTORY CHALLENGE** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

Judge Mark R. Denton
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

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

Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 2nd day of November, 2015.

By: /s/Lisa Heller

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDER STRIKING VENETIAN MACAU LTD'S PEREMPTORY CHALLENGE

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
09/18/2015	Transcript: Hearing on Plaintiff's Renewed Motion to File Fifth Amended Complaint	IV	PA917 – 27
09/18/2015	Court Minutes Plaintiff's Renewed Motion for Leave to File Fifth Amended Complaint on OST	IV	PA928 – 29
09/18/2015	Fifth Amended Complaint	IV	PA930 – 950
09/22/2015	Notice of Entry of Order Granting Sands China Ltd.'s Motion to Confirm that No Response to Plaintiff's Fourth Amended Complaint is Due Until NSC Acts on the Jurisdictional Writ	IV	PA950A-50D
10/16/2015	Peremptory Challenge of Judge	IV	PA951 – 53
10/16/2015	Notice of Department Reassignment	IV	PA954 – 955
10/19/2015	Plaintiff's Emergency Motion to Strike Unlawful Peremptory Challenge of Judge on OST	IV and V	PA956 - 1073
10/19/2015	Venetian Macau Ltd.'s Motion to Quash Service of Summons	V	PA1074 – 86
10/21/2015	Venetian Macau Ltd.'s Motion to Dismiss the First, Second, and Third Causes of Action in Plaintiff's Fifth Amended Complaint	V	PA1087 – 1126
10/23/2015	Venetian Macau Ltd.'s Lawful Opposition to Plaintiff's Ex Parte Motion to Strike its Rule 48.1 Peremptory Challenge	V	PA1127 – 34
10/23/2015	Plaintiff's Reply in Support of Motion to Strike Unlawful Peremptory Challenge of Judge	V	PA1135 - 39
10/26/2015	Transcript: Hearing Plaintiff's Emergency Motion to Strike Unlawful Peremptory Challenge of Judge on OST	V	PA1140 - 56

Date	Description	Vol. #	Page Nos.
10/27/2015	Order Striking Peremptory Challenge of Judge	V	PA1157 - 58

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDER STRIKING VENETIAN MACAU LTD'S PEREMPTORY CHALLENGE

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
06/12/2015	Amended Order Setting Civil Jury Trial	IV	PA769 – 76
06/18/2015	Court Minutes Plaintiff's Motion for Leave to File Fourth Amended Complaint	IV	PA777 – 78
09/18/2015	Court Minutes Plaintiff's Renewed Motion for Leave to File Fifth Amended Complaint on OST	IV	PA928 – 29
12/22/2010	Defendant Las Vegas Sands Corp.'s Motion to Dismiss	I	PA1 – 45
12/22/2010	Defendant Sands China Ltd.'s Motion to Dismiss	I, II, and III	PA46 – 570
09/17/2015	Defendants' Opposition to Plaintiff's Motion for Leave to File a Fifth Amended Complaint on OST	IV	PA862 – 916
09/18/2015	Fifth Amended Complaint	IV	PA930 – 950
06/22/2015	Fourth Amended Complaint	IV	PA791 – 811
10/16/2015	Notice of Department Reassignment	IV	PA954 – 955

Date	Description	Vol. #	Page Nos.
09/22/2015	Notice of Entry of Order Granting Sands China Ltd.'s Motion to Confirm that No Response to Plaintiff's Fourth Amended Complaint is Due Until NSC Acts on the Jurisdictional Writ	IV	PA950A-50D
07/09/2015	Notice of NRCP 30(b)(6) Videotaped Deposition of Las Vegas Sands Corp.	IV	PA812 – 23
05/27/2015	Order Setting Civil Jury Trial	III	PA734 – 40
10/27/2015	Order Striking Peremptory Challenge of Judge	V	PA1157 - 58
10/16/2015	Peremptory Challenge of Judge	IV	PA951 – 53
06/02/2015	Plaintiff Steven C. Jacobs' Motion for Leave to File a Fourth Amended Complaint on OST	III and IV	PA741 – 68
10/19/2015	Plaintiff's Emergency Motion to Strike Unlawful Peremptory Challenge of Judge on OST	IV and V	PA956 - 1073
02/09/2011	Plaintiff's Opposition to Las Vegas Sands Corp.'s Motion to Dismiss	III	PA571 – 723
09/15/2015	Plaintiff's Renewed Motion for Leave to File a Fifth Amended Complaint on OST	IV	PA833 – 61
10/23/2015	Plaintiff's Reply in Support of Motion to Strike Unlawful Peremptory Challenge of Judge	V	PA1135 - 39
07/17/2015	Second Amended Order Setting Civil Jury Trial	IV	PA824 – 32
03/15/2011	Transcript: Hearing on Defendants' Motions to Dismiss	III	PA724 – 33
06/18/2015	Transcript: Hearing on Plaintiff's Motion to Amend Complaint	IV	PA779 – 90
09/18/2015	Transcript: Hearing on Plaintiff's Renewed Motion to File Fifth Amended Complaint	IV	PA917 – 27

Date	Description	Vol. #	Page Nos.
10/26/2015	Transcript: Hearing Plaintiff's Emergency Motion to Strike Unlawful Peremptory Challenge of Judge on OST	V	PA1140 - 56
10/23/2015	Venetian Macau Ltd.'s Lawful Opposition to Plaintiff's Ex Parte Motion to Strike its Rule 48.1 Peremptory Challenge	V	PA1127 – 34
10/21/2015	Venetian Macau Ltd.'s Motion to Dismiss the First, Second, and Third Causes of Action in Plaintiff's Fifth Amended Complaint	V	PA1087 – 1126
10/19/2015	Venetian Macau Ltd.'s Motion to Quash Service of Summons	V	PA1074 – 86

time based upon the results of the search. Searches can be modified to be more or less expansive to generate more or less responsive documents. (Day 2, pp. 20, 81-83, 86.)[12]

73. Most often, the Boolean search terms consist of the names of individuals. (Day 2, pp. 82, 89-90, 94, 280.) The significance of this point cannot be understated here since SCL later redacted all of the names from the responsive documents prior to producing them to Jacobs.

74. While SCL initially claimed that Jacobs had not provided any input on the appropriate search terms, the evidence at the hearing demonstrated otherwise, including that Jacobs had provided additional search terms, some of which SCL incorporated and others which were not included. (Ex. 215.)

75. The search terms were run in December 2012 and identified approximately 70,000 responsive documents for review. (Day 2, p. 93.)

76. The review of the documents was conducted in a second conference room at the Venetian Macau because FTI employees and SCL's counsel in this case were purportedly not permitted to see any of the documents that were being reviewed or handled. (Day 2, pp. 20, 112-113.)

77. SCL's review for relevancy and responsiveness was conducted by Macau attorneys and "Macau citizens." As Ray explained, because SCL had not sought to hire reviewers until a week before Christmas, SCL could not find a sufficient number of "competent Macau lawyers" to conduct the review. (Day 2, pp. 98-103, 106, 143-44, 238.) Thus, non-

---

[12] FTI assisted SCL with two productions from Macau. The second production was completed in March/April of 2013. The second search was an expanded search of terms and additional custodians. (Day 2, pp. 88, 148-149.) Jacobs proposed additional search terms for this production. (Day 2, pp. 151-171.) Not all of Jacobs' proposed changes were incorporated. The documents from the second search were not produced to Jacobs until January 2015. (Day 2, p. 286.)

lawyer paralegals, legal secretaries, and "other people" with supposed "legal knowledge" were used to make relevancy determinations in Macau.[13] No lawyers involved in this litigation reviewed documents in Macau for relevancy or responsiveness.

78. The lack of transparency in SCL's procedures is highly problematic. SCL presented no evidence of any training of the so-called Macau reviewers or their qualification to be making relevancy/responsiveness determinations for discovery in a Nevada lawsuit. Ray concedes that FTI did not do any subject matter training for the Macanese reviewers and he did not know if anyone provided any subject matter training. FTI only provided training on how to use the computerized review tool. (Day 2, pp. 98-103, 106.)

79. Search terms without any substantive review cannot be relied upon to insure responsiveness to discovery requests. The review process of at least a portion of the retrieved data generally provides the transparency necessary for the Court to rely upon the responsiveness of results. Here there is no transparency due to the redactions.[14]

---

[13] This revelation is in contrast to Sands China's representations to the Court and to Jacobs made in its so-called "Report on its compliance with the Court's ruling of December 18, 2012."

[14] The Sedona Conference has published its Cooperation Proclamation. The Sedona Conference® Cooperation Proclamation, 10 SEDONA CONF. J. 331 (2009 Supp.). The intent of the proclamation is "to promote open and forthright information sharing, dialogue (internal and external), training, and the development of practical tools to facilitate cooperative, collaborative, transparent discovery."

More recently the Sedona Conference has published a cooperation guide which reiterates this principle in part:

> Finally, a few overarching points: when making decisions unilaterally—before opposing counsel is identified—do so in anticipation of cooperation. Document the reasonable and good faith efforts you are making to comply with your obligations in a manner that you can share with opposing counsel once identified, if necessary. All cooperative efforts, actually, should be transparent so that if opposing counsel does not reciprocate and motion practice ensues, the court will know the steps you have taken to try to avoid unnecessary discovery disputes. Lastly, even if your case is already under way, it is never

80. As the Macanese reviewers were also redacting the documents at the same time they were reviewing for relevancy and privilege, no one involved in this litigation was allowed to see what in fact was being redacted and what documents were being excluded from the production. (Day 2, pp. 103-104.) According to SCL and Ray, the Macau reviewers were supposed to be redacting information from which the identity of a person could be known, which principally meant person's names were redacted.

81. Once the review was complete, the redactions were burned onto the document images and then the images and metadata were packaged for production. This production was then sent to Mayer Brown electronically. (Day 2, pp. 113-114, 119.) According to Ray, the Macau reviewers determined that only 15,000 documents out of the some 70,000 documents identified by the search terms were sufficiently relevant/responsive to be produced. (Day 2, p. 110.)

82. The redaction of all names and personal identifiers from the documents exacerbates an already problematic review process. The lack of transparency – with unidentified Macau reviewers making determinations as to types of documents that should be subject to disclosure – highlights the prejudice from SCL's noncompliance.

83. The Court can have little confidence in such a nontransparent process. No litigant should be required to accept it, particularly under the circumstances of this case. The redactions made to the documents – eliminating all names and other identifying information about identities – casts doubt as to fairness and thoroughness of the entire search, vetting and production process.

---

too late to adopt a cooperative approach to fact-finding consistent with the Cooperation Points set forth below.

THE SEDONA CONFERENCE® COOPERATION GUIDANCE FOR LITIGATORS & IN-HOUSE COUNSEL, March 2011 version.

Because many of the search terms were in fact names, the veracity and completeness of the search cannot be tested against the documents that were flagged for production as SCL has made it impossible for Jacobs to know the identity of any of the names in the redacted documents. Thus, because several of the search terms are in fact names of people, the search terms themselves are redacted. Such a process is ripe for abuse and fails to meet the standards of fairness for discovery in a Nevada court.

84. Because in many instances the actual search terms are redacted, Jacobs cannot himself even run searches against the redacted documents.

85. The Defendants themselves confirmed that redacted documents are effectively useless in terms of evidentiary value, particularly emails since those contain the identity of the sender, recipient and other names, all of which SCL has redacted and made inaccessible.

86. SCL's continuing misuse of the MDPA in violation of this Court's September 2012 Order has perpetuated the already lengthy delay of this action to Jacobs' prejudice. This action has now been pending for over four years and merits discovery has been stayed until this Court is able to resolve SCL's jurisdiction defense.

87. Fleming acknowledges he knew the effect and what was required by the Court's September 2012 Order. As he testified:

> Q. Okay. And when you saw it did you understand that it precluded you - - or, I'm sorry, it precluded the company from redacting any documents pursuant to the MPDPA?
>
> MR. RANDALL JONES: Mr. Fleming - -
>
> THE WITNESS: Yes, of course I did. I told Her Honor exactly that a few minutes ago.
>
> BY MR. BICE:
>
> Q. All right. So you were - - you did not misunderstand as to which documents it applied; correct?

A. Of course not.

Q. You know that it applied to all of the documents that were then located in Macau; correct?

A. Correct.

(Day 1, p. 148.)

88. Fleming concedes that he recognized that the September 2012 Order did not permit redactions to be made under the MDPA. Nonetheless, he claimed that he made the decision not to comply with this Court's order and would proceed to make redactions. Fleming then claimed under questioning by SCL that he had been led to believe that redactions were permitted. He claims that he could not recall who told him that this Court had authorized the redactions to be made. Fleming acknowledges that he was going to make the redactions notwithstanding the terms of this Court's September 2012 Order and that this Court's supposed approval of redactions merely gave him more comfort. The Court only gave authorization for redactions based on privilege.

89. Undue delay in the prosecution of any case is prejudicial, but acutely so here. Witnesses have left LVSC and SCL. As LVSC's own general counsel acknowledges, memories fade with time. One key witness, former SCL Board member, Jeffrey Schwartz, died during this latest delay of this case. Raphaelson was unaware of any attempts to preserve evidence from Schwartz prior to his passing.

90. The result of the delay has been the permanent loss of evidence in this case, which underscores why a reliable and thorough production of contemporaneous documents is all the more necessary here. This Court resolved the MDPA's use by SCL two years ago. Yet, it continues to be enlisted as a tool of delay and obstruction to this very day.

91. SCL claims that it has endeavored to mitigate some of the prejudice by searching for and producing some of the relevant/responsive documents in an unredacted form by locating copies that were already outside of Macau.

92. On or before January 4, 2013, SCL produced 4,707 documents from Macau consisting of about 27,000 pages. Most of those documents contained personal data redactions.

93. After the January 4 production, SCL undertook extensive efforts to locate duplicates of the documents produced from Macau in the United States, so those documents could be produced without MDPA redactions. Among other things, FTI transferred the hash code values of the documents located in Macau (which do not contain personal data) to the United States and searched LVSC's documents for duplicates. (2/10/15 Hearing Tr. at 23:21-24:4). FTI also transferred the documents it had collected in the United States for LVSC to Macau and performed 11 separate search iterations in an attempt to locate documents in the LVSC database that were duplicates of the documents that SCL had located in Macau. (*Id.* at 27:8-19, 31:2-20). FTI was able to locate thousands of duplicate documents in the U.S., which were subsequently produced without MDPA redactions in a series of replacement productions. (*Id.*). Jason Ray of FTI estimated that, given a normal schedule and without the complications posed by the MPDPA redactions and the attempt to locate duplicates in the U.S., FTI would have charged approximately $400,000 for the work it did in connection with SCL's January 2013 production. The additional work caused the bill to increase to approximately $2.4 million. (*Id.* at 33:11-13).

94. After its initial production in early 2013, SCL later produced "replacement images," *i.e.* unredacted (or less redacted) duplicates of certain documents originally produced redacted from Macau that were later found in the United States. SCL has now produced over

17,500 documents consisting of more than 124,000 pages in response to jurisdictional discovery. Approximately 9,600 of those documents have been produced without any MDPA redactions.

95. As noted above, after it produced redacted documents, SCL searched for and found many duplicates. SCL also unredacted portions of the remaining redacted documents after securing consents from Adelson, Leven, Goldstein and Kay.

96. At least 7,900 documents from SCL's production remain redacted with the names and identities of all participants in those documents removed. At least 7,900 documents – of the 15,000 documents, which SCL's Macau reviewers determined were relevant/responsive to jurisdictional discovery from the 70,000 returned by the search terms – remain effectively unproduced to Jacobs due to the redactions. The identity of all participants in those documents remains redacted and they are effectively unusable as confirmed by SCL's own witnesses.

97. SCL's attempt to locate duplicates of certain of the documents outside of Macau and later production of them in an unredacted form[15] does not mitigate the prejudice to Jacobs. Thousands of documents relevant and responsive to the jurisdictional issue remain unproduced in violation of this Court's September 2012 Order.

98. There is no cure to the prejudice from this continued nonproduction. According to SCL, it has done everything possible to locate all duplicates that could exist outside of Macau and all documents that are still redacted will remain that way because it is not going to comply with this Court's prior ameliorative sanction, which precluded SCL reliance on the MDPA to avoid production.

---

[15] The Court applauds SCL's efforts to locate the duplicate documents through the use of hash codes and additional review. Unfortunately given the large number that remain redacted the prejudice remains.

99. The replacement documents SCL was able to locate and produce were not done in a timely fashion. The replacement documents were not produced early enough to be used during jurisdictional discovery depositions, which were completed in early February, 2013.

100. The video deposition of former SCL and LVSC Board member, Mike Leven, was played to the Court. Leven was shown a number of the redacted emails and testified he would not have "the slightest idea" what the documents were about or how they pertain to this case because of the redactions. Leven conceded that he could not make heads or tails out of the documents because all of the names and identifying information was missing. (Day 3, pp. 152-154.)

101. Toh, who testified live via videoconference, confirmed the same. Toh was similarly shown a number of the emails as well as a copy of Board meeting minutes where all the names were redacted. Toh confirmed that he could not recall these events and could not even identify who was involved or to what they necessarily pertained. Again, documents with all of the names redacted, particularly email, are effectively rendered useless from an evidentiary standpoint.

102. These redacted documents are those that the unidentified Macau reviewers determined were relevant/responsive to jurisdictional discovery. Yet, SCL has effectively destroyed the evidentiary value of all of the redacted documents, particularly the emails, through its willful violation of this Court's September 2012 Order.

103. SCL's reference to the amount of money it has expended in redacting and searching for duplicates outside of Macau is not evidence of good faith so as to militate against the imposition of serious sanctions. To the contrary, the fact that SCL would expend what it claims are in excess of $2 million so as to not comply with this Court's September 2012 Order

only highlights how even significant monetary sanctions will not bring SCL to cease its misconduct.

104. The evidence elicited from Ray confirms that SCL could have expended at least $2 million less in discovery costs had it simply complied with this Court's discovery orders. Instead, because of time constraints brought on by its own delays and noncompliance, SCL claims that it incurred an additional $2 million in expenses with FTI as a product of its efforts to continue to use the MDPA as a shield against discovery in violation of this Court's September 2012 Order. (Day 2, pp. 47-50.)

105. The Court's prior $25,000 sanction and the additional evidentiary sanctions imposed by the September 2012 Order have proved insufficient to deter SCL from continuing to act in violation of this Court's orders and derogation of Jacobs' rights.

106. There is evidence that SCL has selectively applied the MDPA over the course of this litigation.

107. Any finding of fact stated hereinabove that is more appropriately deemed a conclusion of law shall be so deemed.

III.
CONCLUSIONS OF LAW

108. The MDPA and its impact upon production of documents related to discovery has been an issue of contention between the parties in motion practice before this Court since May 2011.

109. The MDPA has been an issue concerning documents, which are the subject of the jurisdictional discovery.

110. Following the previous sanctions hearing, the Court concluded after hearing the testimony of witnesses that the transferred data was not brought to the United States in error,

but was purposefully brought into the United States after a request by LVSC for preservation purposes.

111. The transferred data remains relevant to the evidentiary hearing related to jurisdiction, which the Court intends to conduct.

112. The change in corporate policy regarding LVSC access to SCL data made during the course of this ongoing litigation was made with intent to prevent the disclosure of the transferred data as well as other data.

113. As the transferred data had already been reviewed by counsel, the failure to search this transferred data and produce documents from these data sources without redaction (except for privilege) further belies any claim of good faith.

114. The violation of the September 2012 order appears to the Court to be an attempt by SCL to further stall the jurisdictional discovery in these proceedings.

115. "Under NRCP 37(b)(2), a district court has discretion to sanction a party for its failure to comply with a discovery order, which includes document production under NRCP 16.1." *Clark Co. School Dist. v. Richardson Const. Co.,* 123 Nev. 382, 391; 168 P.3d 87, 93 (2007). Sanctions can be imposed "only when there has been willful noncompliance with the discovery order or willful failure to produce documents as required under NRCP 16.1." *Id.* (emphasis added). SCL bears the burden of proof on the issue of willfulness.

116. The second factor that must be considered in deciding whether and the extent to which sanctions should be imposed for a violation of a discovery order is the extent to which the violation caused the opposing party to suffer prejudice. *Young v. Johnny Ribiero Bldg. Inc.*, 106 Nev. 88, 93, 787 P.2d. 777, 780 (1980). *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 870; 900 P.2d 323, 325 (1995) ("[f]undamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue"). Plaintiff bears the burden of showing prejudice.

117. The Nevada Supreme Court held that a number of additional factors should be considered in this case, where a party does not comply with a court order on the ground that foreign laws preclude it from doing so. Those factors include: "(1) 'the importance to the investigation or litigation of the documents or other information requested'; (2) 'the degree of specificity of the request'; (3) 'whether the information originated in the United States'; (4) 'the availability of alternative means of securing the information'; and (5) 'the extent to which noncompliance with the request would undermine important interests of the United States or compliance with the request would undermine importance interests of the state where the information is located.'"

118. Here, SCL cannot dispute the relevancy of the unproduced documents to the ongoing jurisdictional dispute. Even with questions as to the completeness of the Macanese review, the reviewers deemed these redacted documents to be sufficiently relevant/responsive to be produced regarding jurisdictional discovery. Access to all of the responsive documents is important to the ability of any party to test the adequacy of the search results, a process which has been defeated by the redactions undertaken in violation of this Court's September 2012 Order.

119. Jacobs' jurisdictional discovery requests were specific. The Court had previously ruled upon the scope of Jacobs' jurisdictional discovery requests and approved them. (Order Re: Pl.'s Mot. to Conduct Jurisdictional Discovery & Def.'s Mot. for Clarification, March 8, 2012, on file.); SCL did not present any evidence that Jacobs' discovery requests were not specific or that it somehow did not understand or that these documents were not relevant to those requests. SCL's representative from FTI, Ray, confirmed that the redacted documents were relevant.

120. It appears that many of the documents with MDPA redactions originated and are based solely in Macau. However, that fact does not militate against sanctions or their importance to the jurisdictional issues.

121. At the time of the entry of the September 2012 order– over two years ago – this Court recognized that "[t]he delay and prejudice to the Plaintiff in preparing his case is significant . . . ."

122. One of the principal sanctions this Court imposed for the misrepresentations and lack of candor continues to be ignored by SCL.

123. The decision by Fleming on behalf of SCL to violate the Court's previous orders clearly involved his balancing of issues related to the MDPA, business interests in Macau, and Macanese governmental authorities. However, SCL's failure to at a minimum provide supplemental information to the OPDP or to file an appeal with the Macanese courts belies any claim of good faith.

124. SCL did nothing for over two years regarding OPDP's instructions that SCL's request was defective. SCL provides no explanation for this conscious inaction, which again contradicts its claims that it has been acting in good faith.

125. The evidence indicates that SCL could obtain consents, but consciously chose not to seek consents from most custodians in this action. Only four consents were obtained and then only well after the deadline for production in January 2013. SCL made no effort at all to obtain consents from the Macau-based custodians.

126. SCL made a business decision that to violate this Court's September 2012 Order. Its after-the-fact claims of a "good faith" defense do not comport with the actual evidence adduced at the hearing before this Court.[16]

127. Jacobs does not have any "substantially equivalent" means of obtaining the redacted documents. SCL concedes that the thousands of documents, which remain redacted, are located only in Macau and that it has been unable to locate any other source to produce them. Jacobs has no other method of obtaining the personal data identifying the decision-makers, attendees, senders, recipients, of subject(s) of the documents and communications. SCL's redaction logs are of no assistance as they contain only generic descriptions of individuals and Jacobs' jurisdictional theories require that the precise identities of the relevant individuals be known. The redaction logs are in no way "substantially equivalent" substitutes.

128. SCL admits that at least 7,900 documents from its production remain redacted with the identity of authors, recipients and participants undisclosed and incapable of determination.

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

---

[16] SCL asserted attorney-client privilege as to the input Fleming received from attorneys in forming his "good faith" decision to violate this Court's order. Jacobs maintains that making claims of good faith based upon advice of counsel constitutes a waiver of that advice, because it goes to whether the claim of "good faith" is legitimate. At this juncture, the Court has drawn no inference or conclusion on the claim of privilege and its potential waiver. Jacobs may proceed by way of separate motion on this point if he so chooses.

130. When considering Macau's purported interests, the Court must consider "'expressions of interest by the foreign state,' 'the significance of disclosure in the regulation . . . of the activity in question,' and 'indications of the foreign state's concern for confidentiality ***prior to the controversy***.'" *Richmark Corp.*, 959 F.2d at 1476 (quoting RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 442 cmt. c) (bold added). In the absence of earlier statements of interest, a foreign government can express its interests by formally intervening in an action or filing an amicus brief. *See Chevron Corp.*, 296 F.R.D. at 206-07 (government can intervene); *see also In re Rubber Chem. Antitrust Litig.*, 486 F. Supp. 2d 1078, 1082 & n.2 (N.D. Cal. 2007) (foreign government offering to submit amicus brief as it had done in other matters).

131. Although it has been fined nominal amounts by the OPDP previously, SCL has presented no evidence that it – or its officers and executives – face actual or serious consequences for complying with an order of a United States court. *See In re Air Crash at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. at 379.

132. SCL's exchanges of correspondences with the OPDP are not evidence that SCL faces the threat of serious consequences. In fact, SCL's failure to provide more complete information as requested by OPDP calls this assertion into question.

133. The United States has an overwhelming interest in ensuring that its citizens, including Jacobs, receive full and fair discovery to uncover the truth of their judicial claims. Nevada has the same interest.

134. SCL did not present any evidence of an official statement of the Macanese government outside of, and before, this litigation regarding its interests in preventing SCL's disclosure of personal data. SCL's exchanges of correspondence with the OPDP regarding this

litigation do not express a sovereign interest in the redaction of the personal data in this case and leave open the ability of SCL to provide more complete information for consideration.

135. The lack of a true Macanese interest in this personal data is further evidenced by the fact that SCL executives utilize email while travelling; SCL regularly transmits personal data out of Macau during the course of its business; and personal data was reviewed by non-Macanese citizens in response to internal and U.S. regulatory investigations.

136. SCL's refusal to comply with the Court's September 2012 Order is willful. It is not factually impossible for SCL to produce the documents from Macau in unredacted form, as would be the case if SCL did not possess or control the requested documents. SCL can direct its vendor to remove the redactions. SCL has simply elected not to comply.

137. SCL's continued use of the MDPA in violation of the Court's September 2012 Order is willful and not supported by good faith.

138. The letters sent to the OPDP do not evidence good faith. SCL's request did not provide the necessary information and were deemed deficient. After learning that its requests were deficient, SCL failed to remedy its inadequate request.

139. SCL's continued reliance upon the MDPA despite the Court's September 2012 Order appears to be a concerted effort at continued delay and obstruction.

140. The continued use the MDPA has inflicted severe prejudice on Jacobs. He has been denied access to proof, he is unable to determine if he has received all of the discovery to which he is entitled, important witnesses have died or become unavailable, and his day in Court has been interminably delayed.

141. The law presumes that the delay has imposed severe prejudice upon Jacobs. *Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042 (2010) ("continued discovery abuses

and failure to comply with the district court's first sanctions order evidences their willful and recalcitrant disregard of the judicial process, which presumably prejudiced" opposing parties.).

142. Because the continuing redactions are willful and designed to deprive Jacobs's access to sources of proof – sources, which even SCL's Macau reviewers determined, were relevant to the jurisdictional issues– SCL's conduct gives rise to a presumption that the non-produced evidence is favorable to Jacobs and adverse to SCL. NRS 47.250(3) and (4). SCL has willfully suppressed the information that it has redacted so as to gain advantage. Therefore, the Court presumes (subject to SCL's ability to rebut such presumption) that the concealed evidence would benefit Jacobs and would belie SCL's defense of personal jurisdiction. *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006) (explaining that adverse presumption arises when evidence has been willfully suppressed with the intent to prejudice an opposing party).

143. Nevada Rule of Civil Procedure 37 underscores the basis for sanctions. It authorizes sanctions for "willful noncompliance with a discovery order of the court." *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

144. "Fundamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue." *GNLV Corp.*, 111 Nev. at 870, 900 P.2d at 325 (citing *Young,* 106 Nev. at 92, 787 P.2d at 779-80).

145. Jacobs is entitled to adverse evidentiary sanctions for the jurisdictional hearing and the Court awards monetary sanctions to avoid further repetition.

146. The Supreme Court has announced a number of factors to consider when assessing the propriety of a sanction:

> The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the

> feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.
>
> *Young*, 106 Nev. at 93, 787 P.2d at 780.

147. In this case, the Court has outlined a number of additional factors this Court must consider in deciding "what sanctions, if any, are appropriate" in light of SCL's redaction of personal information from documents it produced out of Macau in January 2013. (August 7 Order at 10). Those factors include:

> (1) 'the importance to the investigation or litigation of the documents or other information requested'; (2) 'the degree of specificity of the request'; (3) 'whether the information originated in the United States'; (4) 'the availability of alternative means of securing the information'; and (5) 'the extent to which noncompliance with the request would undermine important interests of the United States or compliance with the request would undermine importance interests of the state where the information is located.'

Id. at 7-8

148. The sanctions identified in Part IV are appropriate given SCL's willful noncompliance, the prejudice to Jacobs from any lesser sanction, the severity and repetitiveness of SCL discovery misconduct in this action, the feasibly and fairness of other available and lesser sanctions, the lack of effect of the Court's prior sanction, and the need to deter SCL from further discovery abuses during the remainder of the litigation. These sanctions will not penalize SCL for any improprieties of its attorneys because the discovery abuses and use of the MDPA appears to be driven by the client. *Young*, 106 Nev. at 93, 787 P.2d at 780.

149. This repeated conduct shows a disregard for this Court's orders, including the previous ameliorative sanctions order, however, the conduct does not rise to the level of striking the defense of jurisdiction as urged by Plaintiff, striking pleadings as exhibited in the Foster v.

Dingwall, 227 P.3d 1042 (Nev. 2010) or the entry of default as in Goodyear v. Bahena, 235 P.3d 592 (Nev. 2010) cases.

150. SCL's ongoing noncompliance is incompatible with and undermines the search for truth. By its September 2012 Order, this Court has already imposed sanctions upon SCL, including precluding it from further using the MDPA as a basis for not complying with its jurisdictional discovery obligations. As the Nevada Supreme Court confirmed, SCL "did not challenge" the September 2012 Order precluding SCL's use of the MPDPA here. *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 878 (2014).

151. The Nevada Supreme Court explained, "the mere presence of a foreign international privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply with Nevada discovery rules. Rather, the existence of an international privacy statute is relevant to the district court's sanctions analysis in the event that its order is disobeyed." *Id.*

152. Again, this is not a case where a party is simply disregarding an order to produce documents. SCL has already been sanctioned once, and that sanction was that it could no longer rely upon the MDPA as a basis for noncompliance. That sanction remains binding upon SCL.

153. The delay in holding the evidentiary hearing was attributable, not solely to the MDPA redaction issue, but also to the privilege issues surrounding some of the documents Plaintiff took with him when he left Macau and Defendants late decision to review and update the privilege and redaction logs related to those documents prior to the Court completing the review of those documents *in camera*.

154. After evaluating the factors in Ribiero v. Young, 106 Nev. 88 (1990) and those provided by the Nevada Supreme Court in this case, the Court finds:

a. The decision by SCL to violate this Court's first sanctions order in failing to produce documents without redaction pursuant to the MDPA to Plaintiff was knowing, willful and intentional conduct with an intent to prevent the Plaintiff access to information discoverable for the jurisdictional proceedings;

b. The repeated nature of SCL's conduct is further evidence of the intention to disregard this Court's first sanctions order;

c. Based upon the evidence currently before the Court it appears that testimonial evidence from at least one witness has been irreparably lost;

d. There is a public policy to prevent further abuses and deter litigants from concealing discoverable information in an attempt to advance its claims; and

e. The delay and prejudice to the Plaintiff in preparing his case is significant, however, a sanction less severe than striking defenses can be fashioned to ameliorate the prejudice.

155. The Court after evaluation of the evidence and testimony, weighing the factors and evaluating alternative sanctions determines that evidentiary and monetary sanctions are an alternative less severe sanction to address the conduct that has occurred in this matter.

156. After considering all of the above factors and the evidence presented at the hearing, the Court finds that a combination of sanctions as described in Part IV of this decision is the best way to rectify the undermining of the discovery process caused by SCL's ongoing and continuing violations of this Court's September 2012 Order.

157. Any conclusion of law stated hereinabove that is more appropriately deemed a finding of fact shall be so deemed.

IV.

ORDER

Therefore, the Court makes the following order:

a. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL will be precluded from raising the MDPA as an objection or as a defense to use, admission, disclosure or production of any documents.[17]

b. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL is precluded from contesting that Jacobs's electronically stored information (approx. 40 gigabytes) is rightfully in his possession.[18]

c. For purposes of the evidentiary hearing related to jurisdiction, SCL is precluded from calling any witnesses on its own behalf or introducing any evidence on its own behalf. SCL may object to the admission of evidence, arguments of counsel, and to testimony of witnesses during the evidentiary hearing related to jurisdiction; cross-examine witnesses during the evidentiary hearing related to jurisdiction; and, argue the application of the evidence to the law during the opening and closing arguments of the evidentiary hearing related to jurisdiction.

d. During the evidentiary hearing related to jurisdiction, the Court will adversely infer, subject to SCL's ability to rebut that inference (within the evidentiary constraints set forth in the paragraph above), that all documents not produced in conformity with this Court's September 2012 Order are adverse to SCL, would contradict SCL's denials as to personal jurisdiction, and would support Jacobs' assertion of personal jurisdiction over SCL.

---

[17] This does not prevent SCL from raising any other appropriate objection or privilege.

[18] This does not prevent SCL from raising any other appropriate objection or privilege.

e. Within 10 days of entry of this order, SCL will produce to Jacobs the documents identified as a result of a search run using the same custodians and search terms described in Exhibit 213 against the electronically stored information contained in the transferred data, or, alternatively, may reproduce copies of the electronically stored information (in a searchable format) contained in the transferred data to Plaintiff to run his own searches. The only redactions permitted will be for privilege.

f. For purposes of jurisdictional discovery, Plaintiff may, at his sole discretion and upon five judicial days written notice, retake any previously taken deposition and examine the deponent on the information produced as a result of the preceding paragraph. Plaintiff's reasonable attorney's fees and expenses as well as court reporters, videographers and interpreter expenses for retaking any deposition may be awarded upon application to the Court.

g. Within 10 days of entry of this order, SCL will make a contribution of $50,000 to the Clark County Law Foundation; $50,000 to the Legal Aid Center of Southern Nevada; $50,000 to the Clark County Law Library; $50,000 to the Sedona Conference; and $50,000 to the Nevada Bar Foundation. Proof of these contributions must be filed with the Court.

h. Reasonable attorneys' fees of Plaintiff will be awarded upon filing an appropriate motion for those fees and expenses related to Plaintiff Steven C. Jacobs' ("Jacobs") Renewed Motion for NRCP 37 Sanctions for violating this Court's September 14, 2012 sanctions order.

Dated this 6th day of March, 2015

ELIZABETH GONZALEZ
District Court Judge

Certificate of Service

I hereby certify that on or about the date filed, this document was copied through eservice or e-mail, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper person as follows:

J. Stephen Peek, Esq. (Holland & Hart)

Randall Jones (Kemp Jones Coulthard)

Steve Morris (Morris Law)

James J. Pisanelli, Esq. (Pisanelli Bice)

and by mail to:

The Sedona Conference
5150 North 16th St, Suite A-215,
Phoenix, AZ 85016
Attn: Irina Goldberg

Legal Aid Center of Southern Nevada
800 South 8th Street
Las Vegas, NV 89101

Nevada Bar Foundation
600 E. Charleston Boulevard
Las Vegas, NV 89104

Clark County Law Foundation
725 South 8th Street
Las Vegas, NV 89101

Clark County Law Library
309 South Third St., Suite 400
P.O. Box 557340
Las Vegas, NV 89155-7340

Dan Kutinac

EXHIBIT 3

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS	.	
	.	
Plaintiff	.	CASE NO. A-627691
	.	
vs.	.	
	.	DEPT. NO. XI
LAS VEGAS SANDS CORP., et al.	.	
	.	**Transcript of Proceedings**
Defendants	.	
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE JURISDICTION - DAY 1

MONDAY, APRIL 20, 2015

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. TODD BICE, ESQ. DEBRA L. SPINELLI, ESQ. JORDAN T. SMITH, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. JON RANDALL JONES, ESQ. IAN P. McGINN, ESQ. STEVE L. MORRIS, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

BY MR. BICE:

Q Uh-huh.

A And at that time, prior to the IPO, VML was, just like -- just like the Venetian and the Palazzo and Bethlehem and Singapore. It was all one entity, essentially, at that time.

Q Okay.

A And so the comp committee would rule on highly compensated people and providing them -- providing the agreement. That changed. The comp committee of LVSC does not even see or approve any of the SCL executives any longer.

Q Okay. That was --

A It's done by the comp committee of the SCL board.

Q Okay. Well, we'll address that in a little while. But with respect to that, that wouldn't have been sometime until after December 1, 2009, when the IPO closed; right?

A Correct.

Q But because this term sheet predated SCL, it had to go to the LVSC comp committee, is that what you're saying?

MR. JONES: Same objections, Your Honor.

THE COURT: Overruled.

BY MR. BICE:

Q Did VML in August of 2009, did it have a board of directors?

A Technically, yes. There was a small board because

you had to have it for the incorporation of the VML entity. The board would sign papers, things like that, same thing that we have in Singapore. LVS has -- has a small board there because of the way it's incorporated in the country, things that are done there.

Q Uh-huh.

A But they don't govern.

Q They don't govern.

A They didn't govern.

Q They just -- they just approve --

A It's a legalized entity in Macau, I believe, and it went away with SCL and then became a regular board.

Q Okay. But --

A I don't even recall who was on the board.

Q Right. But there was no -- but V -- but VML, there was no -- are you aware of any VML board approving this term sheet?

A No, they would not.

Q It wouldn't; right?

A Not at that time.

Q Because this was Las Vegas Sands Corporation was in control; correct?

A That is correct.

Q Now, you look --

MR. BICE: f you would scroll down, Dustin, to

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

EXHIBIT 4

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS Plaintiff vs. LAS VEGAS SANDS CORP., et al. Defendants	CASE NO. A-627691 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE JURISDICTION - DAY 2

TUESDAY, APRIL 21, 2015

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. TODD BICE, ESQ. JORDAN T. SMITH, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. JON RANDALL JONES, ESQ. MARK JONES, ESQ. IAN P. McGINN, ESQ. STEVE L. MORRIS, ESQ.
COURT RECORDER: JILL HAWKINS District Court	TRANSCRIPTION BY: FLORENCE HOYT Las Vegas, Nevada 89146

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

And I think it's fair to say that the management of those entities was in the control or management of LVSC.

THE COURT: Thank you, sir.

BY MR. BICE:

Q Because those -- if there was a small board, they didn't actually govern; right? They just -- they approved documents and that was it; correct?

A That's correct.

Q Okay. And when I say, approve documents, they would sign documents that LVSC told them to sign?

A Correct.

Q All right. Now, when you were thinking about doing this IPO, let's deal even in August of the 2009 time frame, were you for sure that it was going to be on the Hong Kong Exchange?

A Yes.

Q Okay. So you had already determined that if you were going to do an IPO it would be in Hong Kong?

A We were going to list on the Hong Kong Exchange -- was the original goal, that is correct.

Q Okay. Now, Jacobs had actually -- well, strike that. Let's put it this way. When you joined the company as COO in March of '09, how long after you became COO did you reach out to Mr. Jacobs?

A I reached out to Mr. Jacobs before I actually got to

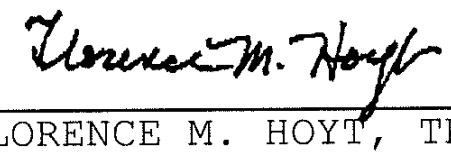
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

EXHIBIT 5

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS Plaintiff vs. LAS VEGAS SANDS CORP., et al. Defendants	CASE NO. A-627691 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE JURISDICTION - DAY 3

WEDNESDAY, APRIL 22, 2015

APPEARANCES:

FOR THE PLAINTIFF: JAMES J. PISANELLI, ESQ.
TODD BICE, ESQ. ESQ.
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS: J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
IAN P. McGINN, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

Q Okay. Well, we could take the time to do that. So I'm going to give you a chance to just -- I'll ask you the question directly. Is it your position, sir, that in October of 2009, VML was still outside of SCL?

A The way I would have viewed it is that SCL really doesn't exist until the IPO gets -- takes place.

Q Fair enough.

A So therefore it would be outside.

Q Outside.

A From a typical legal standpoint maybe it is inside. I don't know.

Q Got it. Okay. And you also testified, just so that we're clear, VML was controlled out of Las Vegas, correct, because it had this board, but the board didn't do anything; right?

A During the October time frame?

MR. PEEK: Objection. Relevancy, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. BICE:

Q What's that?

A Yes.

Q Okay. You also testified that the independent directors were the ones that determined compensation for SCL?

A The compensation committee.

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

EXHIBIT 6

NEOJ
James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. No. 4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 214-2100
Facsimile: (702) 214-2101

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.

AND RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XI

NOTICE OF ENTRY ORDER

Hearing Date: 4/20-22/2015, 4/27-30/2015, 05/04-05/2015 and 05/07/2015

PLEASE TAKE NOTICE that an "Amended Decision and Order" was entered in the above-captioned matter on May 28, 2015, a true and correct copy of which is attached hereto.

DATED this 2nd of June, 2015.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
James J. Pisanelli, Esq., #4027
Todd L. Bice, Esq., #4534
Debra L. Spinelli, Esq. #9695
Jordan T. Smith, Esq. #12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
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 2nd day of June, 2015, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER** properly addressed to the following:

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
speek@hollandhart.com
rcassity@hollandhart.com

Michael E. Lackey, Jr., Esq.
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
mlackey@mayerbrown.com

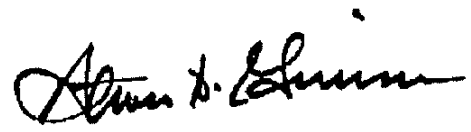
J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
jrj@kempjones.com
mmj@kempjones.com

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
sm@morrislawgroup.com
rsr@morrislawgroup.com

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

Electronically Filed
05/28/2015 02:11:14 PM



CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS, Plaintiff(s), vs LAS VEGAS SANDS CORP, ET AL, Defendants.	**Case No.** 10 A 627691 **Dept. No.** XI **Date of Hearing:** 04/20-22/2015, 04/27-30/2015, 05/04-05/2015 and 05/07/2015

AMENDED[1] DECISION AND ORDER

This matter having come on for an evidentiary hearing related to the Defendant Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party, the Nevada Supreme Court's Order Granting Petition for Writ of Mandamus,[2] and the Writ of Mandamus issued by the Nevada Supreme Court to this Court on August 26, 2011 (collectively "Writ") beginning on April 20, 2015 and continuing, based upon the availability of the Court and Counsel, until its completion on May

---

[1] On May 28, 2015, this Court granted Plaintiff's Motion to Modify/Correct Decision and Order. Based upon the issues related to the loss of the electronic file the Court has taken the opportunity to not only make the corrections requested in the Motion but also those other corrections that had been made in the prior electronic version prior to its unfortunate and inadvertent loss due to what the Court's IT staff described as "operator error".

[2] The Nevada Supreme Court directed this 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 [this Court's] personal jurisdiction decision." Sands China Ltd. v. Eighth Judicial Dist. Court of State ex rel. Cnty. of Clark, No. 58294, 2011 WL 3840329, at *2 (Nev. Aug. 26, 2011). Since then, the parties have engaged in jurisdictional discovery. The decisions in Daimler AG v. Bauman, 134 S.Ct. 746, 761 (2014), and the Nevada Supreme Court's decision in Viega GmbH v. Eighth Judicial Dist., 130 Nev. Adv. Rep. 40, 328 P.3d 1152 (2014) were made subsequent to that decision and have been considered by the Court in evaluating the propriety of the exercise of general, specific and/or transient jurisdiction over SCL.

7, 2015; Plaintiff Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of record, James J. Pisanelli, Esq., Todd L. Bice, Esq., Debra L. Spinelli, Esq., and Jordan T. Smith, Esq., of the law firm Pisanelli Bice PLLC; Sands China Ltd. ("SCL") appearing by and through its attorney of record J. Stephen Peek, Esq. of the law firm Holland & Hart LLP and Randall Jones, Esq., Mark M. Jones, Esq., and Ian P. McGinn, Esq., of the law firm Kemp, Jones & Coulthard, LLP; Defendants Las Vegas Sands Corp. ("LVS") appearing by and through its attorney of record J. Stephen Peek, Esq. of the law firm Holland & Hart LLP; and Defendant Sheldon G. Adelson ("Adelson") appearing as a witness and by and through his attorney of record, Steve Morris, Esq. and Rosa Solis Rainey, Esq. of the Morris Law Group; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the evidentiary hearing;[3] and having heard and carefully considered the testimony of the witnesses called to testify; the Court having considered the oral and written arguments of counsel, and with the intent of deciding the limited issues before the Court related to jurisdiction over SCL,[4] makes the following findings of fact[5] and conclusions of law: [6]

---

[3] As a result, of an *in camera* review conducted by this Court related to discovery disputes, additional documents not admitted in evidence have been previously reviewed. For purposes of this decision, the Court relies upon the evidence admitted during this hearing and the two prior evidentiary hearings conducted.

[4] The Court notes, as the Nevada Supreme Court noted in Trump v. District Court, 109 Nev. 687, 693, n.2 (1993), given the intertwined factual issues present between the facts supporting the claims made by Plaintiff and the facts relating to the jurisdictional issues the procedure undertaken in this case, is not an efficient use of judicial resources.

[5] The findings made in this Order are preliminary in nature based upon the limited evidence presented after very limited jurisdictional discovery and may be modified based upon additional evidence presented to the Court and/or jury at the ultimate trial of this matter.

[6] The Writ of Mandamus issued to this Court on August 26, 2011 states:

> NOW, THEREFORE, you are instructed to hold an evidentiary hearing on personal jurisdiction, to issue findings of act (sic) and conclusions of law stating the basis for your decision following that hearing,. . . .

I.
PROCEDURAL POSTURE

Jacobs filed this suit on October 20, 2010, against SCL claiming that SCL breached contractual obligations it allegedly owed him by refusing to honor his demand to exercise certain stock options following his termination. On December 22, 2010, SCL moved to dismiss the complaint for (among other things) lack of jurisdiction. Jacobs opposed the motion on February 9, 2011, arguing that the Court had jurisdiction over SCL and that it also had transient jurisdiction because the complaint was served in Nevada on Michael A. Leven ("Leven"), who was then the Acting Chief Executive Officer of SCL.

On March 15, 2011, this Court denied the SCL motion stating:

> Here there are pervasive contacts with the State of Nevada by activities done in Nevada by board members of Sands China. Therefore, while Hong Kong law may indeed apply to certain issues that are discussed during the progress of this case, that does not control the jurisdictional issue here.

March 15, 2011 Transcript p. 62, lines 3 to 7. The Nevada Supreme Court issued an Order Granting Petition for Mandamus on August 26, 2011.

On August 26, 2011, the Nevada Supreme Court issued a stay of certain proceedings in this matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues related to SCL. The Court granted Jacobs request to conduct jurisdictional discovery prior to the evidentiary hearing. The order granting the jurisdictional discovery was entered on March 8, 2012. Due to numerous discovery disputes[7] and stays[8] relating to petitions for extraordinary relief, the evidentiary hearing on jurisdiction was delayed.

---

[7] Certain evidentiary sanctions were imposed upon SCL in the Order entered March 6, 2015.

a. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL will be precluded from raising the MDPA as an objection or as a defense to use, admission, disclosure or production of any documents.

II.
BURDEN OF PROOF

There are significant issues related to the appropriate burden of proof to be utilized in this case that have been well briefed by counsel. The typical standard on a motion to dismiss for lack of jurisdiction is a *prima facie* standard. In Trump, the Nevada Supreme Court noted that a preponderance of the evidence standard may be the appropriate standard in a "full evidentiary hearing".[9] The Nevada Supreme Court also made mention of a case in the Trump decision which suggested a third standard --"likelihood of the existence of each fact necessary to support personal jurisdiction"[10] -- may be appropriate.[11]

---

b. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL is precluded from contesting that Jacobs's electronically stored information (approx. 40 gigabytes) is rightfully in his possession.

c. For purposes of the evidentiary hearing related to jurisdiction, SCL is precluded from calling any witnesses on its own behalf or introducing any evidence on its own behalf. SCL may object to the admission of evidence, arguments of counsel, and to testimony of witnesses during the evidentiary hearing related to jurisdiction; cross-examine witnesses during the evidentiary hearing related to jurisdiction; and, argue the application of the evidence to the law during the opening and closing arguments of the evidentiary hearing related to jurisdiction.

d. During the evidentiary hearing related to jurisdiction, the Court will adversely infer, subject to SCL's ability to rebut that inference (within the evidentiary constraints set forth in the paragraph above), that all documents not produced in conformity with this Court's September 2012 Order are adverse to SCL, would contradict SCL's denials as to personal jurisdiction, and would support Jacobs' assertion of personal jurisdiction over SCL.

---

[8] The parties have not agreed that any stays issued act as a tolling or extension of the period under NRCP Rule 41(e). As such, the trial of this matter was set by Order entered on May 27, 2015 to commence on October 14, 2015, prior to the earliest expiration of the period under NRCP Rule 41(e), October 19, 2015.

[9] 109 Nev. at 693.

[10] This third standard and the circumstances in which it may be appropriate to utilize was explained as:

> If, however, the court finds that determining a motion on the *prima facie* standard (thereby deferring the final jurisdictional determination until trial) imposes on a defendant a significant expense and burden of trial on the merits in the foreign forum that

A traditional preponderance of the evidence standard is inappropriate for this case because of the limited discovery done to date due to the stay and the inextricably intertwined facts between jurisdiction and merits. These limitations impact the ability of the parties to conduct a "full evidentiary hearing". A jury demand has been filed; Jacobs has a right to a jury trial on the jurisdictional defense raised by SCL. Given the inextricably intertwined issues between the conduct of representatives of LVS and SCL, the Court shares the concerns expressed by counsel for LVS regarding the potential impact of these findings and conclusions upon LVS. Despite these concerns, the Court makes findings and reaches conclusions related to jurisdiction, *solely to comply with the Writ*, upon a preponderance of the evidence standard *based solely on the evidence presented.* The findings and conclusions are preliminary in nature and may not be used by the parties or their counsel for any purpose other than this Court's compliance with the Writ.[12]

> it is unfair in the circumstances, the court may steer a third course that avoids both this unfair burden and (especially when the jurisdictional facts are enmeshed with the merits) the morass of unsettled questions of law regarding "issue preclusion" and "law of the case". This third method is to apply an intermediate standard between requiring only a *prima facie* showing and requiring proof by a preponderance of the evidence. Thus, even though allowing an evidentiary hearing and weighing evidence to make findings, the court may merely find whether the plaintiff has shown a likelihood of the existence of each fact necessary to support personal jurisdiction.
>
> Boit. v. Gar-Tec Products, Inc., 967 F. 2d 671 at 677 (1st Cir. 1992).

[11] Another standard which might be appropriate for consideration, but which was not raised by the parties, is the standard of substantial evidence used for judgment on partial findings made under NRCP 52(c).

[12] Given the inextricably intertwined issues of jurisdiction with the facts surrounding the merits issues, i.e. the termination of Plaintiff's employment and associated stock option(s), the evidentiary hearing and the jurisdictional discovery necessary prior to the hearing have not been a wise use of judicial resources. Unfortunately, as a result of the process imposed upon this Court because of the Writ, the parties will have only a few months to conduct the merits discovery and be ready for trial.

III.
FINDINGS OF FACT

1. Jacobs filed this suit on October 20, 2010 against SCL claiming that SCL breached contractual obligations it allegedly owed him by refusing to honor his demand to exercise certain stock options following his termination.

2. On December 22, 2014, Jacobs filed a Third Amended Complaint, alleging three new claims against SCL: conspiracy, aiding and abetting his alleged wrongful termination by LVS, and defamation as a result of statements made during the course of the litigation by LVS's and SCL's chairman, Adelson. Jacobs contends that there is specific jurisdiction over SCL on all three claims.

3. LVS is a Nevada corporation with its principle place of business in Las Vegas, Nevada. LVS is headed by Adelson who serves as LVS's Chairman of the Board of Directors. LVS is a publicly-traded company in the United States. Through subsidiaries, LVS operates casinos in Nevada, Pennsylvania, Macau, and Singapore.

4. In early 2009, Leven became Chief Operating Officer ("COO") of LVS.

5. Leven had previously served on the LVS Board.

6. Leven asked Jacobs to assist him as a consultant.

7. Jacobs became a consultant to LVS through Vagus Group, Inc., an entity Jacobs owned. In that role, Jacobs began assisting with the restructuring of LVS's Nevada operations. In doing so, Jacobs, Leven and Adelson met extensively in Nevada. They also traveled to Macau to review LVS's operations there.

8. While Jacobs was assisting LVS as a consultant, all of its Macau operations and assets were held through wholly-owned subsidiaries, one of which was Venetian Macau Limited ("VML").

9. Leven discussed bringing Jacobs on directly, on a temporary basis, to help oversee and restructure LVS's Macau operations. Jacobs and Leven discussed the terms of this temporary engagement. These discussions principally occurred while both Jacobs and Leven were in Las Vegas working on the LVS restructuring.

10. One of the tasks that Jacobs was assigned was restructuring Macau operations for the potential of spinning the Macau assets off into a yet-to-be-formed publicly-traded subsidiary for LVS. This would serve as a financing means by which LVS could raise additional capital to recommence construction on certain existing, but delayed, projects in Macau.

11. On April 30, 2009, Leven advised that effective May 5, 2009, LVS gave Jacobs the title of "Interim President" overseeing its Macau operations. In that role, Jacobs reported directly to Leven in his capacity as COO of LVS. Leven was the operational boss over all of LVS's assets.

12. Leven began negotiating with Jacobs for a more permanent position. Through June and July of 2009, Leven and Jacobs exchanged drafts of what became known as the "Term Sheet" which would become Jacobs' employment agreement.[13] Many of those negotiations occurred between Jacobs and Leven at LVS's headquarters in Nevada.

13. These negotiations also involved the exchange of correspondence and telephone communications into, and out of, Nevada.

14. In emails in late June and July 2009, LVS executives and Jacobs had multiple communications concerning the terms and conditions of his employment.

15. By late July 2009, Jacobs indicated that if they could not come to an agreement as to his full-time position, he needed to make commitments for his family back in Atlanta,

---

[13] The "Term Sheet" was an exhibit to LVS's 10Q for the quarter ending March 31, 2010.

Georgia. Jacobs was in and out of Macau on only a temporary basis, and Jacobs indicated that he would not be moving his family unless he and LVS came to an agreement.

16. On or about August 2, 2009, Leven emailed Robert Goldstein ("Goldstein"), copying Charles Forman – one of the members of LVS's compensation committee – explaining that tomorrow would be the "last chance" to try and close out the terms and conditions of Jacobs' employment with Adelson. If they could not do so, Leven indicated that they would have to do a nine-month deal with Jacobs so as to get through a planned initial public offering ("IPO") for the spinoff of LVS's Macau operations.

17. The next day, August 3, 2009, Leven testified Adelson and he expressly approved the "Terms and Conditions" of Jacobs' employment. Although Adelson claims he does not remember doing so, Leven confirmed that Adelson approved those terms and conditions in Nevada pursuant to his role as Chairman and CEO of LVS. Leven negotiated and signed the deal in Nevada pursuant to his role as LVS's COO. Adelson claims that he did not consider the Term Sheet to be binding.

18. Pursuant to the Term Sheet, LVS agreed to employ Jacobs as the "President and CEO Macau, listed company (ListCo)." The subsidiary, which would serve as the vehicle for the IPO, had not yet been determined. LVS agreed to pay Jacobs a base salary of $1.3 Million, with a 50% bonus. It also awarded Jacobs 500,000 options in LVS. Of the 500,000 options, 250,000 options were to vest on January 1, 2010, 125,000 were to vest on January 1, 2011, and 125, 000 were to vest on January 1, 2012. LVS agreed to pay a housing allowance and Jacobs was entitled to participate "in any established plan(s) for senior executives."

19. The Term Sheet incorporated the standard "for cause" termination language of other LVS employment agreements. In the event Jacobs terminated not for cause, the Term Sheet

provided a "1 year severance, accelerated vest [of the options], and the Right to exercise [the options] for 1 year post termination."

20. Leven signed the Term Sheet on or about August 3, 2009, and had his assistant, Patty Murray, email it to Jacobs.

21. Prior to the formation of SCL, the proposed entity was referred to in certain documents as "Listco".

22. SCL is a corporation organized under the law of the Cayman Islands. SCL was formed as a legal entity on or about July 15, 2009.

23. Adelson named himself as Chairman of the Board prior to the identification of other board members. An initial board was formed which dealt solely with governance issues.

24. SCL became the vehicle through which LVS would ultimately spin off its Macau assets as part of the IPO process.

25. SCL went public on the Hong Kong Stock Exchange ("HKSE") through an IPO on November 30, 2009.

26. LVS owns approximately 70% of SCL's stock and includes SCL as part of its consolidated filings with the US Securities and Exchange Commission.

27. SCL is the indirect owner and operator of the majority of LVS's Macau operations.

28. SCL includes the Sands Macau, The Venetian Macau, Four Seasons Macau, and other ancillary operations that support these properties.

29. SCL is a holding company.

30. SCL has no employees.[14]

31. One of SCL's primary assets is VML. VML is the holder of a subconcession authorized by the Macau Government that allows it to operate casinos and gaming areas in Macau.

32. Prior to the Fall of 2009, decisions related to the operations of the Macau entities were made by Adelson and Leven.

33. Neither SCL nor any of its subsidiaries has any bank accounts or owns any property in Nevada.

34. SCL has separate bank accounts from LVS.

35. SCL does not conduct any gaming operations in Nevada, nor does it derive any revenue from operations in Nevada. All of the revenues that SCL annually reports in its public filings derive from operations in Macau.

36. SCL has never owned, controlled, or operated any business in Nevada. SCL has a non-competition agreement with LVS.

37. It was not uncommon for the executives of subsidiaries that LVS controlled to fulfill that role pursuant to an employment agreement with the parent, LVS. When it was determined that Leven would become the interim CEO for SCL, he did so pursuant to an employment agreement with LVS. As interim CEO for SCL, Leven had no employment agreement with SCL and fulfilled that role as an LVS employee.[15]

---

[14] Conflicting evidence on this point was presented throughout the evidentiary hearing. Counsel confirmed during closing that SCL had no direct employees and the reference to employees related to VML.

[15] Adelson is now the CEO of SCL and serves in that capacity pursuant to an employment agreement with LVS. Adelson has no separate employment agreement with SCL. The interim

38. In having its leading executives serve in those roles pursuant to employment agreements with LVS and delegating tasks to LVS employees in Nevada, SCL reasonably would foresee that it would be subject to suit in Nevada over any dispute concerning the services of its executives.

39. Leven testified, that upon the closing of the IPO, Jacobs' employment pursuant to the Term Sheet was transferred to SCL and assumed by it. As Leven testified, the obligations under the Term Sheet were assumed by SCL in conjunction with the closing of the IPO. The assignment and assumption of the Term Sheet from LVS to SCL does not appear to have been documented in any formal fashion. However, as Leven acknowledged, SCL and its Board understood that Jacobs was serving as CEO pursuant to the terms and conditions of the Term Sheet that had been negotiated and approved in Nevada with the Nevada parent.

40. Jacobs' duties as SCL's CEO provided under the Term Sheet required frequent trips to Las Vegas, Nevada and involved countless emails and phone calls into the forum. Jacobs frequently conducted internal operations and business with third parties while physically present in Nevada.

41. While SCL had its own Board of Directors, kept minutes of the meetings of its Board and Board Committees, and maintained its own separate and independent corporate records, direction came from LVS.

42. At the time of its IPO, the SCL Board consisted of (1) three Independent Non-Executive Directors (Ian Bruce, Yun Chiang and David Turnbull[16]), all of whom resided in Hong

---

COO of SCL is Goldstein. Goldstein acknowledged that he serves as SCL's COO pursuant to his employment agreement with the Nevada parent company, LVS.

[16] During his testimony at the evidentiary hearing, when questioned about board member Turnbull, Adelson stated, "not for long". It is this type of control of SCL, that leads the Court to