

# EXHIBIT C

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:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

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

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

7 Q Fair enough.

8 A So therefore it would be outside.

9 Q Outside.

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

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

16 A During the October time frame?

17 MR. PEEK: Objection. Relevancy, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: Yes.

20 BY MR. BICE:

21 Q What's that?

22 A Yes.

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

25 A The compensation committee.

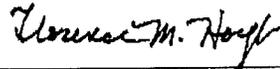
CERTIFICATION

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, TRANSCRIBER

# **EXHIBIT B**

TRAN

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

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

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

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

3 THE COURT: Thank you, sir.

4 BY MR. BICE:

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

8 A That's correct.

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

11 A Correct.

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

16 A Yes.

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

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

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

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

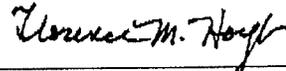
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FLORENCE HOYT  
Las Vegas, Nevada 89146



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FLORENCE M. HOYT, TRANSCRIBER

# **EXHIBIT A**

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

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

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:
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1 whatever, that Listco Company.

2 Q Okay.

3 A That was the anticipation, so Listco Company. You  
4 could ask yourself an additional question as to whether or not  
5 the company would have retained Mr. Jacobs if there were no  
6 public IPO, but that's also hypothetical. But at this  
7 particular point in time it would have been my intention if  
8 the IPO didn't work that Mr. Jacobs would have gone with this  
9 term sheet.

10 Q Okay. What I'm trying to -- and I need to -- and --  
11 and I need to maybe articulate it a little bit better. What  
12 I'm trying to understand is, so the IPO does proceed. And I'm  
13 asking you, sir, did LVSC, the parent, transfer the term  
14 sheet, the obligations under it, to SCL in some fashion?

15 MR. JONES: Same objections.

16 THE COURT: Overruled.

17 You can answer.

18 THE WITNESS: I don't think -- I don't think SCL  
19 gets the transfer. I think VML gets the transfer in terms of  
20 the payment.

21 BY MR. BICE:

22 Q Okay.

23 A What -- what you're talking about is the transfer of  
24 the title of CEO. If there were no SCL, it would have been  
25 CEO of VML.

1 Q Okay.

2 A Which had a previous person had that title. If it  
3 -- if there were to be Sands China, you could transfer the  
4 term sheet. But effectively, VML was the paying entity. So  
5 it's -- it's -- it's -- I don't know how to say it. You're  
6 looking for a legal -- a legal direction. And I'm saying the  
7 practicality of it is that Steve was paid by VML and acted as  
8 the CEO of SCL.

9 Q Okay. Pursuant to the term sheet.

10 A Pursuant to the term sheet. Correct.

11 Q Okay. So what I'm trying to understand is the term  
12 sheet comes into existence, the IPO happens sometime later;  
13 right?

14 A Uh-huh. Yes.

15 Q Okay.

16 A Yes.

17 Q So there's more than just the salary covered by the  
18 term sheet. We can agree on that; right?

19 A Yes, we can.

20 Q Okay. So there's more obligations under this term  
21 sheet than just salary. So who is this term sheet now the  
22 responsibility of?

23 THE COURT: Can we turn our phones off, please.

24 THE WITNESS: It's the responsibility of VML,  
25 actually.

1 BY MR. BICE:

2 Q So you're -- so this agreement, this term sheet,  
3 gets transferred from the parent, LVC, to VML?

4 MR. JONES: Objection. Misstates --

5 MR. PEEK: Objection. Asked and answered, Your  
6 Honor. It mischaracterizes.

7 THE COURT: Overruled.

8 MR. JONES: It mischaracterizes the testimony.  
9 Agreed.

10 THE WITNESS: Yes, it would be.

11 BY MR. BICE:

12 Q Okay. As a practical matter, that's what happened;  
13 right?

14 A Yes.

15 Q Okay. So VML in some fashion accepts it; is that  
16 right? Accepts this term sheet that you had already  
17 negotiated; correct?

18 MR. JONES: Object to the form --

19 THE WITNESS: VML is --

20 MR. JONES: -- of the question.

21 THE COURT: Overruled.

22 THE WITNESS: I don't know what you keep saying VML  
23 accepts the term sheet. What do you mean by accepting the  
24 term sheet?

25 //

1 BY MR. BICE:

2 Q Uh-huh.

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

7 Q Okay.

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

12 Q Okay. That was --

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

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

17 A Correct.

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

20 MR. JONES: Same objections, Your Honor.

21 THE COURT: Overruled.

22 BY MR. BICE:

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

25 A Technically, yes. There was a small board because

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

6 Q Uh-huh.

7 A But they don't govern.

8 Q They don't govern.

9 A They didn't govern.

10 Q They just -- they just approve --

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

13 Q Okay. But --

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

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

18 A No, they would not.

19 Q It wouldn't; right?

20 A Not at that time.

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

23 A That is correct.

24 Q Now, you look --

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

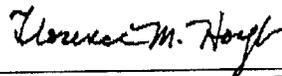
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FLORENCE HOYT  
Las Vegas, Nevada 89146



\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

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

2 \*\*\*\*\*

3 VENETIAN MACAU, LTD., a Macau  
4 corporation,

5 Petitioner,

6 v.

7 CLARK COUNTY DISTRICT  
8 COURT, THE HONORABLE MARK  
9 R. DENTION, DEPT. 13,

10 Respondents,

11 and

12 STEVEN C. JACOBS,

13 Real Party in Interest.

Case No.: 69090 Electronically Filed  
Nov 04 2015 10:22 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**REAL PARTY IN INTEREST  
STEVEN C. JACOBS' OPPOSITION  
TO EMERGENCY MOTION  
UNDER NRAP 27(e) TO STAY ALL  
PROCEEDINGS IN THE DISTRICT  
COURT PENDING DECISION ON  
CONCURRENTLY-FILED  
PETITION FOR WRIT OF  
PROHIBITION OR MANDAMUS  
RE: ORDER STRIKING VML'S  
PEREMPTORY CHALLENGE**

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

14 **I. INTRODUCTION**

15 Real Party in Interest Steven C. Jacobs ("Jacobs") agrees with Petitioner  
16 Venetian Macau Ltd. ("VML") that there are manipulative litigation tactics afoot.  
17 However, the maneuvering comes from the side that misled the District Court about  
18 the location and their clandestine review of documents from Macau, improperly  
19 invoked the Macau Data Privacy Act after being barred by sanction from doing so,  
20 asserted false claims of privilege (later conceding that the claims were erroneous),  
21 and has sought improperly and unsuccessfully to dislodge the presiding judge over  
22 this case because she has not ignored this misconduct. It is also the same side that  
23 waived any right to a peremptory challenge of The Honorable Judge Gonzalez  
24 pursuant to Supreme Court Rule 48.1, as she has ruled on numerous contested  
25 matters.

26 Defendants below, of course, know all this, but they do not care what the  
27 rules provide. They will do anything to remove any judge who does not yield to  
28 their improprieties. As this Court itself has seen, the Defendants have sought to

1 have this Court impose a reassignment, which this Court has rejected. But that has  
2 not deterred these Defendants. Their wholly-owned and controlled subsidiary –  
3 which their joint board member concedes is not actually treated as a separate entity  
4 – claims that it can file a peremptory challenge in violation of the express terms of  
5 SCR 48.1. With that maneuver, the case was reassigned to Judge Denton, who  
6 promptly saw through VML's violation, struck the peremptory challenge, and  
7 remanded the case back to Judge Gonzalez, where it resides today. Defendants are  
8 well aware of numerous motions that have been pending and are set for hearing.  
9 Their attempts at more stalling must be rejected.

## 10 **II. STATEMENT OF FACTS**

11 Jacobs initiated this action over five years ago, on October 20, 2010. After  
12 being served, both LVSC and Sands China filed motions to dismiss. (PA1-570.)  
13 LVSC moved to dismiss for failure to state a claim and failure to join an  
14 indispensable party, VML. (PA1-45) Sands China moved to dismiss for lack of  
15 personal jurisdiction and the omission of VML. (PA46-570,) Jacobs opposed both  
16 motions and the District Court agreed with Jacobs, recognizing that VML was  
17 neither a necessary nor indispensable party.

18 That reality has not changed. VML is not a necessary or indispensable party  
19 under NRC 19. But at the same time, new evidence came to light at the 2015  
20 jurisdictional hearing conducted by Judge Gonzalez concerning VML, its  
21 non-existent board, and its purported assumption of Jacobs' contractual agreement  
22 with LVSC. Because of the merits discovery stay, Jacobs had been thwarted in  
23 pursuing discovery into all such matters.

24 But at the 2015 evidentiary hearing on personal jurisdiction, Michael Leven,  
25 LVSC's former Chief Operating Officer, testified that the Term Sheet was  
26 transferred to VML. (Ex. A at 115:10-117:14.) Leven also revealed that, although  
27 VML technically is a corporation with its own board, that board was a fiction as it  
28 does not actually govern. (*Id.* at 148:23-149:9.) The VML board simply approves

1 and signs whatever documents LVSC tells it to sign. (Ex. B at 9:5-11.) Leven was  
2 unequivocal that "VML was controlled out of Las Vegas . . . because it had this  
3 board, but the board didn't do anything. . . ." (Ex. C at 293:12-19 (Leven responding  
4 "Yes.").)

5 In the face of Leven's telling revelations, Jacobs promptly moved to add  
6 VML to this action, which the District Court originally denied at the insistence of  
7 LVSC and Sands China. The District Court later allowed Jacobs to add VML once  
8 this Court indicated that the trial did not need to proceed in October of 2015. Any  
9 belated addition of VML is a direct product of the unprecedented merits stay that  
10 the Defendants used to delay this case, all the while making what proved to be false  
11 representations about their inability to comply with jurisdictional discovery. The  
12 suggestion by VML that the delay in adding it to this case deprived it of a  
13 peremptory challenge is nonsensical on its face. But by definition, had the  
14 District Court added VML in response to LVSC's and Sands China's original  
15 motions to dismiss back in 2010 and 2011, any ability to claim a peremptory  
16 challenge was long gone because the District Court had heard that contested  
17 motion. No one is confused as to the continuing gamesmanship by these  
18 Defendants and their so-called subsidiary VML.

### 19 **III. DISCUSSION**

#### 20 **A. The Standard for Obtaining a Stay**

21 Disregarding NRAP 8(a)(1)(A), VML failed to seek any stay from the  
22 District Court. Even if that violation could be ignored, VML shows no entitlement  
23 to a stay. Its entire petition ignores the law and is designed to simply engender  
24 more delay in this case, cognizant that merits discovery is finally under way and  
25 confirming the merits of Jacobs' claims. *See Hansen v. Eighth Jud. Dist. Ct.*, 116  
26 Nev. 650, 657, 6 P.3d 982, 986 (2000) (setting forth four factors for considering a  
27 stay).

28

1           **B.     VML is Unlikely to Prevail on the Merits of Its Writ Petition**

2           Nevada Supreme Court Rule 48.1 states in relevant part:

3           1.     In any civil action pending in a district court, which has  
4           not been appealed from a lower court, *each side* is entitled, as a matter  
5           of right, to one change of judge by peremptory challenge. Each action  
6           or proceeding, whether single or consolidated, *shall be treated as*  
7           *having only two sides*. . . If one of two or more parties on one side of  
8           an action files a peremptory challenge, no other party on that side may  
9           file a separate challenge.

10          . . . 5.    A notice of peremptory challenge *may not be filed against any*  
11          *judge who has made any ruling on a contested matter or commenced*  
12          *hearing any contested matter in the action.*

13          . . . 9.    Notwithstanding the prior exercise of a peremptory challenge,  
14          in the event that the action is reassigned for any reason other than the  
15          exercise of a peremptory challenge, *each side* shall be entitled, as a  
16          matter of right, to an additional peremptory challenge.

17          (emphasis added).

18          This Court has recognized that the provisions of SCR 48.1 must be "strictly  
19          construed" due to the potential to misuse a peremptory challenge to cause delay,  
20          waste of judicial resources, and "judge shopping." *Nevada Pay TV v. Eighth Jud.*  
21          *Dist. Ct.*, 102 Nev. 203, 205-06, 719 P.2d 797, 798 (1986);<sup>1</sup> *see also Smith v.*  
22          *Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 852 (1991). In *Morrow v.*  
23          *Eighth Judicial District Court*, 294 P.3d 411, 413-14 (2013), the Court noted that  
24          SCR 48.1 must be followed pursuant to its plain language. The Court observed that  
25          the peremptory challenge must be issued "before **any** hearing is commenced or **any**  
26          ruling is made on the contested matter . . . ." (emphasis added).

27          By its plain language, if one side does not exercise its peremptory challenge  
28          before any contested hearing or ruling, the peremptory challenge is forever waived  
29          for all parties on the same side, even if some are added to the case.<sup>2</sup> *Gallen v.*

30          

---

<sup>1</sup>       *Superseded by rule on other grounds as stated State, Dep't of Motor Vehicles*  
31          *& Pub. Safety v. Eighth Jud. Dist. Ct.*, 113 Nev. 1338, 948 P.2d 261 (1997).

32          <sup>2</sup>       Of course, the same is true if someone from the same side exercises the  
33          peremptory challenge in a timely manner as permitted by SCR 48.1. A later-added  
34          party has no ability to exercise a second peremptory challenge any more than they  
35          have the ability to "revive" a peremptory challenge that was waived by their side.

1 *Eighth Jud. Dist. Ct.*, 112 Nev. 209, 213, 911 P.2d 858, 860 (1996) (new party to  
2 the action had no ability to assert peremptory challenge which had been waived by  
3 failure to exercise by parties on the same side as the newly-added party); *see also*  
4 *Jeaness v. Second Jud. Dist. Ct.*, 97 Nev. 218, 219-20, 626 P.2d 272, 273 (1981)  
5 (failure to file within the time structures of Rule 48.1 results in the waiver of any  
6 right to make a peremptory challenge).<sup>3</sup>

7 Here, the defense side – which includes VML – waived any right to a  
8 peremptory challenge by proceeding with Judge Gonzalez and participating in  
9 contested hearings. Since the inception of the case, Judge Gonzalez has ruled on  
10 hundreds of contested motions, held evidentiary hearings, and received evidence.  
11 VML, even though added later, does not have a separate right to file a peremptory  
12 challenge.

13 This Court held in *Gallen* that a new party to an action is not entitled to a  
14 peremptory challenge if a party on the same side of the action had already waived  
15 the right to do so. 112 Nev. at 213; 911 P.2d at 860 ("Gallen contends that as a new  
16 party to the action, he was entitled to exercise a peremptory challenge to the district  
17 judge even though David Allen had already waived its right to do so. We conclude  
18 that because Gallen is on the same side of the action as David Allen, he had no right  
19 to exercise a peremptory challenge."); *see also Carr–Bricken v. First Interstate*  
20 *Bank*, 105 Nev. 570, 573, 779 P.2d 967, 969 (1989) (holding that a counterclaim  
21 does not revive the opportunity for a peremptory challenge under SCR 48.1).

22 VML attempts to discount the significance of *Gallen* by characterizing it as  
23 "dicta." Instead, it claims that *Moore v. Fourth Judicial District Court*,  
24 77 Nev. 357, 364 P.2d 1073 (1961) is controlling. However, *Moore* involved a  
25

26 <sup>3</sup> The exception to this rule is where a case is reassigned to another judge, such  
27 as occurs in consolidation, by means other than through the exercise of peremptory  
28 challenge. In that limited circumstance, each side is entitled to exercise a  
peremptory challenge, provided, of course, that the newly-assigned judge has not  
issued a ruling on any contested matter. SCR 48.1(5) & (9).

1 challenge against a judge for bias under to NRS 1.230 by an intervening party.  
2 There, the judge was challenged for "cause," which this Court recognized is  
3 afforded to any *party* by filing an "affidavit alleging that the judge before whom the  
4 action is to be tried had a bias or prejudice. . . ." 77 Nev. at 1076, 364 P.2d at 361.  
5 (emphasis added). As noted in *Turnipseed v. Truckee-Carson Irr. Dist.*, 116 Nev.  
6 1024, 1031, 13 P.3d 395, 399 (2000), what *Moore* recognized is that "an  
7 intervening party was not precluded from **filing an affidavit to disqualify a judge**  
8 despite the fact that there had been an earlier motion to set the cause for trial  
9 because the interveners did not become party's to the action until their motion for  
10 intervention was granted." (emphasis added).<sup>4</sup>

11 Ignoring Supreme Court Rule 123, VML confirmed its lack of serious merit  
12 when it advances – just as it did to Judge Denton – the unpublished decision of  
13 *Tradewinds Building. & Development Inc. v. Eighth Judicial District Court*, 2013  
14 WL 3896543 (Nev. 2013). But *Tradewinds* merely notes that a party had a right to  
15 file a peremptory challenge because the action was assigned to a new judge by way  
16 of consolidation, and this Court expressly noted that SCR 48.1(9) authorizes  
17 issuance of a new peremptory challenge under such circumstances. *Id.* at \* 1.

18 Indeed, this Court's decision in *Turnipseed* highlights VML's lack of  
19 substance. There, this Court provided an extensive analysis as to the meat of  
20 SCR 48.1(5) as to when there has been a ruling on a contested matter "in the  
21 action." 116 Nev. at 1030-32, 13 P.3d at 398-99. There, the Court concluded that a  
22 newly-added party by way of intervention had not lost the ability to claim a  
23 peremptory challenge, because there had been no ruling on a contested matter in  
24 **that** action. *Id.* Of course, if VML's tortured argument had merit – that any new  
25 party has a right to exercise a peremptory challenge notwithstanding the terms of  
26 SCR 48.1(5) – then the entire analysis and discussion in *Turnipseed* would have

27  
28 <sup>4</sup> Of course, challenges for cause under NRS 1.230 and 1.235 belong to  
"parties" and are not limited to "sides."

1 been unnecessary. Rather, this Court would have simply said that SCR 48.1(5) had  
2 no application when a new party is added to or joins the action. *Id.* But of course,  
3 it did not do so because VML's assertion is untenable on its face. VML is engaged  
4 in improper forum shopping in violation of the law.

5 This case has been in front of the same District Court judge and the defense  
6 side long ago waived the right to exercise a peremptory by engaging in contested  
7 motions. Under the plain language of SCR 48.1, no peremptory challenge can be  
8 filed against a judge that has heard any contested matter. The rule is designed to  
9 preclude the very type of forum shopping that these Defendants have long been  
10 waging.

11 **C. The Object of VML's Writ is to Delay.**

12 The real purpose of VML's writ is to procure more delay in Jacobs' rights.  
13 "[I]f the appeal appears frivolous or if the appellant apparently filed the stay motion  
14 purely for dilatory purposes, the court should deny the stay." *Mikohn Gaming*  
15 *Corp.*, 120 Nev. at 253, 89 P.3d at 40. Here, VML had no good faith basis to  
16 exercise a peremptory challenge. SCR 48.1 clearly provides that no peremptory  
17 challenge can be exercised against any judge that has ruled on a contested matter.  
18 VML filed the peremptory challenge anyway with the intent to set up this writ  
19 petition in the hopes that this case will be further delayed. VML's purpose for filing  
20 the improper peremptory challenge and this Motion is stall the resolution of this  
21 action and to undertake the forum shopping that the other Defendants have been  
22 unsuccessful in accomplishing.

23 **D. VML's Claims of Harm are Untenable.**

24 VML reaffirms its lack of serious legal substance when it protests how its  
25 "basic due process" rights will be harmed if (as a purported new party) it is not  
26 allowed to revive a peremptory challenge in violation of SCR 48.1. (Mot. at 9.)  
27 However, Due Process is not remotely implicated here.

1 Peremptory challenges are a matter only of legislative favor. *See State v.*  
2 *McClellan*, 11 Nev. 39, 53 (1876); *see also Rivera v. Illinois*, 556 U.S. 148 (2009)  
3 (holding that a state criminal defendant's federal constitutional rights were not  
4 violated by the denial of his peremptory challenge of a juror and stating that "States  
5 may withhold peremptory challenges 'altogether without impairing the  
6 constitutional guarantee of an impartial jury and a fair trial").

7 Peremptory challenges in a civil case do not raise constitutional concerns.  
8 VML still has the ability to make a challenge for cause (with an accompanying  
9 attestation and the consequences if it is done for an improper purpose) under  
10 NRS 1.230 and NRS 1.235 if there were honest grounds to do so. Of course, there  
11 is no legitimate basis to challenge Judge Gonzalez for cause and there has not been  
12 a valid basis to do so the last multiple times Defendants have asked this Court for a  
13 reassignment. They have no basis and know that any such motion would be for an  
14 improper purpose. If this Court wants to grind all litigation to a halt, all it needs to  
15 do is allow parties who have engaged in misconduct to remove any judge who rules  
16 against them. *Smith*, 107 Nev. at 678, 818 P.2d at 852.

17 **E. Jacobs Will Suffer Irreparable Harm if a Stay Issues.**

18 The party that will be harmed from yet another delay of this action is Jacobs,  
19 which is precisely what Defendants want. They hope that if this Court or the  
20 District Court will just accommodate their continuing delays, Jacobs will grow tired  
21 of fighting for his rights. In the ordinary case, increased litigation costs and  
22 discovery delays may not constitute irreparable harm. *Mikohn Gaming Corp.*, 120  
23 Nev. at 253, 89 P.3d at 39. But the extraordinary delays that Jacobs has been forced  
24 to endure already is unprecedented. *Id.* ("Of course, in certain cases, a party may  
25 face actual irreparable harm and in such cases [it] should be considered in the stay  
26 analysis."); *see also Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1049  
27 (2010) (prejudice from unreasonable delay is presumed); *see also Aspen Fin. Servs.*

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*v. Dist. Ct.*, 128 Nev. Adv. Op. 57, 289 P.3d 201, 210 (2012) (staying depositions can "all but grind [a] case to a halt.").

Jacobs should not be forced to tolerate Defendants' delay efforts or wait another five years to bring this case to trial. Granting VML a stay based upon an improper peremptory challenge will only compound the harm to Jacobs and reward such impropriety.

**III. CONCLUSION**

Based upon the foregoing, Jacobs respectfully requests that VML's request to stay be denied.

DATED this 4th day of November, 2015.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 4th day of November, 2015, I electronically filed and served a true and correct copy of the above and foregoing **REAL PARTY IN INTEREST STEVEN C. JACOBS' OPPOSITION TO EMERGENCY MOTION UNDER NRAP 27(e) TO STAY ALL PROCEEDINGS IN THE DISTRICT COURT PENDING DECISION ON CONCURRENTLY-FILED PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDER STRIKING VML'S PEREMPTORY CHALLENGE** properly addressed to the following:

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**SERVED VIA HAND-DELIERY ON 11/04/15**  
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