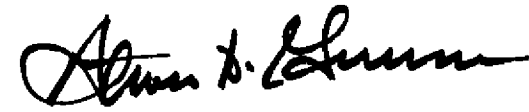


# EXHIBIT 1

# EXHIBIT 1



CLERK OF THE COURT

**ORDR**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: 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:

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

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

5  
6 IT IS SO ORDERED.

7  
8 DATED: Dec 19 26 2015

  
THE HONORABLE MARK R. DENTON  
EIGHTH JUDICIAL DISTRICT COURT

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10  
11 Respectfully submitted by:

12 PISANELLI BICE PLLC

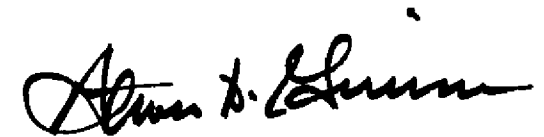
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# EXHIBIT 6

# EXHIBIT 6



CLERK OF THE COURT

1 RTRAN

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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 STEVEN C. JACOBS,

8 Plaintiff,

9 vs.

10 LAS VEGAS SAND CORP., et al.,

11 Defendants.  
12 -----

13 AND ALL RELATED CLAIMS

CASE NO. A627691

DEPT. XIII

TRANSCRIPT OF PROCEEDINGS

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

15 MONDAY, OCTOBER 26, 2015

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

19 APPEARANCES:

20 For the Plaintiff:

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

22 For Venetian Macau Ltd.:

DANIEL R. MCNUTT, ESQ.  
MATTHEW C. WOLF, ESQ.

24  
25 APPEARANCES CONTINUED ON PAGE 2

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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

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

2  
3 THE COURT: Page 15, Steven Jacobs versus Las Vegas Sands Corp.

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

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

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

11 THE COURT: Okay.

12 Okay, other appearances.

13 MR. MORRIS: Good morning, Your Honor.

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

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

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

17 THE COURT: Okay.

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

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

21 MR. BICE: Correct.

22 THE COURT: Okay.

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

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

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

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

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

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



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

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

1 THE COURT: Okay.

2 MR. BICE: I thank the Court.

3 THE COURT: Mr. McNutt.

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

13 THE COURT: Thank you.

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

16 MR. MORRIS: And --

17 THE COURT: All right.

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

19 THE COURT: Okay, thank you.

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

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

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

4 48.1 -- and Mr. Bice purposely recited this and did it well -- does afford  
5 each side an opportunity for a peremptory challenge. Where Mr. Bice goes astray  
6 on behalf of his client is he says that he's asking -- or I'm asking you to, quote,  
7 revive a right. I do not need revival. That right has survived in this case since its  
8 inception. It has never been used and it is still here based upon the case law from  
9 Moore in 1961 --

10 THE COURT: Moore was a case involving an affidavit of prejudice; wasn't  
11 it?

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

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

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

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

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

19 Now, since 1996, we have three cases all of which discuss NRCP --  
20 excuse me, SCR 48.1. We've got Tradewinds in 2013; we've got the Alaska  
21 Supreme Court case Mundt in 1998; and in between we've got Turnipseed in 2000,  
22 and all of those cite back critically to Moore and Smith, Smith coming -- earlier in  
23 1991, Carr-Bricken in 1989, back to Moore in 1961. And, Your Honor, Tradewinds  
24 clearly says that the statutory predecessor of SCR 48.1 is NRS 1. Smith refers and  
25 -- excuse me, Nevada Pay TV says that we can look at NRS 1 because its, quote,

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

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

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

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

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

4 MR. MCNUTT: -- and they --

5 THE COURT: -- right?

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

8 THE COURT: Okay.

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

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

14 MR. MCNUTT: How has my side --

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

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

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

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

14 THE COURT: Okay.

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

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

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

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

2 MR. MCNUTT: And yet its --

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

4 MR. MCNUTT: -- not in their holding.

5 THE COURT: -- that addresses an issue.

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

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

17 Your Honor, I would submit to you that that's the best objective  
18 evidence. You don't have to take my word for it. Look at what the Supreme Court  
19 has done with this case. And conversely, look at what the Supreme Court has done  
20 17 years after Gallen. Seventeen years after Gallen, in Tradewinds in 2013, they  
21 are endorsing Moore. Four years after Gallen they endorse Moore in Turnipseed.  
22 Two years after Moore, in 1998, the Alaska Supreme Court endorsed Moore and  
23 Smith in the Mundt case.

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



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

5 THE COURT: Okay, thank you.

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

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

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

14           And I love this argument now about, well, Moore -- Moore is really the  
15 controlling case even though Moore involved a challenge for cause under that  
16 statute which belongs to a party and not a side. This is why the Supreme Court has  
17 a rule, I suspect, that you're not allowed to be citing these unpublished decisions  
18 which is what he hangs his hat on is because, as the justices say, those opinions  
19 get prepared and they don't get vetted thoroughly. So now he's seizing on this --  
20 words in the Tradewinds unpublished decision in violation of the rule which says  
21 48.1 was the, quote, predecessor to NRS 1.230. Well, that's just flat wrong and we  
22 all know that. 1.230 has existed for years, Your Honor. That's the -- challenge for  
23 cause of a Supreme Court justice just like -- and by the way, peremptory challenges  
24 don't even apply to Supreme Court justices so it's just -- it's an absurd statement.  
25 They know it but this is what happens when you try and use unpublished decisions

1 to then use and take them out of context.

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

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

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

24 THE COURT: All right.

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

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

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

4 THE COURT: All right.

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

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

9 MR. BICE: Thank you, Your Honor.

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

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

13 [Colloquy between counsel]

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

15 [Colloquy between counsel]

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

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

18 THE COURT: Yeah. Fine.

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

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

21 THE COURT: Okay, very well.

22 MR. BICE: All right, thank you.

23 THE COURT: Court's in recess.

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

25 [Colloquy between counsel]

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

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

6 MR. MCNUTT: Thank you, Your Honor.


7 THE COURT: Okay, thank you.

8 MR. BICE: Thank you, Your Honor.

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

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

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

# EXHIBIT 2

# EXHIBIT 2

TRAN

## STEVEN JACOBS

Plaintiff

VS.

LAS VEGAS SANDS CORP., et al...

Defendants

• • • • •

CASE NO. A-627691

DEPT. NO. XI

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

FRIDAY, SEPTEMBER 18, 2015

APPEARANCES :

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.  
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
JON RANDALL JONES, 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 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 18, 2015, 8:33 A.M.

2 (Court was called to order)

3 THE COURT: All right. Can everybody identify  
4 themselves, starting with Mr. Pisanelli and moving across the  
5 room.

6 MR. PISANELLI: Good morning, Your Honor. James  
7 Pisanelli on behalf of Steven Jacobs.

8 MR. SMITH: Jordan Smith also on behalf of Steven  
9 Jacobs.

10 MR. RANDALL JONES: Randall Jones on behalf of Sands  
11 China Limited.

12 MR. PEEK: 'Morning, Your Honor. Stephen Peek on  
13 behalf of Las Vegas Sands and Sands China Limited.

14 MR. MORRIS: Good morning, Your Honor. Steve Morris  
15 for Sheldon Adelson.

16 THE COURT: It's your motion. So can I ask the  
17 question first why'd it take so long to file this motion after  
18 we heard from the Supreme Court?

19 MR. SMITH: Well, we were sort of waiting to see if  
20 we would get a little bit more definitive answer from the  
21 Supreme Court, Your Honor. We were thinking, perhaps  
22 optimistically, that we'd actually have an answer on the  
23 jurisdictional writ by now. So that's sort of what the slight  
24 delay would be.

25 THE COURT: Okay.



1           MR. SMITH: Your Honor first addressed this issue in  
2 June when plaintiff moved to file a fourth amended complaint.  
3 At that time Your Honor denied the motion based upon concerns  
4 about the five year rule. Since that time --

5           THE COURT: And the trial date.

6           MR. SMITH: And the trial date based upon the five  
7 year rule. Since that time, on July 1st, the Supreme Court  
8 indicated that its previous orders in this matter had tolled  
9 the five year rule. That concern has since been alleviated.  
10 There are now nine months between now and the current trial  
11 date. That's more than sufficient time for VML to get up to  
12 speed.

13           Again, recall that throughout this process,  
14 especially during discovery, Sands China has taken the  
15 position that these were VML's documents all along. VML was  
16 the data controller. So VML has been participating in the  
17 document discovery in this case, and Sands China can't take a  
18 different position now.

19           So there's plenty of time, there's no prejudice, and  
20 we ask that the motion be granted.

21           THE COURT: Mr. Jones.

22           MR. RANDALL JONES: Apparently he didn't want to use  
23 a whole lot of 10 minutes. I might take a little longer.

24           I would just -- my first comment would be that their  
25 argument that -- in response to your question, actually, I was

1 interested to hear what the answer would be. It makes no  
2 sense to me whatsoever. I don't know if it makes any sense to  
3 the Court. But my response would be, assuming that you were  
4 waiting for the Supreme Court to make a decision, then why  
5 file this before the Supreme Court made a decision? The  
6 argument with the Supreme Court was just weeks ago. It's  
7 highly unlikely, at least in my experience, that you're going  
8 to have any answer with the Supreme Court for some period of  
9 time.

10 THE COURT: They gave an answer in Wynn-Okada.  
11 I still -- you know, and they mailed it to me a week later,  
12 but --

13 MR. RANDALL JONES: Understood, Your Honor. But it  
14 doesn't explain why you would delay -- assuming you now know  
15 that we have a ruling on the 41(e) motion from the Supreme  
16 Court that says that the trial date is not going to need to be  
17 done in October, you would think after all this time they  
18 would have immediately moved to join VML to this case. Not to  
19 mention we didn't have a scheduling order at that point in  
20 time. We now have one. So we've got this major delay issue  
21 that's going to be a significant problem.

22 But that's just the beginning of the issues that  
23 they have with this motion. First of all, they say that you  
24 have said previously that -- I think -- quoting them, they  
25 said, "You ruled that the motion will be granted," end quote.

1 That is absolutely not what you said.

2 THE COURT: I said I was likely to grant it if I  
3 wasn't dealing with the issues related to the five year rule  
4 and the trial.

5 MR. RANDALL JONES: Well, the quote that I found  
6 that you said, you would "reconsider if the Supreme Court  
7 recalculates or issues other orders related to the 41(e)  
8 motion on the trial." That's a far cry from saying you're  
9 going to do something that they represented to you in their  
10 papers.

11 You never ruled on any of our objections that we  
12 raised in the motion previously. They waited, again, over two  
13 months since the ruling from the Supreme Court to bring this  
14 motion. And, Your Honor, I would suggest the timing of this  
15 motion is not a coincidence. They just responded to our  
16 discovery, Sands China's discovery, and it is pretty obvious  
17 to me that they got nervous about the viability of their  
18 contract claims when they saw our discovery that they had to  
19 answer, including admissions. And that's the real motivation  
20 here, is that they're nervous that they don't have a claim  
21 against Sands China, Las Vegas Sands, or VML because of the  
22 nature of the claims that they've made in this case, and so  
23 now they're trying to bootstrap a claim that will keep their  
24 contract claims viable.

25 There are three distinct reasons why this motion

1 should be denied. The -- first of all, the new allegations  
2 are a complete about face from the position they've taken in  
3 the past, which you're well aware of. When a motion was filed  
4 to dismiss their claims for failing to join an indispensable  
5 party back in 2011 they argued specifically that VML was not a  
6 party to the alleged employment agreement or the stock option  
7 agreement. Now they come back to that argument and say, well,  
8 we have an excuse as to why we couldn't join VML or wouldn't  
9 agree that VML was an indispensable party at the time, because  
10 we didn't know that -- we were apparently surprised in the  
11 jurisdictional discovery involving Sands China to find out  
12 about this alleged assignment.

13           There are multiple reasons why that argument is  
14 meritless on its face, including the fact that all of Mr.  
15 Jacobs's paychecks, bonus money, and employee benefits were  
16 paid by VML. So that would sort of lead you to believe that  
17 your contract was with VML if you're getting paid by VML and  
18 you're accepting and cashing those paychecks, your bonus is  
19 being paid by VML and you're accepting that, and your employee  
20 benefits for you and your family are being paid for by VML.  
21 That would be an indication that you were an employee of that  
22 company. That was all done in 2009 and 2010. Not to mention  
23 the fact that the stock option agreement was with Sands China  
24 Limited. So that would have given them an idea of -- Mr.  
25 Jacobs and his counsel who is employer really was, which they

1 vehemently denied when we brought the motion to dismiss in  
2 2011.

3           There's another point here that should be noted.  
4 Mr. Jacobs knew -- and the documentation is clear that Mr.  
5 Jacobs knew, because we have an agreement that he entered into  
6 in 2009 with VML where he had to be an employee of the  
7 Macanese company in order to work there. That was a  
8 requirement to get the so-called blue card. So he had to  
9 know, he had to be an employee of that company, and yet he  
10 claims he wasn't an employee when it comes to the fact of  
11 trying to add that company as an indispensable party or moving  
12 to dismiss for failure to add an indispensable party in 2011.

13           The only other point I would make on that issue is  
14 that Mr. Jacobs received his termination letters from Sands  
15 China and VML, which includes -- the VML letter, as you may  
16 recall, from 2010 included the 12 reasons for his termination.  
17 That would be an indication to him in 2010 that his employer  
18 was VML, as opposed to Las Vegas Sands.

19           And finally, you cannot amend a complaint when the  
20 amendment would be futile. The amendment would be futile,  
21 because there is no jurisdiction over VML, period, end of the  
22 story. They even failed to plead the necessary elements under  
23 Daimler or Viega to make a claim for personal jurisdiction  
24 over VML.

25           And I would just add that the notion that plaintiff

1 -- that Mr. Jacobs can sue VML for breach of an employment  
2 agreement with Las Vegas Sands while still maintaining that  
3 Las Vegas Sands was his employer and was responsible for  
4 terminating him is on its face an absurd proposition.

5           So, Your Honor, I would simply suggest that there's  
6 no basis at this point in time -- and I mentioned the delay  
7 issue is a real problem for all the parties here. They want  
8 -- they claim they want to get to trial. We've got the issues  
9 of if the Court granted this motion presumably VML will want  
10 to take issue with jurisdiction.

11           THE COURT: They might file a motion to dismiss on  
12 jurisdiction issues.

13           MR. RANDALL JONES: They might. I can't predict it.

14           THE COURT: They might.

15           MR. RANDALL JONES: I don't represent them. But I  
16 would suspect that any competent lawyer would think that would  
17 be an appropriate move. That issue would have to be dealt  
18 with. And by the way, that's after they get served. The  
19 process of serving VML will take who knows how long. So then  
20 we'll go through that process.

21           Then we have to discovery, assuming there's not  
22 other motion practice or writ practice involved with VML  
23 before we could even start doing discovery with VML in this  
24 case. They wanted the early trial date, they pressed to have  
25 a shortened trial date schedule; now they're coming in with a

1 motion that is going to simply delay this process indefinitely  
2 at least at this point.

3           And then the final point I would make, Judge, is you  
4 can't have a personal services contract under Nevada law -- an  
5 assignment of a personal services contract without consent.  
6 And think about this, Judge. Mr. Jacobs in his papers is  
7 claiming that he didn't know about this assignment, this is  
8 all news to him that came out in the late winter, early spring  
9 of this year before the jurisdictional hearing, that's when he  
10 found out about the alleged assignment. Well, if he didn't  
11 know about it until this year, how could he have ever  
12 consented to it? Without his consent under Nevada law he  
13 absolutely cannot argue that there was an assignment of this  
14 agreement which is the linchpin of the basis of his argument  
15 that there is a transfer of this contract to VML and therefore  
16 VML is potentially liable for this claim.

17           THE COURT: Thank you.

18           Anybody else on this side of the room need to say  
19 anything?

20           MR. PEEK: Other than just to join in the arguments,  
21 Your Honor.

22           THE COURT: Okay.

23           MR. MORRIS: Join, too.

24           THE COURT: Thank you.

25           The motion is granted. I understand I'm going to

1 now be faced with jurisdictional motions if there is service.

2 This may impact your trial date, okay. Good luck.

3 MR. PISANELLI: Thank you.

4 THE COURT: Goodbye.

5 MR. PEEK: Thank you, Your Honor.

6 MR. MORRIS: Thank you, Your Honor.

7 THE PROCEEDINGS CONCLUDED AT 9:06 A.M.

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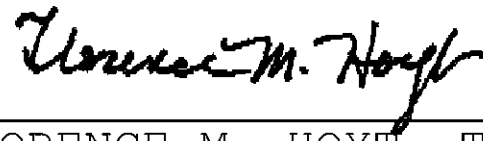
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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

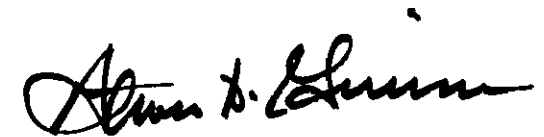
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Las Vegas, Nevada 89146**

  
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FLORENCE M. HOYT, TRANSCRIBER

9/18/15  
DATE

# EXHIBIT 8

# EXHIBIT 8



CLERK OF THE COURT

TRAN

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

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

. . . . .

CASE NO. A-627691

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON PLAINTIFF'S MOTION TO AMEND COMPLAINT**

THURSDAY, JUNE 18, 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.  
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 LAS VEGAS, NEVADA, THURSDAY, JUNE 18, 2015, 8:57 A.M.

2 (Court was called to order)

3 THE COURT: Good morning.

4 MR. PEEK: So are you calling us, Your Honor?

5 THE COURT: I was trying to get Mr. Hofland out of  
6 here. And I failed.

7 MR. RANDALL JONES: Good morning, Your Honor.

8 THE COURT: Lovely to see you all.

9 MR. RANDALL JONES: Good to see you, as well.

10 MR. BICE: Good morning, Your Honor.

11 THE COURT: My first item of business is different  
12 than your first item of business. Yesterday I signed an order  
13 shortening time on a motion to stay my order related to the  
14 deposition of Mr. Turnbull. Does anybody have an objection to  
15 hearing that today, or do you want to come back tomorrow for  
16 your third appearance of the week?

17 MR. BICE: We actually do want to come back  
18 tomorrow, Your Honor.

19 THE COURT: Okay.

20 MR. BICE: We're going to be filing an opposition to  
21 that. We want a record.

22 THE COURT: It's all right, Mr. Bice. I just make  
23 the offer because it's not always the most convenient place to  
24 come.

25 MR. BICE: I understand. I appreciate that, Your

1 Honor.

2 MR. PEEK: We enjoy coming here, though, Your Honor.

3 THE COURT: Good morning. How are you?

4 Is there anybody on the telephone? Good.

5 Mr. Bice, this is your motion.

6 MR. BICE: Yes. Thank you, Your Honor. This is our  
7 motion to amend. The Court knows the facts of this case and  
8 the history of it, probably much to its chagrin. But this is  
9 our motion to amend to add VML as a party to the lawsuit. As  
10 the Court knows, the legal standard is a liberal one; they are  
11 to be granted unless there is grounds to deny it. I know that  
12 when we were back here before the Court had expressed some  
13 concerns about adding VML at this point in time considering  
14 the trial date that the Court presently has pending.

15 THE COURT: Yeah. And there's a case that says if I  
16 add a new party I can't sever them and the five year rule  
17 continues to run as to that party because it's a part of this  
18 case.

19 MR. BICE: Okay.

20 THE COURT: That's a case that's like 15, 20 years  
21 old I think Mr. Urga's firm was involved in.

22 MR. BICE: So our position on this, Your Honor, is  
23 that if the Court's position is it can't sever, first of all,  
24 VML --

25 THE COURT: I think you absolutely can sever. I

1 just don't think 41(e) is affected by severance, which I think  
2 is a huge problem in this case.

3 MR. BICE: Yeah. All right, Your Honor.  
4 Notwithstanding that fact, VML by the assertions of the  
5 defendants has been a participant in this case since the day  
6 it was filed. That's been the testimony of all of their  
7 witnesses, that's been the position of counsel. As the Court  
8 will recall, they said that VML had to be a party to this  
9 case. That's not true, and we opposed the contention that it  
10 had to be a party to this case, because they were trying to  
11 claim that VML had no ties to Nevada, as the Court will  
12 recall, and now Mr. Leven, Mr. Adelson, and I believe even Mr.  
13 Goldstein all effectively debunked that longstanding story  
14 that had been advanced by the defendants.

15 Nonetheless, our point here is that VML, according  
16 to Sands China -- Sands China has no employees, Sands China  
17 has no documents. All of the witnesses for Sands China by  
18 their own acknowledgement, except for the two highest-ranking  
19 executives, Sheldon Adelson and Robert Goldstein, are actually  
20 all part of VML. That's their position. That's been their  
21 position since day one. So adding VML at this point cannot  
22 cause any prejudice to VML, because, according to them, VML  
23 should have been the party in this case since day one. That's  
24 their position. And VML's documents -- and we're just  
25 starting merits discovery, as the Court knows. So they've

1 accused us of bad faith in bringing this motion now.

2           What I would say to the Court on that is I think  
3 that the evidence contradicts that wholly. When were we  
4 allowed to ask the questions that resulted in the answers for  
5 bringing VML into this lawsuit, Your Honor? We were allowed  
6 to ask them during your jurisdictional hearing for the first  
7 time because the defendants were trying to use that stay to  
8 obstruct everything. And they were using it to obstruct  
9 everything. So the first time we got these acknowledgements  
10 out of Leven and Adelson that they had transferred, assigned,  
11 whatever word one wants to use, the term sheet to VML/Sands  
12 China was during the jurisdictional hearing. So you can't  
13 accuse us of delay here when they're the parties who were  
14 obstructing our ability to get those admissions on the record  
15 and have the evidentiary basis upon which this motion rests.

16           So there is good cause to add them now, there is no  
17 prejudice that they can cite, and, as a consequence, they will  
18 be able to participate in discovery and we can move this case  
19 forward. And so we ask the Court to do it.

20           Of course, if the Court says -- it's within your  
21 discretion; we acknowledge that -- and you say, well, I'm  
22 going to deny it, then we will, of course, file a new lawsuit  
23 against VML. We are within the limitations period still, and  
24 we'll file a new lawsuit against VML.

25           THE COURT: Thank you.

1                   Gentlemen.

2                   MR. RANDALL JONES: Good morning, Your Honor.

3                   Randall Jones on behalf of Sands China Limited.

4                   I'm going to be unusually brief this morning. I  
5                   think our papers outline our position, and I would just make a  
6                   couple of small points -- well, a couple of points. One is  
7                   that I do think it would be abuse of a discretion and  
8                   fundamentally unfair to my client, Sands China, irrespective  
9                   of VML -- certainly VML is in a much worse position, but  
10                  there's --

11                  THE COURT: VML indirectly owns the subsidiary, your  
12                  client.

13                  MR. RANDALL JONES: I certainly don't disagree that  
14                  VML is a wholly owned subsidiary of -- actually, it's a  
15                  subsidiary through other entities. But ultimately --

16                  THE COURT: Right. But they're all owned by SCL.

17                  MR. RANDALL JONES: Correct. And I would just make  
18                  the other point that there are two new claims against Sands  
19                  China that has a prejudicial effect against Sands China to try  
20                  to change the landscape at this point in time with the trial  
21                  date we have set.

22                  And the only other thing I would add, Your Honor, is  
23                  that we disagree with the -- in the reply brief they cite --  
24                  Mr. Bice cites some testimony of Mr. Leven and Mr. Adelson.  
25                  We completely disagree with his interpretation of that



1 testimony of Mr. Adelson in particular. Mr. Adelson did not  
2 ever say that the term sheet was transferred. In fact, he  
3 specifically denied that. But since that was in the reply, we  
4 didn't have an opportunity to respond to that.

5           And also, with respect to Mr. Leven, Mr. Leven we  
6 believe should have never been able to -- should have never  
7 had to answer those questions, because it went to the merits,  
8 I think. And virtually every question that they refer to in  
9 their reply brief I had made an objection -- I think Mr. Peek  
10 made objections, as well -- based upon the stay order.

11           The only other point I would make is that to the  
12 extent Mr. Leven did testify about any kind of transfers I  
13 think they've taken that testimony out of context. And also,  
14 if you read other testimony of Mr. Leven that they did not  
15 cite to you, he clarifies what he meant by that. Also, he  
16 indicated in that testimony he didn't understand the  
17 legalities of the question, he was simply giving his comments  
18 with respect to the practical nature of the situation in  
19 certain questions. But that was also contradicted in other  
20 questions.

21           So we think it would be improper to allow the  
22 amendment at this time as to any party, in particular my case  
23 for Sands China Limited.

24           THE COURT: Thank you.

25           Mr. Peek.

1           MR. PEEK: Your Honor, I will likewise be brief and  
2 join in the remarks made by Mr. Jones and rely on the papers  
3 that we have filed jointly and add, as Mr. Jones says, that  
4 this request highlights the fact that this testimony came  
5 during the course of an evidentiary hearing on jurisdiction;  
6 however, it did go to merits and has always gone to merits  
7 from the beginning.

8           So on that basis, Your Honor, I think that there has  
9 been significant deprivation of the due process rights of Las  
10 Vegas Sands. Thank you.

11           THE COURT: Thank you.

12           Mr. Morris, anything you'd like to add?

13           MR. MORRIS: No, Your Honor, I have nothing to add,  
14 other than I support what Mr. Peek and Mr. Jones said.

15           THE COURT: Thank you.

16           Mr. Bice.

17           MR. BICE: Yes, Your Honor. I think those two  
18 points by Mr. Jones and Mr. Peek actually demonstrate our  
19 point, which is their position is that the truth should not  
20 have been known, their witnesses should have not have been  
21 required to tell the truth and those facts came out for the  
22 first time on the stand. And I think that highlights exactly  
23 what they were doing during jurisdictional discovery. Those  
24 facts unquestionably went to the point of jurisdiction as the  
25 Court even cited in its ultimate decision. But they

1 obstructed that information coming out and are now saying that  
2 they should succeed through that obstruction by saying, well,  
3 now, because we've ground this case for four years, actually  
4 almost five years, you shouldn't allow them to add VML at this  
5 point in time.

6           Again, Your Honor, there is no prejudice to them at  
7 this point in time when they are the ones who have insisted  
8 that they wanted VML in this lawsuit until now. Now that the  
9 facts have come out they switch gears and say, well, please  
10 don't add them, Your Honor. And there is no basis for that.

11           Mr. Leven's testimony will speak for itself, and  
12 we'll let the jury decide what Mr. Leven said. Because that's  
13 exactly what he testified to, and it's quite crystal clear  
14 what he testified to. And to try and spin it now and say,  
15 well, he just didn't understand the legal significance of what  
16 he was admitting -- that's true of all facts. Witnesses are  
17 supposed to tell the truth, not worry about the legal  
18 ramifications of telling the truth, which is apparently what  
19 the argument is now being advanced.

20           So the motion -- Your Honor, we ask that the motion  
21 be granted. And Mr. Smith reminded me, Your Honor, there's  
22 actually two aspects to this motion. One is VML, which we're  
23 all focusing on, and the other one is --

24           THE COURT: And the other is Sands China's breach of  
25 contract. I got it.

1 MR. BICE: -- SCL, just adding them to that other  
2 count.

3 THE COURT: I got that part.

4 MR. BICE: All right. I thank the Court.

5 THE COURT: All right. The motion's granted in  
6 part. With respect to adding Sands China to the breach of  
7 contract cause of action the Court finds there is no prejudice  
8 and grants that request.

9 As to adding VML as a new party, it appears to the  
10 Court that under United Association of Journeymen versus  
11 Manson it would be inappropriate to that action given the  
12 Rule 41(e) issues. Solely based upon that and my analysis of  
13 42(e)'s deadline at this point, which I understand the  
14 defendants disagree with, I am denying the motion.

15 If for some reason the Nevada Supreme Court makes a  
16 recalculation or issues an order related to what 41(e)  
17 mentions, I'd be happy to reconsider the motion.

18 MR. BICE: We understand that, Your Honor.

19 THE COURT: Anything else? All right. I guess I'll  
20 see you guys tomorrow on the motion to stay. Have a nice day.

21 MR. PEEK: See you tomorrow.

22 THE COURT: Oh. Sorry. My mistake. There's now a  
23 new motion to unseal that is filed by UNITE HERE. It is  
24 scheduled for July 21st at 9:00 o'clock. Do you want to reach  
25 out to them and see if they want to have their hearing at the

1 same time on July 16th at 8:30 that Guardian and Campaign for  
2 Accountability have their motions?

3 MR. BICE: They actually did reach out, and they  
4 have asked for that.

5 THE COURT: Any objection?

6 MR. PEEK: Yes, Your Honor, we object to it. We  
7 think that the -- we think the issues are significantly  
8 different, because they're a union coming in here, as opposed  
9 to the press or other so-called public interest entities, and  
10 we don't think that they -- I think that the issues are  
11 significantly different and it ought to be heard on a  
12 different date.

13 THE COURT: Okay. I'm going to set it for hearing  
14 on the same day, on July 16th. I have no idea why Master  
15 Calendar set it in Department 29 at 9:00 o'clock. Since it's  
16 filed in this case, it should be heard in this case at 8:30 on  
17 July 16th.

18 Dulce, will you do a minute order so everybody finds  
19 out.

20 THE CLERK: Yes, Your Honor.

21 THE COURT: Thank you.

22 Anything else?

23 MR. PEEK: Nothing, Your Honor.

24 THE COURT: Have a nice vacation, Mr. Peek.

25 THE PROCEEDINGS CONCLUDED AT 9:10 A.M.

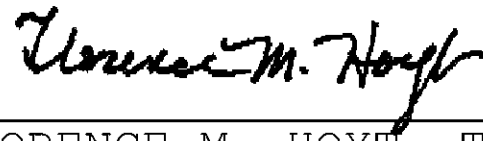
**CERTIFICATION**

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

**AFFIRMATION**

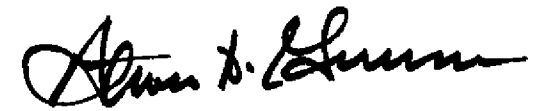
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT  
Las Vegas, Nevada 89146**

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

# EXHIBIT 7

# EXHIBIT 7



CLERK OF THE COURT

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Attorneys for Plaintiff Steven C. Jacobs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'  
MOTION FOR LEAVE TO FILE A  
FOURTH AMENDED COMPLAINT  
ON ORDER SHORTENING TIME**

Hearing Date:

Hearing Time:

Plaintiff Steven C. Jacobs ("Jacobs") moves to amend his complaint in light of the recent admissions that the contractual agreement governing the terms and conditions of Jacobs' employment was transferred/assigned by Defendant Las Vegas Sands Corp. ("LVSC") to Sands China Ltd. ("Sands China") and Venetian Macau Limited ("VML"). Not only does the transfer and assumption render both Sands China and VML subject to personal jurisdiction in Nevada, it also makes Sands China and VML liable for any breach of the Term Sheet. Thus, the proposed amended complaint adds Sands China and VML as Defendants to Jacobs' breach of contract causes of action.

06-01-15P02:19 RCVD

06-01-15P02:22 RCVD 1



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

5 DATED this 1 day of June, 2015.

6 PISANELLI BICE PLLC

7  
8 By: 

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  
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11 Attorneys for Plaintiff Steven C. Jacobs  
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PISANELLI BICE PLLC  
400 SOUTH 7th STREET, THIRD FLOOR  
LAS VEGAS, NEVADA 89101

**ORDER SHORTENING TIME**


Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 11<sup>th</sup> day of June, 2015, at 8:30 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF STEVEN C. JACOBS' MOTION FOR LEAVE TO FILE A FOURTH AMENDED COMPLAINT ON ORDER SHORTENING TIME** on for hearing.

DATED: 6/2/15

  
DISTRICT COURT JUDGE

Respectfully submitted by:

PISANELLI BICE PLLC

By:   
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*

DECLARATION OF TODD L. BICE, ESQ. IN SUPPORT OF  
ORDER SHORTENING TIME

I, TODD L. BICE, Esq., being first duly sworn, hereby declare as follows:

1. I am one of the attorneys representing Plaintiff Steven C. Jacobs ("Jacobs") in the action styled *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A656710, pending before this Court. I am competent to testify as to the facts stated herein.

2. During the evidentiary hearing on Sands China's personal jurisdiction defense, certain witnesses (including Mike Leven and Sheldon Adelson) testified that the Term Sheet was subsequently transferred to, and assumed by, Sands China and/or VML. Such assumption renders Sands China and VML liable under the Term Sheet and subjects them to personal jurisdiction in Nevada.

3. On May 22, 2015, this Court entered its Decision and Order (the "Order") making findings of fact and conclusions of law as to Defendant Sands China, Ltd.'s ("Sands China") defense of personal jurisdiction. The entry of this Decision and Order lifts the stay of merits discovery imposed by the Nevada Supreme Court.

4. On May 27, 2015, the Court entered an Order Setting Civil Jury Trial with a trial date of October 14, 2015, before the expiration of the NRCP 41(e) five year rule.

5. Given the shortened timeframe caused by the Defendants' constant maneuvering, there is good cause to hear this Motion on shortened time so that Jacobs can file his Fourth Amended Complaint and move forward with discovery as soon as possible.

6. I certify that this Motion for order shortening time is not brought for any improper purpose or to secure delay.

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

Dated this 1<sup>st</sup> day of June, 2015.

  
\_\_\_\_\_  
TODD L. BICE, ESQ.

1 **I. DISCUSSION**

2 **A. Leave to Amend Is Freely Given.**

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

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

17 **B. Jacobs is Entitled to Amend His Complaint to Add Sands China and VML to**  
18 **His Breach of Contract Causes of Action.**

19 As demonstrated by the proposed amended complaint, Jacobs seeks to add Sands China and  
20 VML to Jacobs' existing breach of contract causes of action based upon the Term Sheet and Share  
21 Option Grant. Evidence presented at the jurisdictional hearing – through Leven and Adelson –  
22 provided that LVSC transferred or assigned the contract to both Sands China and VML. Based  
23 upon this new admission, this amendment has not been unduly delayed or made in bad faith. Nor  
24 will Defendants suffer any prejudice because merits discovery has been stayed and has recently  
25 commenced.

26 Assignees of a contract are liable for breach of any obligations thereunder. *See, Ross v.*  
27 *Wells' Estate*, 94 Nev. 314, 317, 579 P.2d 782, 784 (1978) ("No one is liable on a contract except  
28 a party or his assignee, or successor."); *see also Wells v. Bank of Nevada*, 90 Nev. 192, 197, 522

1 P.2d 1014, 1017 (1974) ("Controversies arising under an agreement properly are to be determined  
2 and settled by parties to the agreement or their assigns, that is, by those who have legal rights or  
3 duties thereunder."); *Enter. Leasing Corp. v. Shugart Corp.*, 231 Cal. App. 3d 737, 745-46 (1991)  
4 (similar). Therefore, Jacobs should be granted leave to file the Fourth Amended Complaint adding  
5 Sands China and VML as parties to the existing breach of contract claims.

6 **II. CONCLUSION**

7 Based upon the foregoing, Jacobs respectfully requests that this Court grant him leave to  
8 file the proposed Fourth Amended Complaint, a redline version of which is attached hereto as  
9 Exhibit A, to show the proposed additions.

10 DATED this 7<sup>th</sup> day of June, 2015.

11 PISANELLI BICE PLLC

12  
13 By: 

14 James J. Pisanelli, Esq., Bar No. 4027  
15 Todd L. Bice, Esq., Bar No. 4534  
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17 Jordan T. Smith, Esq., Bar No. 12097  
18 400 South 7th Street, Suite 300  
19 Las Vegas, Nevada 89101

20 Attorneys for Plaintiff Steven C. Jacobs  
21  
22  
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CERTIFICATE OF SERVICE

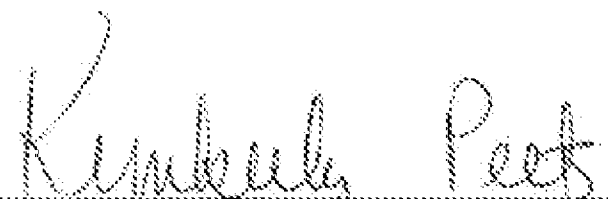
I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this  
day of June, 2015, I caused to be served via the Court's E-Filing system true and correct copies  
of the above and foregoing PLAINTIFF STEVEN C. JACOBS' MOTION FOR LEAVE TO  
FILE A FOURTH AMENDED COMPLAINT to the following:

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An employee of PISANELLI BICE PLLC

# **EXHIBIT A**

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Attorneys for Plaintiff Steven C. Jacobs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

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

**THIRDFOURTH AMENDED**  
**COMPLAINT**

AND RELATED CLAIMS

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

**PARTIES**

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

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



4. Defendant Venetian Macau Ltd. ("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.

10           4.5. Defendant Adelson is a Nevada resident who directs and operates his gaming  
11   enterprise from Las Vegas, Nevada.

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

20           6-7. Each Defendant is the agent of the other Defendants such that each Defendant is  
21 fully liable and responsible for all the acts and omissions of all of the other Defendants as set forth  
22 herein.

23 JURISDICTION AND VENUE

24        ~~7-8.~~ The Court has personal jurisdiction over the Defendants and the claims set forth  
25        herein pursuant to NRS 14.065 on grounds that such jurisdiction is not inconsistent with the Nevada  
26        Constitution or United States Constitution.

27           §:9.\_\_\_\_ Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because the material  
28 events giving rise to the claims asserted herein occurred in Clark County, Nevada.

## COMMON ALLEGATIONS

### LVSC's Dysfunction and Infighting

~~9~~.~~10~~. LVSC and its subsidiaries develop and operate large integrated resorts worldwide. The company owns and operates properties in Las Vegas, Nevada, Macau (a Special Administrative Region of China), Singapore, and Bethlehem, Pennsylvania.

~~40~~.~~11~~. The company's Las Vegas properties consist of The Palazzo Resort Hotel Casino, The Venetian Resort Hotel Casino, and the Sands Expo and Convention Center.

~~41~~.~~12~~. Macau, which is located on the South China Sea approximately 37 miles southwest of Hong Kong, was a Portuguese colony for over 400 years, and is the largest and fastest growing gaming market in the world. LVSC opened the Sands Macau, the first Las Vegas-style casino in Macau. Thereafter, LVSC opened the Venetian Macau and the Four Seasons Macau on the Cotai Strip section of Macau where the company has resumed development of additional casino-resort properties.

~~42~~.~~13~~. Beginning in or about 2008, LVSC's business was in a financial freefall, with its own auditors subsequently issuing a going concern warning to the public. LVSC's problems due to the economic decline were exacerbated when the Chinese government imposed visa restrictions limiting the number of permitted visits by Chinese nationals to Macau. Because Chinese nationals make up more than half the patrons of Macau casinos, China's policy significantly reduced the number of visitors to Macau from mainland China, which adversely impacted tourism and the gaming industry in Macau. LVSC insiders viewed these visa restrictions as a message from the Chinese Central Communist government's displeasure over a number of activities by LVSC and its Chairman, Adelson.

~~43~~.~~14~~. Indeed, LVSC's Board members and senior executives internally expressed concern over Adelson's oftentimes erratic behavior, but failed to inform shareholders or take corrective action. Adelson's behavior had become so corrosive that some government officials in Macau, one of LVSC's principal markets, were no longer willing to even meet with Adelson. On a fact-finding tour of Asia by select LVSC Board members and senior executives -- where they met to discuss LVSC's declining fortunes with Asian business leaders and government officials -- a common theme

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

7 44-15. Adelson's behavior did not just alienate outsiders, it effectively paralyzed the  
8 management's ability to respond to the financial calamity. LVSC faced increased cash flow needs,  
9 which, in turn, threatened to trigger a breach of the company's maximum leverage ratio covenant in  
10 its U.S. credit facilities. Due to Adelson's erratic behavior, LVSC's then-president and  
11 Chief Operating Officer William Weidner ("Weidner") lost confidence in Adelson's abilities, and  
12 undertook steps that Adelson would characterize as an attempted coup. Because Adelson controls  
13 more than fifty percent (50%) of LVSC's voting power, Adelson forced Weidner's removal from  
14 the company so as to preserve his own control.

15 45-16. Weidner was replaced as President and COO by Michael Leven ("Leven"), a  
16 member of LVSC's Board of Directors.

17 46-17. Because of the dysfunction and paralysis Adelson created, LVSC failed to access  
18 capital markets in a timely fashion, which then forced the company to engage in a number of  
19 emergency transactions to raise funds in late 2008 and early 2009. Ironically for LVSC's  
20 shareholders – all of those except for Adelson, that is – this unnecessary delay resulted in Adelson's  
21 personal wealth as the financing source for a quick influx of liquidity. But, to access those funds,  
22 Adelson would charge LVSC a hefty price, obtaining convertible senior notes, preferred shares,  
23 and warrants. Later, Adelson would reap a staggering windfall as a result of these highly-favorable  
24 (for him) financing terms. Conveniently, Adelson was the principal beneficiary, to the detriment  
25 of all other shareholders, of the very financial calamity that he helped create.

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

27 47-18. It is in this poisonous environment that Jacobs enters the LVSC picture. Even before  
28 Leven became LVSC's President and COO, he had reached out to Jacobs to discuss potential COO

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

8 ~~18-19.~~ Jacobs travelled to Las Vegas in March 2009 where he met with Leven and Adelson  
9 for several days to review the company's Nevada operations. While in Las Vegas, the parties agreed  
10 to a consulting contract between LVSC and Jacobs' company, Vagus Group, Inc. Jacobs then began  
11 assisting LVSC in restructuring its Las Vegas operations.

12 ~~19-20.~~ Jacobs, Leven, and Adelson subsequently travelled to Macau to conduct a review of  
13 LVSC's operations there. While in Macau, Leven told Jacobs that he wanted to hire him to run  
14 LVSC's Macau operations. Jacobs and Leven returned to Las Vegas after spending approximately  
15 a week in Macau. Jacobs then spent the bulk of the next 2-3 weeks working on the Las Vegas  
16 restructuring program and also negotiating with Leven regarding LVSC's desire to hire him as a  
17 full-time executive.

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

24 ~~21-22.~~ Notwithstanding that Jacobs would be spending the majority of his time in Macau  
25 focusing on LVSC's operations in that location, he was also required to perform duties in Las Vegas  
26 including, but not limited to, working with LVSC's Las Vegas staff on reducing costs within the  
27 company's Las Vegas operations, consulting on staffing and delayed opening issues related to the  
28

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

3 22-23. On June 24, 2009, LVSC awarded Jacobs 75,000 stock options in the company to  
4 reward him for his past performance as a LVSC team member and to incentivize him to improve  
5 his future performance as well as that of the company. LVSC and Jacobs executed a written  
6 Nonqualified Stock Option Agreement memorializing the award.

7 23-24. On or about August 4, 2009, Jacobs received LVSC's "Offer Terms and Conditions"  
8 (the "Term Sheet") for the position of "President and CEO Macau[.]" The Term Sheet reflected the  
9 terms and conditions of employment that had been negotiated by Leven and Jacobs while Jacobs  
10 was in Vegas working under the original consulting agreement with LVSC and during his  
11 subsequent trips back to Las Vegas. With Adelson's express approval, Leven signed the Term Sheet  
12 on or about August 3, 2009, and had his assistant, Patty Murray, email it to Jacobs who was then in  
13 Macau. Jacobs signed the Term Sheet accepting the offer contained therein and delivered a copy  
14 to LVSC. LVSC's Compensation Committee approved Jacobs' contract on or about August 6,  
15 2009. LVSC thereafter filed a copy of the Term Sheet with the United States Securities and  
16 Exchange Commission, disclosing it as Jacobs' employment contract with LVSC.

17 25. According to LVSC, it subsequently assigned the terms and conditions of Jacobs'  
18 employment with LVSC to both VML and Sands China.

### 19 **Jacobs Saves the Titanic**

20 24-26. The bases for Jacobs' full-time position were apparent. The accomplishments for  
21 the four quarters over which Jacobs had presided created significant value. From an operational  
22 perspective, Jacobs and his team removed over \$365 million of costs from LVSC's Macau  
23 operations, repaired strained relationships with local and national government officials in Macau  
24 who would no longer meet with Adelson due to his obstreperous behavior, and refocused operations  
25 on core businesses to drive operating margins and profits, thereby achieving the then-highest  
26 EBITDA figures in the history of the company's Macau operations.

27 25-27. Due in large part to the success of its Macau operations under Jacobs' direction,  
28 LVSC was able to raise over \$4 billion dollars from the capital markets, spin off its Macau

1 operations into a new company -- Sands China Limited -- which became publicly traded on the  
2 Hong Kong Stock Exchange in late November 2009, and restart construction on a previously stalled  
3 expansion project on the Cotai Strip known as "Parcels 5 and 6." Indeed, for the second quarter  
4 ending June 2010, net revenue from Macau operations accounted for approximately 65% of LVSC's  
5 total net revenue (*i.e.*, \$1.04 billion USD of a total \$1.59 billion USD).

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

10 ~~27-29.~~ Jacobs' success was repeatedly confirmed by Board members of LVSC as well as  
11 those of the new spinoff, Sands China. When Leven was asked in February 2010 to assess Jacobs'  
12 2009 job performance, he advised: *"there is no question as to Steve's performance[;] the Titanic*  
13 *hit the iceberg[.] he arrived and not only saved the passengers[.] he saved the ship."*  
14 Unremarkably, Jacobs received a full bonus in 2009 and no more than three months later, in  
15 May, 2010, he was awarded an additional 2.5 million stock options in Sands China. The options  
16 had an accelerated vesting period of less than two years.

17 ~~28-30.~~ But Adelson would make sure that Jacobs was cheated out of what he was owed, a  
18 practice that Adelson has honed in dealing with many executives and companies that refused to do  
19 as Adelson demanded.

#### 20 **Jacobs' Confrontations with Adelson**

21 ~~29-31.~~ Jacobs' success was in spite of numerous ongoing debates he had with Adelson,  
22 including Adelson's insistence that as Chairman of both LVSC and Sands China, and the primary  
23 shareholder, he was ultimately in charge, including on day-to-day operations as well as such minute  
24 issues as carpeting, room design, and the choice of paper towel dispensers to be used in the men's  
25 room. As Leven would remind Jacobs, both orally and in writing, Adelson was in charge and the  
26 substantive decisions, including such things as construction in Macau, were controlled and made in  
27 Las Vegas:



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

6 30.32. But a greater impediment concerned the unlawful and/or unethical business practices  
7 put in place by Adelson and/or under his watch, as well as repeated outrageous demands Adelson  
8 made to pursue illegal and illegitimate ends. The demands included, but were not limited to:

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

1           ~~31-33.~~ Jacobs reported these improprieties to Leven and LVSC's general counsel, in  
2 accordance with LVSC's company whistleblower guidelines.

3           ~~32-34.~~ When Jacobs objected to and/or refused to carry out Adelson's illegal demands,  
4 Adelson repeatedly threatened to terminate Jacobs' employment. This is particularly true in  
5 reference to: (i) Jacobs' refusal to comply with Adelson's edict to terminate Sands China's General  
6 Counsel, Luis Melo ("Melo"), and his entire legal department and replace him/it with Leonel Alves  
7 and his team; (ii) Adelson's refusal to allow Jacobs to present to the Sands China Board information  
8 that the company's development of Parcels 5 and 6 was at least 6 months delayed and more than  
9 \$300 million USD over-budget due to Adelson-mandated designs and accoutrements the  
10 Sands China management team did not believe would be successful in the local marketplace;  
11 (iii) Adelson's refusal to allow Jacobs to disclose to the Board LVSC findings relating to the  
12 allegations contained in a Reuters article that LVSC was conducting business with Chinese  
13 organized crime syndicates, known as Triads; and (iv) Adelson's refusal to allow Jacobs to discuss  
14 his concerns with the Board regarding the use and rehiring of Leonel Alves after Alves had  
15 requested a \$300 million payment for government officials in China.

16           ~~33-35.~~ During this same time, Jacobs began developing suspicions concerning the propriety  
17 of certain financial practices and transactions involving LVSC and other LVSC subsidiaries,  
18 including, but not limited to: (i) certain transactions related to Hencing island, the basketball team,  
19 the Adelson Center, and the Macau ferry contract which all involved payments that LVSC made;  
20 (ii) allegations concerning LVSC's practice of couriering undeclared monies into the United States  
21 to repay gambling debts of third parties and/or to be used to fund accounts for non-residents once  
22 they arrived in the country; (iii) LVSC's practice referred to as the Affiliate Transaction Advise  
23 ("ATA"), which allowed third parties and gamblers to move money into the United States by  
24 depositing monies with an LVSC overseas affiliate or marketing office, creating an account in  
25 Las Vegas from which the depositor or their designee would be issued chips with which to gamble,  
26 and then transferring the "winnings" back offshore either to the original depositor or to a third party  
27 designee not involved in the transaction; (iv) using the ATA process to move monies for known  
28



1 and/or alleged members of Triads; and (v) structuring and/or using offshore subsidiaries to funnel  
2 monies onto the gaming floor.

3 34-36. One such suspicious entity was WDR, LLC, a wholly-owned subsidiary set up by  
4 LVSC at the apparent behest of Robert Goldstein. When Jacobs raised that entity and certain  
5 transactions with Sands China's then-existing CFO, he similarly considered the transactions  
6 involving WDR as suspicious and expressed concerns over potential money laundering. Of course,  
7 Jacobs would be fired before he could further pursue the matter. When LVSC's then-existing CFO,  
8 Ken Kay, was asked about WDR at a deposition, he professed to have no knowledge of WDR or  
9 what purpose it would serve. But, just a few months after Kay was questioned about WDR, Leven  
10 quietly had the entity dissolved.

11 35-37. Jacobs' disagreements with Adelson came to a head in late June 2010 when they  
12 were in Singapore to attend the grand opening of LVSC's Marina Bay Sands. While in Singapore,  
13 Jacobs attended several meetings of LVSC executives including Adelson, Leven, Ken Kay (LVSC's  
14 Chief Financial Officer), and others. During these meetings, Jacobs disagreed with Adelson's and  
15 Leven's desire to expand the ballrooms at Parcels 5 and 6, which would add an incremental cost of  
16 approximately \$30 million to a project already significantly over budget when Sands China's  
17 existing facilities were already underutilized. In a separate meeting, Jacobs disagreed with  
18 Adelson's desire to aggressively grow the junket business within Macau as the margins were low,  
19 the decision carried credit risks, and based upon recent investigations by Reuters and others alleging  
20 LVSC's involvement with Chinese organized crime groups, known as Triads, connected to the  
21 junket business.

22 36-38. Following these meetings, Jacobs re-raised the issue about the need to advise the  
23 Sands China Board of the delays and cost overruns associated with the development of Parcels 5  
24 and 6 in Macau so that a determination could be made of whether the information must be disclosed.  
25 Jacobs also raised the need to disclose LVSC's involvement with Triads and the implications of  
26 Adelson's desire to grow Sands China's junket business in Macau, as well as Adelson's rehiring of  
27 Leonel Alves, given Jacobs' and others' FCPA concerns. Once again, Adelson reminded Jacobs  
28 that he was both the chairman and the controlling shareholder and that Jacobs should "do as I

1 please." This was consistent with Adelson's attitudes and Jacobs' belief that Adelson considered  
2 himself untouchable. Indeed, on a prior occasion when Jacobs had voiced his concern over how  
3 Nevada's gaming regulators might view Adelson's actions, Adelson scoffed at the suggestion,  
4 informing Jacobs that he (Adelson) controlled the regulators, not the other way around.

5 37-39. When Jacobs refused, Adelson commenced carrying out a scheme to fire and  
6 discredit Jacobs for having the audacity to blow the whistle and confront Adelson. Adelson has  
7 admitted his personal animus and malice toward Jacobs even before firing him. Adelson had  
8 privately been angling for some excuse to terminate Jacobs.

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

10 38-40. In or about July 2010, Adelson directed executives from LVSC in Las Vegas,  
11 Nevada to begin the process of terminating Jacobs. This process, which would be referred to as the  
12 "exorcism strategy," was planned and carried out from Las Vegas and included (1) the creation of  
13 fictitious Sands China letterhead upon which a notice of termination was prepared, (2) preparation  
14 of the draft press releases with which to publicly announce the termination, and (3) the handling of  
15 all legal-related matters for the termination. Again, all of these events took place in Las Vegas,  
16 ostensibly by agents acting for both LVSC and Sands China.

17 39-41. Indeed, it was LVSC in-house attorneys, claiming to be acting on behalf of  
18 Sands China, who informed the Sands China Board on or about July 21, 2010, about Adelson's  
19 decision to terminate Jacobs, and directed the Board members to sign the corporate documents  
20 necessary to effectuate Jacobs' termination. These same attorneys promised to explain the basis for  
21 the termination to the Board members during the following week's Board meeting (after the  
22 termination took place). Predictably, as Adelson is all-controlling, he took action first and then  
23 decreed how the Board thereafter reacted.

24 40-42. Promptly thereafter, the team that Adelson had placed in charge of overseeing the  
25 sham termination -- Leven, Kenneth Kay (LVSC's CFO), Irwin Siegel (LVSC/Sands China Board  
26 member), Gayle Hyman (LVSC's general counsel), Daniel Briggs (LVSC's VP of investor  
27 relations), Ron Reese (LVSC's VP of public relations), Brian Nagel (LVSC's chief of security),  
28

1 Patrick Dumont (LVSC's VP of corporate strategy), and Rom Hendler (LVSC's VP of strategic  
2 marketing) -- left Las Vegas and went to Macau in furtherance of the scheme.

3 41-43. On the morning of July 23, 2010, Jacobs attended a meeting with Leven and Siegel,  
4 which had been represented to him (albeit falsely) as pertaining to the upcoming Sands China Board  
5 meeting. During the meeting, Leven unceremoniously advised Jacobs that he was being terminated  
6 effective immediately. When Jacobs asked whether the termination was purportedly "for cause" or  
7 not, Leven responded that he was "not sure" but that the severance provisions of the Term Sheet  
8 would not be honored. Leven then handed Jacobs the letter drafted by LVSC's attorneys and signed  
9 by Adelson advising him of the termination.

10 42-44. Cognizant that he had no legitimate basis to terminate Jacobs for cause, Adelson  
11 authorized and expected Leven to meet with Jacobs and implement the termination strategy. As is  
12 now a well-documented Adelson tactic, he had no regard for the contractual terms of Jacobs'  
13 employment agreement. Instead, Adelson's tried and true tactic is to demand a discount off of what  
14 is contractually owed for a lesser amount. If Jacobs, or anyone else for that matter, will not  
15 acquiesce in Adelson's strong arm tactics, Adelson retorts to "sue me, then." And, that is essentially  
16 how the Adelson game-plan played out with Jacobs.

17 43-45. When Leven could not persuade Jacobs to "voluntarily" resign, Jacobs was escorted  
18 off the property by two members of security in public view of many company employees, resort  
19 guests, and casino patrons. Jacobs was not permitted to return to his office to collect his belongings,  
20 but was instead escorted to the border to leave Macau.

21 44-46. Because Leven had not been able to persuade Jacobs to resign, the next play from  
22 the Adelson playbook went into effect -- fabricating purported cause for the termination. Once  
23 again, this aspect of the plan was also carried out in Las Vegas by executives professing to act for  
24 both LVSC and Sands China. Indeed, this time they prepared a false letter in Las Vegas and put it  
25 on Venetian Macau, Ltd. letterhead and identified twelve manufactured "for cause" reasons for  
26 Jacobs' termination. Transparently, one of the purported reasons is an attempt to mask one of  
27 Adelson's personal transgressions: The letter absurdly claimed that Jacobs exceeded his authority  
28 and failed to keep the companies' Boards of Directors informed of important business decisions.

1 Not surprisingly, not only are the after-the-fact excuses a fabrication, they would not constitute  
2 "cause" for Jacobs' termination even if they were true, which they are not.

3 ~~45-47.~~ All but conceding that fact, Adelson would later claim to have developed  
4 (i.e., fabricated) some 34 "for cause" reasons for Jacobs' termination.

5 ~~46-48.~~ Confirming what Jacobs had complained about regarding Adelson's improper  
6 demands and concealment of information from the Board, Adelson subsequently arranged the  
7 termination of Sands China's then-General Counsel, Luis Melo, and made sure that Leonel Alves  
8 was retained to perform services for Sands China despite knowledge of Alves acting with disregard  
9 for the United States Foreign Corrupt Practices Act. Also with Jacobs' departure, and with complete  
10 disregard for internal concerns regarding junket affiliations with Triads, Adelson announced that  
11 Sands China would be implementing a new junket strategy whereby it would partner with existing  
12 and established junkets to grow its VIP business. In or about the same time frame, LVSC and  
13 Sands China also publicly disclosed a material delay in the construction of Parcels 5 and 6 and a  
14 cost increase of \$100 million to the project, further confirming the appropriateness of Jacobs'  
15 insistence upon disclosure despite Adelson's insistence otherwise.

16 ~~47-49.~~ Jacobs was not terminated for cause. He was terminated for blowing the whistle on  
17 improprieties and placing the interests of shareholders above those of Adelson. Indeed, in just one  
18 candid communication Leven sent to executives (including Adelson) just days before Jacobs'  
19 termination, Leven claimed that the problem with Jacobs was that "he believes he reports to the  
20 board, not the chair [Adelson]."

## 21 FIRST CAUSE OF ACTION

### 22 (Breach of Contract — LVSC, Sands China & VML)

23 ~~48-50.~~ Plaintiff restates all preceding and subsequent allegations as though fully set forth  
24 herein.

25 ~~49-51.~~ Jacobs and LVSC are parties to various contracts, including the Term Sheet and  
26 Nonqualified Stock Option Agreement identified herein.

27 ~~50-52.~~ The Term Sheet provides, in part, that Jacobs would have a 3-year employment term,  
28 that he would earn an annual salary of \$1.3 million plus a 50% bonus upon attainment of certain

1 and the other fifty percent was to vest on January 1, 2012. The grant is memorialized by a written  
2 agreement between Jacobs and Sands China.

3 ~~58-61.~~ Pursuant to the Term Sheet agreement between Jacobs and LVSC, which was later  
4 ~~transferred and assumed by Sands China and VML.~~ Jacobs' stock options are subject to an  
5 accelerated vest in the event he is terminated "Not for Cause." The Term Sheet further provides  
6 Jacobs with a one-year right to exercise the options post-termination.

7 ~~59-62.~~ Jacobs has performed all his contractual obligations except where excused.

8 ~~60-63.~~ On September 24, 2010, Jacobs made proper demand upon LVSC and Sands China  
9 to honor his right to exercise the remaining 2.5 million stock options he had been awarded in Sands  
10 China. LVSC and Sands China rejected Jacobs' demand and, thus, further breached the Term Sheet  
11 and the Sands China share grant agreement by characterizing Jacobs' termination as being for  
12 "cause" when, in reality, the purported bases for Jacobs' termination, as identified in the belatedly-  
13 manufactured August 5, 2010 letter, are pretextual and in no way constitute "cause."

14 ~~64-64.~~ LVSC and Sands China and VML have wrongfully characterized Jacobs'  
15 termination as one for "cause" in an effort to deprive him of contractual benefits to which he is  
16 otherwise entitled. As a direct and proximate result, Jacobs has suffered damages in an amount to  
17 be proven at trial but in excess of \$10,000.

### 18 **THIRD CAUSE OF ACTION**

19 **(Breach of the Implied Covenant of Good Faith and Fair Dealing ~~—LVSC—~~**

20 **LVSC, Sands China & VML)**

21 ~~62-65.~~ Plaintiff incorporates all preceding and subsequent allegations as though fully set  
22 forth herein.

23 ~~63-66.~~ All contracts in Nevada contain an implied covenant of good faith and fair dealing.

24 ~~64-67.~~ The conduct of LVSC described herein including, but not limited to, the improper  
25 and illegal demands made upon Jacobs by Adelson, Adelson's continual undermining of Jacobs'  
26 authority as the President and CEO of LVSC's Macau operations (and subsequently Sands China),  
27 and the wrongful characterization of Jacobs' termination as being for "cause," is unfaithful to the  
28

1 purpose of the agreements between Jacobs and LVSC, which Sands China and VML later assumed,  
2 and was not within the reasonable expectations of Jacobs.

3 ~~65.68.~~ As a direct and proximate result of LVSC's, Sands China's and VML's wrongful  
4 conduct, Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000.

#### 5 **FOURTH CAUSE OF ACTION**

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

7 ~~66.69.~~ Plaintiff incorporates all preceding and subsequent allegations as though fully set  
8 forth herein.

9 ~~67.70.~~ LVSC retaliated against Jacobs by terminating his employment because he  
10 (i) objected to and refused to participate in the illegal conduct requested by Adelson, and  
11 (ii) attempted to engage in conduct that was required by law and favored by public policy. In so  
12 doing, LVSC tortiously discharged Jacobs in violation of public policy.

13 ~~68.71.~~ As a direct and proximate result of LVSC's tortious discharge, Jacobs has suffered  
14 damages in an amount to be proven at trial but in excess of \$10,000.

15 ~~69.72.~~ LVSC's conduct, which was carried out and/or ratified by managerial level agents  
16 and employees, was done with malice, fraud and oppression, thereby entitling Jacobs to an award  
17 of punitive damages.

#### 18 **FIFTH CAUSE OF ACTION**

##### 19 **(Defamation Per Se - Adelson, LVSC, Sands China)**

20 ~~70.73.~~ Plaintiff incorporates all preceding and subsequent allegations as though fully set  
21 forth herein.

22 ~~71.74.~~ In an attempt to cover their tracks and distract from their improper activities,  
23 Adelson, LVSC and Sands China have waged a public relations campaign to smear and spread lies  
24 about Jacobs. One such instance is a press release made by Adelson, LVSC and Sands China after  
25 an adverse court ruling on March 15, 2011. Having been unable to obtain a procedural victory in  
26 Court, the Defendants undertook to smear Jacobs in the media, issuing a statement to Alexander  
27 Berzon, a reporter for the Wall Street Journal, which provided:  
28



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

8                   72-75. The Defendants' media campaign stating that: (1) Jacobs was justifiably fired "for  
9                   cause" and (2) Jacobs had resorted to "outright lies and fabrications" were false and constitute  
10                  defamation per se.

11                 73-76. All of the offending statements made by Adelson concerning Jacobs and identified  
12                 in Paragraph 71, *supra*, were (1) false and defamatory; (2) published to a third person or party for  
13                 the express intent of republication to a worldwide audience; (3) maliciously published knowing  
14                 their falsity and/or in reckless disregard of the truth thereof; (4) intended to and did in fact harm  
15                 Jacobs' reputation and good name in his trade, business, profession, and customary corporate office;  
16                 and (5) were of such a nature that the law presumes significant economic damages.

17                 74-77. Adelson's malicious defamation of Jacobs was made in both his personal as well as  
18                 his representative capacities as Chairman of the Board of LVSC and as Chairman of the Board of  
19                 its affiliate, Sands China; both of which ratified and endorsed either explicitly or implicitly  
20                 Adelson's malicious invective.

21                 75-78. The comments and statements noted in Paragraph 71, *supra*, were made without  
22                 justification or legal excuse, and were otherwise not privileged because they did not function as a  
23                 necessary or useful step in the litigation process and did not otherwise serve its purposes.

24                 76-79. As a direct and proximate result of Adelson, LVSC, and Sands China's defamation,  
25                 Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000. Moreover,  
26                 Jacobs is entitled to the imposition of punitive damages against Adelson, LVSC, and Sands China,  
27                 said imposition not being subject to any statutory limitations under NRS 42.005.

## 28                   SIXTH CAUSE OF ACTION

### (Tortious Discharge in Violation of Public Policy - Adelson)

77-80. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
                  forth herein.





1 the termination and ratifying the termination for the benefit of Adelson and LVSC, and not for the  
2 benefit of Sands China's shareholders, to whom they owed a fiduciary duty of loyalty.

3       88-91. As a direct and proximate result of Sands China's conduct, Jacobs has suffered  
4 damages in an amount to be proven at trial but in excess of \$10,000.

5       89-92. Sands China's conduct was undertaken with malice, fraud and oppression, thereby  
6 entitling Jacobs to an award of punitive damages.

### 7                                   EIGHTH CAUSE OF ACTION

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

9       90-93. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
10 forth herein.

11       91-94. LVSC and Sands China are separate legal entities, each capable of making  
12 agreements.

13       92-95. LVSC and Sands China agreed, acted in concert and conspired to effectuate Jacobs'  
14 tortious discharge.

15       93-96. LVSC and Sands China intended to harm Jacobs for refusing to follow the illegal  
16 and improper demands of their common-chairman, Adelson.

17       94-97. As a direct and proximate result of LVSC's and Sands China's civil conspiracy,  
18 Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000.

19       95-98. LVSC and Sands China's conduct was done with malice, fraud and oppression,  
20 thereby entitling Jacobs to an award of punitive damages.

### 21                                   PRAYER FOR RELIEF

22       WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as  
23 follows:

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

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

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

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

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

DATED this 22th day of ~~December, 2014~~ June, 2015.

PISANELLI BICE PLLC

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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  
22<sup>nd</sup> day of December, 2014 June, 2015, I caused to be served via the Court's E-Filing system,  
true and correct copies of the above and foregoing ~~THIRD~~FOURTH AMENDED COMPLAINT  
properly addressed to the following:

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\_\_\_\_\_  
An employee of PISANELLI BICE PLLC

# EXHIBIT 5

# EXHIBIT 5

ORIGINAL

*Alvin D. Blum*

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

CLERK OF THE COURT

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

**HEARING ON DEFENDANTS' MOTIONS TO DISMISS**

TUESDAY, MARCH 15, 2011

APPEARANCES:

FOR THE PLAINTIFF:

DONALD JUDE CAMPBELL, ESQ.  
COLBY WILLIAMS, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
JUSTIN C. JONES, ESQ.  
PATRICIA GLASER, 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.

85

RECEIVED  
MAR 18 2011  
CLERK OF THE COURT

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 15, 2011, 9:01 A.M.

2 (Court was called to order)

3 THE COURT: Could I have the Jacobs versus Las Vegas  
4 Sands Corp. case come up for a minute. No, up to your tables.  
5 I have to do something, because I thought you were going to be  
6 here a couple weeks ago. I know it'll be a minute, because  
7 Mr. Campbell's in the back corner.

8 MS. GLASER: Good Morning, Your Honor.

9 THE COURT: Good morning. How are you?

10 MR. CAMPBELL: Good morning, Your Honor.

11 MR. PEEK: Good morning, Your Honor.

12 THE COURT: In my past life, when I was lawyer at a  
13 point in time when Don Prunty and Shelly Berkeley were still  
14 with the Las Vegas Sands, I represented them primarily in  
15 personal injury matters. I make that disclosure to you  
16 because it's important for the record for me to make the  
17 disclosure. I also at one point in time, before they opened a  
18 shopping mall, whenever that was, because it was a long time  
19 ago, participated in training a security staff on how to  
20 properly document personal injuries in case we had to litigate  
21 those. That was the -- my best recollection of the extent of  
22 my involvement. But I make that disclosure to you so you can  
23 have a moment to think about it, decide if you want to consult  
24 with your clients outside my presence before we get to your  
25 matter, which is near the end of the calendar.

1 MR. CAMPBELL: Thank you, Your Honor.

2 MR. PEEK: Thank you, Your Honor.

3 (Proceedings recessed at 9:02 a.m., until 10:25 a.m.)

4 THE COURT: Okay. Jacobs.

5 And if everyone could please identify yourself for  
6 the record again for the clerk.

7 MS. GLASER: Good morning, Your Honor. Patricia  
8 Glaser for Sands China.

9 MR. PEEK: Good morning, Your Honor. Stephen Peek  
10 on behalf of Las Vegas Sands Corp.

11 MR. CAMPBELL: Good morning, Your Honor. Donald  
12 Jude Campbell, Campbell & Williams, on behalf of Mr. Jacobs,  
13 the plaintiff in the action.

14 MR. WILLIAMS: Colby Williams on behalf of the  
15 plaintiff, Your Honor. That's Steve Jacobs, the plaintiff.

16 THE COURT: Good morning.

17 MR. JACOBS: Good morning.

18 THE COURT: Which motion would you like to take  
19 first?

20 MR. PEEK: It matters not to us, Your Honor.  
21 Whatever is the pleasure of the Court.

22 THE COURT: Mr. Peek, your motion is shorter.

23 MR. PEEK: Thank you, Your Honor.

24 THE COURT: Not by much.

25 MR. PEEK: Well, my papers certainly. I see the

1 opposition's a little bit lengthier.

2           Although mine is shorter, Your Honor, it is a little  
3 bit more fact specific, because the analysis that you have to  
4 make under Rule 19(a) and Rule 19(b) is more fact specific for  
5 the purposes of the motion to dismiss for failure to join an  
6 indispensable party under Rule 19(a) and Rule 19(b).

7           As you know, this is a case brought by a Georgia  
8 resident against Las Vegas Sands Corp. and Sands China  
9 Limited, a Macau entity. This case started with Mr. Jacobs in  
10 the spring of 2009, when Mr. Jacobs first was retained through  
11 his company, Vagus, to be a consultant to Las Vegas Sands  
12 Corp. I emphasize it was Vagus who had the consulting  
13 agreement with Las Vegas Sands Corp., Your Honor. It then, of  
14 course, changed in the spring of -- later in the spring of  
15 2009. So in May of 2009 an agreement for services between  
16 Jacobs and Venetian Macau Limited, which is our Exhibit B, was  
17 entered into on behalf of Venetian Macau Limited on the one  
18 side and Jacobs on the other. We've set forth and Your Honor  
19 can see what the terms and conditions were of that agreement  
20 for services, but, importantly, it is an agreement for  
21 services between Venetian Macau Limited and Mr. Jacobs.

22           That then moved and transitioned in the latter part  
23 of May and the first part of June 2009 into a letter of  
24 appointment by Venetian Macau Limited. That's Exhibit C to  
25 our motion. And in that letter of appointment Mr. Jacobs was



1 appointed as president of Venetian Macau Limited. He was to  
2 be paid a salary of \$1.3 million per year, he was to serve for  
3 two years, could be terminated without cause. There are other  
4 terms and conditions. And Mr. Jacobs proceeded to begin work  
5 on behalf Venetian Macau Limited under the terms and  
6 conditions of that agreement of a letter of appointment for  
7 executive.

8 Now, certainly, as Mr. Campbell's papers point out,  
9 it was something that was needed for purposes of Mr. Jacobs to  
10 get a blue card. But though it was for purposes of getting a  
11 blue card, it was also for purposes of his employment as the  
12 president and chief executive officer of Venetian Macau  
13 Limited.

14 So he started work in June 2009 on behalf of the  
15 Venetian Macau Limited as president and chief executive  
16 officer of Venetian Macau Limited in the Macau Special  
17 Administrative Region of China, Macau SAR. You've seen that.  
18 We also know, Your Honor, that beginning in that same period  
19 of time he began working as Venetian Macau's president/CEO,  
20 and moved and began to operate out of Hong Kong and Macau.

21 Certainly there was, as we know a -- a he calls a  
22 side letter, which is Exhibit 10 to their motion, which was  
23 preceded by an Exhibit 11 email. And the Exhibit 11 email I  
24 think is important because it's characterized one way in his  
25 email and another way by his counsel. In the email, written

1 contemporaneously on July 1st, Mr. Jacobs, writing from an  
2 email address, Your Honor -- and you see that on Exhibit 11,  
3 what his email address is, it's steve.jacobs@venetian.com.mo,  
4 which is Macau. He's writing from the Macau -- Venetian Macau  
5 email address as president and CEO.

6           So he writes in the second paragraph, "Attached you  
7 will find a two-page side letter that Luis has suggested we  
8 sign locally. It was not, as Mr. Jacobs attempts to  
9 characterize it in his opposition, something that he thought  
10 was necessary because he wanted to have a not Nevada or United  
11 States corporation held liable. It was something that Luis  
12 suggested, it was not something that Mr. Jacobs suggested, as  
13 they write and as he says in his affidavit, because it's  
14 contradicted by his own email.

15           But what do we have in that so-called side letter  
16 that I think is important for all of us to understand and  
17 characterize? We know from that so-called side letter that he  
18 acknowledges that Venetian Macau Limited understands that Mr.  
19 Jacobs is having discussions with the Las Vegas Sands Corp.  
20 for purposes of his employment contractual terms and  
21 conditions. Now, he's talking to the parent company because  
22 he's talking to a parent company who's going to hire a  
23 president and CEO for a subsidiary, indirect subsidiary of it,  
24 so there's nobody there other than -- when you're talking  
25 about hiring a president, the vice president doesn't hire him,

1 the CFO doesn't hire him, somebody has to hire him, somebody  
2 has to be in a position to hire him. And that's the parent.  
3 So that's why he's in discussions with Las Vegas Sands Corp.

4 But what is even more important to them? And this  
5 is, I thought, an interesting portion of not only the  
6 contract, but also the way that counsel characterized it. And  
7 I'm reading now, Your Honor, from Exhibit 10. "First of all,  
8 if you and the Company --" company is defined as VML "-- do  
9 not reach agreement on your employment terms and conditions  
10 and a valid employment contract (including the supplemental  
11 employment terms) is executed on or before October 31st, the  
12 interim agreements will expire." Those are the interim  
13 agreements of the consulting and the June 16th agreement.

14 But here's the paragraph that I thought interesting,  
15 Your Honor, that a misquote in their brief. Again, it says,  
16 "The Company and you," and again, "company" here is  
17 capitalized and stands for VML, "hereby agree that your  
18 employment relationship with the Company," again capitalized  
19 C, meaning VML, "will be ruled exclusively by the terms and  
20 conditions forming part of an employment agreement being  
21 currently negotiated and to be agreed upon and executed in due  
22 time, which agreement shall replace and supersede in its  
23 entirety the interim agreements." This is in July of 2009.

24 Now, they want to characterize this side letter as  
25 something that says in their minds that there's no enforceable

1 agreement and that they're discussing their contractual  
2 relationship with Las Vegas Sands Corp. so therefore, under  
3 that syllogism that they argue, the contract must be with Las  
4 Vegas Sands Corp. But that's not what the letter says, and  
5 that's not what Mr. Jacobs signed. He signed that the  
6 company, VML, and he agree that his employment relationship  
7 well be with the company, VML.

8           Now, you'll note in their opposition that they make  
9 a little small C. They try to make it in their opposition  
10 appear to the Court as though "company" means somebody other  
11 than VML. But it means VML. There certainly were, no  
12 question, in that period of time negotiations between Jacobs  
13 and the parent corporation as to what he would be paid, what  
14 all the terms and conditions of his contract of employment  
15 with VML would be.

16           So what do we have, then? We have, of course,  
17 a terms sheet. That terms sheet came out of a series of  
18 emails and negotiations, and it starts -- and we'll look at  
19 Exhibit 12, Your Honor, because it's that -- it's that terms  
20 sheet upon which they focus to say it's Las Vegas Sands Corp.  
21 who is the employer and not VML. And they say to you and you  
22 know that the Court has to interpret that contract as to  
23 determine who the obligors are under that contract.

24           So let's start with at least Exhibit 12, which is  
25 the email. We note first of all that that address -- that

1 email address is like the other one. It's sent from the Macau  
2 Limited email address. Mr. Jacobs is already over there doing  
3 the work for VML as the president and CEO under the letter of  
4 appointment of June 16th, 2009. He talks there about the fact  
5 that he has been paid the 75 shares of stock options for LVSC  
6 for work performed by Vagus as a consultant to LVSC, so he  
7 acknowledges that. He got those options for the work that he  
8 had done. He acknowledges that in his email, Exhibit 12. He  
9 also says that it's a -- now a no go or a go, no go situation  
10 for him.

11           Why is it a go, no go situation for him? Because he  
12 talks about having to move his family to Hong Kong, and for  
13 his child to be enrolled in a school in Hong Kong he needs to  
14 be able to make a decision, because he's already lost the  
15 opportunity with at least three schools in Hong Kong to enroll  
16 his child. So he needs to be able to get a decision now from  
17 Mr. Levin as to whether or not I'm going to have a contract.  
18 So that's his go, no go.

19           He also says, my wife needs to be able to get over  
20 there quickly enough in order for her to get a green card to  
21 stay there in Hong Kong. He's going to move to Hong Kong to  
22 perform work on behalf of VML as its president and CEO. You  
23 don't go to Hong Kong to do work for Las Vegas Sands Corp.,  
24 which is what he attempts to have you believe.

25           He also says that, I need to be able to have this

1 determined right away because I have to be able to ship my  
2 furniture and my belongings over to Hong Kong in order to have  
3 them there so that I can start my work. Start his work for  
4 what? President and CEO of VML.

5           So we do get the terms sheet that he prepares, and  
6 he sends it to Mr. Levin, and that terms sheet, as you know,  
7 is Exhibit 13 to their motion. And what does he say about  
8 that terms sheet? He says in his Footnote 16 that that  
9 Exhibit 13 which is attached is a true and correct copy of the  
10 terms sheet. He says it's the true and correct copy, and yet  
11 -- so whose signature do we see on there? Do we see Mr.  
12 Jacobs's signature on that? No, we don't. And that's an  
13 interesting part of this case both from the complaint  
14 standpoint as well as from the motion practice. He keeps  
15 saying, this is my agreement, this is what I signed; but he  
16 doesn't present you with a signed copy of the terms sheet.

17           THE COURT: But Mr. Levin signed it.

18           MR. PEEK: I agree Mr. Levin signed it, Your Honor,  
19 and I'm not arguing that. But I think it's interesting that  
20 he continues to argue that, this is my contract but I didn't  
21 sign it. So is only VML to be bound by that and not Mr.  
22 Jacobs to be bound by it? Is there something else that Mr.  
23 Jacobs has?

24           But what do we see in that terms sheet which is  
25 Exhibit --

1 THE COURT: 13.

2 MR. PEEK: -- 13? We see the following. A  
3 \$1.3 million salary, same as what the letter of appointment  
4 is of June 16th. It's a 50 percent bonus. And what's the  
5 50 percent bonus based on? It's the -- 25 percent of it will  
6 be based upon him achieving a certain level of EBIT DAR  
7 performance as submitted and approved by the board for Macau.  
8 So it's based upon the performance of VML, Venetian Macau  
9 Limited and the casino in Macau. That's what his bonus is  
10 based on, not something he's doing for Las Vegas Sands Corp.  
11 And then there's another one where 25 percent of that  
12 50 percent bonus is based upon individual objectives to be  
13 mutually agreed upon on an annual basis. We don't have any  
14 follow up to that, Your Honor.

15 Then what do we have? We have an equity portion.  
16 And what does it say in the equity portion, again, that is  
17 critical as to who the contracting parties are and who's going  
18 to perform? Because at this time there is no Sands China  
19 Limited, and it's clearly reflected that there's no Sands  
20 China Limited, because it says that the contract will be him  
21 as president and CEO Macau, a listed company (ListCo), not  
22 president and CEO Las Vegas Sands Corp., not executive vice  
23 president, nothing, really, for Sands Corp. He's going to be  
24 a position as president and CEO Macau, a listed company.

25 So let's talk now about the options. The options

1 are -- the Court knows they're 500,000 shares of Las Vegas  
2 Sands Corp. But what does it then go on and say to be  
3 consistent with who the employer is and what his role will be,  
4 is that those options will be converted into ListCo, which we  
5 know was Sands China Limited. We know it from his papers, we  
6 know it from our papers. So that doesn't make him again an  
7 employee of Las Vegas Sands Corp. It's just that's all that  
8 there was that was available at that time in negotiating with  
9 him to work on behalf of the subsidiary. A parent was  
10 granting him options, knowing that there was going to be a  
11 publicly traded company at some time. If it worked out, those  
12 would be converted into that company for whom you're going to  
13 be performing services, who was going to be your employer.  
14 "Convert it at IPO into sufficient number of ListCo options."  
15 So again that's evidence of the fact that his employment  
16 relationship was not with Las Vegas Sands Corp., but was in  
17 fact with VML and/or Sands China Limited.

18           So there are no joint obligors or no co-obligors  
19 under this terms sheet. The obligors were the -- the obligor,  
20 not plural, was VML and/or ListCo, not Las Vegas Sands Corp.  
21 We know, because we presented evidence from June 2009 all the  
22 way up until the termination in July 2010, he was paid from  
23 VML. We also know that he received stock options from Sands  
24 China Limited. We now that he moved to Hong Kong, he took his  
25 family, he enrolled his child in school, he negotiated for, as



1 we know from the terms sheet, repatriation, an exit package, a  
2 one-time fee to cover moving expenses, a housing allowance of  
3 12,000 a month, a repatriation, meaning when I come back -- my  
4 business affair for employee independence. We know that all  
5 of his vacation, holidays, and employment benefits were paid  
6 from VML. Certainly he did report to either the president and  
7 CEO Macau -- excuse me, president and CEO of LVS, COO of LVS  
8 or CEO/chairman LVS, because at that time Venetian Macau  
9 Limited didn't have its own CEO or its own chairman to whom he  
10 could report. So you're going to report up to the parent.

11 We also know, Your Honor, from papers that have been  
12 filed subsequently, that Mr. Adelson became the chairman of  
13 Sands China Limited, the parent company of VML. So it's  
14 logical that he was going to be reporting to the chairman of  
15 the board of the entity that became Sands China Limited and  
16 became ListCo here.

17 So what do we know later? Again, Your Honor, trying  
18 to interpret this contract and interpret the circumstances  
19 here factually as to whether or not VML should be a necessary  
20 party and whether in the absence of having jurisdiction over  
21 them in equity and good conscience this case should be kept  
22 or dismissed. So we have certainly Plaintiff's Exhibit 15,  
23 the comp committee. No other comp committee was available  
24 to approve other than the Las Vegas. We have Plaintiff's  
25 Exhibit 16, an email from Gail Hyman to Jacobs. "Once you've

1 signed the employment agreement you will become an executive  
2 officer of LVSC," not an executive -- not -- excuse me, not an  
3 employment agreement with LVSC, but an employment agreement  
4 for your position as president and CEO of Macau, you will  
5 become an executive.

6 THE COURT: Of LVS.

7 MR. PEEK: Of LVS. That doesn't make him an  
8 employee of LVS, Your Honor. But for purposes of SEC  
9 reporting you become an executive officer of that.

10 You have Exhibit 17, which is a similar email from  
11 Ms. Hyman to Mr. Jacobs. It's Plaintiff's Exhibit 17 in which  
12 Ms. Hyman reports to Mr. Jacobs that Mr. Adelson and Mr. Levin  
13 have decided to make the CEOs of the company's significant  
14 subsidiaries executive officers of LVSC for SEC reporting  
15 purposes. It doesn't say, because you're an employee of LVSC,  
16 it says, because you are a CEO of the company's significant  
17 subsidiaries, in this case VML. And she asks him to sign the  
18 attach form.

19 And then if we look at Exhibit 18 attached to  
20 plaintiff's opposition -- and I thank, actually, plaintiff  
21 for attaching all these, because they're very helpful. In  
22 Exhibit 18, which Mr. Jacobs signed and submitted on  
23 September 14th, 2009, what does he say he is under his  
24 signature -- or above his signature? He says -- in the block  
25 numbered 4 it says, "Relationship of reporting person to

1 issuer, President and CEO Venetian Macau Limited." President  
2 and CEO of Venetian Macau Limited. He doesn't say, I'm  
3 executive VP of Las Vegas Sands Corp., he doesn't say, I'm  
4 some kind of an employee of Las Vegas Sands Corp. He says, my  
5 position and relationship to the issuer is not as an employee  
6 of it, but it's as a president and CEO of this indirect  
7 subsidiary, Venetian Macau Limited. That's what he said he  
8 was. He doesn't say, I'm an employee of LVSC. So clearly,  
9 Your Honor, he is the employee [sic].

10 And now what do we have that they also are kind  
11 enough to attach? They have something called an Exhibit 19,  
12 which is our 8-K in which we are reporting to the world that  
13 we are engaged in any IPO of Sands China Limited and that  
14 there is this Web-proof information pack available to people  
15 to review, the WPIP, which is a new term for me, Your Honor,  
16 that I learned today. And in that Exhibit 19 attached to that  
17 8-K plaintiff was kind enough to attach that Web-proof  
18 information pack in which on page 201 or the last page of the  
19 exhibit, Your Honor, it describes who the directors and senior  
20 management of Sands China Limited, this now to be traded -- or  
21 this now initial public offering entity to be traded on the  
22 Hong Kong Stock Exchange --

23 THE COURT: Well, it's created in the Cayman  
24 Islands.

25 MR. PEEK: Pardon?

1 THE COURT: But it's created in the Cayman Islands.

2 MR. PEEK: Yes. But it's going to be traded on the  
3 Hong Kong Stock Exchange, Your Honor.

4 THE COURT: I got that.

5 MR. PEEK: What does it say Mr. Jacobs is? He is  
6 the chief executive officer, president Macau, and executive  
7 director. That's who Sands China describes as its directors  
8 and senior management.

9 And then they make much of this sentence, which  
10 begins with who the executive directors are. The first one  
11 is, "Steven Craig Jacobs, age 46, is our chief executive  
12 officer," okay, "our" meaning SCL, "is the president Macau and  
13 executive director," again, that's what he does, he's  
14 president, executive director, CEO of Macau. "Mr. Jacobs has  
15 been president Macau of LVS," again, that's what he's been,  
16 VML, "from May 2009," and here's a sentence that they think is  
17 really important -- or phrase, "has worked with LVS since  
18 March 2009." It's interesting that it says "worked with," not  
19 "worked for," because, yes, he had a contract with -- as  
20 Vagus, V-A-G-U-S, Your Honor, as a consultant which was  
21 entered into in March of 2009. So, yes, he's worked with LVS  
22 under that consulting agreement with Vagus, his entity.

23 We know, of course, that there were termination  
24 letters, first from Sands China Limited, which is their  
25 Exhibit 22, signed by Mr. Adelson, whom we know from Exhibit

1 -- from this exhibit we just reviewed, Exhibit 19, 8-K, that  
2 Mr. Adelson was the chairman of the board of SCL. So that's  
3 one termination letter on the letterhead of Sands China  
4 Limited, not on behalf of LVSC. We know that Exhibit G to  
5 their -- to our motion, Your Honor, is the termination letter  
6 from VML, Venetian Macau Limited.

7           So when you look at, Your Honor, all of those facts,  
8 all of those circumstances, you take them all together, you  
9 can only come to one inescapable conclusion, is my belief,  
10 Your Honor -- certainly you may disagree with me, but I don't  
11 think you will -- that he was an employee of VML, not an  
12 employee of Las Vegas Sands Corp.

13           So where do we go from there? Then we look at the  
14 analysis under Rule 19 for the Court to determine based on  
15 these facts, based on what I had been presented --

16           THE COURT: So can I ask you the question that  
17 controls sort of this.

18           MR. PEEK: Certainly.

19           THE COURT: Is VML subject to service of process and  
20 whose joinder will not deprive the Court of jurisdiction over  
21 the subject matter of the action?

22           MR. PEEK: I would say, Your Honor, that more than  
23 likely not. They are not. I would be -- it would be silly  
24 for me to argue otherwise, Your Honor. They are an entity  
25 doing business in Macau.

1           THE COURT: In the Republic -- Special  
2 Administrative Republic --

3           MR. PEEK: Special Administrative Region of Macau.  
4 And he has -- contractually he agreed, Your Honor, in the  
5 letter of appointment to Venetian -- excuse me, to Macau's  
6 jurisdiction, Macau venue, and to be doing everything in  
7 Macau. But just because this Court may be deprived of  
8 jurisdiction, you have to make that first determination of  
9 whether or not they are a necessary party under 19(a).

10           First of all, Your Honor, you have to look at, you  
11 know, is it a necessary party. I say it's an easy one,  
12 because there is a contract with VML. It will impede the  
13 ability of the parties to protect their interests, because VML  
14 won't be there. It won't be there to protect its interests  
15 under the contracts and the contract upon which it terminated  
16 Mr. Jacobs. It's the only one who has the right and the  
17 authority to terminate Mr. Jacobs. It is not Las Vegas Sands  
18 Corp. who has that right, it is Venetian Macau Limited. They  
19 have to be there in order for him to make that case of a  
20 contractual relationship that he had with Venetian Macau and  
21 for them to say, I terminated him because he failed to fulfill  
22 his obligations. That's who terminated him, Your Honor, not  
23 Las Vegas Sands Corp., not Sands China Limited. It was --  
24 well, excuse me. Sands China Limited also terminated him  
25 under the July as president and CEO of that entity, but the

1 contractual relationship and the obligation for his payments  
2 were termed by VML.

3           You can't say VML doesn't have to be here, although  
4 they argue that they're co-obligors. They are not co-  
5 obligors, Your Honor. There's no contractual obligation that  
6 Las Vegas Sands Corp. made with Mr. Jacobs to pay his salary,  
7 to pay his benefits. They cite to the Janie case as being  
8 controlling. If you look at the Janie case, the reason the  
9 Janie case created co-obligors is because they specifically  
10 agreed that Underwood and its subsidiaries would be liable.  
11 We don't have that here, Your Honor. You can't keep him --  
12 you have to decide that he is a necessary party, Your Honor,  
13 because his contract is then with VML.

14           So what do you look at next? You look at the four  
15 factors under 19(b), whether under equity and good conscience  
16 -- equity and good conscience applies not only to Mr. Jacobs,  
17 but it also applies to VML and also applies to LVSC. So it's  
18 not just something you look about, oh, poor Mr. Jacobs, the  
19 Georgia resident who's coming to Nevada to sue a Nevada  
20 corporation, you look at what the impact and the effect is  
21 upon those who are not parties, VML, and those who are a  
22 party, Las Vegas Sands Corp., under current framing of their  
23 pleadings. You have to look at both. You don't just look at  
24 Jacobs and say, oh, my gosh, what can you do about poor Mr.  
25 Jacobs, the Georgia resident.

1           And one factor, judgment might be prejudicial. It  
2 will be prejudicial to the absent party, VML, who won't be  
3 here to defend its actions in terminating Mr. Jacobs under its  
4 contract with Mr. Jacobs.

5           THE COURT: Mr. Peek, can you tell me what court in  
6 whatever jurisdiction in the world would have jurisdiction  
7 over all of the parties in this case --

8           MR. PEEK: Venetian Macau --

9           THE COURT: -- including VML.

10          MR. PEEK: Macau would, Your Honor.

11          THE COURT: Macau's not going to have jurisdiction  
12 over all the parties in this case.

13          MR. PEEK: They're going to have jurisdiction over  
14 Mr. Jacobs, they're going to have jurisdiction over Sands  
15 China Limited, they're going to have jurisdiction over VML.

16          THE COURT: And LVSI?

17          MR. PEEK: LVSI, Your Honor, in the way it does  
18 business there through its subconcessions I think is going to  
19 be -- have jurisdiction over LVSI.

20          THE COURT: Okay. Thank you.

21          MR. PEEK: I'm certainly not a Macau lawyer, Your  
22 Honor --

23          THE COURT: I know.

24          MR. PEEK: -- so I don't want to be able to say that  
25 to you. But I believe that, given the fact that it is the



1 entity which certainly as the parent and as the one who sought  
2 and achieved subconcessions through indirect subsidiaries, it  
3 may likely be subject to service of process in Macau. Okay.

4 THE COURT: Okay. Thanks.

5 MR. PEEK: Okay. So in equity and good conscience  
6 let's look at that, okay. So here we don't have the  
7 jurisdiction over Venetian Macau Limited, so you're saying --  
8 you're suggesting that, okay, it's okay to proceed against  
9 LVSC because perhaps in Macau Mr. Jacobs may not have  
10 jurisdiction over LVSC. But let's look at the equity and good  
11 conscience. Who's the contract with? The contract's with  
12 VML, not Las Vegas Sands.

13 So even if you don't have jurisdiction over Las  
14 Vegas Sands Corp. in Macau, how is he to be harmed? Because  
15 he has the obligor, the obligor is there. The one who signed  
16 that contract and paid his wages and paid his benefits and  
17 gave him stock options, they're there in Macau. So you don't  
18 even need to have Las Vegas Sands Corp. So when you ask me  
19 that question, it's really not a question, though I can answer  
20 the way I did, that is necessary to your decision, because in  
21 equity and good conscience does he have complete relief? Does  
22 he have an adequate remedy if this case is dismissed against  
23 him? Yes, he does. That's what you have to look at, is does  
24 he have an adequate remedy, does he have a remedy at all. He  
25 does. Macau, Sands China Limited, VML.

1           Your Honor, I could go through the other four  
2 factors, but I think I've gone through them. But, you know,  
3 one, I don't think you can fashion relief here to avoid or  
4 lessen prejudice to VML, to avoid or lessen the prejudice to  
5 Las Vegas Sands Corp. of having the possibility of multiple or  
6 duplicate or inconsistent judgments rendered against it or  
7 against VML. That party who termed him is not here. That  
8 part who wrote those letters is not here.

9           THE COURT: Well, but Sands China Limited is.

10          MR. PEEK: Certainly, Your Honor. And you'll  
11 address that with Ms. Glaser. You'll have to address that  
12 question with Ms. Glaser as to whether or not it is the entity  
13 who paid his salary, an entity who certainly gave him options  
14 and the entity who paid his benefits and whether or not it was  
15 the one directing him. But that's a different -- different  
16 issue, Your Honor. But as far as Las Vegas Sands Corp. is  
17 concerned, it must have that entity which entered into the  
18 contract and gave its obligations or agreed to its obligations  
19 to Mr. Jacobs here when he moved to Hong Kong, took his family  
20 with him, and set up shop in Hong Kong as the president and  
21 CEO of Macau. Thank you.

22          THE COURT: Thank you.

23          Mr. Campbell, Mr. Williams.

24          MR. CAMPBELL: If I could have the Court's  
25 indulgence for about 30 seconds.

1 THE COURT: Sure.

2 (Pause in the proceedings)

3 THE COURT: And, counsel, as always, if you need to  
4 get up to be able to move to see a board, please feel free to  
5 get up.

6 I truly appreciate, Mr. Peek, you and Mr. Campbell  
7 being so civil and complimentary to each other today.

8 MR. CAMPBELL: Oh, absolutely, Your Honor.

9 MR. PEEK: Thank you, Your Honor.

10 MR. CAMPBELL: Mr. Peek and I go back a long while.

11 Your Honor, I'd like to try to take you through some  
12 of the documents themselves to point out what we believe are  
13 the critical factors and elements of each of these documents  
14 and why it eviscerates the argument that has just been made by  
15 Las Vegas Sands.

16 I'd like to start first of all with the consulting  
17 agreement. Throughout both the original moving papers and the  
18 rebuttal Las Vegas Sands has repeatedly said that these are  
19 two employment agreements, time and time again. Irrespective  
20 of what we demonstrated in our opposition, they nevertheless  
21 cling to that dogma. And that is absolutely not true. But  
22 there are a few important features of each of these documents  
23 that we believe are going to have a bearing on the decision  
24 that the Court makes here today. And let's talk about the  
25 first one.

1           As you can see, Your Honor, from the consulting  
2 agreement -- and that consulting agreement is our Exhibit  
3 Number -- that's our Exhibit Number 8, Your Honor.

4           THE COURT:   8.

5           MR. CAMPBELL: This consulting agreement was with  
6 Mr. Jacobs's company, Vagus Consulting. And, contrary to what  
7 has been said over and over in both the moving papers of Las  
8 Vegas Sands, as well as their reply, this was not an  
9 employment agreement. This was a consulting agreement. And  
10 in fact it specifically excluded him as being an employee of  
11 VML. That's not my argument, that's not my hyperbole, that is  
12 what the agreement says. He was an independent contractor, he  
13 was not an employee. So this really is a canard, except for  
14 one very important feature. And this is going to become  
15 important as we go along in this argument. And the feature of  
16 this is this was a consulting agreement that was indeed with  
17 VML, and it was signed, Your Honor, if you'll look at it, by  
18 Antonio Ferraria. Mr. Ferraria -- and, by the way, you never  
19 got an affidavit from him. Mr. Ferraria was the executive  
20 director for VML. I'd like you to keep that in mind as we go  
21 along, the executive director signed and bound VML to this  
22 consulting agreement.

23           Now let's move to the side agreement, which is  
24 Exhibit 10, the side letter. This side letter completely  
25 eviscerates the employment agreement. If you would take a

1 look at the so-called employment agreement -- just put that up  
2 here for a second, if you would --

3 THE COURT: And you're on Exhibit 10 now?

4 MR. CAMPBELL: Yes, Your Honor. If you'll take a  
5 look at this, this, too, is on Venetian Macau Limited. Now,  
6 the contract that -- the purported contract that employed him  
7 that they spent a good deal of time talking about was with  
8 VML. That's what they talked about, that employment contract.  
9 Now, this says -- and, by the way, that's the employment  
10 contract that they say controls, that's the employment  
11 contract that they say dominates with respect to what the  
12 application of the law, and likewise compels this to be  
13 brought in that forum. That is the employment agreement  
14 they're talking about. And that employment agreement, too,  
15 was signed by VML through, once again, Antonio Ferraria, its  
16 executive director.

17 Now, this side agreement, which was never, ever  
18 brought up by either Las Vegas Sands nor by Sands China at any  
19 point in their moving papers -- and the Court should ask  
20 itself why. We suggest for this reason, because this side  
21 agreement says as follows, that the relationship is going to  
22 be, quote, "ruled exclusively by the terms and conditions  
23 forming a part of an employment agreement currently being  
24 negotiated, agreed upon, and executed in due time, which  
25 agreement," that is, what is going to follow, that agreement

1 that will follow, "shall replace and supersede." Those are  
2 not words of equivocation. They are direct and dogmatic.  
3 They will replace and supersede in its entirety the interim  
4 agreements that were signed by VML and by Mr. Ferraria on  
5 behalf of VML. So once that's done, these no longer exist.  
6 They're meaningless.

7 Let's go to the exchanged email. Those terms are  
8 hammered out, and they're hammered out with Mr. Levin. And  
9 Mr. Levin ultimately agrees to those terms with respect to  
10 what has been agreed upon in an email in which he on behalf of  
11 the Las Vegas Sands, not on behalf of VML or any other entity,  
12 but on behalf of Las Vegas Sands, agrees to it and says, this  
13 will protect you.

14 It then goes to the terms sheet, Your Honor. This  
15 terms sheet, all right, is the ultimate agreement which we  
16 contend replaces in its entirety any other agreements that may  
17 have existed with VML.

18 THE COURT: And that's Exhibit 13?

19 MR. CAMPBELL: Yes, Your Honor. And, Your Honor,  
20 that is the agreement that Mr. Peek so forcefully argued was  
21 somehow ineffectual or likely ineffectual because it was not  
22 signed and agreed upon by both of the parties because it only  
23 bears the signature of Mr. Levin. But I'll get to that in a  
24 moment.

25 This terms sheet, which was agreed and signed on

1 August the 3rd of '09, Your Honor, makes no mention whatsoever  
2 of VML. You will see, likewise, that the signature on it is  
3 not of any officer or director of VML. You don't see Antonio  
4 Ferrara's signature on it on behalf of VML. For good reason,  
5 Your Honor. Because this is not with Venetian Macau Limited,  
6 this is not like the consulting agreement with VML or the --  
7 or any of the other agreements. That's why Ferrara is not  
8 signing it. This is with Las Vegas Sands. And in fact and  
9 indeed you will see that it is identifying Las Vegas Sands  
10 senior executives as those individuals that he will report to.  
11 It does not say that he is going to be reporting to VML's  
12 executive director, Mr. Ferrara, but rather to the president  
13 and chief operating officer of Las Vegas Sands and to the Las  
14 Vegas Sands chief executive officer, and he's also chairman of  
15 the board of Las Vegas Sands, Mr. Sheldon Adelson.

16           So we have no mention whatsoever of VML, we have no  
17 signatory of VML's executive director, Mr. Antonio Ferrara,  
18 it differs dramatically in other ways, showing that in fact  
19 there were other terms and conditions included in this that  
20 we're replacing and not supplementing, but superseding. For  
21 example, you will look in vain, Your Honor, for any such forum  
22 clause that Mr. Peek so adamantly contended required this to  
23 be brought to the courts of Macau.

24           Your Honor, there is also a significant increase in  
25 the term of the employment contract. The term is at least one

1 full year longer. Rather than two, it's now three. It also  
2 provides one of the most significant and important financial  
3 considerations, and that is the remuneration that is going to  
4 be received by my client, Mr. Jacobs, of half a million  
5 dollars of stock in Las Vegas Sands. That had increased it  
6 substantially by the earlier 75,000 shares that he had  
7 previously received. In addition, Your Honor, you will look  
8 at that stock agreement. That stock agreement specifically  
9 says that that agreement with him by Las Vegas Sands is  
10 controlled exclusively by, not the law of Macau, but rather,  
11 Your Honor, by the law of the state of Nevada.

12           Next, this terms sheet, who was it actually  
13 negotiated with? Again, it was negotiated with Mr. Levin and  
14 to some degree Mr. Adelson, both of whom have no role in any  
15 sort of executive, board, or officer fashion with VML. Zero.  
16 That's who he negotiated this with, Your Honor.

17           Who approved his compensation of -- as detailed in  
18 all of this? It wasn't anybody but Las Vegas Sands  
19 compensation committee approved it. And that makes perfect  
20 sense, because they are the party to the agreement. It's  
21 their chief operating officer who's signing off, and it's  
22 their chief executive officer who's also agreed to all of  
23 this. It only makes sense that the compensation committee of  
24 the board of Las Vegas Sands has agreed to this.

25           What happens upon this agreement being signed and



1 executed? What happens is that Mr. Jacobs is thereafter  
2 forever designated as an executive of Las Vegas Sands. And  
3 this is not window dressing. This is exceedingly important.  
4 It's exceedingly important because if he is such an executive  
5 of Las Vegas Sands, Las Vegas Sands must do certain things  
6 with respect to him. The Securities and Exchange Commission  
7 demands that certain protocols be followed, and those  
8 protocols are substantive in nature. Once signed, he is  
9 identified by Ms. Hyman, who says that he is now an executive  
10 officer. That's something that flows immediately thereafter.  
11 He is now an executive officer of Las Vegas Sands. She  
12 identifies him as such, and says, you now have attendant  
13 responsibilities.

14 SEC Form 3, that is Exhibit 18, Your Honor,  
15 identifies Jacobs as an officer of Las Vegas Sands  
16 Corporation. Form 8-K identifies Jacobs as president of Macau  
17 for Las Vegas Sands Corporation. And indeed Levin -- Mr.  
18 Levin and Mr. Adelson in particular are known to exercise a  
19 high degree of control. In public filings it has been stated,  
20 you'll look at Exhibit 3, that, "Las Vegas Sands exercises  
21 control of its business policies and affairs, including the  
22 selection of executives including Sands China Limited's senior  
23 management." They have full and complete control. Moreover,  
24 they are exercising that control -- and I'll save it for the  
25 time that you have allotted to us in response to Sands China

1 and Ms. Glaser's argument that will come, but you will see  
2 where that control is exercised from.

3           So if I could, I'd just like to -- if I could have  
4 that one, please. Let's see if we can just summarize who Mr.  
5 Jacobs was dealing with. Specifically, chief executive  
6 officer, Mr. Adelson, and its chief operating officer of Las  
7 Vegas Sands. He is dealing directly with him. Mr. Ferrara  
8 is nowhere around. Nowhere. There's no mention of Venetian  
9 Macau Limited at all. He negotiates with, not Venetian Macau  
10 Limited, but with Las Vegas Sands Corp. Who is he reporting  
11 to? He is reporting directly to Las Vegas Sands Corp., Levin  
12 and Adelson. Who is this approved by? Las Vegas Sands  
13 Corp.'s compensation committee. Upon this agreement, which  
14 supersedes the other agreements and becomes the final  
15 agreement, he becomes an officer of Las Vegas Sands Corp. He  
16 then receives stock options in Las Vegas Sands Corp. He gets  
17 the approval from the GC of Las Vegas Sands Corp., and is  
18 advised that he is now responsible for filing important forms  
19 with the United States of America, specifically the Securities  
20 and Exchange Commission, and, more specific yet, Form 3 and  
21 Form 8-K, which identify him as Las Vegas Sands Corp.  
22 executive officer.

23           All right. Now, Mr. Peek at -- give me a second,  
24 Your Honor, if I could -- at 10:22 today in his argument said  
25 as follows: is there something else that Mr. Jacobs has that

1 suggests that he is in fact an employee of Las Vegas Sands,  
2 after he started talking about the consulting agreement and  
3 then he talked about the actual agreement that was superseded  
4 by this particular agreement. And my answer to that is, you  
5 bet.

6           Your Honor, this is -- okay. What you're seeing  
7 here is Exhibit 21. This is a Las Vegas Sands Corporation  
8 Second Quarter 2010 Earnings Call. And this took place  
9 July 28th, 2010. And remember, he was terminated on the 23rd.  
10 This is five days later. This is right on the heels of his  
11 termination, within the week. And he's asked by a J.P. Morgan  
12 analyst the following question -- that is, Mr. Levin, the  
13 chief operating officer of Las Vegas Sands says, Mr. Greff  
14 from J.P. Morgan asks the following question, "Query --"

15           THE COURT: And you're on page 6 of the document?

16           MR. CAMPBELL: Yes, Your Honor. Page 6 of that  
17 20-page document.

18           Mr. Greff asks the following question. "Maybe I'll  
19 follow up offline with you guys just on the topic of Steve  
20 Jacobs's departure. I'm presuming he has a noncompete. Can  
21 you confirm that? And how long does that noncompete last?"  
22 Mr. Levin says, "I don't believe he has a noncompete.  
23 Actually, he does not have an actual employment contract."

24           Let's stop right there. He doesn't say he has an  
25 employment contract and it's with VML. He doesn't say

1 anything about anything with VML. They're saying that he has  
2 an employment contract with VML. Well, that's not what Mr.  
3 Levin is telling the public in this quarterly report on the  
4 earnings. He's saying something else. He's saying what  
5 actually controls and what actually exists. He does not have  
6 an actual employment contract. He's right. He knows, because  
7 he negotiated the darn thing. He's the one that said, listen,  
8 Steve, if we get the lawyers involved we're never getting this  
9 thing done, okay, this is good enough for me, it should be  
10 good enough for you, all right, we're in action and we're  
11 moving.

12 "He does not have an actual employment contract. He  
13 had a signed terms sheet." Absolutely correctly. That's  
14 exactly what it was termed. It was a signed terms sheet.  
15 He's not saying, I only signed it, he's not saying that,  
16 lookit, you know, it may not apply. He's saying he did have a  
17 signed terms sheet and he did sign it, Your Honor.

18 You have to understand the circumstances, and I  
19 think that Mr. Jacobs outlined it in his affidavit. What  
20 happens to him is he's literally removed without any notice  
21 whatsoever from the casino floor, taken and brought to the  
22 border, and kicked out and he's told he's fired. That's what  
23 happens to him. So he didn't have a lot of time to go back in  
24 and try to get all of his documents, because they didn't allow  
25 him that common courtesy. They just had him escorted right

1 out of the casino right away and brought to the border and  
2 said, so long, pal.

3           What else did Mr. Levin say? "We never got to  
4 contract with him." He's right. Just as he said, I don't  
5 want to go to contract with this thing with all the lawyers  
6 involved with it. "And I don't believe he has a noncompete in  
7 that terms sheet." Absolutely true. Absolutely true. So we  
8 have from Mr. Levin, the chief operating officer of Las Vegas  
9 Sands Corp. saying, this is what controls, this is who it's  
10 with, and he doesn't mention anything else about any other  
11 agreements, that this is in some way affected by some other  
12 agreement. If there was an actual contract with VML, as Mr.  
13 Peek alleges there was, then he would be talking about it.  
14 But this is just five days later. And Mr. Levin knows what we  
15 know and what we believe the Court now knows, that this is  
16 what controls, not what is now being relied upon in hindsight  
17 by Las Vegas Sands as saying, oh, something else controls.

18           But there's something else. This continuing mantra  
19 that, you know, this really does not control, that there  
20 really is something else is totally and completely eviscerated  
21 by something else. Could I have the next.

22                           (Pause in the proceedings)

23           MR. CAMPBELL: Okay. Your Honor, you'll see  
24 down here something else here. See this SEC filing as to  
25 Form 10-Q. Even in the reply they kept harping on the fact

1 that no, no, no, no, no, no, this was never -- this was never  
2 the document that controlled the relationship. And we dug and  
3 we dug and we dug, and what we found is this. And we have  
4 copies of this. I'm sure they're probably aware of it, since  
5 they filed it. This is a 10-Q. This is filed, again, in  
6 Washington, D.C., with the Securities and Exchange Commission  
7 by Las Vegas Sands Corp., all right. And what does the 10-Q  
8 say? What the 10-Q says is that, there was an employment  
9 offer and terms and conditions that were agreed upon by the  
10 company, Las Vegas Sands, on August 3rd, 2009. They're  
11 absolutely correct. I agree wholeheartedly with Las Vegas  
12 Sands. There it is. If they didn't agree with it, if there  
13 was something else, then they wouldn't be filing this. This  
14 is the employment offer and terms and conditions agreed upon  
15 August 3rd, 2009, and they say, not just agreed upon by our  
16 chief operating officer, Mr. Levin, but they say by Steve  
17 Jacobs and the company.

18 And, by the way, there is a signed copy of it  
19 somewhere. They'll be producing that at some point, I'm sure.

20 This is by Las Vegas Sands Corp., signed by Mr.  
21 Sheldon Adelson, the chief executive officer and chairman of  
22 the board. And what does it say about the offer and terms?  
23 It says two important things, that he's reporting to the  
24 president and chief operating officer of Las Vegas Sands and  
25 that his options are with Las Vegas Sands and they were

1 granted on the day of hire. The day of hire is with Las Vegas  
2 Sands, Your Honor. That's what they're talking about there.  
3 So I think we can now put aside that notion that there's not  
4 anything else out there that says that.

5 One more thing that Mr. Jacobs, who came to court  
6 this morning, flew in for this hearing because, of course, it  
7 has a great impact on him, and he just received something.  
8 I'll proffer this to the Court, and I'm sure that they may or  
9 may not know. I don't know. But he gets a W-2. And he's got  
10 it in his pocket. And that W-2 is from Las Vegas Sands. And  
11 do you know how it identifies him? As an employee of Las  
12 Vegas Sands.

13 Now, it's certainly clear that under all of the  
14 important criteria --

15 THE COURT: Mr. Peek, do you want to see the W-2?  
16 I'll be happy to have a copy --

17 MR. PEEK: I don't think it adds anything, Your  
18 Honor. I'd --

19 THE COURT: I'd be happy to have a copy made of it,  
20 if you want.

21 MR. PEEK: I -- I don't think it adds anything. I  
22 don't think it even should be part of this argument. But if  
23 the Court's going to consider it, it's just representations of  
24 Mr. Campbell and statements of counsel, as opposed to  
25 evidence.

1 THE COURT: That's why I'm making the offer.

2 MR. CAMPBELL: Your Honor, Las Vegas Sands, it is  
3 clear, controlled Mr. Jacobs's employment in every material  
4 matter. And control is, according to just about every single  
5 case that has grappled with this issue, the singular and most  
6 important particular element. I mean, clearly he is reporting  
7 to the chief executive officer, the COO. Mr. Jacobs, you will  
8 note, filed a very detailed affidavit with the Court, and in  
9 that affidavit --

10 THE COURT: And that's Exhibit 1 in the book you've  
11 given --

12 MR. CAMPBELL: Yes, Your Honor, with respect to Las  
13 Vegas Sands I believe it is Exhibit 1. And you will see in  
14 there that he detailed what that control was, and it was  
15 virtually all encompassing and affected virtually every aspect  
16 of his job.

17 There's something else that I think is very, very  
18 important. Certainly while VML may have been designated as  
19 the entity that was paying his monthly or weekly or biweekly  
20 salary or whatever it may have been, that obligation is  
21 absolutely dwarfed by the real compensation at issue in the  
22 case. And that's about I think a gross value of about \$10  
23 million worth of stock, all right. Absolutely dwarfed by  
24 that. And that, of course, is with Las Vegas Sands.

25 So at best, at best -- and we don't even think you



1 can even say it, but at best what we're dealing with insofar  
2 as VML is that they would be a joint obligor. There is  
3 abundant caselaw on that. I know the Court's read it. Unless  
4 you really want me to go in and tell you something you already  
5 know, I'm not going to really argue that. But the suggestion  
6 that somehow Mr. Jacobs should just get on a plane and go on  
7 over to Macau and grapple with all of this over in Macau when  
8 in fact all of this is based out of Las Vegas, Nevada,  
9 borders, most respectfully, on the ludicrous. This is where  
10 Las Vegas Sands has its home. They shouldn't be objecting to  
11 being tried in the courts of where it has its home and where  
12 it has exercised all of this control and where it has executed  
13 and agreed to the seminal documents in this particular case.

14 So, Your Honor, I don't know if you have any  
15 questions of me at this time. If not, I'll sit down and --

16 THE COURT: Thank you, Mr. Campbell.

17 MR. CAMPBELL: Thank you, Your Honor.

18 THE COURT: Mr. Peek.

19 MR. PEEK: Mr. Campbell tells you that the phrase in  
20 Exhibit 10, which is the -- what he characterizes as the side  
21 letter, I characterize it as a supplement to the work permit.  
22 He says that the phrase at the end which refers to a "replace  
23 and supersede in its entirety the interim agreement," he  
24 focuses on that. But what is the antecedent of which  
25 agreement? Because you have to focus on what the antecedent

1 is in order to know whether or not there has been a  
2 replacement and a supersecession. Starts out, "The Company  
3 and you here by agree that your employment relationship," with  
4 VML, I'm using VML because it really is the Company, "will be  
5 ruled exclusively by the terms and conditions forming part of  
6 an employment agreement being currently negotiated and to be  
7 agreed upon and executed in due time, which agreement shall  
8 replace and supersede in its entirety the interim agreement."  
9 So there's still -- when he says which agreement that's going  
10 to be able to supersede it, there has to be one between the  
11 employee and VML. So by his own reference to that section  
12 within the body he is admitting to you and to his client and  
13 to me that that terms sheet is a contract with VML, because  
14 the only thing that can replace and supersede the interim  
15 agreements is a contract between VML and Jacobs. So I agree  
16 with his argument.

17 THE COURT: So you don't think the terms sheet's a  
18 contract, Mr. Peek?

19 MR. PEEK: No, Your Honor, that's not what I'm  
20 saying.

21 THE COURT: Okay.

22 MR. PEEK: What I'm saying, Your Honor -- let me  
23 focus again. By what Mr. Campbell is telling you is that that  
24 terms sheet is a contract with Las Vegas Sands Corp. and it  
25 therefore supersedes. What I'm saying to the Court is if that

1 does -- if it is, as he suggests, a followup to this side  
2 letter and therefore a replacement, it can only be a  
3 replacement to the June 16th agreement if it is between VML  
4 and Jacobs, Your Honor. Because it says that the only thing  
5 that will replace and supersede the interim agreement is an  
6 agreement between Jacobs and VML.

7           Maybe I'm confusing the Court. You have that look  
8 of perhaps puzzlement.

9           THE COURT: No. I have the documents in front of  
10 me, and I'm looking at them.

11           MR. PEEK: Okay. I apologize, Your Honor. But it  
12 does say --

13           THE COURT: I'm not puzzled.

14           MR. PEEK: Yeah. Because it does say "which  
15 agreement." "Which agreement" means the agreement between the  
16 Company and VML. So, as I said -- so that's my argument  
17 there.

18           THE COURT: So that's why Mr. Levin says on  
19 August 4th, after he signs the terms sheet, hey, this is okay,  
20 I forwarded it to the comp committee, they already knows the  
21 details, and if we get the lawyers involved we'll never get  
22 this done?

23           MR. PEEK: Your Honor, I don't disagree that the  
24 terms sheet under this argument that he makes is an agreement.  
25 I'm not trying to say it's not an agreement. What I'm saying

1 to the Court is it's an agreement if -- whatever kind of  
2 agreement it is, it's an agreement with an entity in Macau.  
3 It's not an agreement with Las Vegas Sands Corp. That is the  
4 focus of their argument, is that the terms sheet is an  
5 agreement with an entity, Las Vegas Sands Corp., for him to  
6 perform services for Las Vegas Sands Corp. It's not. It's an  
7 agreement, Your Honor, for him to be president and CEO of a  
8 Macau entity, ListCo. It's an agreement whereby he will be  
9 paid by that company in Macau under the terms sheet. It's an  
10 agreement where he will receive stock options to be converted  
11 into that Macau entity. It's an agreement where he gets  
12 housing and allowances for moving expenses and he gets  
13 repatriation, all of which focuses on the fact that he is an  
14 employee of a Macau entity to perform services in Macau.

15 Now, the fact that there may be individuals like Mr.  
16 Adelson and Mr. Levin who have control over the -- their  
17 indirect subsidiary Venetian Macau Limited, Sands China  
18 Limited later, after it became an IPO -- after it became an  
19 entity and then went through its IPO, may somehow -- it  
20 doesn't create a contract. That's why I keep getting puzzled.  
21 He's focusing on Levin's in control, Adelson's in control,  
22 ergo contract with LVSC. No. They are the 90 percent owner  
23 of a indirect subsidiary, VML. It's logical that that parent  
24 would have some type of say in the operations of its  
25 90 percent controlled subsidiary. But that doesn't -- and you

1 cannot ignore the existence of that subsidiary by saying,  
2 well, they have control over it.

3           Mr. Adelson was the chief executive officer. You  
4 notice he also said that the management under that terms sheet  
5 was Levin and Adelson. Again, Mr. Campbell wants to make the  
6 -- rewrite things, because it doesn't say "and," it says "or."  
7 Now, it may be a little bit of a nit, but it's just like the  
8 nit when he doesn't say Company capitalized under the side  
9 letter.

10           I don't ignore, Your Honor, the fact that there is a  
11 terms sheet, that there is a contract, that we refer to it as  
12 a contract with Mr. Jacobs in all of our stuff. But when we  
13 refer to it in our 10-Q, which he gave to you, that there is a  
14 terms sheet with an indirect subsidiary which we have to  
15 report to the SEC of what Sands China, our 70 percent  
16 subsidiary, is doing and what its 90 percent subsidiary is  
17 doing with Mr. Levin, we report that. All we did was recount  
18 within the body of the 10-Q the terms and conditions of the  
19 terms sheet. I'm not trying to walk away from that, Your  
20 Honor, and say it doesn't exist. But it's not a contract with  
21 Las Vegas Sands Corp. It is a contract between Jacobs and  
22 ListCo. ListCo became Sands China Limited, which became the  
23 parent of VML, Your Honor.

24           So am I looking not at a contract case now, but at  
25 something other than that which he argues of control? Because

1 a control doesn't create a contract. The instrument itself  
2 creates the contract. The terms sheet itself creates a  
3 contract, not the parties who negotiated it. It's what those  
4 terms and conditions contained within the body of the contract  
5 are that control who the employer is. Just because it was  
6 negotiated by Mr. Levin doesn't make it a contract with LVSC,  
7 it makes it a contract with ListCo, Sands China Limited. He  
8 says that, well, there's the IPO disclosures that -- in  
9 Exhibit 3 that LVSC is in control of its subsidiary.  
10 Absolutely. It would be remiss to not report to those who are  
11 going to buy stock in Sands China Limited that Sands China  
12 Limited at the conclusion of the initial public offering is  
13 going to be owned by LVSC up to 70 percent. The last I looked  
14 under corporate governance, 70 percent gives one control. So  
15 they're telling the public, and that's what the Exhibit 3 IPO  
16 does, is tell the public that, we're going to be owned by LVSC  
17 up to 70 percent and that will create control so you should  
18 know that as potential investors, that this entity will own  
19 70 percent and it will be in control. Majority rules.  
20 Corporate governance, not a very difficult concept, but one  
21 that is necessary to report to those who are going to buy the  
22 stock. So again, it doesn't say there's a contract, it just  
23 says, going to be in control.

24 He focuses on the earnings call, Exhibit 21, and I  
25 certainly don't disagree with what Mr. Levin says. But what

1 he doesn't tell you when it's -- when Mr. Levin is being asked  
2 the question about the noncompete and about the employment  
3 contract, it's in the context of the earlier disclosure on  
4 page 3 of the earnings call, Exhibit 21, where Mr. Levin is  
5 reporting to those on the phone, as he should be, "Thanks,  
6 Sheldon. I'll just add a couple of thoughts. First let me  
7 cover our leadership change in Macau. The board of Sands  
8 China made the decision that a leadership change was in the  
9 best interests of the company, its employees, and  
10 shareholders. I will be serving as acting chief executive  
11 officer for Sands China while the committee of the board of  
12 directors of Sands China conducts the new search for the chief  
13 -- new chief executive officer." He's telling everybody about  
14 what just occurred.

15               So when Mr. Campbell argues to that when he is asked  
16 the question he doesn't say, employment contract with VML, or,  
17 employment contract with SCL, well, no, he doesn't need to,  
18 because he's already said it. He's already said it five  
19 minutes earlier when he reports to those on the earnings call  
20 that Mr. Jacobs has been replaced as the president of Sands  
21 China and that that decision was made by the board of Sands  
22 China and that he's now going to be the new executive -- chief  
23 executive officer.

24               He argues to you, Your Honor, that, well, the grant  
25 of the 500,000 shares of Las Vegas Sands Corp. stock in the

1 terms sheet is controlling and therefore makes Sands -- Las  
2 Vegas Sands Corp. the employer and therefore a co-obligor.  
3 But what do we do? If we look and focus on what that terms  
4 sheet says, it talks about a conversion into this ListCo, this  
5 company that is going to be formed and organized under  
6 whatever law that is. As we know, it became an IPO. But it's  
7 going to be converted. Again, why is it going to be  
8 converted? Because Mr. Jacobs is going to be the employee,  
9 going to move to Hong Kong, going to take his family to Hong  
10 Kong, and going to run the casino in Macau owned by the  
11 indirect subsidiary, Venetian Macau Limited, that party who  
12 should be here and present and part of this proceeding because  
13 it's the one who termed him. And without them, complete  
14 relief cannot be afforded to us, and it would impair and  
15 impede, and in equity and good conscience it wouldn't be fair  
16 to Las Vegas Sands Corp. and VML to come here, not be present  
17 to defend its actions in terminating him which gave rise to  
18 the fact that as long as you're not an employee of VML or some  
19 entity, Sands China Limited or VML, that ListCo, you don't get  
20 your stock options. Somebody needs to come here and defend  
21 them, and it shouldn't just be Las Vegas Sands, who doesn't  
22 have a contract with Mr. Levin [sic]. Thank you.

23 THE COURT: Thank you, Mr. Peek.

24 Despite the extensive briefing and arguments that  
25 have been presented here today, the Court is only hearing a



1 joinder motion at this time, not a summary judgment motion.  
2 While it would certainly be easier for all of us if VML was a  
3 party to this litigation, the motion is denied because of the  
4 Court's concerns regarding jurisdiction over VML.

5 Would you like to go to the Sands China motion now?

6 MS. GLASER: Would Your Honor care to take a break,  
7 or would you like us just to --

8 THE COURT: Anybody need a break?

9 They don't need a break.

10 MS. GLASER: In every respect you're tougher than in  
11 Los Angeles, Your Honor. Thank you. Your Honor --

12 THE COURT: I always tell them if they need a break  
13 they have to tell me. And they're pretty good about it.

14 MS. GLASER: Not a problem. All right. Your Honor,  
15 Patricia Glaser for Sands China.

16 Your Honor, this is not about the lack of honor of  
17 Mr. Jacobs in carrying out his responsibilities or the honor  
18 of Mr. Levin and Mr. Adelson, who terminated this gentleman  
19 for good cause. It's not on the merits. This is just about  
20 whether Your Honor should be here to discuss and rule on Sands  
21 China being a party to this action, key points. And I know,  
22 Your Honor, we've filed extensive papers, and I apologize in  
23 advance for that. Very thick.

24 THE COURT: No, it's fine. Gives me stuff to read.

25 MS. GLASER: Plaintiff's burden of proof is on this

1 motion, not the other one, but on this motion, and that's the  
2 -- I'm going to mispronounce this, F-I-R-O-U-Z-A-B-A-D-I, the  
3 Firouzabadi case. It's a '94 Nevada Supreme Court case.  
4 Their burden, not ours. I want to point out key issues that  
5 they do not grapple with, in our view, in a satisfactory --  
6 remotely satisfactory fashion.

7           Plaintiff is not now or has ever been a Nevada  
8 resident. The Sands -- and you will appreciate this, Your  
9 Honor. The second cause of action is the only one alleged  
10 against Sands China. In that second cause of action there's a  
11 reference to a stock option agreement. That stock option  
12 agreement, as we have demonstrated to the Court, says  
13 specifically Hong Kong law is to apply. It's page 33 of  
14 Exhibit G of the Salt declaration.

15           What does that mean, and why is that so significant?  
16 Well, first of all, it's not Nevada law. And what's the  
17 difference in this case, what are some of the key differences  
18 between Hong Kong law that is by contract supposed to apply?  
19 And Mr. Jacobs signed that contract. There's no question  
20 about that. This isn't a missing contract. This is a signed  
21 contract. You get no jury under Hong Kong law, there is a  
22 recovery to the winner of that dispute of attorneys' fees and  
23 costs, and, third, if there is a termination for cause or not  
24 cause, as long as the stock hasn't vested, he doesn't get  
25 anything. If we got up in the morning and decided we didn't

1 like the way he parted his hair and the stock had not vested,  
2 which it had not when he was terminated, Your Honor, he gets  
3 nothing. That's why you don't hear any discussion about that  
4 agreement, because that agreement gives him nothing. Which is  
5 another reason why Sands China should not be a part of this  
6 lawsuit.

7           Something else that's not discussed at any length in  
8 the opposing papers, Hong Kong Stock Exchange rules. It's  
9 Exhibit B to the second Salt declaration. That's in the reply  
10 papers, Your Honor. In order for Sands China to be registered  
11 on that stock exchange they are required to carry on the  
12 business independent of and at arm's length with its parent,  
13 Las Vegas Sands Corp. There is no dispute that Las Vegas  
14 Sands Corp. is indeed the parent, 70 percent, slightly more  
15 than 70 percent owner.

16           And, Your Honor, the section I'm referring to in the  
17 Hong Kong Stock Exchange rules is 8.10(1)(a)(iii), and also we  
18 gave the Court 27(a). Both of those sections specifically  
19 provide that this is not a proper place for the rules of the  
20 Exchange for Sands China to be a defendant.

21           Now, Sands China businesses operate completely  
22 separately from Las Vegas Sands. They have independent  
23 financial auditing, they have independent bank accounts, they  
24 have independent tax registration, they have independent  
25 Treasury Department, and Sands China, appropriately, is not

1 registered to do business in Nevada. It doesn't do business  
2 or direct any business of any sort, any activities towards  
3 Nevada or its residents.

4 Now, Your Honor, there's sort of a bunch of legalese  
5 that is being thrown at you on these jurisdictional issues.  
6 One is talking about transient jurisdiction. And the Burnham  
7 case -- we've provided Your Honor plenty of authority --  
8 doesn't apply to corporations, it applies to individuals.

9 There's then the second argument, is specific  
10 jurisdiction. And there you need a cause of action that  
11 arises from Mr. Jacobs's contacts here, and he doesn't even  
12 argue specific jurisdiction in his opposition brief.

13 Where we do have an argument is general  
14 jurisdiction. And on general jurisdiction there has to be  
15 minimum contacts under anybody's theory, and they have to be  
16 substantive, substantial, and continuous. And while that  
17 sounds like a bunch of legalese and gobbledegook, there's --  
18 one of the cases that we cite, the Gator versus L.L. Bean  
19 case, it's a 2003 Ninth Circuit case, talks about how that's a  
20 high standard requiring extensive contacts between the  
21 defendant and the forum.

22 Now, it's not enough -- and we point this out to  
23 Your Honor, it is not enough to have a parent/sub  
24 relationship. Parent/sub relationships involve consistent  
25 involvement here, nothing more or less than consistent with

1 the entities' investment status. That's not enough. And how  
2 do we know that? Because the Ninth Circuit has told us that,  
3 among other circuits and other states. That's the AT&T  
4 Lambert case, Your Honor. It's a 1996 Ninth Circuit case.  
5 And the response that we hear back is, well, you've got to  
6 look at this Perkins case. Perkins case is totally  
7 inapplicable. It's a 1952 case where that's a guy who has  
8 some mining interests in the Philippines and the war has  
9 broken out, so he's required to come back to Ohio and conduct  
10 all his business, except for the actual mining operations  
11 themselves, everything takes place in Ohio. That case is  
12 distinguishable completely on its facts as it relates to this  
13 case. That's not what happened here.

14           If you look at the FDIC versus British American  
15 Insurance case, that is, again -- keep harping on the Ninth  
16 Circuit, but it is a Ninth Circuit case, and they have a  
17 seven-factor -- seven factors. They talk about the extent of  
18 Sands China's purposeful contacts; the burden on Sands China  
19 of having to defend an action in Nevada; the extent to which  
20 jurisdiction conflicts with domiciliary country, which  
21 demonstrated to you and told you about; Nevada's interest in  
22 adjudicating the dispute; which forum's the most efficient for  
23 resolving the dispute; Mr. Jacobs's interest in choosing  
24 Nevada as a forum; and the existence of alternative forums to  
25 adjudicate Mr. Jacobs's claims. If Mr. Jacobs has a beef with

1 Sands China, it belongs in either Hong Kong or Macau, Your  
2 Honor, because that's the only agreement with Sands China, and  
3 that's a stock option agreement that says Hong Kong law, not  
4 Nevada, not California, not anyplace in the United States law  
5 is to apply.

6 Now, interestingly, there's a Cubbage case,  
7 C-U-B-B-A-G-E, which is a Ninth Circuit, again, 1984 case.  
8 And there the presence of a choice of law provision was  
9 specifically found to weigh strongly in favor of denying the  
10 exercise of jurisdiction when the chosen law conflicts or is  
11 substantially different from that in the forum state. That's  
12 the chosen law. Mr. Jacobs chose Hong Kong law. He can't get  
13 around that.

14 I saw a lot of these boards. Can I pull one of them  
15 out, Your Honor?

16 THE COURT: You certainly may. You just cannot  
17 deface Mr. Campbell's boards.

18 MS. GLASER: I will not deface Mr. Campbell's -- I  
19 wouldn't dream of that.

20 I wanted to point out to Your Honor -- here's a big  
21 fancy board that was provided to Your Honor. It says,  
22 "Jacobs's Employment With LVSC." If you look at the board  
23 provided by Mr. Campbell, I looked, and I didn't see Sands  
24 China one place on this board. Because it doesn't belong  
25 there. The beef, the second cause of action with Sands China

1 is pursuant, Your Honor, specifically to a stock option  
2 agreement that says Hong Kong law is to apply. It was signed  
3 over there, it was negotiated over there, and we don't belong  
4 here.

5 Your Honor, if you have any questions at all, I'll  
6 be glad to answer them, either now or at the time of my reply.

7 THE COURT: Thank you.

8 MS. GLASER: Thank you.

9 THE COURT: Mr. Campbell.

10 MR. CAMPBELL: Your Honor, the reason why you don't  
11 see anything on Sands China on this particular board, because  
12 this particular board was reserved for my argument with  
13 respect to Las Vegas Sands. So let me address those  
14 particular points. And while they are not on a board, I know  
15 that the Court has carefully read our responsive pleadings  
16 now, and I think you'll recognize many of these same points.

17 So let's go first of all to the fact that we have a  
18 very extensive affidavit, that is, a separate affidavit that  
19 has been presented to Her Honor in this portion of the case in  
20 opposition to the motion of Las Vegas -- or Sands China. That  
21 affidavit by Mr. Jacobs, which has been signed under oath, has  
22 received absolutely no responsive affidavit of any kind.  
23 None. Zero. They certainly had the opportunity to do that.  
24 They certainly had the opportunity to present something. If  
25 it was untrue in any way, shape, or form, they could have said

1 that. All they had to do was get one from Mr. Levin or get  
2 one from Mr. Adelson. They could clearly have done that, and  
3 they did not do that. And why? Well, Your Honor, you have to  
4 accept that they didn't do that because they couldn't do that.  
5 They're available. There's no reason why they couldn't have.

6 And while Ms. Glaser is absolutely correct that the  
7 burden is on us, let's reflect upon what that burden is. That  
8 burden is not the heavy burden that was on Mr. Peek with  
9 respect to his motion. Rather, it is only to establish by a  
10 prima facie case. That's it. It's not even preponderance of  
11 the evidence. It's a prima facie case. And we've done it.  
12 We've submitted you the only evidence that you have, and it's  
13 all under oath. It's all under oath, Your Honor. And this is  
14 what he says.

15 "Mr. Adelson --" point one, "Mr. Adelson and Mr.  
16 Levin routinely conducted business on behalf of Sands China  
17 Limited out of Las Vegas office." He even goes into some of  
18 the particular events that demonstrate that, number one, a  
19 board meeting, a board meeting. "A board meeting was noticed  
20 from Macau, was noticed on both Macau and Las Vegas time."  
21 The chairman of that board -- the chairman of the board wasn't  
22 in Macau, he was here. Mr. Adelson was here and conducted  
23 that board meeting from Las Vegas, Nevada, along with three  
24 other members. They had four members of the board that were  
25 here conducting the meeting.



1           Mr. Jacobs has said time and time again he flew over  
2 here to meet with them with respect to Sands China site  
3 design. Indeed, the development over Sites 5 and 6 took place  
4 -- took place on a consistent and ongoing basis for 5 and 6  
5 here in Las Vegas, Nevada.

6           They recruited and interviewed executives for Sands  
7 China Limited here in Las Vegas, Nevada. Indeed, I think Mr.  
8 Tracy, who's been recently appointed for Sands China, came out  
9 of here along with his co-executive, and I forget that  
10 gentleman's name right now.

11           In any event, Adelson issued the directives with  
12 respect to those that are present in our complaint as to the  
13 threats, improper leverage, et cetera, from Las Vegas, Nevada.

14           Mr. Adelson and Mr. Levin's involvement was  
15 extensive in marketing strategies. Similarly, Mr. Levin and  
16 Mr. Adelson's involvement in the negotiation of possible joint  
17 ventures took place here, including with Harrah's, Mr. Lubman,  
18 if you recall that. Again, one more point.

19           Ms. Glaser's talked about arm's-length transactions.  
20 She's absolutely correct, Your Honor. Sands China Limited  
21 does engage in arm's-length transactions. And they have  
22 engaged in those arm's-length transactions, presumably in good  
23 faith, in accordance with their fiduciary duty. Now, who have  
24 they dealt with? They have dealt with Las Vegas Sands here in  
25 Las Vegas, Nevada. They don't have to deal with Las Vegas

1 Sands. Indeed, it's Sands China's commitment that a will  
2 exercise their fiduciary duty to get the best deal. So  
3 presumably in those arm's-length transactions that they talked  
4 about they presumably resolved that issue, and they've said to  
5 themselves, this is the best deal we can get among the third  
6 parties out there and we're going to go ahead and we're going  
7 to contract with Las Vegas Sands because they provide that,  
8 and we've done that in good faith and at arm's-length.

9 Let's talk a little bit about that. Reciprocal  
10 administrative services are provided. They share the use of  
11 jets. They have engaged in reciprocal design, development,  
12 and construction. They have an agreement to use International  
13 Marketing Services to recruit VIP players for all of the  
14 casinos, both Sands China Limited, as well as Las Vegas Sands  
15 Asian players, as well. They have the Bally Tech deal, a Las  
16 Vegas deal. Jacobs routinely travelled to Las Vegas, Nevada,  
17 for meetings with Adelson and Levin with regard to Cirque du  
18 Soleil here in Las Vegas, Nevada, as well as Base  
19 Entertainment. And if all of that wasn't enough, you have  
20 this.

21 THE COURT: See, Ms. Glaser, you do have your own  
22 board.

23 MR. CAMPBELL: I saved the best for last, Ms.  
24 Glaser.

25 You have this, Your Honor. You have a \$68 million

1 fund associated with affiliate transfer advices. Now, I know  
2 that since the time that we've responded they changed the name  
3 of these, but let's choose to call it what they choose to call  
4 it and what truly it is. These reflected from Sands China  
5 players \$68 million in credit deposits and credits for  
6 gambling activities, not just for Sands China Las Vegas play  
7 -- or Sands China play, but for Las Vegas play, as well. Now,  
8 they now say, well, they weren't actually -- you know, we  
9 didn't actually courier them, what we did is we had entries,  
10 we had journal entries.

11 Let's stop. What they did say was that, we have  
12 these journal entries because we wanted to save our customers  
13 that were playing in both venues the time and trouble of going  
14 to a bank and going ahead and having these transferred by the  
15 bank by a wire transfer service, we went ahead and handled it  
16 for them. I get it. I understand why they did it. But this  
17 is not some guy sitting with that little green shade, okay,  
18 making a little entry in a book someplace. What this is is  
19 this is a combined, integrated, electronic transfer advice,  
20 which basically makes all this money equally available to both  
21 venues. And it's not de minimis. This is \$68 million. You  
22 know what this type of enterprise is. You have engaged in it  
23 every single year that you've probably been earning money.  
24 You walk into a bank, and this is what a bank does for you.  
25 Sands is acting as a bank for its customers, both in Macau and

1 in Las Vegas, Nevada, to the tune of \$68 million.

2 Now, I was on the other side of this argument to a  
3 much lesser degree when about 15 years ago I was arguing to  
4 the court, please don't let them sue Donald Trump personally  
5 here, please don't, don't, don't.

6 THE COURT: You didn't win that one, did you, Mr.  
7 Campbell?

8 MR. CAMPBELL: I didn't win that argument. For the  
9 same reason why I hope Ms. Glaser doesn't win this one. And  
10 that is that the Supreme Court said, Mr. Campbell, did Mr.  
11 Trump engage in a financial transaction here; and I had to  
12 candidly admit yes, he did, he engaged in a sole, very limited  
13 transaction in which he actually didn't do it, what he really  
14 did was he guaranteed it.

15 THE COURT: I'm not worried about that transaction.

16 MR. CAMPBELL: He guaranteed it. So --

17 THE COURT: Doesn't matter to me.

18 MR. CAMPBELL: I mean, that's -- it mattered to me  
19 at the time. Believe me, it mattered to Mr. Trump.

20 Irrespective of that, this is real money we're  
21 talking about here. \$68 million is real money in anybody's  
22 ledger. And one final point on this. This wasn't just one  
23 transfer. These transfers took place over a period of three  
24 years. By any definition I believe that constitutes  
25 consistent ongoing behavior of a significant nature here in

1 Las Vegas, Nevada.

2 THE COURT: I'd call it pervasive.

3 MR. CAMPBELL: I call it pervasive.

4 Then I'm not even going to argue the last point.

5 The last point was even if you didn't believe all that, we

6 still get to take discovery. I'll sit down, Your Honor.

7 THE COURT: Okay.

8 MS. GLASER: May I be heard briefly?

9 THE COURT: You may. Aren't you glad you've got  
10 your own board now?

11 MS. GLASER: I am. And it's sort of funny, but it's  
12 sort of not, because this man, Mr. Jacobs, lied to the Court  
13 and said money was couriered into this country. He lied to  
14 the Court, and he's not telling the truth in a lot of other  
15 respects, as well. This is not Sands China money, this is not  
16 Las Vegas Sands money.

17 THE COURT: It's players' money.

18 MS. GLASER: It's players' money, correct.

19 THE COURT: Yes. I understand that.

20 MS. GLASER: But it's not couriered. It is  
21 transferred for the convenience periodically, and it's --  
22 every month it's reported honestly and forthrightly and has  
23 nothing to other than facilitating somebody who wants to  
24 gamble in Las Vegas and somebody who might want to gamble in  
25 China. And let me say, Your Honor, that is something that is

1 done between subsidiaries and parents all the time. There's  
2 nothing nefarious about it. There's nothing that -- and we  
3 admit it. So -- and there's nothing improper about it. And,  
4 most importantly, it doesn't provide a basis for jurisdiction.

5 Your Honor, said jokingly that it was -- or perhaps  
6 not jokingly -- that it was pervasive. We don't run away from  
7 this. But this doesn't establish jurisdiction, and the  
8 caselaw doesn't say it does, period.

9 THE COURT: But it's a good business practice,  
10 right, for your marketing for both properties?

11 MS. GLASER: It is a good business practice. Not  
12 marketing. Actually not. It doesn't have much to do with  
13 marketing, honestly.

14 THE COURT: Okay.

15 MS. GLASER: But it is -- and it is a good,  
16 honorable business practice, but it's certainly not couriering  
17 cash --

18 THE COURT: Making your customers' lives easier.

19 MS. GLASER: -- as was suggested by --

20 THE COURT: Well, you're making your customers'  
21 lives easier; right?

22 MS. GLASER: It does.

23 THE COURT: Isn't that the goal?

24 MS. GLASER: It is the goal.

25 Now, there is another wills, Your Honor. There's a

1 lie about how there are board meetings. And Mr. Campbell,  
2 surprisingly, repeated it here. There has never been a board  
3 of directors meeting in Las Vegas ever, in the state of Nevada  
4 ever in connection with Sands China. Mr. Campbell knows it  
5 and -- perhaps I can't blame him, but certainly his client  
6 knows it. That's just not telling the truth to the Court.

7 THE COURT: So how many people would be here in Las  
8 Vegas during a board meeting for Sands China?

9 MS. GLASER: Depends.

10 THE COURT: But they'd be participating in a board  
11 meeting from there?

12 MS. GLASER: Telephonically.

13 THE COURT: Yes.

14 MS. GLASER: Because --

15 THE COURT: Or even by Web cam.

16 MS. GLASER: I'm sorry?

17 THE COURT: Or even by video conferencing.

18 MS. GLASER: They haven't done that yet, to my  
19 knowledge.

20 THE COURT: You're saying telephone conference.  
21 Okay.

22 MS. GLASER: For example, Mr. Adelson is -- happens  
23 to be the chairman of the board of Sands China. Nobody  
24 disputes that. I stipulate to that. Mr. Levin is now -- not  
25 at the time Mr. Jacobs was employed -- the acting, the acting

1 CEO of Sands China. There are three independent directors who  
2 have no prior affiliation with any Sands entity who are in the  
3 Far East and only in the Far East, and they don't come here  
4 ever. And they have three votes. The board is made up I  
5 believe of eight people. There's no question, and we don't  
6 dispute this, that Sands Las Vegas controls Sands China. But,  
7 Your Honor, not one case was provided to Your Honor where  
8 interaction between a 70 percent or 51 percent or 40 percent  
9 subsidiary/parent -- there isn't one case that you have been  
10 provided that says normal interaction facilitating, for  
11 example, customers from one to the other, none of that, there  
12 isn't one case that stands for the proposition therefore you  
13 have jurisdiction in this court over Sands China.

14           The irony, I guess, of a lot of this, a lot of the  
15 facts that were presented to Your Honor, the irony is,  
16 frankly, Your Honor, that all of the things that have been  
17 alleged, except for frankly their blatant lies, and I -- Mr.  
18 Campbell I think just made a mistake. He said there was no  
19 declaration on our side. Well, Ann Salt is not nothing, and  
20 she is a significant player in Sands China. She's a counsel  
21 over there, and she provided two, not one, not zero, two  
22 declarations.

23           THE COURT: Well, one's attached to the reply, and  
24 one's attached to the motion.

25           MS. GLASER: I'm sorry?



1 THE COURT: There are two affidavits or declarations  
2 that are in different places; right?

3 MS. GLASER: In ours.

4 THE COURT: Yeah.

5 MS. GLASER: Absolutely.

6 THE COURT: I read them.

7 MS. GLASER: One was in the original paper, one was  
8 in the reply paper.

9 THE COURT: I saw them.

10 MS. GLASER: Okay. The only comment I'm making is  
11 it was represented to Your Honor that nothing refuted Mr.  
12 Jacobs, and there was plenty to refute Mr. Jacobs's -- what we  
13 believe to be many of the misrepresentations, complete  
14 untruths, and some of them don't matter. And that's the point  
15 I want to focus on.

16 Put aside the untruths. We dealt with all of the  
17 untruths. Everything that wasn't refuted doesn't matter to  
18 the jurisdictional issue of whether Sands China should be  
19 before Your Honor in this court. The only -- and I sound like  
20 a broken record, and I apologize to Your Honor. The only  
21 document -- the only cause of action is the second cause of  
22 action, and the only document that is before Your Honor giving  
23 Mr. Jacobs options involving Sands China is a document that is  
24 required for Your Honor to apply Hong Kong law, which is -- as  
25 we have said to you before, is substantially different than

1 the law in this state. Thank you very much, Your Honor.

2 THE COURT: Thank you.

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

8 At some point in time I assume that we well have  
9 experts in Hong Kong law provide information so that an  
10 appropriate decision can be made on the stock option  
11 agreement. So the motion's denied, and your request to join  
12 in Mr. Peek's motion was denied when I denied his.

13 MS. GLASER: Understood.

14 THE COURT: Anything else?

15 MS. GLASER: Yes, Your Honor, I have one other --

16 MR. CAMPBELL: Just one housekeeping matter, Your  
17 Honor. Could we -- could we form --

18 THE COURT: Well, I've got a couple things for you  
19 if you want to --

20 MR. CAMPBELL: Yes, Your Honor. Your Honor, may we  
21 form -- may we file -- I'm drying up -- Form 10-Q with the  
22 Court --

23 THE COURT: No.

24 MR. CAMPBELL: -- as our Exhibit 24?

25 THE COURT: Not today. You can file a supplemental

1 briefly electronically.

2 MR. CAMPBELL: Okay. That's fine.

3 THE COURT: And I would also ask you to --

4 MR. CAMPBELL: Because we referred to it, that's  
5 all.

6 THE COURT: -- print out your boards and file those  
7 with your supplement so they are part of our record --

8 MR. CAMPBELL: Oh. I'd be happy to.

9 THE COURT: -- in case somebody decides to go to  
10 Carson City.

11 MR. CAMPBELL: Your Honor, there's one -- a second  
12 matter, and I was just going to ask -- maybe the Court's going  
13 to already do that. And generally --

14 THE COURT: Are you on our April Fool's Day meeting?

15 MR. CAMPBELL: I'm going to try.

16 MS. GLASER: Your Honor, I had -- I wanted to  
17 address that.

18 THE COURT: Well, it's on my list to check off  
19 before you leave.

20 Mr. Campbell.

21 MR. CAMPBELL: With respect to generally they're  
22 required to answer the complaint within 10 days after the time  
23 that the order was entered. If they would like more time -- I  
24 know that Ms. Glaser is from Los Angeles. She's probably  
25 going to be currying back and forth. If she needs more time,

1 we're happy to give it to her.

2 MS. GLASER: That doesn't mean I'm dumber or slower,  
3 Your Honor, just because I'm from Los Angeles.

4 MR. CAMPBELL: No, Your Honor. I did not mean to  
5 suggest that. I think Ms. Glaser is a little too sensitive.  
6 I was simply trying to extend her a professional courtesy.

7 THE COURT: All right. Wait. No. I'm going to  
8 start this case off like we didn't start off the Palms case.

9 MR. CAMPBELL: I think that's probably something  
10 unusual for her to experience coming from Los Angeles.

11 THE COURT: Okay. Remember in the Palms case how I  
12 said we were going to behave ourselves?

13 MR. PEEK: I haven't said a word, Your Honor.

14 THE COURT: I waited two months to say that. I'm  
15 just going to say it today. We're going to behave  
16 appropriately and nicely and respectfully to each other at all  
17 times.

18 Okay. So if you need an extension, Mr. Campbell  
19 just told you he'd be happy to give you an extension, just let  
20 him know.

21 MR. PEEK: Your Honor --

22 THE COURT: Do you have anything else before I go to  
23 the other side, Mr. Campbell?

24 MR. CAMPBELL: No, Your Honor.

25 THE COURT: Mr. Peek.

1 MR. PEEK: Your Honor, just with respect to that  
2 April 1st date, April Fool's Day, as the Court referred to  
3 it --

4 THE COURT: That's what day it is.

5 MR. PEEK: Yeah. Given the fact that these were  
6 denied, I think there's a whole lot more that we need to do to  
7 try to get ready for that Business Court conference.

8 THE COURT: Well, then let me tell Ms. Glaser --

9 MR. PEEK: And I would really --

10 THE COURT: -- what we do with those so she can then  
11 tell me, since she's not been here for those before --

12 MR. PEEK: Right.

13 THE COURT: -- how long she thinks.

14 Ms. Glaser, it's not a fun thing in Business Court,  
15 but in Business Court one of the things I try and do is I find  
16 ways to expedite getting the parties to a decision point,  
17 where they have enough information to make good decisions  
18 about resolving their case where they actually have control.  
19 Frequently at those conferences I ask questions of the clients  
20 who are present. In your case it may be general counsel or  
21 somebody from the company who come and provide answers as to  
22 document storage techniques, email availability, financial  
23 information, so that I can try and get an early exchange of  
24 information so that I can get you to a settlement conference  
25 that will actually be productive where the business people

1 have a chance to make decisions instead of spending a lot of  
2 money on lawyers and a lot of time in the courthouse, which  
3 does not help them run their businesses. So those conferences  
4 are not a -- very short -- they're usually a half hour or so  
5 conference, and we try and do substantive things at that  
6 conference. But I do require people from the company with  
7 information in their head to be here. Sometimes people bring  
8 more than one person. It's up to you guys. But, you know,  
9 sometimes it's a scheduling issue. So that's why before you  
10 left today and since you've not been here for one of those,  
11 although other people from your firm have, that I wanted to  
12 make sure you understood that you actually have to bring a  
13 real person from the company.

14 MS. GLASER: May I address that?

15 THE COURT: Yes.

16 MS. GLASER: Two things. One, I am going to be out  
17 of the country from March 29 to April 8, so I would very much  
18 appreciate it --

19 THE COURT: So we're going to reschedule the  
20 April 1st date.

21 MS. GLASER: That would be great. If we could do it  
22 the third week of April, that would be great, Your Honor, if  
23 that's satisfactory with Your Honor.

24 THE COURT: Is everybody free on April 15th? That's  
25 the third Friday.

1 MR. PEEK: Your Honor, as the Court knows -- I don't  
2 know what Clark County schools are like, but I know for my  
3 children --

4 THE COURT: Our County schools are out April 15  
5 through April 22.

6 MR. PEEK: Yeah. See, my children are out 11th  
7 through the 15th. And that's -- this is --

8 THE COURT: So do you guys want to go to the 22nd?

9 MR. PEEK: This is, thankfully, Your Honor, my year  
10 to have my children for spring break.

11 THE COURT: So is everybody --

12 MR. PEEK: So the next week would --

13 THE COURT: -- free on the 22nd of April?

14 MS. GLASER: That's fine with us, Your Honor.

15 MR. CAMPBELL: Court's indulgence for about  
16 15 seconds.

17 THE COURT: I'm waiting. I'm waiting. Somebody  
18 turn on your calendar.

19 MR. CAMPBELL: He's doing it, Your Honor.

20 MR. WILLIAMS: I had to turn my [inaudible] on, Your  
21 Honor.

22 MR. PEEK: John has to give him permission to turn  
23 on his --

24 THE COURT: John gave him permission.

25 MR. WILLIAMS: 22nd, Your Honor?

1 THE COURT: Yes.

2 MR. WILLIAMS: We're fine.

3 THE COURT: Okay. I'll see you the 22nd at  
4 9:00 a.m. You --

5 MS. GLASER: Your Honor, may I ask a question?

6 THE COURT: Yes. But hold on a second.

7 You do not have to bring people with settlement  
8 authority. When you read the order it will say, if you want  
9 to discuss settlement you can. You don't have to. It would  
10 be one of my things that I do at the end of the conference to  
11 set you for a settlement conference, as well as give you a  
12 discovery schedule and a trial date.

13 Now you had a question.

14 MS. GLASER: Just one. Your Honor -- and I'm -- is  
15 it possible for, for example, Ms. Salt, who is the most  
16 knowledgeable person about documents, et cetera, at Sands  
17 China -- she's in Hong Kong and Macau. May she participate by  
18 telephone?

19 THE COURT: No. But she can participate probably by  
20 video conference.

21 MS. GLASER: No problem at all.

22 THE COURT: Mr. Campbell, any problem with that?

23 MR. CAMPBELL: Your Honor, I would have no problem  
24 with that at all.

25 THE COURT: I just don't do telephone. It's really



1 hard to do the communication by telephone. By video  
2 conference it's much easier. It's not that hard to do. Mr.  
3 Peek's done it with people in Australia before.

4 MR. PEEK: And, Your Honor, because you know the  
5 time difference is -- can we try to find -- I don't remember  
6 exactly what the time differences are, but I know it might be  
7 the middle of the night for Ms. Salt if we start at 9:00  
8 o'clock in the morning.

9 THE COURT: Well, no. On the board meeting agenda  
10 it was a 9:00 a.m./6:00 p.m. thing. Right? 9:00 a.m. in  
11 Vegas is 6:00 p.m. there.

12 MS. GLASER: I think that is right.

13 THE COURT: I've got some people nodding at me that  
14 I guessed right from looking at the agenda.

15 MS. GLASER: It's the other way. It's actually --  
16 when it's 6:00 p.m. -- because we've done conference calls.  
17 When we did 6:00 p.m. here, it's 9:00 a.m. the next morning.

18 UNIDENTIFIED SPEAKER: 9:00 a.m. is midnight.

19 THE COURT: Well, I made Mr. Peek's guy do it at  
20 3:00 in the morning.

21 MR. PEEK: She actually -- I remember that, Your  
22 Honor.

23 THE COURT: I told him he could not wear his  
24 pajamas, he had to put a suit on. And he came.

25 MS. GLASER: Your Honor, is it possible for us to

1 meet and confer with --

2 MR. PEEK: Your Honor, like at 4:00 o'clock in the  
3 afternoon?

4 THE COURT: The problem I have is my trial schedule,  
5 Mr. Peek. As you know, that is difficult.

6 MR. PEEK: 3:00 o'clock?

7 MS. GLASER: We'll do it as late as Your Honor --

8 THE COURT: Why don't you guys see if you can come  
9 up with a time. I would prefer to do it around 1:00 o'clock  
10 so I can have my trial come back a little later, if that's  
11 possible.

12 MS. GLASER: I understand.

13 THE COURT: If that would work, the later I go in  
14 the afternoon, the more disruptive it is to my trial.

15 MS. GLASER: Understood.

16 THE COURT: Okay. Anything else on your case today?

17 MR. PEEK: Just a moment, Your Honor.

18 (Pause in the proceedings)

19 THE COURT: 11:00 at night, Mr. Jones?

20 MR. JONES: No. 8:00 a.m. here.

21 MS. GLASER: He's saying 11:00 at night in Hong  
22 Kong.

23 THE COURT: I don't do 8:00 very well, Mr. Jones.  
24 You know that.

25 MR. JONES: Apologies, Your Honor.

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MS. GLASER: I think we'll --

THE COURT: I do it sometimes, but not well.

(Pause in the proceedings)

MS. GLASER: Your Honor, 9:00 o'clock in the morning  
is midnight there, and we'll do it.

THE COURT: All right.

MR. PEEK: I'm good, Your Honor. 9:00 o'clock.

THE COURT: Okay. Ms. Glaser, Mr. Peek and Mr.  
Jones can probably tell you who to talk to here about  
arranging the video conference so they have the right firewall  
issues under control.

MS. GLASER: Thank you, Your Honor.

THE COURT: Okay.

MR. CAMPBELL: Thank you, Your Honor.

THE COURT: Have a nice day.

MR. PEEK: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 12:15 A.M.

\* \* \* \* \*

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 HOYT, TRANSCRIBER

3/17/11

DATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Dec 29 2015 04:25 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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: 69090

District Court Case Number  
A627691-B

**MOTION TO STRIKE  
REAL PARTY IN  
INTEREST'S "NOTICE OF  
MOOTNESS" AND TO  
SUBMIT AND GRANT  
PENDING PETITION FOR  
WRIT OF PROHIBITION  
OR MANDAMUS RE  
ORDER STRIKING VML'S  
PEREMPTORY  
CHALLENGE OR IN THE  
ALTERNATIVE, TO  
PERMIT DISMISSAL  
PROVIDED IT IS WITH  
PREJUDICE**

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

Petitioner Venetian Macau Ltd. ("VML"), a Macanese corporation doing business exclusively in the Chinese Special Administrative Region ("SAR") of Macau, respectfully requests that the Court submit for decision the pending writ petition, which Jacobs elected not to answer despite seeking additional time to do so, and then to grant it. Alternatively, and for the reasons discussed below, VML asks that if Jacobs is permitted to avoid complying with the Court's order to answer VML's petition by dismissing against VML, the dismissal should be "with prejudice."

### *Context for This Motion*

On November 3, 2015, VML filed a writ petition challenging Judge Mark Denton's order striking VML's peremptory challenge of Judge Elizabeth Gonzalez, as well as an emergency motion to stay the district court action pending consideration of the petition. On November 4, 2015, this Court issued an order granting a stay of the proceedings as to VML, and directed real party in interest, Steven C. Jacobs ("Jacobs"), to answer the petition within 30 days.

Jacobs did not answer when ordered. He sought and obtained a two week extension to answer under NRAP 26(b)(1), extending his time to answer to December 18, 2015. On that extended date, Jacobs did not file his answer. Instead, he filed a "Notice of Mootness," claiming that because he had just filed a voluntary dismissal, without prejudice, of VML in the district court, in contravention of this Court's stay order, "VML's Writ Petition is moot."

Jacobs's "Notice of Mootness" exhibits the same "heads I win-tails you lose" gamesmanship that has characterized his litigation tactics in this Court over the past two years of writ proceedings, and it should be

condemned. As the Court may recall, VML was added as a defendant on September 18, 2015, when the challenged judge granted Jacobs's belated motion for leave to file a *fifth* amended complaint. Ex. 4, Sept. 18, 2015 Hrg. Tr. at 9 - 10. VML's addition to this lawsuit came over four years *after* Jacobs persuaded the challenged judge that VML – the entity that provided his paychecks and employee benefits while he worked in Macau -- was neither an indispensable nor a necessary party to this litigation and *should not be a party*. Ex. 1, Mar. 15, 2011 Hrg. Tr. at 23 - 36. Because it is to his procedural advantage to do so, Jacobs now would dismiss VML as a party that *he added*, but do so "without prejudice," a bye that would allow him to return later and sue his former foreign employer when it suits his strategic purposes.

Jacobs should not be given this indulgence. In 2011, he successfully maintained that VML – his employer – was not a necessary party in his wrongful termination suit – this lawsuit. Over four years later, he added VML, based on facts known to him and the district court that have not changed in the past four-and-a-half years.<sup>1</sup> Now, as 2015 becomes 2016, he again reverses course to avoid this Court's consideration of a statutory peremptory challenge issue that it deemed worthy of writ consideration last month.

VML requests the Court to resolve the petition on its merits. A decision on the merits of the pending petition will benefit all litigants who are faced with such tactics. For Jacobs, though, a decision on the merits risks losing a district court judge that has consistently ruled in his favor.

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<sup>1</sup> The district court, over objection, accommodated this questionable tactic of adding VML four years after the fact, but in so doing remarked that the timetable for getting prepared for trial would likely require extending.

Jacobs's gamesmanship has caused VML significant expense. If he is to be permitted to voluntarily and tactically dismiss VML as a party, the Court should order that dismissal must be with prejudice.

CARBAJAL & MCNUTT

/s/ Dan McNutt  
Daniel R. McNutt, Bar No. 7815  
Matthew C. Wolf, Bar No. 10801  
625 South Eighth Street  
Las Vegas, NV 89101  
Attorneys for Petitioners

## POINTS AND AUTHORITIES

### I. INTRODUCTION

This Motion asks the Court to consider whether a voluntary dismissal of VML filed in the district court has any effect while all proceedings against this entity are stayed by Order of the Court pending disposition of this writ on its merits. VML also asks the Court to consider whether Jacobs, who has been ordered to answer the writ petition and obtained an extension of time from the Court to do so, may unilaterally decline to answer and declare that the writ is moot. VML suggests the answer to each question should be “no.” A voluntary dismissal of this writ petition and VML--without prejudice--would be unjust.<sup>2</sup> In the alternative, VML asks that if Jacobs is going to dismiss his case against VML after nearly five years of toying with it, the dismissal should be ordered with

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<sup>2</sup> Jacobs issued a check reimbursing VML for the district court filing fee and the filing fee to file its writ petition before this Court as provided in Nev. R. Civ. P. 41. However, this rule is not just in a case like this, where Jacobs' capricious pleading prevented VML from early participation in the case, and has now caused VML to spend thousands of dollars on attorney's fees and costs to defend its right to a peremptory challenge both here and before the district court.



prejudice. VML (who was rejected as a necessary party) and the remaining defendants deserve assurance that the conclusion of this case brings closure to the underlying dispute.

This relief is necessary because unless the dismissal is with prejudice, VML will be in the same position if, or more likely when, Jacobs decides to drag it back into this litigation. Jacobs's early, now recanted insistence that VML had no role in this litigation has already precluded VML from early participation in this case, and if Jacobs has now concluded he has no claims against VML, he should be forced to live with that decision so that VML can have closure on this matter. More importantly, relief is also necessary because the Court has already determined the questions raised by the writ petition are ones worthy of consideration. A decision on the merits of the pending writ will clarify for all Nevada litigants whether a later added party is entitled to the same rights as an original party or whether, as Jacobs would cast VML, a later-added party is a second class citizen whose procedural rights are subject to being caught up in litigation gamemanship and trampled with impunity by the gamemaster.

## **II. RELEVANT FACTS**

After Jacobs filed this action in Las Vegas for his alleged wrongful termination in Macau, defendant Las Vegas Sands Corp. ("LVSC") moved to dismiss this case for his failure to join an indispensable party, his employer, VML. Jacobs aggressively fought and defeated the motion directed to his employer by persuading the challenged judge that VML was *neither* a necessary nor an indispensable party. Ex. 1.

Years later, on June 2, 2015, *after* he obtained an accelerated trial setting from the challenged judge—not to mention virtually complete, one-

sided merits discovery under the guise of jurisdictional discovery--Jacobs moved to add VML as a party. Ex. 2, Mot. for Leave to File Fourth Am. Compl. The district court denied his motion because trial on the merits was close at hand and discovery even among the existing parties had not yet taken place. The judge determined there was insufficient time to add VML and hold the expedited trial in October 2015. Ex. 3, June 18, 2015 Hrg. Tr. re Mot. to Amend.

After the expedited trial date was vacated on July 1, 2015, as a consequence of an order of this Court in a previous writ proceeding, Jacobs did not immediately renew his motion to add VML, as even the district court expected. Rather, he waited more than two months while he obtained additional discovery advantages before moving to file his Fifth Amended Complaint on September 15, 2015, adding VML. VML was purportedly served in Las Vegas on October 16, 2015, and the company immediately filed a peremptory challenge of Judge Gonzalez, as SCR 48.1 permits, and promptly thereafter moved to quash service of process and to dismiss for lack of personal jurisdiction. The case was reassigned to Judge Mark Denton. Jacobs then filed an "emergency" motion to strike VML's peremptory challenge and Judge Denton granted it, based on a single sentence of dicta in this Court's decision in *Gallen v. Eighth Judicial District Court*, 112 Nev. 209, 911 P.2d 858 (1996), which neither this Court nor any other court has since cited or followed. Ex. 5, Oct. 26, 2015 Hrg Tr.; Ex. 6, Oct. 27, 2015 Order.

VML then challenged the order granting the motion to strike by a writ petition filed with this Court on November 3, 2015. The following day, on November 4, 2015, this Court ordered Jacobs to answer the writ

petition within thirty days and stayed the underlying litigation as to VML. That stay order remains in place.

On the day his answer was due, Jacobs sought and obtained a two week extension under NRAP 26. *See* Dec. 4, 2015 Order. But rather than file his answer as he was ordered to do, Jacobs filed an NRCP 41(a) voluntary dismissal in the district court, and then declared to this Court that the writ petition is "moot." In executing this gamesmanship, Jacobs overlooked completely the Court's November 4, 2015 stay order. Neither the district court nor Jacobs can, without VML's consent, alter the proceedings in regard to VML while this writ petition is pending and the stay order is in place. Because Jacobs elected to ignore the order and defaulted in filing an answer to the writ petition, it should be treated as unopposed and granted.

### **III. ARGUMENT**

#### **A. The District Court is Divested of Jurisdiction over VML by the Stay Order.**

The Court's November 4, 2015 stay order says "the proceedings below against *petitioner only* are stayed pending further of this court." (emphasis in original). Order at 1. It is undisputed that a district court may not act in a case that this Court has stayed unless and until the stay is lifted. *See, Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006), quoting *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) (confirming that "a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court"). No order lifting the Court's November 4 stay has been issued. Thus, the district court lacks jurisdiction to entertain any matter concerning VML, including Jacobs's purported voluntary dismissal.

The same November 4 order also provided that the "real party in interest, on behalf of respondents, shall have 30 days from the date of this order within which to file an answer, including authorities." Order at 2. The language of the order is not discretionary or unclear: a "notice of mootness" is not "an answer, including authorities." Jacobs had no right to unilaterally disregard the Court's order and not file the answer as ordered without first seeking appropriate relief from the Court. *See, e.g.,* NRAP 42 (providing that the Clerk may dismiss an appeal *or other proceeding* if *the parties* file a signed dismissal specifying how costs are to be paid and pay any fees that are due.") (emphasis added). VML was not consulted nor did it agree to dismissal of this writ petition so Jacobs can later add VML again or assert claims against it VML in another lawsuit in the district court.

In opposing VML's emergency motion to stay in this writ proceeding, Jacobs set out his unavailing arguments against the writ petition being considered by the Court. Apparently, he had nothing further to say to assist the Court, because he disregarded the November 4 Order. As discussed further below, Jacobs's failure to file an answer as ordered should be construed as an admission that VML's writ petition is meritorious and should be granted.

**B. Jacobs's Election to Default Should be Treated as a Non-Opposition to VML's Writ Petition.**

The Court ordered an answer to VML's petition because it determined that after reviewing the issues and documents in VML's writ, and Jacobs's opposition to a stay, "an answer to the petition will assist the court in resolving this matter." Order at 1 -2. If Jacobs were the petitioner, he would have had the right to abandon the proceeding he commenced, *see Breeden v. Eighth Judicial Dist. Ct.*, 131 Nev. Adv. Op. 12, 343 P.3d 1242

(2015), but he is not. Jacobs is the party who must answer, as ordered. Rather than answer, he took the gambit of declaring the petition moot and treated the Court's order directing an answer as meaningless. The Court should conclude from this defiant non-response that Jacobs has no answer to VML's petition on the merits.

An extraordinary writ is an extraordinary remedy that is available when an aggrieved party has no other plain, speedy, and adequate legal remedy. NRS 34.170; NRS 34.330; *Smith v. Eighth Judicial Dist. Ct.*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). The Court has previously held that "[e]xtraordinary writ petitions are the appropriate means to challenge district court decisions concerning peremptory challenges." *Morrow v. Eighth Judicial Dist. Court of Nev.*, 129 Nev. Adv. Op. 10, 294 P.3d 411, 413 (Nev. 2013) (citing *State Engineer v. Truckee-Carson Irrig.*, 116 Nev. 1024, 1029, 13 P.3d 395, 398 (2000)). Jacobs should not be permitted to interdict the decision-making authority of this Court in a writ proceeding by declining to answer as he was directed to do.

VML respectfully asks that its writ petition be submitted for decision and granted.

### **C. Policy Considerations Favor Submitting the Writ for Decision.**

Nevada Supreme Court Rule 48.1 provides each party or side, as a matter of right, one change of judge by peremptory challenge. The rule imposes deadlines on existing parties for exercising peremptory challenges and reasonably tie those deadlines to events for which the existing parties will receive notice. *See Morrow*, 129 Nev. Adv. Op. 10, 294 P.3d at 413 (time to file peremptory challenge ran from notice to that party, which could pre-date first appearance). "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*, 107 Nev. at 677, 818 P.2d at 852.

As set forth in the writ petition, a party added to a case after it is underway has the same reasons for concern about fairness and bias of judicial officers as parties who are present at the inception of the case may have. There is no good reason in law to permit Jacobs to deny VML its SCR 48.1 right – which is designed to address these concerns – by endorsing Jacobs's capricious procedural and pleading choices to define the rights of the late-added defendant, VML.

Judicial policy considerations are of particular import since Jacobs for over 4 years spurned VML as a party before changing paths to insist VML belonged in the case from the outset. VML's pending writ petition has been deemed worthy of consideration by the Court, and there is value in having the novel and important SCR 48.1 issue it presents decided.

Whether or not late-added parties are entitled to the same rights to a peremptory challenge is an issue that is ripe for decision now and should be decided, for the benefit of VML and all other Nevada litigants who face tactics such as those deployed by Jacobs here.

**D. If Dismissal by Jacobs is Permitted to Render this Writ Petition Moot, The Dismissal Should Be with Prejudice.**

Plaintiff added VML as a party four years and five months after having persuaded the Court, over the defendants' objections, 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." *See Ex 1.* Rule 41 permits a plaintiff to voluntarily dismiss a defendant upon repayment of the defendant's filing fees. "Unless otherwise stated . . . the dismissal is without prejudice, except that a notice of dismissal operates

as an adjudication on the merits when filed by a plaintiff who has once dismissed in any court . . . an action based on or including the same claim." NRCP 41(a)(1). Jacobs does not squarely fall within the ambit of this rule, insofar as the proceedings five years ago over joining VML as a party are concerned. Nonetheless, policy considerations favor construing Jacobs's earlier rejection of VML as his exercise of his prerogative to dismissal without prejudice. It would be unjust to permit him to reject VML, then add VML, then again reject VML, only to add it later when it suits his fancy. The dismissal should be with prejudice.

If the Court is inclined to give effect to Jacobs's voluntary dismissal, it should at minimum require that the dismissal be with prejudice. Jacobs's gamesmanship has resulted in the unreasonable waste of precious judicial resources, as well as substantial but unnecessary attorneys' fees and costs arguing over the inclusion of VML as a party and then defending its right to a peremptory challenge. Unless he provides VML some finality from the claims in this case, the writ petition should be decided to avoid the unnecessary time and expense that will be required when Jacobs decides to again add VML, as he would be free to do unless the dismissal is with prejudice.

#### **IV. CONCLUSION**

VML respectfully requests the Court to consider and grant its writ petition.

At minimum, in the alternative, VML asks that if Jacobs is permitted to voluntarily dismiss, such dismissal should be with prejudice.

Respectfully submitted,  
CARBAJAL & MCNUTT

/s/ DAN MCNUTT

Daniel R. McNutt, Bar No. 7815  
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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 **MOTION TO STRIKE REAL PARTY IN INTEREST'S "NOTICE OF MOOTNESS" AND TO SUBMIT AND GRANT PENDING PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDER STRIKING VML'S PEREMPTORY CHALLENGE OR IN THE ALTERNATIVE, TO PERMIT DISMISSAL PROVIDED IT IS WITH PREJUDICE** to be delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

### **VIA HAND DELIVERY**

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

### **COURTESY COPY**

Hon. Elizabeth Gonzalez  
Eighth Judicial District Court of  
Clark County, Nevada  
Regional Justice Center  
200 Lewis Avenue  
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DATED this 29<sup>th</sup> day of December, 2015.

By: /s/ Lisa Heller