

# EXHIBIT C

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**OPPS**  
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1 Limited ("VML")—an entity that has been owned and controlled by LVSC through one vehicle or  
2 another at all times relevant to these proceedings. LVSC's Motion is premised on the notion that  
3 Jacobs was an employee of VML, not LVSC, and relies principally upon two documents to support  
4 this assertion: (i) an Agreement for Services that was entered into between VML and Jacobs  
5 effective May 1, 2009; and (ii) a Letter of Appointment for Executive (the "Appointment Letter")  
6 executed by Jacobs and VML on or about June 16, 2009. *See* Mot. at Exs. B and C. LVSC's  
7 reliance on these documents for the propositions advanced in its Motion is wholly misleading.  
8

9       The Agreement for Services and the Appointment Letter upon which LVSC relies did not  
10 establish an employer-employee relationship between Jacobs and VML. To the contrary, VML  
11 executed a document on July 3, 2009 expressly acknowledging that Jacobs was still "discussing [his]  
12 employment contractual terms with the parent company Las Vegas Sands Corp.," that the  
13 Agreement for Services and Appointment Letter served "the sole and exclusive purpose of applying  
14 for a Macau work permit," and that, with the exception of paying Jacobs' salary and reimbursing his  
15 expenses, these "Interim Agreements" could not "be used for any other purpose." Given that VML's  
16 July 3 letter to Jacobs completely eviscerates the positions advanced by LVSC—including the sworn  
17 declaration of VML employee Cheong, Kuok Kuan Paulo—it is hardly surprising that the gaming  
18 behemoth not only failed to provide Her Honor with a copy, but also failed to mention the  
19 document's very existence.  
20

21       The reality is that Jacobs' employment was governed by a term sheet executed on or about  
22 August 3, 2009 by Jacobs and Michael Leven, LVSC's President and Chief Operating Officer. The  
23 term sheet makes no mention of VML and clearly provides that Jacobs would be reporting to the  
24 "President and COO LVS" (*i.e.*, Leven) or "CEO/Chairman LVS" (*i.e.*, Sheldon G. Adelson).  
25 Indeed, it was the Compensation Committee for LVSC, not VML, which approved Jacobs' term  
26 sheet. LVSC's Vice-President and Deputy General Counsel, moreover, expressly advised Jacobs in  
27  
28



1 writing on August 7, 2009 that he was becoming "an executive officer of LVS" and, as such, was  
2 subject to reporting requirements of the United States Securities and Exchange Commission  
3 ("SEC"). LVSC did, in fact, file documents with the SEC identifying Jacobs as an "Officer" of  
4 LVSC. Finally, when questioned about Jacobs' termination in an LVSC earnings call on July 28,  
5 2010, Leven—in the presence of Adelson—made no mention of any purported employment contract  
6 between Jacobs and VML but instead acknowledged that Jacobs "had a signed term sheet."

8 Simply put, Jacobs' employment relationship was governed by the term sheet he executed  
9 with LVSC. That LVSC opted to route Jacobs' salary and benefits through VML in no way  
10 diminishes the control LVSC had over Jacobs' employment and certainly does not transform VML  
11 into a necessary, let alone, indispensable party under NRCP 19.

## 13 II. FACTUAL BACKGROUND

### 14 A. Parties/Players

15 1. Prior to his employment relationship with LVSC, which will be detailed below,  
16 Plaintiff Steven Jacobs served as the President and Chief Executive Officer of Vagus Group, Inc.  
17 ("VGI"), an international management services company specializing in travel and hospitality.  
18 Through VGI, Jacobs held a variety of senior executive roles at various companies, including Louvre  
19 Hotels, Hyatt, and Best Western International.<sup>1</sup>

21 2. LVSC is a corporation organized and existing under the laws of the State of  
22 Nevada with its principal place of business in Clark County, Nevada. LVSC is publicly traded on  
23 the New York Stock Exchange. From or about June 2002 through or about September 2009,  
24 LVSC (and/or its corporate predecessors) was the parent company of VML, the holder of a  
25

26  
27  
28 <sup>1</sup> See Affidavit of Steven C. Jacobs ("Jacobs Afft.") at ¶ 3, attached hereto as Exhibit 1.



1 subconcession granted by the Macau government that allows Defendants to conduct gaming  
2 operations in the Macau Special Administrative Region of China.<sup>2</sup>

3 3. In or about Fall 2009, LVSC spun off its Macau holdings into a new company,  
4 Defendant Sands China, Ltd. ("SCL"). SCL conducted an initial public offering on the Hong  
5 Kong Stock Exchange on November 30, 2009. As a result of this corporate reorganization,  
6 LVSC remained the owner of more than 70% of SCL's outstanding shares, and SCL became the  
7 90% owner of VML. Pursuant to Macau law, 10% of VML's shares must be held by a Macau  
8 citizen. Nevertheless, SCL—like LVSC before it—still exercises 100% of the voting and  
9 economic rights associated with VML. SCL's public filings likewise acknowledge that SCL, and  
10 thus VML, is still subject to the control of LVSC.<sup>3</sup>

11 4. At all relevant times herein, Sheldon G. Adelson ("Adelson") has been the  
12 Chairman of the Board and Chief Executive Officer of LVSC. Adelson is likewise the Chairman  
13 of the Board of SCL.<sup>4</sup> Upon information and belief, Adelson did not hold an officer or director  
14 position with VML at any time during Jacobs' tenure with LVSC (*i.e.*, March 2009 through July  
15 2010).<sup>5</sup>

16 5. Michael Leven ("Leven") has served on LVSC's Board of Directors since 2004  
17 and became LVSC's President and Chief Operating Officer on March 11, 2009. After Jacobs was  
18

19  
20  
21  
22 <sup>2</sup> See Declaration of J. Colby Williams ("Williams Decl.") authenticating various exhibits,  
23 attached hereto as Exhibit 2. See also, Prospectus of Sands China, Ltd. at pp. 76-79, true and  
24 correct excerpts of which were obtained at [www.sandschinaltd.com](http://www.sandschinaltd.com) and are attached hereto as  
25 Exhibit 3.

26 <sup>3</sup> See Exhibit 3 at pp. 48, 76-80.

27 <sup>4</sup> See LVSC Corporate Overview obtained at [www.lasvegassands.com](http://www.lasvegassands.com), a true and correct  
28 copy of which is attached hereto as Exhibit 4. See also, SCL Corporate Governance obtained at  
[www.sandschinaltd.com](http://www.sandschinaltd.com), a true and correct copy of which is attached hereto as Exhibit 5.

<sup>5</sup> See Jacobs Afft. at ¶ 6.



1 terminated, Leven became SCL's Chief Executive Officer on July 23, 2010. On July 27, 2010,  
2 Leven was appointed Executive Director of SCL's Board of Directors. Leven holds both of these  
3 positions with SCL today.<sup>6</sup> Upon information and belief, Leven did not hold an officer or  
4 director position with VML at any time during Jacobs' tenure with LVSC (*i.e.*, March 2009  
5 through July 2010).<sup>7</sup>

7 **B. Jacobs' Employment Relationship With LVSC**

8 6. Leven and Jacobs have known each other for many years having worked together  
9 as executives at U.S. Franchise Systems in the 1990's and in subsequent business ventures  
10 thereafter. After Leven received an offer from LVSC's Board to become the company's  
11 President and COO in March 2009, Leven reached out to Jacobs to discuss the opportunity and  
12 the conditions under which he should accept the position. One of the conditions included a  
13 commitment from Jacobs to join Leven for a period of 90-120 days to "ensure my [Leven's]  
14 success."<sup>8</sup>

16 7. Jacobs travelled to Las Vegas in March 2009 where he met with Leven and  
17 Adelson for several days to review LVSC's Nevada operations. While in Las Vegas, the parties  
18 agreed to a consulting agreement between LVSC and Jacobs' company, VGI. Jacobs then began  
19 working for LVSC restructuring its Las Vegas operations.<sup>9</sup>

23 <sup>6</sup> See Exhibits 4 and 5. See also, LVSC Form 8-K dated September 14, 2010 (incorporating  
24 SCL Interim Report 2010), true and correct excerpts of which are attached hereto as Exhibit 6.  
25 Prior to becoming an Officer and Director of SCL in July 2010, Leven had only been a special  
26 advisor to SCL's Board. *Id.*

26 <sup>7</sup> See Jacobs Afft. at ¶ 7.

27 <sup>8</sup> See Jacobs Afft. at ¶ 8.

28 <sup>9</sup> See Jacobs Afft. at ¶ 9. See also, E-mail chain regarding "Vagus Group-LVSC-Consulting  
Agreement" a true and correct copy of which is attached hereto as Exhibit 7 (emphasis added).



1           8.       Jacobs, Leven, and Adelson subsequently travelled to Macau to conduct a review  
2 of LVSC's operations in that location. While in Macau, Leven told Jacobs that he wanted to hire  
3 him to run LVSC's Macau operations. Jacobs and Leven returned to Las Vegas after spending  
4 approximately a week in Macau. Jacobs then spent the bulk of the next 2-3 weeks working on the  
5 Las Vegas restructuring program and also negotiating with Leven regarding the latter's desire to  
6 hire him as a full-time executive with the company and the terms upon which Jacobs would agree  
7 to do so.<sup>10</sup>

9           9.       LVSC, through Leven, announced on May 6, 2009 that Jacobs would become the  
10 interim President of Macau Operations. In order to enable Jacobs to obtain a Macau work permit,  
11 Jacobs and VML executed two documents: (i) an Agreement for Services, and (ii) a Letter of  
12 Appointment for Executive.<sup>11</sup> The Agreement for Services, which reflects an effective date of  
13 May 1, 2009, memorialized Jacobs' initial status as an independent contractor of VML. The  
14 Appointment Letter, which is dated June 16, 2009, memorialized an offer of employment.<sup>12</sup>  
15 These are the two documents upon which LVSC relies to contend that Jacobs was a VML  
16 employee.  
17

18           10.       On July 3, 2009, Antonio Ferreira, VML's Managing Director and the same person  
19 who signed the aforementioned Agreement for Services and Appointment Letter, sent Jacobs a  
20 side-letter that utterly dispels the fiction that said documents rendered Jacobs a VML employee.  
21 The letter states in pertinent part:  
22

- 23                   •       "Venetian Macau Limited ("the Company") understands  
24                   that you are currently discussing your employment

25           <sup>10</sup>       See Jacobs Afft. at ¶ 10.

26           <sup>11</sup>       See Mot. at Exs. B and C. For the convenience of the Court, true and correct copies of the  
27 Agreement for Services and the Appointment Letter are attached hereto respectively as Exhibits 8  
28 and 9.

<sup>12</sup>       See Exhibit 8 at ¶¶ 3-4; Exhibit 9.



1 contractual terms with the parent company, *Las Vegas*  
2 *Sands Corp.*" (emphasis added).

- 3 • *The Company and You hereby acknowledge and accept*  
4 *that the Letter of Appointment for Executive and the*  
5 *Agreement for Services signed by the Company and You*  
6 *("Interim Agreements") will serve the sole and exclusive*  
7 *purpose of applying for a Macau work permit and that*  
8 *with the exception of paying the salary and reimbursing*  
9 *all personal expenses, the terms and conditions therein*  
10 *are non-binding and non-enforceable, on any grounds*  
11 *and cannot be used for any purposes whatsoever.*  
12 (emphasis added).
- 13 • The Company and you hereby agree that your employment  
14 relationship with the company *will be ruled exclusively by*  
15 *the terms and conditions forming part of an employment*  
16 *agreement being currently negotiated* and to be agreed  
17 upon and executed in due time, which agreement shall  
18 replace and supersede in its entirety the Interim  
19 Agreements. (emphasis added).<sup>13</sup>

20 11. Jacobs required the side-letter because he was familiar with the high turnover rate  
21 of executives who had worked for LVSC and its subsidiaries in the past coupled with Adelson's  
22 well-established reputation for dishonoring contractual obligations owed by his companies. In  
23 light of the foregoing, Jacobs (presciently) wanted his employment agreement to be with the U.S.-  
24 based LVSC so that he would be able to pursue any legal relief in the United States in the event  
25 he was to meet a similar fate. Jacobs specifically provided a copy of the side-letter to Leven for  
26 his approval before it was executed.<sup>14</sup>

27 <sup>13</sup> A true and correct copy of the side-letter dated July 3, 2009 is attached hereto as Exhibit  
28 10. The side-letter contains a confidentiality provision. *See id.* Jacobs is willing to treat the side-  
letter as confidential in this litigation provided the requirements set forth in Part VII of the  
Nevada Supreme Court Rules, titled *Rules Governing Sealing and Redacting Records*, are met.  
Because LVSC has, however, already made public various documents titled "Private &  
Confidential," *see, e.g.,* Mot. at Ex. C, as well as Jacobs' personal information such as his former  
pay stubs and home address, *see id.* at Ex. D, it is clear LVSC is not interested in any sort of  
protective order for these materials.

<sup>14</sup> *See Jacobs Afft. at ¶ 13. See also, e-mail chain between Jacobs and Leven dated 7/1-2/09,*  
a true and correct copy of which is attached hereto as Exhibit 11.





12. Jacobs and Leven continued to negotiate the terms of Jacobs' employment through early-August 2009. On August 3, 2009, Jacobs sent Leven an e-mail containing a counterproposal of terms and advising that a final decision, one way or the other, was necessary within a matter of days. Leven responded as follows:

*This is ok[.] I have forwarded to comp comm. They already know the details[.] [W]ill the letter and signature be good enough or do you want me to put it in another form[?] [I]f the lawyers get involved we will never get it done[.] I think the letter is good enough. I don't think I can go through two lawyers[.] [T]his should protect you but I can draft contract if you wish but if it goes to [H]oward[.] it will take forever. What do you think[?]* (emphasis added).

Leven signed the e-mail as "President and Chief Operating Officer" of LVSC.<sup>15</sup>

13. Jacobs agreed with Leven that a long-form contract was not necessary to formalize his employment relationship with LVSC provided the parties signed off on the Offer Terms and Conditions (the "Term Sheet") that had been agreed upon. Leven and Jacobs signed the Term Sheet on or about August 3, 2009.<sup>16</sup> The Term Sheet makes clear that Jacobs would be reporting to "President and COO LVS" (i.e., Leven) or "CEO/Chairman LVS" (i.e., Adelson). The Term Sheet does not mention VML; nor does it contain any forum selection clause requiring litigation in Macau. It does, however, provide that Jacobs was to receive 500,000 stock options in LVSC "on the date of hire." These options were in addition to 75,000 LVSC options previously

<sup>15</sup> A true and correct copy of the subject e-mail chain is attached hereto as Exhibit 12.

<sup>16</sup> A true and correct copy of the Term Sheet is attached hereto as Exhibit 13. The Term Sheet contains material differences from the Appointment Letter including, but not limited to, a 3-year term (as opposed to 2 years) and benefits flowing from a "Not For Cause" termination. Compare *id.* with Exhibit 9.



1 awarded to Jacobs in June 2009 pursuant to a written agreement with LVSC that is expressly  
2 governed by Nevada law.<sup>17</sup>

3  
4 14. On August 6, 2009, Leven forwarded an e-mail to Jacobs confirming that LVSC's  
5 Compensation Committee "*has approved the term sheet for Steve's contract.*"<sup>18</sup> (emphasis  
6 added). The next day, LVSC's then-VP and Deputy General Counsel, Gayle Hyman, sent Jacobs  
7 an e-mail stating that once he signed the employment agreement, he "*will become an executive*  
8 *officer of LVSC*" (emphasis added) and, thus, would be subject to certain SEC reporting  
9 requirements regarding his LVSC stock ownership.<sup>19</sup>

10  
11 15. Approximately one month later, Ms. Hyman again wrote to Jacobs and stated that  
12 "SGA and Mike decided to make the CEO's of the company's significant subsidiaries '*executive*  
13 *officers' of LVSC* for SEC reporting purposes." (emphasis added). She also provided Jacobs  
14 with a "Form 3" to complete for filing with the SEC.<sup>20</sup> The Form 3, which identified Jacobs as an  
15 "Officer" of LVSC was, in fact, subsequently filed with the SEC and reported the 575,000 stock  
16 options Jacobs held in LVSC.<sup>21</sup>

17  
18 16. On or about November 2, 2009, LVSC filed a Form 8k with the SEC that included  
19 a number of documents regarding the planned initial public offering of SCL. When identifying  
20 the Directors and Senior Management of the soon to be listed company, Jacobs was described as

21  
22 <sup>17</sup> A true and correct copy of the Nonqualified Stock Option Agreement dated June 18, 2009  
is attached hereto as Exhibit 14.

23  
24 <sup>18</sup> A true and correct copy of the subject e-mail chain is attached hereto as Exhibit 15.

25  
26 <sup>19</sup> A true and correct copy of the subject e-mail is attached hereto as Exhibit 16.

27  
28 <sup>20</sup> True and correct copies of the subject e-mail and attachment are attached hereto as Exhibit  
17.

<sup>21</sup> See *id.* See also, Form 3 publicly filed on September 14, 2009, a true and correct copy of  
which is attached hereto as Exhibit 18.



1 "our [i.e., SCL's] Chief Executive Officer, President-Macau and Executive Director. *Mr. Jacobs*  
2 *has been President-Macau of LVS from May 2009 and has worked with LVS since March*  
3 *2009.*" (emphasis added). LVS is defined in the documents as "Las Vegas Sands Corp., a  
4 company incorporated in Nevada, U.S.A. in 2004 and the common stock of which is listed on the  
5 New York Stock Exchange."<sup>22</sup>  
6

7 17. While Jacobs spent the majority of his time in Macau focusing on LVSC's  
8 operations in that location, he was also required to perform duties in Las Vegas including, but not  
9 limited to, working with LVSC's Las Vegas staff on reducing costs within the company's Las  
10 Vegas operations, consulting on staffing and delayed opening issues related to the company's  
11 Marina Bay Sands project in Singapore, and participating in meetings of LVSC's Board of  
12 Directors.<sup>23</sup>  
13

14 18. Notwithstanding that Jacobs was ostensibly the head of LVSC's Macau operations,  
15 both Leven and Adelson, in particular, exercised a high degree of control over Jacobs and his  
16 employment. The control ranged from the mundane such as selecting disposable hand towel  
17 holders for the men's bathroom to items of significance. For example, when Jacobs wanted to  
18 pursue a possible partnership with Caesars Palace for a project in Macau, a project he and Leven  
19 had discussed in some detail, Leven told him there would be "no chance" Jacobs could get it done  
20 unless the idea was made to appear to have originated with Adelson. Having by this time become  
21 well-acquainted with Adelson's ego-centric behavior, Leven sarcastically remarked, "*that's how*  
22 *billionaires think[.] [W]e are just executors[;] they are strategic geni in their own minds[.]*"  
23  
24  
25

26 <sup>22</sup> True and correct excerpts of the Form 8 filed by LVSC on November 2, 2009 are attached  
27 hereto as Exhibit 19.

28 <sup>23</sup> See Jacobs' Afft. at ¶ 19.



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1 (emphasis added).<sup>24</sup> SCL, moreover, has publicly acknowledged that LVSC has “the ability to  
2 exercise control over [SCL’s] business policies and affairs,” including “*the selection of [SCL’s]*  
3 *senior management.*”<sup>25</sup> (emphasis added). Indeed, it was Adelson’s obsessive compulsion to  
4 control every facet of Jacobs’ employment that ultimately led to the latter’s wrongful termination  
5 on July 23, 2010.<sup>26</sup>

7 19. Just five days after Jacobs’ termination, Leven and Adelson participated in an  
8 earnings call to discuss LVSC’s second quarter 2010 earnings. During the call, Leven was asked  
9 whether Jacobs had a “non-compete” and, if so, how long did it last. Contrary to the position now  
10 taken by LVSC before this Court that Jacobs had an employment contract with VML, Leven  
11 advised that Jacobs “does not have an actual employment contract. *He had a signed term sheet.*  
12 We never got to contract with it, and *I don’t believe he has a non-compete in that term sheet.*”  
13 (emphasis added). As we now know, that Term Sheet was executed with LVSC, *not* VML.<sup>27</sup>

16 <sup>24</sup> A true and correct copy of the subject e-mail chain is attached hereto as Exhibit 20. These  
17 e-mail communications likewise undercut the allegation that Jacobs travelled to Toronto without  
18 authorization to negotiate a deal with the Four Seasons, *see* Mot. at Ex. G (VML Termination  
19 Letter), as Jacobs expressly advised Leven therein that he was heading to Toronto to “close the  
20 deal.” *See* Ex. 20. Leven’s lack of objection to this news speaks volumes about the trumped-up  
21 nature of the charges contained in the termination letter. Jacobs looks forward to disproving the  
22 remainder of LVSC’s baseless allegations in due course.

21 <sup>25</sup> *See* Attached Exhibit 3 at p. 48.

22 <sup>26</sup> *See* Complaint at ¶¶ 26-29.

23 <sup>27</sup> True and correct excerpts of the transcript from LVSC’s Q2 2010 earnings call, obtained  
24 from [www.seekingalpha.com](http://www.seekingalpha.com), are attached hereto as Exhibit 21. While Jacobs acknowledges that  
25 he never signed a long-form contract of employment with LVSC, this in no way undermines the  
26 Term Sheet’s status as an enforceable agreement. *See, e.g., Local Union 813, Intern. Broth. Of*  
27 *Teamsters v. Waste Management of NY, LLC*, 469 F.Supp.2d 80, 86-87 (E.D.N.Y. 2007) (“The  
28 law generally enforces [letters of intent and term sheets] as contracts when they contain all  
material terms of the contemplated contract or when the remaining acts to arrive at a contract,  
*e.g.,* drafting and execution of formal contract documents, are merely ministerial.”); *May v.*  
*Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (“[a] contract can be formed . . . when  
the parties have agreed to the material terms, even though the contract’s exact language is not  
finalized until later.”). After all, it was Leven who advised that he thought a letter agreement was



### III. LEGAL ARGUMENT

#### A. Applicable Standards Governing NRCP 12(b)(6) and NRCP 19.

LVSC seeks dismissal of Jacobs' Complaint pursuant to NRCP 12(b)(6). Under this Rule, the moving party bears the heavy burden of demonstrating that the non-moving party failed to join a necessary and indispensable party. *See Shermoen v. U.S.*, 982 F.2d 1312, 1317 (9th Cir. 1992) (analyzing the federal equivalent of NRCP 12(b)(6)); *Nevada Eighty-Eight, Inc. v. Title Ins. Co. of Minnesota*, 753 F.Supp. 1516, 1522 (D. Nev. 1990) ("the burden of proving that joinder is necessary rests with the party asserting it."). Indeed, "courts are reluctant to dismiss a complaint for failure to join a party unless it appears that serious prejudice or inefficiency will result." *Jordan v. Washington Mut. Bank*, 211 F.Supp.2d 670, 675 (D. Md. 2002); *World Omni Financial Corp. v. Ace Capital Re, Inc.*, 2002 WL 31016669 (S.D.N.Y. 2002) (same).

A Rule 12(b)(6) motion to dismiss requires the Court to engage in a two-step analysis under NRCP 19 to determine first whether the absent party is "necessary." If the party is deemed "necessary," only then does the Court proceed to the determination of whether it is "indispensable." Rule 19(a) governs whether a party is "necessary" to an action and reads in pertinent part:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

- (1) in the person's absence complete relief cannot be accorded among those already parties; or

---

"good enough," that the lawyers would "take forever" to draft a long-form contract, and that a letter agreement "should protect [Jacobs]." *See Exhibit 10.* The parties, moreover, mutually performed under the Term Sheet for nearly one year. *Cf. Tropicana Hotel Corp. v. Speer*, 101 Nev. 40, 44, 692 P.2d 499, 502 (1985) ("performance by a party after agreement has been reached but before a writing has been prepared is regarded as some evidence that the writing was only a memorial of a binding agreement.").



- 1 (2) the person claims an interest relating to the subject of the action  
2 and is so situated that the disposition of the action in the person's  
3 absence may:  
4 (i) as a practical matter impair or impede the person's  
5 ability to protect that interest or;  
6 (ii) leave any of the persons already parties subject to a  
7 substantial risk of incurring double, multiple, or  
8 otherwise inconsistent obligations by reason of the  
9 claimed interest.

10 NRCP 19(a).

11 If the absent party is deemed "necessary" but cannot be joined to the action, then the  
12 Court must consider "whether in equity and good conscience the action should proceed among  
13 the parties before it, or should be dismissed." NRCP 19(b). "The inquiry is a practical one and  
14 fact specific, and is designed to avoid the harsh results of rigid application." *Makah Indian Tribe*  
15 *v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990). The Court considers the following four factors when  
16 determining whether an absent party is "indispensable":

- 17 (1) to what extent a judgment rendered in the person's absence might be  
18 prejudicial to him or those already parties;  
19 (2) the extent to which, by protective provisions in the judgment, by shaping of  
20 relief, or other measures, the prejudice can be lessened or avoided;  
21 (3) whether a judgment rendered in the person's absence will be adequate; and  
22 (4) whether the plaintiff will have an adequate remedy if the action is  
23 dismissed for nonjoinder.

24 NRCP 19(b). Joinder, however, "is not required where the absent parties' interests are adequately  
25 protected by those who are present." *In re Allustiarte*, 786 F.2d 910, 919 (9th Cir. 1986). As will  
26 be set forth below, VML is neither necessary nor indispensable to this action.

27 ....  
28 ....



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1       **B.     VML Is Not A "Necessary" Party Under Rule 19(a).**

2               **1.     VML is not a Party to Jacobs' Employment Agreement or the Nonqualified**  
3               **Stock Option Agreement.**

4               "A nonparty to a commercial contract ordinarily is not a necessary party to an  
5 adjudication of rights under the contract." *Northrop Corp. v. McDonnell Douglas Corp.*, 705  
6 F.2d 1030, 1044 (9th Cir. 1983) (government was not a necessary party under Fed.R.Civ.P. 19  
7 where it was not a party to contract at issue even though it had prompted the parties to enter into  
8 the subject agreement). This principle controls the issue here as Jacobs' breach of contract claims  
9 against LVSC arise from the Term Sheet and the Nonqualified Stock Option Agreement. *See*  
10 Complaint at ¶¶ 34-47. VML is not a party to either of these agreements.

11  
12              To review, VML expressly disavowed any legal effect of the Agreement for Services and  
13 Appointment Letter (other than paying Jacobs' salary and costs) and acknowledged that Jacobs  
14 was negotiating his employment contract with LVSC. *See supra* at 6-7. Those negotiations  
15 occurred between Jacobs and Leven in his capacity as President and COO of LVSC and resulted  
16 in a Term Sheet that contained material differences from the Appointment Letter and required  
17 Jacobs to report to LVSC's "President and COO" or its "CEO/Chairman." *Id.* at 8. LVSC's  
18 corporate counsel advised Jacobs that he would become an "executive officer" of LVSC and  
19 would be subject to SEC reporting requirements. *Id.* at 9. And LVSC thereafter affirmatively  
20 describe Jacobs as an "officer" of LVSC in public filings with the SEC. *Id.* at 9-10.<sup>28</sup> Finally,  
21 Leven publicly acknowledged that Jacobs' employment was governed by the "signed term sheet."  
22 *Id.* at 11.

23  
24  
25  
26              <sup>28</sup> Given its above-referenced representations to a regulatory agency, LVSC should be  
27 estopped from now taking a contrary position in this action. *Cf. American Manufacturers Mut.*  
28 *Ins. Co. v. Payton Lane Nursing Home, Inc.*, 704 F.Supp.2d 177, 192-93 (E.D.N.Y. 2010)  
("courts have regularly found that quasi-estoppel bars a party from adopting a factual position in  
court that is contrary to a position taken on a tax return.").



1 Because LVSC and Jacobs are the only parties to the Term Sheet and Stock Option  
2 Agreement, it is clear that complete relief can be accorded among them. *See* NRCP 19(a)(1).  
3 *Northrop Corp., supra.* Nor would VML have any genuine interest in this breach of contract  
4 action given its status as a non-party to the contracts at issue. *See* NRCP 19(a)(2). In light of the  
5 foregoing, VML is not a "necessary" party under NRCP 19(a), and LVSC's Motion may be  
6 denied on this basis alone.<sup>29</sup>

8 **2. Even if LVSC and VML are Considered Co-Obligors Under Jacobs'**  
9 **Employment Agreement, VML is Still not a "Necessary" Party Under NRCP**  
10 **19(a).**

11 Jacobs has demonstrated above that the side-letter from VML completely undermines  
12 LVSC's position that Jacobs was a VML employee by virtue of the Agreement for Services and  
13 Appointment Letter. Jacobs has also provided overwhelming evidence establishing that his  
14 employment relationship was with LVSC, not VML. LVSC nonetheless maintains that VML is  
15 an indispensable party because it paid Jacobs' salary and benefits. *See* Mot. at 7:21-27. This is  
16 wrong for at least two reasons, both of which will be addressed in turn.

17 **a. LVSC controlled Jacobs' employment**

18 Payment of salary alone does not determine employment status. While the source of  
19 wages may be one factor in determining an employer-employee relationship, *see, e.g., Clark*  
20

21  
22 <sup>29</sup> Jacobs acknowledges that actions seeking to set aside a contract or other equitable relief  
23 may require the joinder of all parties to a contract. *See Holland v. Fahnestock & Co., Inc.*, 210  
24 F.R.D. 487, 502 n.16 (S.D.N.Y. 2002). Here, however, VML is not a party to the subject  
25 agreements and Jacobs is not seeking to set aside any contracts. He is instead seeking monetary  
26 damages for their breach. *See Sinotrans Container Lines, Co., Ltd. v. North China Cargo Svcs.,*  
27 *Inc.*, 2008 WL 3048855 \*3 (C.D.Cal. 2008) ("Review of the complaint fails to show why  
28 meaningful relief cannot be accorded the existing parties without King being present. For  
example, this case does not involve the rescission of a contract, claimants to a common fund or  
property, or conflicting claims to ownership or possession of property."). This distinguishes the  
present matter from the cases relied upon by LVSC where, for instance, the absent parties had  
issued the sanctions being challenged, *see University of Nevada v. Tarkanian*, 95 Nev. 389, 395-  
96, 594 P.2d 1159, 1163 (1979), or claimed an interest in the real property being forfeited. *See*  
*Glady's Baker Olsen Family Trust v. Eighth Jud. Dist. Ct.*, 110 Nev. 548, 874 P.2d 778 (1994).





1 County v. SIIS, 102 Nev. 353, 354, 724 P.2d 201, 202 (1986) (recounting 5 factors), the key  
2 inquiry is who has the "right to control" the employee's activities.<sup>30</sup> As the Fourth Circuit Court  
3 of Appeals has aptly summarized:

4 [W]here more than one possible employer is involved[,] [t]he question of pay is  
5 not conclusive. Neither is the power to employ and discharge the particular  
6 employee a conclusive test. Nor is it necessarily conclusive to determine for  
7 whose benefit the act was performed. The ultimate test is which employer had the  
8 right to control and direct the conduct of the employee in the performance of the  
9 act in question.

10 *People's Supply, Inc. v. Vogel-Ritt of Penn-Mar-Va., Inc.*, 273 F.2d 933 (4th Cir. 1960).

11 Similarly, in *Beegle v. Rest. Mgmt., Inc.*, the trial court was faced with the question of which of  
12 two possible entities employed a restaurant worker for purposes of determining whether a co-  
13 worker could pursue tort claims based on vicarious liability or was otherwise limited to workers  
14 compensation. 679 A.2d 480, 485 (D.C. Ct. App. 1996). In deciding that the plaintiff was limited  
15 to workers compensation, the decisive factor for the trial court was who paid the worker's salary.  
16 *Id.* The appellate court reversed, instructing "[t]his was not an adequate basis upon which to  
17 determine the relationships of the parties and the question of liability. The right to control the  
18 employee in the performance of work is the decisive test." *Id.*

19 Here, it cannot be genuinely disputed that LVSC controlled Jacobs' employment. The  
20 Term Sheet required Jacobs to report to the "President and COO LVS" or the "CEO/Chairman of  
21 LVS." *See supra* at 8. Jacobs has submitted a declaration attesting to the control exercised by  
22 LVSC over his employment decisions, and SCL—LVSC's majority-owned subsidiary and  
23

24 <sup>30</sup> See, e.g., *Clark County, supra*, 102 Nev. at 354, 724 P.2d at 202 ("The inability of the  
25 alleged employer to control the activities of the claimant is highly persuasive in determining  
26 whether an employer-employee relationship exists."); *Azad v. United States*, 388 F.2d 74, 76 (9th  
27 Cir. 1968) ("authorities seem to be in general agreement that an employer's right to control the  
28 manner in which the work is performed is an important *if not the master test* to be considered in  
determining the existence of an employer-employee relationship.") (emphasis added); *In re*  
*FedEx Ground Package Sys., Inc.*, --- F.Supp.2d ---, 2010 WL 5094230 (N.D. Ind. 2010)  
(summarizing the importance of "right to control" in determining whether an employer-employee  
relationship exists in various jurisdictions).



1 VML's parent at the time of Jacobs' termination—has publicly acknowledged that its business  
2 policies and selection of senior management were subject to the control of LVSC. *Id.* at 10-11. It  
3 is worth noting that when Jacobs was wrongfully terminated, he was given a termination letter  
4 signed by Adelson under the SCL mark.<sup>31</sup> LVSC and SCL, moreover, were the entities that  
5 disclosed Jacobs' termination in public filings on July 23, 2010.<sup>32</sup> It was only after two weeks  
6 had nearly passed that Jacobs received the belatedly-manufactured termination letter from VML  
7 that LVSC now trumpets as proof of an employment relationship. *See* Mot. at 5:8-13. The VML  
8 termination letter and its reference to "the employment contract dated June 16, 2009 between  
9 Venetian Macau Limited and you" is, of course, directly at odds with the VML side-letter  
10 disclaiming any contractual relationship with Jacobs. As such, its evidentiary value for purposes  
11 of rendering Jacobs a VML employee is *nil*.  
12

13  
14 **b. *Because VML was, at most, a joint obligor under Jacobs'***  
15 ***employment agreement, it still does not qualify as a "necessary"***  
16 ***party under NRCP 19(a).***

17 While LVSC may have routed payment of Jacobs' salary and health insurance through  
18 VML, LVSC was nonetheless directly responsible for satisfying other obligations under the Term  
19 Sheet. These obligations included, *inter alia*, the issuance of Jacobs' stock options in LVSC.  
20 Accordingly, VML was—at most—a joint obligor (or co-obligor) with LVSC under the  
21 employment agreement. An "obligor" is defined as "the person who has engaged to perform  
22 some obligation." *Brackin Tie, Lumber & Chip Co. v. McLarty Farms, Inc.*, 704 F.2d 585, 586  
23 (11th Cir.1983) (citing *Black's Law Dictionary*). *See also, Trans Pac. Corp. v. South Seas Enter.,*  
24 *Ltd.*, 291 F.2d 435, 436-437 (9th Cir. 1961) (noting that a case of "joint obligors" occurs when a  
25 contracting party "shares a duty with someone else"). On the other hand, an "obligee" is defined  
26

27 <sup>31</sup> A true and correct copy of this letter is attached hereto as Exhibit 22.

28 <sup>32</sup> *See* Form 8K filed by LVSC on July 23, 2010, a true and correct copy of which is attached  
hereto as Exhibit 23.



1 as "the person in favor of whom some obligation is contracted, whether such obligation be to pay  
2 money or to do or not to do something." *Black's Law Dictionary* 1226 (4th ed. 1951).

3 It is well-settled that "[c]o-obligors to an agreement are not 'indispensable' parties to a  
4 litigation under Rule 19(b)." *Holland v. Fahnestock & Co., Inc.*, 210 F.R.D. 487, 501 (S.D.N.Y.  
5 2002) (numerous citations omitted). *See also, Wolgin v. Atlas United Fin. Corp.*, 397 F.Supp.  
6 1003, 1012 (E.D.Pa. 1975) ("[J]oint obligors (persons who owe a duty of performance), as  
7 opposed to joint obligees (persons to whom a duty is owed), have never been considered  
8 indispensable parties."). As one prominent legal commentator has explained, "the joinder of  
9 obligors is left to plaintiff's discretion by many courts and plaintiff may select defendants without  
10 being concerned about dismissal because of non-joinder. Joint obligors thus are treated as Rule  
11 19(a) parties, but are not deemed indispensable under Rule 19(b)" *See Wright, Miller & Kane*  
12 *Federal Practice and Procedure: Civil* 3d § 1613 at 177 (2001).

13 The reasoning underlying the different treatment of obligors and obligees for purposes of a  
14 Rule 19 indispensability analysis is attributable to the principle of joint and several liability,  
15 which allows "a plaintiff to satisfy its whole judgment by execution against any one of the  
16 multiple defendants who are liable to him, thereby forcing the debtor who has paid the whole debt  
17 to protect itself by an action for contribution against the other joint obligors." *Holland*, 210  
18 F.R.D. at 502 (quoting *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 412 (3d  
19 Cir. 1993)). In other words, forcing one of a number of potential defendants to bear an entire loss  
20 does not constitute "the risk of incurring double, multiple, or otherwise inconsistent obligations"  
21 that Rule 19 is designed to protect against.<sup>33</sup>

22  
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26 <sup>33</sup> Conversely, when a potential plaintiff-obligee is not joined in an action, the defendant in  
27 such a proceeding faces the very real danger of "incurring double, multiple, or otherwise  
28 inconsistent obligations" because nothing prevents the absent plaintiff from bringing a separate  
action against the defendant on the same claim. *See Holland*, 210 F.R.D. at 502 n.16. *See also,*  
*Johnson v. Johnson*, 93 Nev. 655, 658, 572 P.2d 925, 927 (1977) (recognizing that "[a] non-  
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1           *Janney* illustrates this principle nicely in the context of parent and subsidiary corporations.  
2  
3       In that case, a consultant sued a subsidiary corporation (Shepard Niles) in a dispute arising out of  
4       a contract the consultant had with the parent company (Underwood). The plaintiff only named  
5       Shepard Niles as a party to the action even though Underwood was the only signatory to the  
6       agreement. Shepard Niles thus filed a motion to dismiss for failing to join Underwood as an  
7       indispensable party under Rule 19, which the district court granted. In reversing, the Third  
8       Circuit Court of Appeals began by addressing “whether a court can grant complete relief in a  
9       breach of contract action to the parties before it when only one of two co-obligors has been joined  
10      as a defendant.” *Id.* at 405. Where “the agreement in question can be construed or interpreted as  
11      a contract imposing joint and several liability on its co-obligors...complete relief may be granted  
12      in a suit against only one of them.” *Id.* at 406. Because the language of the subject agreement  
13      referred to both Underwood “and subsidiaries” and did not contain language precluding a  
14      construction that imposed joint and several liability, the court determined that Shepard Niles and  
15      Underwood were co-obligors and, therefore, Underwood was not a necessary party under Rule  
16      19(a)(1). *Id.*<sup>34</sup>

17  
18           The court subsequently conducted an analysis under rule 19(a)(2)(ii) to determine whether  
19      continuation of the action in the absence of Underwood would expose Shepard Niles to the  
20      “substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of  
21      

22  
23  
24      joined transferee of property which has been ordered reconveyed could validly force relitigation  
25      of the issue of the propriety of the reconveyance before coming under any legal duty to reconvey  
26      the property.”).

27      <sup>34</sup>       Here, it is Jacobs’ position that LVSC, as the only signatory to the Term Sheet, is the  
28      only obligor and, thus, the only necessary defendant on this breach of contract claim. Assuming,  
    *arguendo*, that VML is a joint-obligor under the Term Sheet, nothing in this agreement—as in  
    *Janney*—precludes a construction that liability thereunder is joint and several.



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1 the claimed interest.” *Id.* at 411.<sup>35</sup> Specifically, Shepard Niles claimed that it would be subject to  
2 “double liability” because it could be responsible for the entire judgment without the presence of  
3 Underwood. *Id.* at 412. The court flatly rejected this contention:

4  
5 The possibility that Shepard Niles may bear the whole loss if it is found liable is  
6 not the equivalent of double liability. It is instead a common result of joint and  
7 several liability and should not be equated with prejudice. Inherent in the concept  
8 of joint and several liability is the right of a plaintiff to satisfy its whole judgment  
9 by execution against any one of the multiple defendants who are liable to him,  
10 thereby forcing the debtor who has paid the whole debt to protect itself by an  
11 action for contribution against the other joint obligors.

12 *Id.* To be sure, an “outcome adverse to Shepard Niles...does not have any legal effect on  
13 whatever right of contribution or indemnification Shepard Niles may have against Underwood.”

14 *Id.* “The possibility that the defendant may have a right of reimbursement, indemnity, or  
15 contribution against the absent party is not sufficient to make the absent party indispensable to the  
16 litigation.” *Id.* (quotations and alterations omitted). In sum, the court held that Underwood was  
17 not a “necessary” party under Rule 19(a)(2)(ii) because continuation of the suit in its absence  
18 would not create double or inconsistent liabilities for Shepard Niles. *Id.* at 412-13.

19 Since Underwood was not a “necessary” party under Rule 19(a)(1) or (a)(2), the court was  
20 not required to reach the issue of whether it was an “indispensable” party under Rule 19(b). *See*  
21 *Janney*, 11 F.3d at 404. Even where courts have found co-obligors to be “necessary” parties

22 <sup>35</sup> Before doing so the court examined whether a judgment entered against Shepard Niles  
23 would constitute binding precedent in a different action on the same facts against Underwood as  
24 contemplated by Rule 19(a)(2)(i). *Janney*, 11 F.3d at 406-11. LVSC did not raise this argument  
25 in its brief, but the *Janney* court was clear that such an occurrence would not be prejudicial to  
26 Underwood. *Id.* at 409 (“Underwood’s absence will not create a precedent that might persuade  
27 another court to rule against Underwood on principles of *stare decisis*, or some other unidentified  
28 basis not encompassed by the rules of collateral estoppel or issue preclusion.”). Likewise, if  
Jacobs prevails in this action, he cannot recover a second time against VML. *See Dernick v.*  
*Bralorne Resources, Ltd.*, 639 F.2d 196, 199 (5th Cir. 1981) (where recovery against parent  
company in federal court action would moot state court proceedings against subsidiary  
corporation, subsidiary was not an indispensable party to federal court action as plaintiff “[did]  
not seek and [could] not have ‘two bites at the apple.’”).



1 under Rule 19(a), they universally hold that such parties are not "indispensable" under rule 19(b).  
2 We turn briefly to that issue now.

3 **C. VML Is Not An "Indispensable" Party Under Rule 19(b).**  
4

5 In the unlikely event the Court was to find that VML is a necessary party under Rule 19(a)  
6 (and it should not given that VML is not a party to the Term Sheet or Stock Option Agreement), it  
7 must still determine whether VML is an indispensable party under Rule 19(b) whose absence  
8 requires dismissal. While some courts other than *Janney* have found that co-obligors are  
9 necessary parties under Rule 19(a), they have nonetheless determined that such parties are *not*  
10 indispensable under Rule 19(b). *See, e.g., Holland*, 210 F.R.D. at 501 and n.15 ("it is well-settled  
11 that "co-obligors to an agreement are not "indispensable parties to a litigation under Rule 19(b).")  
12 (citing 10 cases and 2 legal treatises); *Brackin, supra*, 704 F.2d at 586-87 ("A review of the case  
13 law in this area reveals that the majority of courts hold that while joint obligees are indispensable  
14 parties, joint obligors are not.") (surveying authorities). The same result is warranted here under  
15 the pertinent NRCP 19(b) factors.  
16

17 **1. A Judgment will not Prejudice VML or Existing Parties.**  
18

19 LVSC can avoid sole responsibility for its breach of the Term Sheet by impleading or  
20 independently suing VML for indemnity or contribution. *Id.* at 502 (explaining defendant's  
21 ability to pursue third parties under Rule 14). There is no danger that LVSC and VML will be  
22 subject to inconsistent obligations as Jacobs (i) seeks only money damages (as opposed to  
23 injunctive relief, rescission, or specific performance), and (ii) cannot recover a second time  
24 against VML. *Id.* at 502 and n.16 (explaining that, in contrast to actions for money damages,  
25 actions to set aside contracts or for injunctive relief may require the joinder of all parties to a  
26 contract because such actions could result in inconsistent obligations). *See also, Dernick, supra*  
27 (explaining that plaintiff can only recover once on a judgment); and *supra* at 15 n.29. To the  
28



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1 extent VML may be subject to issue preclusion, LVSC and SCL more than adequately represent  
2 VML's interests as they are the majority shareholders in the company and will undoubtedly be  
3 advancing "virtually the same legal and factual positions." *Id.* at 503 n.18 (quoting *Southeastern*  
4 *Sheet Metal Joint Apprenticeship Training Fund v. Barsuli*, 950 F.Supp. 1406, 1414 (E.D.Wis.  
5 1997)).<sup>36</sup>  
6

## 7 2. Protective Measures to Lessen Claimed Prejudice.

8 In discussing this factor, the Advisory Committee Note to the 1966 amendments of  
9 Fed.R.Civ.P. 19 indicate that the absent parties as well as those presently before the court should  
10 take steps to avoid the possibility of prejudice. *See* 1966 Advisory Committee Note to Rule 19.  
11 This includes informally notifying the absent party of the pending suit so that it may consider  
12 what to do. "[Its] inaction with knowledge may be pertinent to the issue of maintaining the action  
13 or dismissing it." *Id.* Here, of course VML already knows about the suit and has provided  
14 documentation to LVSC for use in these proceedings. Nothing prevents VML from voluntarily  
15 appearing in this action or intervening as any personal jurisdiction and venue issues can be  
16 waived, and its presence would not deprive this Court of subject-matter jurisdiction. *See* Wright,  
17 Miller & Kane *Federal Practice and Procedure*: Civil 3d § 1608 at 112-14 (2001). Alternatively,  
18 and as touched on above, LVSC and SCL are perfectly free to bring VML into this action by way  
19 of third-party practice. *See id.* at 111-12.  
20  
21

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22  
23 <sup>36</sup> LVSC's (and SCL's) ability to advance VML's positions is evidenced by the Motion itself  
24 where LVSC had no problem obtaining an extensive—albeit wholly inaccurate—declaration from  
25 VML's Associate Director for Human Resources as well as a variety of VML documents. *See*  
26 *Mot.* at Exs. A-D. *See also*, *Pujol v. Shearson/American Express*, 877 F.2d 132, 134-38 (5th Cir.  
27 1989) (where the interests of the defendant parent company and its wholly-owned subsidiary were  
28 virtually identical, subsidiary was not an indispensable party to action filed by wife arising out of  
her husband's wrongful termination by subsidiary even though wife indicated intent to introduce  
evidence of wrongdoing by subsidiary); *Micro-Medical Industries, Inc. v. Hatton*, 607 F.Supp.  
931, 934 (D.P.R. 1985) ("Being thus situated as parent and wholly-owned subsidiary, members of  
a single enterprise engaged in a common business venture, it appears to us that the interests of the  
parent in this suit encompass those of the subsidiary.").



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In light of the foregoing, LVSC's Motion must be denied in its entirety.

DATED this 9th day of February, 2011.

CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of February, 2011 I served by U.S. Mail, first class postage pre-paid, a true and correct copy of the foregoing **Opposition to Las Vegas Sands Corp.'s Motion to Dismiss Pursuant to NRCP 12(b)(6) and 19 for Failure to Join an Indispensable Party** to the following counsel of record:

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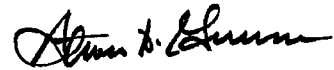


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# **EXHIBIT B**

# **EXHIBIT B**



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 FOR PROTECTIVE ORDER**

FRIDAY, NOVEMBER 6, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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 rehearing, even though I technically can't do it until I get  
2 the writs. So if Mr. Bice is telling me he thinks he may be  
3 moving for rehearing on the issue related to the deposition --

4 MR. BICE: I don't know. But --

5 THE COURT: You're thinking about it.

6 MR. BICE: Yeah. We're analyzing it.

7 THE COURT: Then I will wait until you tell me other  
8 stuff.

9 MR. BICE: Understood.

10 MR. RANDALL JONES: And we are, too.

11 THE COURT: Okay. So then I won't do anything until  
12 I actually get the formal documents.

13 Next step was we had previously suspended expert  
14 disclosures until after the first of the year. Is it time now  
15 to talk about when you want those expert disclosures to be, or  
16 do you need some time to figure that out?

17 MR. BICE: We would like to get those put back on,  
18 Your Honor.

19 MR. RANDALL JONES: And I understand why Mr. Bice  
20 would, and I don't blame him. If I was him, I would, as well.  
21 I think the problem with that is with the status of VML up in  
22 the air that is problematic.

23 THE COURT: I am assuming at this point those three  
24 initials are not involved in my case. That's my assumption.  
25 Until something happens and I get an order, I'm making the

1 assumption I'm moving forward with the parties currently  
2 sitting in this courtroom.

3 MR. RANDALL JONES: And I would only say, Your  
4 Honor, that, while we certainly believe that -- and I don't  
5 represent, as you know, VML -- we certainly believe they  
6 shouldn't be in the case for the reasons we've articulated  
7 before they got in the case, that's still an issue that's up  
8 in the air. And going ahead with the expert designations is  
9 problematic for that reason. Obviously you could do it, but  
10 in if we -- if VML is ultimately in this case, then that's  
11 going to be a problem for expert designations, it seems to me.

12 THE COURT: Well, here's my concern. And this is --  
13 and I'll let Mr. Bice talk in a minute. The way the most  
14 recent order was issued from the Supreme Court related to  
15 Judge Denton's decision the case is stayed as to them only.  
16 And that means I have to move forward on you guys and I've got  
17 to do my part. And if something happens and they come back,  
18 then I, of course, will make accommodations. As I've already  
19 told Mr. Bice, that may impact his trial date, it may impact  
20 all your discovery dates.

21 MR. RANDALL JONES: Right.

22 THE COURT: But it's up there, and they'll do what  
23 they do and it'll take as long as it takes.

24 MR. RANDALL JONES: You know, and again I understand  
25 you're going to run the case as you think is most appropriate.

1 That was my only comment about that. That may or may not be a  
2 significant issue in the Court's mind with respect to those  
3 deadlines. So that was -- that's my only point on that issue.

4 THE COURT: Is that your only concern?

5 Mr. Peek.

6 MR. PEEK: Your Honor, I have additional concerns,  
7 and I don't say this to -- in any effort to throw fuel on a  
8 flame. But we certainly have a number of discovery issues  
9 that are still outstanding on both sides -- or all sides. So  
10 I'm concerned about being able to get all of the discovery  
11 necessary that our experts would need. So for that reason I  
12 think that -- I'm happy to set a date or a deadline, but I'd  
13 like to at least move it out as far as we can in order to meet  
14 everybody's obligations.

15 MR. RANDALL JONES: And in that regard Mr. Peek's  
16 point is that we have been unable to get -- and I understand  
17 Mr. Bice has a right to protect his client the way he thinks  
18 is appropriate, but this is -- this motion is an example of  
19 that. We've had a very great time -- difficult time, excuse  
20 me, getting information related to Mr. Jacobs, and I -- from a  
21 strategic standpoint, and I'm sure the Court can appreciate  
22 this from your own experience as a trial lawyer, I don't want  
23 to take Mr. Jacobs's deposition until I get the backup  
24 documentation. And I have had a difficult -- very difficult  
25 time getting that information. And so that's part of the

1 concern I have about setting expert deadlines.

2 THE COURT: So how about we do this. And, Mr. Bice,  
3 what I want you to do is I want you to come up with a  
4 schedule. Because in the order that I issued which I called  
5 Second Amended Order Setting Civil Trial I set the dates which  
6 are now suspended that start on November 20th.

7 MR. BICE: Correct.

8 THE COURT: I told you guys you would be good until  
9 at least after the first of the year. I need to make sure you  
10 have at least a month's advance notice, which is why I'm  
11 trying to have this discussion now, because I don't want to  
12 throw anybody under the bus by giving you too short a  
13 deadline. Which is why I thought we would discuss it today.  
14 And I'm not giving you a date today. I'm saying I need you to  
15 think about those dates today. And I understand your VML  
16 issue, but under the circumstances I've got to move forward.

17 MR. RANDALL JONES: Understood.

18 THE COURT: But I understand.

19 Mr. Bice.

20 MR. BICE: Yes. And, Your Honor, when VML comes  
21 back we will address that, and there may be other motions that  
22 deal with VML, since VML wants to claim to be separate. We  
23 can even address severance at that point in time of VML and  
24 its issues. So we'll address all of that when VML comes back  
25 down here.




**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**



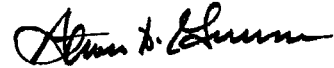
FLORENCE M. HOYT, TRANSCRIBER

11/6/15

DATE

# **EXHIBIT A**

# **EXHIBIT A**



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 MOTIONS**

THURSDAY, NOVEMBER 5, 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.  
RYAN M. LOWER, 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, NOVEMBER 5, 2015, 8:41 A.M.

2 (Court was called to order)

3 THE COURT: Is Jacobs versus Sands ready now? I  
4 tried to call you before. Everybody got up here, and then we  
5 realized Mr. Peek and Mr. Morris were not here.

6 MR. PEEK: I'm so sorry for being a little tardy,  
7 Your Honor.

8 THE COURT: Well, you were actually on time. I was  
9 trying to start early so you guys could get where you're  
10 supposed to be.

11 MR. PEEK: I'm sure all the folks behind me are  
12 pleased that you called us first.

13 THE COURT: Because of the stay, I am not mentioning  
14 three initials today of another party who I assume is not here  
15 with us, and I will take no action related to that party.

16 So what motion would you gentlemen like to start  
17 with?

18 MR. LOWER: Your Honor, how about the motion to  
19 strike?

20 THE COURT: That's the easiest one. Let's start  
21 with easy. Thank you. Mr. Lower, I appreciate easy every  
22 once in a while.

23 MR. LOWER: I think this is very easy, Your Honor.  
24 You've dismissed the sixth cause of action twice because Mr.  
25 Jacobs has not alleged that Mr. Adelson was his employer.

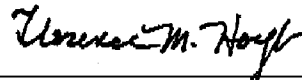
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**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

11/5/15

DATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Feb 01 2016 02:39 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

**REPLY IN SUPPORT OF  
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

Real Party in Interest Steven Jacobs ("Jacobs") offers nothing more to this Court than excuses for not obeying this Court's order, and declaring VML's motion to strike moot. Despite contending that he has "granted VML the very relief it sought – dismissing it from the action," Opp'n at 1, he affirms he is "entitled to re-file his action and address his rights against VML if he so desires." Opp'n at 6. This is not the "relief" VML seeks or is entitled to.

Moreover, because Jacobs concedes that an answer to VML's pending petition is not needed, Opp'n at 5 - 6, it is ripe for consideration and should be submitted and decided on the merits.

#### **A. JACOBS'S DISMISSAL OF VML IS NOT EFFECTIVE**

As a threshold matter, VML has not conceded that it has been dismissed from the case; Jacobs's claim otherwise disregards the substance of VML's motion *and* the district court's recognition that it is barred from acting as to VML until further order of this Court. VML's motion, at page 6 says: "*the district court lacks jurisdiction to entertain any matter concerning VML, including Jacobs's purported voluntary dismissal.*" VML's position on this issue could not have been clearer.

##### **1. Jacobs Does Not Have A "Right" To A NRCP 41(a)(1) Dismissal**

NRCP 41(a)(1) says "*an action* may be dismissed by the plaintiff . . . ." Jacobs does not seek to dismiss *an action*, he simply seeks to dismiss claims against VML. Compare NRCP 41(b) (a defendant may move for dismissal of *an action or of any claim* . . . ." with NRCP 41(a)(1) ("*an action* may be dismissed). Because the language in NRCP 41(a)(1) "is plain and unequivocal," it should be given "its ordinary meaning and not go beyond it." *City of Henderson v. Kilgore*, 122 Nev. 331, 333, 131 P.3d 11, 12 (2006) (citations and internal quotations omitted).

This Court has also recognized that the right to voluntary dismissal is not absolute. *In re Phillip A.C.*, 122 Nev. 1284, 1290-91, 149 P.3d 51, 55-56 (2006). Where, as here, a Rule 41(a)(1) dismissal is filed at an advanced stage of the proceedings, it is ineffectual. *Id.* This is consistent with the essential purpose of the rule, which "is to facilitate voluntary dismissals, but to limit them to an early stage of the proceedings before issue is joined." *Harvey Aluminum*, 203 F.2d at 107.

**2. Both Jacobs and the District Court Recognized the Court's November 4 Order Stayed all Matters as to VML Until Further Order of the Court.**

Jacobs also tortures the language in the Court's November 4 Order to excuse his defiance of it, in an effort to support his suggestion that dismissal is effective. The November 4 Order, however, says that "*the proceedings below* against petitioner only *are stayed* pending further order of this court." The district court recognized this repeatedly during the November 5 and 6, 2015 hearings following issuance of the Order. *See* Ex. A, Excerpts of Nov. 5, 2015 Hr'g Tr. at 2:13-15); Ex. B, Excerpts of Nov. 6, 2015 Hr'g Tr. at 4 – 5. Thus, Jacobs's self-serving attempt to restore jurisdiction to the district court to dismiss VML *without prejudice* so as to avoid the writ petition that he did not answer as ordered should be rejected.

Jacobs's revisionist claim that he "never opposed" joining the action below (Opp'n at 2) is a distinction without a difference. Jacobs's position, which VML correctly presented on page 4 of its motion is a matter of record: Jacobs aggressively fought and defeated the motion to dismiss years ago by persuading Judge Gonzalez that VML was neither a necessary nor indispensable party. *See* Ex. 1 to Mot. at 23 – 36; *see also* Ex. C, Jacobs's Opp'n to Mot. to Dismiss at 23 (VML is not a "necessary" party under Rule



19(a) for the simple reason that it is not a party to any of the contracts at issue."). If Jacobs believed his own excuse that VML might be a joint obligor, rather than unavailable for lack of jurisdiction, he would have simply moved to amend to add VML in 2011.

### **3. The Mootness Doctrine Is Irrelevant.**

The Court recently declared that "[u]nder the mootness doctrine, this court will only decide cases if a live controversy is present *or they 'involve[ ] a matter of widespread importance that is capable of repetition, yet evading review.'*" *Las Vegas Paving Corp. v. RBC Real Estate Fin., Inc.*, Nos. 60599, 60822, 2015 LEXIS 1124, at \*3 (Nev. Sep. 21, 2015) (quoting the case cited by Jacobs: *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010)). Unlike the direct appeal cases on which Jacobs mistakenly relies, this case involves a petition for extraordinary relief which the Court *has already determined* involves an issue worthy of writ consideration. "Consideration of extraordinary writ relief is often justified 'where an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction.'" *MountainView Hosp., Inc. v. Eighth Judicial Dist. Ct.*, 273 P.3d 861, 864 (Nev. 2012) (internal quotations and citations omitted). The issues presented by VML's petition are ones that deserve clarity for the benefit of the bench and bar. It would be inappropriate to permit Jacobs to defeat their consideration and clarification by declaring the petition moot.

### **B. JACOBS'S SUGGESTION THAT THIS COURT LACKS JURISDICTION IS ALSO WRONG.**

Jacobs's bold suggestion that this Court lacks jurisdiction and would violate the Constitution by proceeding is foolish. The Court's November 4, 2015 Order staying the proceedings against VML divested the district court of jurisdiction over VML until this Court says otherwise.

*Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (citations omitted) ("a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court"); *see also Nken v. Holder*, 556 U.S. 418, 419, 129 S. Ct. 1749, 1752 (2009) (reiterating that "[a]n appellate court's power to hold an order in abeyance while it assesses the order's legality has been described as inherent, and part of a court's 'traditional equipment for the administration of justice.'" (quoting *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9-10, 62 S. Ct. 875 (1942))). Comparing an injunction to a stay, the United States Supreme Court in *Nken* said:

A stay pending appeal certainly has some functional overlap with an injunction, particularly a preliminary one. Both can have the practical effect of preventing some action before the legality of that action has been conclusively determined. *But a stay achieves this result by temporarily suspending the source of authority to act.*

*Id.* at 428-29, 129 S. Ct. at 1758 (internal citations omitted) (emphasis added). Jacobs filed his purported "voluntary dismissal" in the district court that lacks jurisdiction over VML. *See* Ex. B at 4 -5 (where the district court recognized that "[VML is] *not involved in my case . . . [u]ntil something happens and I get an order.*").

Jacobs's reliance on the line of cases that provide, correctly, that an appellate court's stay permits actions not inconsistent with the terms of the stay is non-availing.<sup>1</sup> The Court in this case did not stay a discrete act

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<sup>1</sup> None of the cases on which Jacobs rely are instructive. *Independent Union of Flight Attendants v. Pan Am World Airways, Inc.*, 966 F.2d 457, 459 (9th Cir. 1992), and *In re Davenport*, 40 F.3d 298, 299 (9th Cir. 1994) involved direct appeals in two party disputes and the automatic stay under the Bankruptcy Code. The purpose of that stay is two-fold: (1) to protect debtors by providing a respite to regroup; and (2) to protect creditors for a rush to judgment. *Indep. Union of Flight Attendants*, 966 F.2d at 459. In both cases, the dismissal of the underlying proceedings had no effect on debtors or creditors and thus was no inconsistent with the automatic stay. *Merit Ins. Co. v. Leatherby Ins. Co.*, 581 F.2d 137, (7th Cir. 1978), likewise a direct appeal in a two-party dispute, but involved a stay pending arbitration,

or event related to the litigation (such as a deposition), it expressly stayed "the proceedings below" which both Jacobs and the district court understood took VML out of the district court proceeding. Thus, the Court has jurisdiction to act on VML's petition that Jacobs did not answer.

**C. THE PETITION IS RIPE FOR CONSIDERATION AND SHOULD BE SUBMITTED AND DECIDED.**

VML did not "fault[]" Jacobs for not filing an answer to VML's writ petition because it feels an answer is necessary, (Opp'n at 5); it "fault[ed]" him not obeying the Court's order requiring him to file an answer,<sup>2</sup> despite having sought and obtained a two week extension to do precisely that. VML does not believe an answer from Jacobs is needed, as it said in its petition, but given Jacobs' election not to answer, VML asked that its petition be submitted for a decision on the merits (Mot. at 4).

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which the parties had begun before one opted to voluntarily dismiss the entire action. Jacobs also cites *Nguyen v. United States*, 792 F.2d 1500, 1503 (9th Cir. 1986) for the proposition that this Court agreed with him that "a party can take any action so long as it is not inconsistent with a stay's purpose" (Opp'n at 3), but the case does not stand for the proposition, it simply addresses the scope of the mandate.

<sup>2</sup> Under such circumstances, the Court has previously recognized that "it is the prerogative of this court to elect to treat [the real party in interest] failure to answer as a confession of error." *Orme v. Eighth Judicial Dist. Ct.*, 105 Nev. 712, 782 P.2d 1325, 1326 (1989). *Orme*, cited by Jacobs himself, confirms that his failure to answer could, but need not be the basis for granting the petition.

#### D. CONCLUSION

For these and the reasons set forth in its Motion, VML respectfully asks, again, that its mandamus petition be submitted for consideration on the merits and granted.

CARBAJAL & MCNUTT

By: /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

## CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of CARBAJAL & MCNUTT; that on this date I electronically filed the following document: **REPLY IN SUPPORT OF 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** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

James J. Pisanelli Todd L. Bice Debra Spinelli PISANELLI BICE PLLC 400 South 7th Street, #300 Las Vegas, NV 89101 <b>Attorneys for Steven C. Jacobs, Real Party in Interest</b>	<b>VIA HAND DELIVERY</b> Hon. Mark R. Denton Eighth Judicial District Court of Clark County, Nevada Regional Justice Center 200 Lewis Avenue Las Vegas, Nevada 89155 <i>Respondent</i>  <b>COURTESY COPY - VIA HAND DELIVERY</b> Hon. Elizabeth Gonzalez Eighth Judicial District Court of Clark County, Nevada Regional Justice Center 200 Lewis Avenue Las Vegas, Nevada 89155
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DATED this 1<sup>st</sup> day of February, 2016.

By: /s/ Lisa Heller