

1 and they'll appeal, the defendants will, for as long as they
2 can.

3 So what do we need to do in order to create a
4 record? What do we need to look at in order to show that
5 there is yet another wave of wilful misconduct from these
6 defendants that justifies severe sanctions by way of default,
7 striking answers, striking defenses, and anything else Your
8 Honor deems appropriate?

9 First let's look at where we've been. Your Honor
10 may recall in November of last year, as we were approaching
11 the holiday season, we filed a Rule 37 motion for sanctions.
12 At that time, Your Honor, I'm not sure if you recall, but we
13 were 16 months into the jurisdictional discovery that you
14 ordered. And at the time we filed that motion, by my best
15 count and anyone on either team will correct me if I'm wrong,
16 these monolithic companies with resources that are endless had
17 produced all of 55 pages of documents after 16 months of
18 litigating, 16 months of discovery that you had ordered. And
19 so we had had enough, and we came to Your Honor with our first
20 Rule 37 motion.

21 Your Honor held a hearing on December 18, which was
22 the beginning of what brings us here today. Your Honor may
23 recall what you did at that hearing is you raised the stakes.
24 You raised the stakes. You did not want any ambiguity about
25 prior orders, which you did note that they had violated

1 several of them, but you wanted a clean record, you wanted a
2 clear record, you wanted a clear mandate and instruction to
3 these defendants, you have something to do and you have a date
4 by which you will do it. And your instruction could not have
5 been clearer. You said to these people, to these companies,
6 that on January 4th, two weeks later, quote, "Sands China will
7 produce all information within its possession that is relevant
8 to jurisdictional discovery."

9 Now, every single person in our audience can answer
10 the very simple question, what does it all mean.

11 THE COURT: You can change back to regular lawyer
12 talk now. You bored them so badly, Mr. Pisanelli.

13 MR. PISANELLI: Well, it's only getting better, so
14 too bad they missed it.

15 The point is this, Your Honor. "All" means all.
16 When we're talking about the 55 pages that Sands China had
17 produced at that point, all meant all. And that order, by the
18 way, of course, was preceded by your order of September 14th
19 in which you also made clear not only to the Sands China, who
20 was sitting on their 55-page production at the time, but you
21 also made it clear to both parties, quote, "Las Vegas Sands
22 and Sands China will be precluded from raising the MDPA as an
23 objection or as a defense to admission, disclosure, or
24 production of any documents," all documents produced, nothing
25 about the Macau Data Privacy Act is a defense anymore. You

1 could not have been clearer.

2 Your Honor, at the December 18th, as you may recall,
3 politically we approaching January 1st of this year, which in
4 the politics world was called the fiscal cliff. Everyone was
5 talking about the fiscal cliff during that time period. What
6 you did in this case, my interpretation, was you created this
7 discovery cliff for these defendants. You made it clear that
8 you'd had enough and that January 4th was their cliff day,
9 they can do what you've told them to do for the two years
10 preceding or suffer the consequences with their eyes wide open
11 and with no room for complaint, because you were so crystal
12 clear in your expectation of them.

13 And so we take a look now at what happened on
14 January 4th to determine what is in our record to determine
15 whether the beginning of the end of these defendants is
16 appropriate, that this wilful conduct has continued, and that
17 severe sanctions is now appropriate. Well, I don't think
18 anyone can fairly say anything other than that this group of
19 defendants took the dive, created -- they went right off the
20 cliff on January 4th and did nothing more than create a
21 charade on what they produced. They spent millions of
22 dollars, they say, congratulating themselves on the back, by
23 the way, in making sure that what it was that they produced to
24 us was meaningless and, more importantly, useless, useless to
25 Mr. Jacobs in this case, useless to anyone who might get their

1 hands on it, be it the government, the press, or anyone else
2 that these companies may sue for actually telling the truth
3 about what's going on in this company.

4 So here's the reality. This is the charade.
5 January 4th we find out -- and we find out much of this, by
6 the way, Your Honor, from the self-congratulatory memo that
7 they gave to you telling you and the world what a great job
8 they did over those two weeks. We know that of the twenty
9 custodians that they had been in possession of from us, a list
10 of twenty custodians, they chose six of them, six. They added
11 three of their own, but of the twenty that we gave to them
12 they chose only six to look for records.

13 Now, I don't know about anyone else, but "all" means
14 all. So six isn't all of twenty. Twenty is all of twenty.
15 If there were other people we were -- did not have enough
16 information about to put on that list of twenty, then I would
17 assert to Your Honor they had an obligation to put twenty-plus
18 on the list of custodians they were going to search records
19 for. But to take twenty and pull it back to six and say that
20 that is compliant, "all" doesn't mean all, "all" means a
21 fraction, apparently, in the world of Las Vegas Sands. They
22 were not so graceful, by the way, in their avoidance of some
23 of the most important people on that list, Luis Melo being one
24 of them, the Number Two person on the hit list, didn't seem to
25 make his way onto the list.

1 Now, what is their excuse? Not a shocker. Our
2 fault. My fault, Todd Bice's fault, Debbie Spinelli's fault,
3 we didn't tell them how to do their job, we didn't help them,
4 they say, in figuring out who these people are. That was
5 perhaps one of the most remarkable things that I saw in this
6 reply. And I tagged it. I had to tag it, because in their
7 reply they wrote, quote, "Plaintiff never --" "never" being
8 bolded and italicized, "Plaintiff never provided defendants
9 with a proposed list of custodians or search terms for
10 jurisdictional discovery."

11 Now, perhaps whoever wrote that brief wasn't
12 standing in this courtroom on December 18th when I
13 specifically said, standing at this podium, that we want
14 the custodians from the list from two years ago from Colby
15 Williams. I made it perfectly clear when they raised that
16 same defense in December. And, remarkably, even if the
17 person who wrote that brief was not in this courtroom on
18 December 18th, they only need to look at their own self-
19 congratulatory memo. The same people who just wrote that
20 quote to you in an opposition brief also wrote, "To be sure,
21 at the December 18th, 2012, hearing plaintiff asserted for the
22 first time that he had sent a letter more than two years ago
23 providing a last of relevant custodians." In two different
24 papers filed within days of each other they say, we didn't
25 know, and the other paper they say, we did know. The point of

1 it is of course they knew. They've always known the list.
2 They've had the list for two years.

3 But it doesn't end there. Even when you look at the
4 very few custodians they so conveniently selected, what do
5 they do with them? They conveniently selected which of our
6 requests for production that they wanted to search for. You
7 see on page 9 of our opening motion we set forth a very brief
8 schedule of every one of our requests and how many custodians
9 they actually searched. Some of them are as low as three,
10 some of them we were benefitted where they gave us all six.

11 THE COURT: One you have seven.

12 MR. PISANELLI: Seven. I don't see any of them that
13 had the entire nine, but some of them as little as three.

14 What is remarkable about this exercise, Your Honor,
15 and what certainly shows to all of us that this entire
16 campaign is wilful is we're talking about computer clicks
17 here; right? We have all spent a fortune on both
18 understanding and becoming experts, some of us more than
19 others, on ESI discovery using vendors, how you search, and
20 we're talking about computer clicks of what we're doing for a
21 particular custodian and which requests for production are
22 going to be searched for a custodian. If someone actually
23 doesn't want to go over what I have characterized as the
24 discovery cliff, wouldn't you think they'd just click them
25 all? Wouldn't you think they'd take the entire list of twenty

1 and make sure they searched for all of our requests for
2 production, and if at that point the plaintiffs haven't done
3 the defendants' job well enough by telling them what to do,
4 then at least they've got a better argument that they
5 shouldn't fly off the cliff and that Todd and I and Debbie
6 should do a better job of instructing them how to do their
7 discovery. But they didn't even do that. This doesn't even
8 come close to an argument that this is short of wilful. They
9 know what they're doing, and the reason they're doing it is
10 Mr. Peek's word he told us a while ago, they are and have been
11 and always will be constrained. Constrained by their client,
12 of course.

13 But it gets better. So we get about 5,000 pieces of
14 paper. We've attached 12 to 16, I don't know what they were,
15 in our motion to give you a flavor of what these redactions
16 were. The redactions come in two different categories. I
17 cannot decide which is more offensive, one or the other. The
18 first one is redactions on relevance. Your Honor expressed
19 your views on that last time we were before you, and I can
20 tell you, Your Honor, since you made it so perfectly clear to
21 the one person who stood before you and tried to make that an
22 argument, nothing's changed, nothing was corrected, no
23 relevance redactions were removed even from the time you were
24 so firm in your position about redactions on relevance.

25 The other, of course, was the Macau Data Privacy

1 Act. They redacted on Macau Data Privacy Act. I really can't
2 tell you, as I said, which one surprises me more. If it
3 weren't so disrespectful, it'd be funny.

4 So let me --

5 THE COURT: So you think the word "other" in
6 Footnote Number 12 of my September 14th, 2012, order might
7 mean not the Macau Data Privacy Act?

8 MR. PISANELLI: I think it means what you've said.
9 You've said if there was a -- this is a quote, "a true
10 privilege issue" is what you've said, then of course there can
11 be redactions and privilege logs and challenges, a true
12 privilege issue. There is nothing about the Macau Data
13 Privacy Act that creates a privilege. A constraint perhaps,
14 hurdle perhaps for someone who didn't already violate the
15 rules of this Court and were not already sanctioned stripping
16 them of the ability to do it. You were very clear of what the
17 redactions could be and what they could not be.

18 Now, Your Honor, I have all of these records here
19 for two reasons, one, as you were very clear last time we were
20 here, is you don't want to be looking at someone's computer
21 files to look at one. You said you like paper. Here it is.
22 Here they are. And here's the other reason we --

23 THE COURT: It's only because I just finished a six-
24 month trial where everything was electronic, and I would
25 rather look at paper now.

1 MR. PISANELLI: And I actually am the dinosaur in
2 our firm who likes paper, too. So --

3 But the point is this. This group of defendants
4 congratulated themselves because they said, look, even of the
5 12 or 15, whatever the number was, that were attached to our
6 exhibit they had replaced those, give or take four or five of
7 them. In other words, about 25 percent even in our sampling
8 they said they had gone back and replaced. They're actually
9 congratulating themselves that they got about 75 percent of it
10 right. They didn't, but that's their position.

11 The reason these are all here, Your Honor, is we
12 have 5,000 records. And we could play a game like we did as
13 kids with fanning out a deck of cards and just go pick one.
14 This is -- these were just examples. You can pick one after
15 another after another after another blindly, and you will see
16 the same inappropriate redactions that render this production
17 a waste of paper. They are unintelligible, as you have seen
18 from the deposition transcript of Mr. Leven. He laughed a
19 bit, was frustrated a bit, had no idea what this was. And I
20 got the impression, at least reading from the cold transcript
21 -- I think you get it -- that he thought Mr. Bice was trying
22 to trick him and he was nervous about it. He didn't even know
23 what these things were and couldn't make heads nor tails about
24 them. So let's not be so fast to congratulate ourselves that
25 25 percent failure rate is good enough to overcome this wilful

1 noncompliance issue.

2 But we have to make some other points here. When
3 they tell you that they have fixed some of them -- well, let
4 me take a step back. I apologize. I don't want to miss this
5 point about the Macau Data Privacy Act. I'll get to the
6 fixing of the redactions before I close.

7 They tell you, our mistake, we were confused when
8 Your Honor said -- this is their argument -- that we can't use
9 the Macau Data Privacy Act as a defense to production of a
10 document we didn't know that that would also strip us of the
11 ability to redact it basically down to a blank page and
12 produce it anyway, we thought we could still do that. As if
13 anyone in this courtroom is going to accept that there really
14 is a difference between holding a paper back and redacting it
15 down to zero information. There is certainly too much
16 experience and too much intelligence in this group to think
17 that you somehow would have allows the Macau Data Privacy Act
18 to be a basis for redaction down to zero when you said so
19 clearly that it was no longer a defense to disclosure or
20 production.

21 Now, they tell us in the fix here that, Your
22 Honor, we have gone back and replaced upwards of -- since
23 January 4th, long after the car fell off the cliff, they're
24 still breathing, apparently, and tell us that they have
25 produced about 2100 records -- pages of records that replaced

1 their redactions because they found them in the United States.
2 That admission to me was as shocking as anything we heard for
3 a few reasons. First of all, whether or not the document's in
4 the United States is irrelevant, as we've said, because you
5 can't use the Macau Data Privacy Act as a defense. But, most
6 importantly, Your Honor, if these documents were in the United
7 States, why didn't Las Vegas Sands produce them? We had
8 documents produced to us as replacement documents for the
9 Sands documents that were in the United States that were never
10 produced by the custodians prior to the custodians'
11 depositions. Mike Leven is an example. We deposed Mike
12 Leven, the same search terms -- and I think this applies to
13 Rob Goldstein, as well -- the same exact search terms that
14 they used in Macau they had to use in Las Vegas. So this
15 tells us that they had these records in Las Vegas, in Nevada,
16 but didn't produce them. They only produced them when they
17 got caught with their hand in the cookie jar approaching --
18 I'll mix my metaphors -- approaching the cliff and said, oh,
19 here's some documents we were withholding from you. If they
20 were in the United States, where have they been? We conducted
21 depositions without these records that they knew existed.

22 Let's be clear, by the way, that this 2100 or so
23 still leaves about 60 percent of this mess useless. Useless
24 because of relevance and the Macau Data Privacy Act.

25 And finally on this issue of fixing the problem, no

1 harm, no foul, as I said, we've been severely prejudiced by
2 taking these depositions, we still don't have the records, and
3 January 4th came and gone. We're now months in. Remember,
4 Your Honor told these counsel, no, no more of the meet and
5 confer game, we see what that means, meet and confer, okay,
6 we'll see if we can find something, here's something useless,
7 gotta have another meet and confer, we'll see if we can find
8 you something, here's something useless, wait, you can't file
9 a sanctions motion, gotta have another meet and confer. Your
10 Honor said that doesn't happen after an order, and so you put
11 an end to it. Isn't that what this late, after January 4th,
12 production is doing anyway? They're now replacing this with
13 documents that should have been produced 16 months ago and
14 saying that, this isn't wilful, we're doing our best and no
15 harm, no foul. Well, there's plenty of harm, and there's
16 plenty of foul.

17 So I violated my own promise to you, and I've
18 started to get angry. And let me back up now.

19 Sands China, Your Honor, is very, very clear in its
20 position, a light is not shining on their records, we are not
21 going to open the roof and let the sun shine in, they're not
22 even going to let a little flashlight come in there and let us
23 see these records that we're entitled to in this case. Las
24 Vegas Sands is no better, and they're equally culpable.
25 They're the ones orchestrating this whole thing. And, as

1 we've seen with the replacement documents, they've been
2 holding back documents that were supposed to be produced long
3 ago, as well. Fine. If they are so concerned about what the
4 world will see when these records are produced, then let's
5 just stop this charade. Let's get to a sanctions issue. If
6 Your Honor thinks it's necessary for an evidentiary hearing,
7 we invite it, let's have it.

8 THE COURT: Nevada Power says I have to have an
9 evidentiary hearing if they want me to.

10 MR. PISANELLI: If they want it, then we welcome it.
11 Your Honor, I would -- I'd tell you this. I think that the
12 pattern of behavior here has been so severe and so
13 disrespectful that despite we find ourselves in this case, in
14 the jurisdictional stage, I don't believe that that limit on
15 what we were supposed to do from a debate perspective strips
16 you of your authority to sanction parties for contempt. I
17 think you can go straight to the striking of an answer and
18 let's just have an evidentiary hearing. I know you're not
19 inclined to. My point is in you're empowered to.

20 THE COURT: I've got a limited stay that says
21 I'm only allowed to deal with jurisdictional issues at this
22 point --

23 MR. PISANELLI: I understand. My only point --

24 THE COURT: -- with respect to Sands China.

25 MR. PISANELLI: I understand. My only point is that

1 the violations have been so numerous and so wilful I believe
2 you still hold that power. I understand you're not inclined
3 to exercise all of it yet, but at a minimum I think we should
4 proceed immediately to an evidentiary hearing to strip this
5 Sands China of its defense and any other sanction that you
6 deem appropriate. Because as soon as we do, as soon as merits
7 is opened, mark my words, Your Honor, we're going to go
8 through this again, and we'll end up in a striking of the
9 answer evidentiary hearing against these parties. And it's
10 fine by them. They're spending millions upon millions of
11 dollars to hide records, not produce them. They're not
12 worried about what it is that's going to come out of this
13 courtroom, they're worried about keeping their companies
14 secret and away from public view. And all we ask as the
15 advocates for a plaintiff who's looking for his fair day in
16 this courtroom, let's give them what they want and let's get
17 right to these evidentiary hearings and be done with this
18 charade.

19 THE COURT: Thank you.

20 MR. PISANELLI: Thank you.

21 THE COURT: Mr. Randall Jones.

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

23 THE COURT: And are you glad not to be talking about
24 pipe?

25 MR. RANDALL JONES: Well, Your Honor, I will be as

1 soon as I leave here. I have an expert witness on cross-
2 examination, and I have counsel who is covering for me this
3 morning while they're crossing him.

4 THE COURT: Oh. I thought you were dark today on
5 your trial.

6 MR. RANDALL JONES: We were dark yesterday, Your
7 Honor.

8 THE COURT: Oh. Okay.

9 MR. RANDALL JONES: But, Your Honor, I will say
10 this. In light of the -- and, by the way, I would this, as
11 well. I've known Mr. Pisanelli a long time, and I have had
12 many cases with him, and I will say this. He does not
13 disappoint. And I understand Your Honor may have certain
14 beliefs and opinions about what's gone on in this case, but I
15 will say that Mr. Pisanelli has I think made it clear from our
16 perspective that the real motive here is what they're looking
17 for is discovery by tort. They don't want the discovery that
18 they profess so greatly to have been abused by. They don't
19 want it. They -- I don't believe they've ever wanted it.

20 And, Your Honor, I want to go back, step back just
21 for moment and talk about what's going on here from our
22 perspective. And I know this has -- this case has a long
23 history that existed before me, and I know the Court -- and
24 I've read your prior orders and I've read the transcripts, and
25 I understand the Court was -- at least the impression I get is

1 the Court was quite upset. And I've been on both sides of
2 these types of issues in the past in front of Your Honor, but,
3 Judge, I want to focus on what we're talking about. There is
4 a massive amount of information, and from my perspective --
5 and, again, I've only been in this case since September or
6 October and I've been preoccupied with another trial, but I've
7 tried to keep as much up to speed with everything that's going
8 on, I've been trying to attend as many hearings as I can so
9 that I could keep up to speed.

10 I've been in large document production cases before.
11 For Mr. Pisanelli, who has been in those same kind of cases
12 himself before, to suggest that this is an easy process is
13 just false. It's just false. To try to collect this kind of
14 information is extremely difficult whether he wants to
15 acknowledge it or not. And in fact --

16 THE COURT: Mr. Jones, I've been trying to have this
17 information collected for a year and a half. So when I give a
18 two-week deadline to comply because I've run out of options in
19 getting people to comply with what I've asked for less
20 formally than in written orders, I'm frustrated.

21 MR. RANDALL JONES: I understand.

22 THE COURT: You can tell I'm frustrated in this
23 case. But there has to be a way that the jurisdictional
24 discovery and the information that has been subject to the ESI
25 protocol for almost two years should have been produced by

1 now.

2 MR. RANDALL JONES: Your Honor, I understand. And,
3 by the way, I understand your frustration, as well. I also
4 want you to take into account -- because, again, we're talking
5 about Rule 37 sanctions that they're requested. And, again, I
6 think it's now been laid out in the open what their real goal
7 here has been is, look, let's try to set this up, there's
8 clearly been difficulties, they have the defendants at a
9 disadvantage. We have a law we have to comply with as best we
10 can. That is a reality whether we like it, whether this Court
11 likes it, or certainly whether the plaintiffs like it or not.
12 That is a reality.

13 THE COURT: So you missed the argument at 8:30 about
14 -- where this issue came up on a different case involving
15 Macau? Not all defendants in litigation from Macau think the
16 Macau Data Privacy Act affects their discovery obligations.

17 MR. RANDALL JONES: Well, you know, maybe the
18 difference there and this case is we actually made inquiry of
19 the government office to ask them what their position would
20 be, and we got a written response that said, here's what the
21 rule is. And it was only --

22 THE COURT: You got a written response after six
23 months.

24 MR. RANDALL JONES: Your Honor, there's a difference
25 between delay and there are -- in fact, this Court made

1 rulings about the delay issues back in September, and I
2 understood the Court's frustration at that point about the
3 delays that occurred. But there's a difference between delay
4 and a wilful violation of order and the complete frustration
5 of the discovery process. And that's what we're talking about
6 from the plaintiff's perspective. They're saying the
7 discovery process has been completely frustrated, that there
8 is no going back, that you cannot remedy this, that we have
9 been so prejudiced that there is only option, the death
10 penalty.

11 THE COURT: Well, but under the stay I can't give
12 them that. Under any circumstances I could not give them
13 that, because I only have a limited stay that deals strictly
14 with jurisdictional issues.

15 MR. RANDALL JONES: And, Your Honor, I don't
16 disagree with that. But -- again, you're the Judge, but I --

17 THE COURT: I understand what they're saying, but I
18 can't do it.

19 MR. RANDALL JONES: The point is they essentially
20 make the argument that demonstrates our point. So here -- if
21 I may, the standard, as you know, is wilful noncompliance with
22 an order. And first of the order has to be clear and
23 explicit. So I understand your position is that, okay, on
24 January 4th you had that order, South China [sic], you had
25 that order. And, you know, I like Mr. Pisanelli's argument.

1 He giveth with one hand, then he taketh away. He says, I know
2 these lawyers and I know them to be ethical, good lawyers and
3 they wouldn't be doing this except for this particular
4 defendant that put them in this position and Mr. Peek said it
5 himself, I've been constrained. Well, we have been
6 constrained, Your Honor. We've been constrained by a law
7 in a jurisdiction where this company's principal place of
8 business is where they have told us in writing what we can
9 and cannot do. And so in good faith -- which is the other
10 aspect of Rule --

11 THE COURT: Rule 37.

12 MR. RANDALL JONES: -- thank you -- Rule 37
13 sanctions analysis is did we comply in good faith or did we do
14 our best to comply in good faith. And I want to talk about
15 that, because Mr. Pisanelli doesn't want to talk about that.
16 He gives you the general example, he'll give you a sort of a,
17 let me just talk about generally what we think they've done,
18 without actually talking about whether it actually caused a
19 problem.

20 So what I can tell you -- and I do take umbrage and
21 I try not to attack counsel, and I think that the plaintiff's
22 counsel has a history -- there have been a lot of cases where
23 they have come in and they don't try the merits of the case.
24 They try to villainize the opposing party and talk about the
25 party and the bad people they are, sometimes on subjects that

1 have nothing to do with the merits.

2 So I would like to talk for a moment about actually
3 happened here. We did have -- there's correspondence that
4 can't be denied. Let's talk about what was asked of us to do
5 and what we did to try to accomplish in good faith or not.
6 And that's your call. But I would respectfully suggest to you
7 that it was absolutely in good faith. And here's our
8 perspective on good faith.

9 Before we got involved in the case there was
10 correspondence to them that said, look, if we're going to
11 search jurisdictional discovery tell us who you think we need
12 to search. And I heard Mr. Pisanelli -- because they never
13 really tried to respond to that in their papers of saying why
14 they didn't talk to us. Well, he comes up today and says,
15 well, because you knew we -- we wanted all these twenty
16 different people. Well, Judge, you've said it yourself
17 several times and Mr. Pisanelli acknowledged, one of the few
18 things he will acknowledge about this case, is that there is a
19 limitation that has been imposed by the Supreme Court which
20 you have found to be in existence. That is jurisdictional
21 discovery first. They gave us a list of twenty people,
22 custodians, that had to do with merits discovery. By
23 definition those people are not as to this buzz word here
24 "relevant." But should they have thought those twenty people
25 were relevant, meaning are we going to find anything

1 meaningful -- you know, and this gets to another point.
2 They've used the term "document dump" several times in their
3 papers. So what is it, Judge? Did we give them too much
4 information, or not enough? They criticize us for not
5 searching more, but then they accuse us of presenting them
6 with a document dump. We offered to stipulate to many of
7 these jurisdictional issues almost a year ago, and they
8 declined. They declined.

9 THE COURT: That was last summer; right?

10 MR. RANDALL JONES: It was actually I believe last
11 spring, as I recall. And again, I'm not the best historian in
12 this case, so I'll defer to others. But that's my
13 recollection. But the point is that we offered to do that and
14 they declined. So --

15 THE COURT: That was the Munger Tolles slips; right?

16 MR. RANDALL JONES: That was. It was not --

17 THE COURT: Trying to remember the group.

18 MR. PEEK: It was March last year, Your Honor.

19 MR. MARK JONES: March 7, Your Honor.

20 MR. RANDALL JONES: So having --

21 THE COURT: Good job, Mr. Mark Jones.

22 MR. RANDALL JONES: Having said that, Your Honor,
23 the point is that that -- they talk about, we want to shine a
24 clear light on what they're doing here and we see their true
25 motive is that they don't want to ever give this information

1 up. Well, Your Honor, I'm here to tell you as counsel of
2 record and as an officer of this court who I hope has some
3 credibility with this Court that has never been any part of
4 our strategy since we have been involved. And I don't believe
5 for a second it was before. But they -- going back to
6 motives, why wouldn't they stipulate to multiple issues of
7 jurisdictional facts? Why wouldn't they? What is their
8 motivation for refusing to do that? We didn't say we were
9 going to stop them from doing other discovery. So you offer
10 to stipulate, they say no; but then they say, you gave us too
11 many documents but you didn't give us enough, you didn't
12 search enough people.

13 So we went and said, look, here are the people we
14 want to search -- actually, I shouldn't say that. We asked
15 them before the new firms got involved, and there's an email
16 that's never been refuted where Mark Jones was going to Macau
17 with Mr. Lackey, sent another email and said, look, we want to
18 make sure, are we searching enough; and that point alone,
19 Judge, is demonstrative of a lack of a wilful intent to
20 frustrate the process, especially as it relates to custodians.
21 So we said, hey, you want to tell us who else? They could
22 have easily sent in email back. That's all they had to do is
23 send an email back saying, we think all twenty are relevant to
24 the search of jurisdictional discovery. That's all it would
25 have taken. Now, would we have agreed with them? Who knows?

1 We may have, or we may have said, no, we need to get some
2 direction from the Court. They wilfully refused to cooperate.
3 And that has to be taken into account by this Court in making
4 this determination. If they don't cooperate in helping limit
5 or expand the people we're searching, as you know -- I believe
6 you are a student of the Sedona Principles -- as you know,
7 then when they don't do that we have an obligation in good
8 faith -- and this happens every day, every day in every case.
9 When you are tasked as a lawyer for your client you have to
10 make certain judgment calls as to what is appropriate.

11 THE COURT: So why on earth when you're doing the
12 searches with the ESI vendors do you use different custodians
13 for different purposes? Because typically you just run the
14 search for the custodians and the key words.

15 MR. RANDALL JONES: Well, you know, that's an irony
16 here that I think has been lost upon the plaintiffs, and I
17 hope I can make the Court aware of what went on there. We
18 looked at -- and this is I think referenced on page --
19 starting on page 16 of our opposition. We looked at their
20 written discovery on jurisdiction. Because, as you told them
21 many, many months ago, look, discovery is not just going to
22 happen because you want it to happen, you have to propound
23 discovery and you have to tell them what you want. So in good
24 faith we went and looked at that discovery and we said, okay,
25 based upon what they think is relevant, Judge, not what we

1 think is relevant, what they think is relevant that they put
2 to us in written discovery requests. We will then go and look
3 at the most appropriate custodians using the Sedona
4 Principles, because we don't want to be accused of a document
5 dump, and we looked the those custodians in connection with --
6 directly in connection with their written jurisdictional
7 discovery requests, and we came up with eight names, and we
8 started doing the searches. So, to answer your question,
9 Judge, this was not done at random.

10 And since we're on this subject, I want to come back
11 and point out this point Mr. Pisanelli made, because he either
12 doesn't understand it or he's just flat wrong. With respect
13 to the Las Vegas Sands discovery and nonredacted documents --
14 and he made the big point, the proof of the pudding here,
15 Judge, he says, is that they were wilfully withholding this
16 information, Las Vegas Sands obviously had this document or
17 else they couldn't have produced unredacted copies when they
18 got the redacted copies and compared them with what was
19 produced in the Sands China Limited production. Well, Judge,
20 again, a catch 22. Well, the reason, it's a real simple,
21 straightforward reason, there's nothing nefarious, there's
22 nothing improper, and in fact what it is is compliance with
23 our discovery obligations. After the production -- because
24 you've got to remember we don't know who the names are, we
25 could not get that information. So what we did in our

1 continuing discovery obligations, we went to look at our
2 production in Las Vegas Sands to compare it to what we got in
3 the Sands China production that was redacted. And the reason
4 we came up with new hits, because they were different
5 custodians, Your Honor. They're different custodians we
6 looked at in Sands China, so they're different emails.
7 They're all available. That was --

8 So here we are, they're seeking to punish us. It's
9 the old adage, no good deed goes unpunished. And I understand
10 that's stretching the Court's patience with respect to that
11 cliché in this circumstance, but that is in fact a reality,
12 Your Honor. What would they have us do? Would they have us
13 ignore our continuing obligation to produce information after
14 we had the redacted versions and not compare it against what
15 we had from Las Vegas? That would be a wilful violation, it
16 seems to me. And I will tell this Court in every case I've
17 ever had, especially large ESI-type cases, we will continue to
18 probably find information as time goes on it. Presumably the
19 volume will fall to smaller and smaller portions, but you
20 continue to find things. In a case of this magnitude with
21 this many documents it's impossible to get it right the first
22 time. So that is the nefarious motive behind our production
23 of the unredacted copies, continuing our continuing obligation
24 to supplement discovery. That's what we did wrong that they
25 would ask you to grant sanction for.

1 So, Your Honor, I would ask you to take that into
2 consideration in this whole process.

3 Now, with respect to the wilfulness, Judge, we went
4 to Macau. And in fact I'll tell the Court when Mr. Lackey and
5 my brother went to Macau the first time to look at those
6 documents there was a concern that if they, of-of-country
7 lawyers, looked at that stuff they could be subject to
8 criminal penalties themselves. This was information we went
9 after your order in September to try to make sure we did what
10 you wanted us to do. And, Your Honor, look, Mr. Pisanelli's
11 argument -- think about it. The only way he could make that
12 argument is if in fact we were so afraid of actually having
13 merits discovery that we would shoot ourselves in the head.
14 If we were bound and determined to do that, we wouldn't have
15 produced anything on the 4th of January, we wouldn't have
16 spent millions of dollars. And I can tell you I was in the
17 middle of trial and I was involved in that process at the same
18 time. This was late-night meetings, weekend meetings,
19 discussions, trying to make sure we complied with what you
20 wanted us to do on January 4th. And I'm telling you that as
21 an officer of the court, and you can take that for what you
22 think it's worth, Your Honor. But I can tell you here in open
23 court we were pulling out all the stops that we thought we
24 could pull to try to get this done so we would not be in
25 wilful violation of your order.

1 And that brings up another issue, and this is the
2 redaction issue. That is a troublesome issue, Your Honor.
3 There is no doubt about it. It is -- there's no question we
4 cited the place in the brief where it was referenced that
5 you'd said we could still do redactions.

6 THE COURT: Absolutely. My order says that.

7 MR. RANDALL JONES: And you mention it again even on
8 the 8th of February, where you said again, on page 19 of the
9 transcript, "No, Mr. Peek, you can do redactions," and you go
10 on to talk about that. "There is a privilege issue. I would
11 hope you would do redaction." The Court, "My concern is that
12 perhaps the redactions have been overused, but I'm not there
13 yet today, it's just a concern."

14 So, Your Honor, even after the production, based on
15 what you said -- and I wasn't there, but I've read it -- you
16 do have a concern about redactions. And, Your Honor, I'm here
17 to tell you I understand your concern.

18 THE COURT: Here's the footnote in the order, Mr.
19 Jones -- and this is why the redactions were of such concern
20 to me when I heard about them. But since it wasn't an issue I
21 was addressing that day, I simply said it was a concern. The
22 footnote says, "This does not prevent the defendants from
23 raising any other appropriate objection or privilege." And
24 that's what we've had discussions about redactions. I hope
25 that if there is a true privilege issue that it would be

1 handled appropriately. That doesn't mean redactions under the
2 MDP, which you have been precluded from doing anything with
3 respect to.

4 Now, I certainly understand that Sands China may
5 have obligations with the Macau Government. But because of
6 what's happened in that case, in this particular case you've
7 lost the ability to use that as a defense in any way, shape,
8 or form.

9 MR. RANDALL JONES: Well, Your Honor, my response to
10 that be -- and I hear what you just said and I know the Court
11 understands this, but I think it's necessary to make this
12 point on the record. My client is faced with the proverbial
13 Hobson's choice. It truly is. And in trying to make sure we
14 did not wilfully violate your order and complied with
15 discovery in good faith we did what we did. So the redactions
16 that are there do exist.

17 And, by the way, I would disagree with Mr.
18 Pisanelli's percentages. The way I calculate it is at most
19 10 percent of the documents produced have a redacted vein.
20 But then let's look beyond that. Mr. Pisanelli says that
21 these documents that are redacted are meaningless. He says
22 they are essentially a blank page. They are not a blank page,
23 Your Honor. There are several issues that go directly
24 contrary to that, and I want to talk about that in a couple of
25 respects. One is the subject matter, the substance of the

1 email has not been redacted, so only individual names have
2 been redacted. So you could still -- to suggest that --
3 THE COURT: That is violative of my order, Mr.
4 Jones. And I don't really care that your client is in a bad
5 position with the Macau Government. Your client is the one
6 who decided to take the material out of Macau originally,
7 failed to disclose it to anyone in the court, and then as a
8 sanction for that conduct loses the ability in this case to
9 raise that as an issue. I'm not saying you don't have
10 problems in Macau. I certainly understand you may well have
11 problems in Macau with the Macau Government. I tried to
12 understand the letter you got from the Macau Government. I
13 read it three times. And I certainly understand they've
14 raised issues with you. But as a sanction for the
15 inappropriate conduct that's happened in this case, in this
16 case you've lost the ability to use that as a defense. I know
17 that there may be some balancing that I do when I'm looking at
18 appropriate sanctions under the Rule 37 standard as to why
19 your client may have chosen to use that method to violate my
20 order. And I'll balance that and I'll look at it and I'll
21 consider those issues. But they violated my order.
22 MR. RANDALL JONES: Well, Your Honor, again, I would
23 respectfully state that I was a part of that process, and
24 whether we were being obtuse -- I hope that I'm never obtuse
25 when I'm looking at a Court's transcript or order -- that when

1 we talked about redactions as it related to those we certainly
2 didn't intend to wilfully violate your order. I will tell you
3 that, and you can take that for what it's worth coming from
4 me. We've appeared before you many times. I would not ever
5 tell a client to wilfully violate any court's order, and
6 certainly, Your Honor, I have great respect for you, I would
7 not ever suggest that a client of mine do that intentionally.
8 And that's just period. I would never do that. And I
9 certainly didn't think we were doing that at the time. We
10 were trying to thread a needle, I certainly agree we were
11 trying to do that, and we hope we have accomplished that. And
12 I understand what you just said.

13 Having said that, I would ask you to consider this.
14 With respect to this whole point about a blank page and the
15 information that they don't have, first of all, this goes back
16 to this issue of document dump. We have grossly overproduced
17 what could possibly be relevant, because we didn't want to
18 base it on relevance, and the jurisdictional discovery out of
19 a fear of the very kind of thing that's going on here, that
20 they would ask for the death penalty or some other extreme
21 sanction because they are trying to get, from our perspective,
22 not discovery, they're trying to get jurisdiction by tort or
23 essentially put us in a position because of some of the
24 history that's occurred in this case so that they could ask
25 you for the death penalty. And we know that's what happened.

1 We heard it today. Mr. Pisanelli has now made it public what
2 we all suspected to be the case.

3 So then we have to go back and look at what was the
4 alleged harm assuming there was a violation of this Court's
5 order. The harm was they didn't get the exact name of a
6 person in an email. They got all the other information, they
7 got the date, they got a log that told them who the email was
8 from and who it was to. So from a jurisdictional standpoint
9 when you look at the subject you could see this came from this
10 company to that company or it was an internal email or it was
11 to a third party and here's what was discussed in that email.

12 So it would seem to me that -- we're talking about
13 wilful conduct -- they have not come forth and shown you
14 anyplace that -- in fact they did give you several examples of
15 these emails that have been redacted, and we came forward and
16 said, oh, guess what, we found the majority of them, we found
17 the duplicates in the Las Vegas Sands documents, and, by the
18 way, show us, Plaintiff, where any of these emails have
19 prejudiced you. In fact, Mr. Pisanelli said today, we didn't
20 get these emails for the depositions we took. I have yet to
21 hear him tell you how, verbally or in writing, that prejudiced
22 their ability in the deposition. And I suspect on reply he's
23 going to get up here and say, well, it's blank, or, it's
24 unintelligible, Mr. Leven -- and I wanted to get to that,
25 because they used Mr. Leven as their great example of how

1 these things are unintelligible even to one of these
2 custodians. Well, Your Honor, I would just ask this Court to
3 use -- think about this in the context of one of the stock
4 jury instructions that this Court gives to every jury that
5 ever -- civil jury that it ever swears in. Use your common-
6 sense, everyday experiences. So in context of Mr. Leven
7 seeing an email that is a subject matter he may have nothing
8 to do with in the company or the date that may have occurred
9 years before from one of the highest executives in the company
10 that whether it had the names on it or not, would you
11 reasonably expect that senior executive to know what that
12 email was culled out of hundreds of thousands of emails that
13 may have absolutely nothing to do with his daily business, and
14 even if it did, if it was something that occurred years before
15 on a minor matter, would you reasonably expect him to recall
16 what that email was about.

17 So from our perspective, Your Honor, this is
18 something -- nothing but a setup attempt by the plaintiffs
19 because they don't want to get into jurisdictional discovery.
20 This is perfect end run for them, hey, we've got them now,
21 they redacted and they didn't -- and then they produced stuff
22 even though they have a continuing obligation to produce after
23 the January 4th date, we've got them, let's go for the death
24 penalty. It makes clear -- you talk about motives being
25 apparent. Their motive is apparent. They can't even decide

1 what their jurisdictional legal arguments are.

2 And, you know, I'm going to quote my father, because
3 there's very few times that I recall this -- and it's a pretty
4 standard cliché that we've heard as lawyers, except my father
5 had an interesting twist on it that I've never heard from
6 anybody else. And my dad used to say, you know, when you
7 don't have the law you argue the facts, and when you don't
8 have the facts you argue the law --

9 THE COURT: Is that where Drake Delanoy got that
10 thing?

11 MR. RANDALL JONES: Well, actually, Your Honor, this
12 is a twist my father had on it that I always thought was most
13 appropriate, and when you don't have either one of them, you
14 drag a skunk around the courtroom.

15 THE COURT: That one I haven't heard before, Mr.
16 Jones. That's good.

17 MR. RANDALL JONES: And if that cliché ever applied,
18 this is the case.

19 So, Your Honor, Mr. Pisanelli I know gets to get up
20 here and he gets to make his reply and say all the reasons why
21 what I just told you is not true. The fact of the matter is
22 all you have to do is look at our brief and look at the
23 attachments to it, and every single thing Mr. Pisanelli just
24 told you in his opening remarks is refuted and does not rise
25 to the level of wilful misconduct. We had a good-faith belief

1 in the custodians we chose, we had a good-faith belief in the
2 language of your order with respect to July 4th [sic], and I
3 understand you disagree with that, but I'm telling you we
4 believed we had the right to do that, and we felt even more
5 reassured when we saw the language that you mentioned in your
6 -- at the hearing on February 8th. So --

7 And then I would add this last point, Your Honor.
8 Where have they demonstrated -- other than hyperbole and
9 vitriolic rhetoric, where have they demonstrated to you any
10 real actual harm to them other than delay? And the delay that
11 was occasioned was resolved on January 4th, with the exception
12 of our continuing obligations to supplement, which we did as
13 timely as we possibly could. And, again, other than rhetoric,
14 there's been no statement and no showing of any real prejudice
15 to the plaintiff as a result of our production and the manner
16 in which we produced it. Was it slow? Undeniably. In a
17 perfect world could we have done it better? Perhaps. But I
18 will tell you, Your Honor, and we have the affidavits and the
19 statement of counsel of what we did try to do to make sure we
20 did comply with what you wanted us to do, and we continue to
21 represent to you that we will continue to try as best we can
22 to respond to these discovery issues.

23 And, Your Honor, we see no reason, in spite of the
24 rhetoric and the hyperbole, that the jurisdictional hearing
25 cannot go forward. Until they can show you specifically why

1 any of these redactions will inhibit their ability to do the
2 hearing on jurisdictional discovery, then we think certainly
3 the burden is on them in a Rule 37 motion to show you exactly
4 how it's interfered with their ability to go forward. It may
5 have slowed it down, and there are certainly ways the Court
6 can address that. We thought you addressed that in September,
7 and then you gave us a deadline. And we thought we've
8 complied with that. And we understand your issue about the
9 redactions, but we don't see how, and we certainly don't
10 believe they've demonstrated how, that has inhibited or
11 interfered with their ability to go forward with the
12 jurisdictional motions, Your Honor.

13 THE COURT: Okay. Before you sit down pull the
14 motion at Tab 11.

15 MR. RANDALL JONES: Of our --

16 THE COURT: Their motion. It's an email with a
17 bunch of redactions. I want to ask you some questions.

18 MR. RANDALL JONES: Okay.

19 (Pause in the proceedings)

20 THE COURT: And you guys can huddle together if you
21 want, because this may be a group question, as opposed to a
22 Randall Jones question.

23 MR. RANDALL JONES: Well, let me see if can respond
24 to it, Your Honor, and I'll defer to counsel if they have any
25 other additional comment.

1 THE COURT: Okay. Here's my question. This is an
2 email -- and I'm not going to go too much into the substance
3 of it because it might have privacy issues, who knows. It
4 appears to be an email from Macau seeking direction on how to
5 proceed with a proposed solution to a problematic financial
6 transaction. That's what it appears to be. I can't tell
7 that, though; because, with the exception of the email address
8 that says, @venetian.com I don't have any other information as
9 to who it is, and somebody named David who's involved in this.
10 And the purpose of the jurisdictional discovery is to try and
11 determine what that connection was for some of those issues.
12 Or at least that's what I thought we were doing. So that's
13 why the redactions give me so much concern, Mr. Jones.

14 MR. RANDALL JONES: Well, and, Your Honor, I
15 understand your point. And, again, let me -- because,
16 candidly, I've been a little preoccupied with other things.

17 THE COURT: You're in trial, I know and I
18 understand.

19 MR. RANDALL JONES: Let me get with counsel.

20 (Pause in the proceedings)

21 MR. RANDALL JONES: Actually, Your Honor, Mr. Lackey
22 had the obvious answer and one I'd even spoke about before,
23 and I think that's -- that's our point on this issue.

24 THE COURT: Which is?

25 MR. RANDALL JONES: If you have -- if you have the

1 log under Tab M, I believe, of our documents, and I --
2 THE COURT: I'm there. Max just sent me there.
3 MR. RANDALL JONES: And --
4 THE COURT: And then go to document 102981 on the
5 log maybe?
6 MR. RANDALL JONES: Yes, Your Honor. The point
7 being is that it doesn't necessarily matter who the individual
8 was. When you know who the sender was and who the recipient
9 was that's the critical information you need to make a
10 jurisdictional decision based upon the point you made, there
11 -- the substance of that email is there. They're talking
12 about this repayment. So, again, does it make a difference
13 who the actual sender was if you know who the entity was that
14 was sending it and who the entity was that was receiving it?
15 THE COURT: Well, unfortunately for all of us, this
16 particular document is not on the log. I'm on page 13 of 163.
17 MR. RANDALL JONES: Let's see.
18 THE COURT: Unless, of course, the log isn't in
19 numerical order, which --
20 MR. RANDALL JONES: This may have been --
21 THE COURT: -- would make my life really hard.
22 (Pause in the proceedings)
23 MR. RANDALL JONES: Your Honor, let me --
24 THE COURT: And I picked this one totally at random,
25 Mr. Jones.

1 MR. RANDALL JONES: Oh, I understand, Your Honor.
2 MR. PEEK: Your Honor, it should be on the log.
3 MR. RANDALL JONES: Yeah, it should be on there.
4 THE COURT: Yeah. I'm not saying it shouldn't be,
5 I'm just saying it isn't on the log, because --
6 MR. PEEK: And what I'm also not sure of is whether
7 it may have also been produced in an unredacted form, too.
8 THE COURT: It may have been.
9 MR. RANDALL JONES: And that's the question, Your
10 Honor, I was having, is if it was produced in an unredacted
11 form because six of the -- or I think nine of the --
12 MR. PEEK: Of the 15.
13 MR. RANDALL JONES: -- of the 15 they submitted were
14 ultimately produced in unredacted form. So if it was produced
15 in unredacted form, it would not be on the log.
16 THE COURT: Mr. Bice, do you know? I'm on
17 Exhibit 11 to your motion. Was it produced in unredacted form
18 to the best of your knowledge? And I know I'm testing you.
19 MR. BICE: I don't know.
20 THE COURT: All right.
21 MR. BICE: But it wouldn't surprise me that --
22 because this log is created after this date, if you look at
23 the log date. They created this log on February 7th, so it
24 maybe that's why it's omitted. I don't know for sure.
25 THE COURT: Okay. Thank you, Mr. Bice.

1 MR. BICE: Thank you.

2 THE COURT: All right. I'm done with my exercise in
3 futility, Mr. Jones. Thank you.

4 MR. RANDALL JONES: Thank you, Your Honor.

5 MR. PEEK: Your Honor, I just -- I only have a brief
6 statement to make. And I don't want to really say anything,
7 but because there were certain accusations that were made --

8 THE COURT: I didn't hear a single accusation about
9 you.

10 MR. PEEK: Well -- yeah. I just want to make sure
11 that by not --

12 THE COURT: I didn't hear a single accusation.

13 MR. PEEK: Good. Because I didn't want to say
14 anything on behalf Las Vegas Sands --

15 THE COURT: I'm just going to let you --

16 MR. PEEK: -- here because this is not directed at
17 me.

18 THE COURT: Go sit down.

19 MR. PEEK: Thank you.

20 THE COURT: Mr. Pisanelli.

21 MR. PISANELLI: One might question whether that
22 committee we just witnessed made our point on a document they
23 produced and they had a caucus and couldn't figure out what it
24 was, where you can find it, who sent it, who it went to, or if
25 it's on a log, and what it was supposed to tell us. Your

1 Honor picked out a good one in the sense that you can't tell
2 anything about it.

3 Now, Mr. Jones --

4 THE COURT: And it may relate to jurisdictional
5 issues because of the content of it.

6 MR. PISANELLI: Right. And here's the point about
7 Mr. Jones -- what he was dancing around was the issue of
8 relevance; right? He kept saying, all we need to know is
9 where it came from, you don't need to know the people, et
10 cetera. And my point is of course we do. We're talking about
11 jurisdiction here. We're talking about debates of whether
12 executives from Las Vegas have managerial control and
13 direction over the operations of that company or vice versa.
14 It couldn't be more relevant in a jurisdictional debate of who
15 these emails are coming to, who they're from, what they're
16 talking about, and how, if at all, this email reflects upon
17 the contacts that this company has with Las Vegas.

18 It's also important to point out, with due respect
19 to Mr. Jones, he spoke of many topics of which he just clearly
20 doesn't know what he was talking about. I don't believe for
21 one moment he's trying to mislead you, but he'd said some very
22 demonstrably false things. For instance, he tried to give you
23 the impression, Your Honor, that all we had to do is connect
24 the dots, that if we had this redacted email we could sit in
25 front of a witness for a deposition -- by the way, that had

1 already been conducted -- but we could sit with this
2 deposition that's been redacted look at the privilege log and
3 fill in the holes. What he doesn't apparently know is that
4 the privilege log doesn't give those names. The privilege log
5 gives Employee 1, Employee 2, designations of that sort, which
6 is no different than a blank piece of paper once again. We
7 never doubted for one minute that someone who is using a
8 venetian.com email address was a employee. That didn't tell
9 us anything that it's Employee 1 or Employee 2.

10 He also spoke about a topic of these custodians
11 which reflected a lack of knowledge, saying that these were
12 completely new custodians. Well, they're not new custodians,
13 Your Honor. The custodians for Las Vegas Sands, including Mr.
14 Leven and Mr. Goldstein were the custodians and used the same
15 exact search terms for LVS in their production. It wasn't
16 until they had to go back now and replace documents that we
17 see documents from existing custodians being produced for the
18 very first time after those gentlemen have already been
19 deposed. You notice Mr. Jones never answered that question to
20 you. Why was it that custodians that we had asked for that we
21 had deposed ended up producing documents only as replacement
22 documents to Sands China and not in Las Vegas Sands's original
23 production? And these are key emails. There was no answer,
24 because he doesn't have one.

25 There is also noticeable silence from Mr. Jones on

1 the point that I made about our list. He seemed to still be
2 embracing this concept that they didn't know, they didn't
3 know. I can read it to them again. I can read his own self-
4 congratulatory memo to you in January of this year where they
5 said they knew that I said from this podium I wanted the
6 twenty custodians in the letter from Colby Williams. Of
7 course they knew. And he also didn't tell you whether or not,
8 Your Honor, that they actually had researched those custodians
9 but just didn't produce them. I would ask Mr. Jones to stand
10 up right now and confirm for Your Honor whether his company
11 has researched and reviewed the emails from Louis Melo. I am
12 certain I know the answer to that question, but I would love
13 to hear from Las Vegas Sands or from Sands China of whether
14 they have researched Louis Melo's emails and why we don't have
15 any of them.

16 THE COURT: Mr. Pisanelli, please direct your
17 comments to me.

18 MR. PISANELLI: I'm sorry. That's true. I
19 apologize, Your Honor. But the point being, where is it, why
20 haven't they been searched, and where are the records?

21 He also speaks from a lack of knowledge about this
22 concept of a stipulation. He told you that his predecessor
23 counsel had offered to stipulate to all of this and we
24 rejected it because of our improper motive in this case. What
25 he doesn't know is that that stipulation was so self serving

1 as to be laughable, frankly, a stipulation with a few events
2 of contacts but not even touching upon how broad the contacts
3 were. And, contrary to what Mr. Jones said, it was in
4 substitution of discovery. That's why his predecessor counsel
5 wanted to do the stipulation in the first place, to keep us
6 from deposing their executives.

7 THE COURT: Well, and he thought the hearing would
8 be shorter.

9 MR. PISANELLI: I'm sorry?

10 THE COURT: And he said he thought the hearing would
11 be shorter.

12 MR. PISANELLI: Well, it would be shorter, sure, if
13 they gave us no facts that were useful to us and we weren't
14 entitled to any discovery. We probably would have had a
15 20-minute losing evidentiary hearing had we agreed to that.
16 So I can't blame them for offering it, but I do question how
17 they can criticize us for saying no. Put in our shoes, I have
18 no doubt every lawyer in this room would have made the same
19 choice.

20 Now, nothing unique at all about the defense, the
21 overriding theme that we see in the papers, the overriding
22 theme we heard in oral argument that our motive is to -- is
23 discovery or victory by tort. Every single litigant who is
24 caught violating rules who is facing sanctions says the same
25 exact thing. As creative and artful as Mr. Jones is, this one

1 is an old, tired excuse from every single litigant who isn't
2 playing by the rules, oh, Your Honor, they're afraid of the
3 merits. Well, if this team was so interested in the merits,
4 one would question why they just don't produce what it is they
5 have, why it is they just don't comply with your orders as
6 they're obligated to do.

7 Now, he also speaks completely out of school in what
8 he claimed to be an exception to his practice by attacking our
9 motives and our practice. What he doesn't know about any
10 other case where discovery sanctions were issued --

11 THE COURT: I don't want to talk about those other
12 cases that I was the settlement judge. I --

13 MR. PISANELLI: All I was going to say is that you
14 know all about the case.

15 THE COURT: I don't want to know about it --

16 MR. PISANELLI: That was the funny part about it.

17 THE COURT: -- because I was the settlement judge.

18 MR. PISANELLI: Fair enough. That's my point. He
19 doesn't know that you know all about it. So we'll leave it
20 alone.

21 The long short of it is, Your Honor, he tells you --
22 do you have that case tabbed? He tells you that, sure,
23 there's been some delay, no harm, no foul, Your Honor, what's
24 the big deal. I'll tell you what the big deal is. We have
25 been waiting now for two years. We have been struggling and

1 spending attorneys' fees, we've been wasting our time deposing
2 -- deposing principals not knowing that they're hiding
3 records. We now will have to duplicate those depositions
4 again because of this behavior.

5 Our Supreme Court told us in the Temora Trading case
6 versus Perry that, "Terminating sanctions are proper where the
7 normal adversary process has been halted due to an
8 unresponsive party, as diligent parties are entitled to be
9 protected against interminable delay and uncertainty and
10 resolution of illegal tactics." In other words, hiding
11 discovery, making a case go forward only to be duplicated
12 because of tactics of this sort is the exact type of discovery
13 -- I'm sorry, sanction that Rule 37 and the cases interpreting
14 it are intended to cover. They is nothing here about no harm,
15 no foul. We have at best, at best, a client that has known
16 what it has been doing, and it has done everything it can to
17 halt the process. It has unlimited funds. Sanctions,
18 monetary sanctions have been meaningless to it so far. All
19 that is left at this point, I believe, is an evidentiary
20 hearing to resolve -- an evidentiary hearing not to resolve
21 the jurisdiction, but an evidentiary hearing to resolve this
22 sanction motion in which this defense of lack of personal
23 jurisdiction on behalf of Sands China and any other sanctions
24 that you deem appropriate should be ordered. They lost. Just
25 like they lost the right to hide behind the Macau Data Privacy

1 Act, they lost the right to contest jurisdiction with the
2 manner in which they've conducted themselves.

3 THE COURT: Thanks.

4 I have a couple of concerns and I'm going to tell
5 you guys and we're going to address these in a different
6 hearing. The two concerns that I have are the redactions.
7 The redactions, especially the ones that have the word
8 "personal" on them, appear to be violative of my order. And
9 while there may be a very good business reason that has
10 generated that decision, it is still a violation of my order,
11 and I need to have a hearing related to that as to the degree
12 of wilfulness and the prejudice related to those redaction
13 issues.

14 With respect to the search and selection of the
15 custodian issues I am going to order that the custodians that
16 are identified in Exhibit 6 to the motion, which is the twenty
17 people in the letter, be searched, and that then if there are
18 true privilege issues, that you may do a redaction and a
19 privilege log. But other than that, you should produce the
20 information. I certainly understand if you believe an issue
21 does not go to jurisdictional discovery that there may be an
22 appropriate objection related to that particular production.
23 But it requires you to do the search. You can't do the search
24 until you -- you can't make the decision until you've done the
25 search of the documents.

1 So I'm going to have a hearing. And at my
2 evidentiary hearing I'm going to make a couple determinations.
3 I'm going to make a determination as to the degree of
4 wilfulness, I'm going to make a determination as to whether
5 there has been prejudice, and, if there has been prejudice,
6 the impact of the prejudice. And if I make a determination
7 that there has been prejudice, then I'm going to talk about an
8 appropriate sanction.

9 So under those circumstances when are you going to
10 be done with Suen case and ready to have such a hearing?

11 MR. PISANELLI: Suen is intended to go through
12 April.

13 MR. PEEK: Yeah. What -- we just talked to the
14 judge, Your Honor. We start the 25th, and we're scheduled
15 really for six weeks on his trial calendar.

16 THE COURT: Okay.

17 MR. PEEK: The case tried for six weeks previously.

18 THE COURT: I know. I'm -- you know, I'm just
19 frustrated. Not your fault. I have to resume the Planet
20 Hollywood case, the last part of it, the week of April 29th.
21 So would you guys be ready to go the week of May 13th on this
22 hearing?

23 MR. RANDALL JONES: What date, Your Honor?

24 THE COURT: The week of May 13th.

25 MR. RANDALL JONES: May 13th?

1 THE COURT: That week.
2 MR. RANDALL JONES: I have --
3 THE COURT: Because you'll be done in March. Judge
4 Johnson --
5 MR. RANDALL JONES: Oh, no, I'll be done.
6 THE COURT: -- says you're trial's going to be done
7 in March. And then they've got to try the Suen case and
8 they'll be done at the end of April. So if I can get you guys
9 in the week of May 13th, maybe I can make things work out.
10 MR. PEEK: Well, since this involves Mr. Jones, I
11 mean, that's his decision, Your Honor, on May 13th.
12 MR. RANDALL JONES: I --
13 MR. PEEK: I mean, I certainly want to be here for
14 that.
15 THE COURT: I'm not just --
16 MR. RANDALL JONES: Sooner the better.
17 THE COURT: I'm asking the entire group of people.
18 MR. RANDALL JONES: That's fine, Your Honor.
19 MR. PEEK: The question is Mr. Pisanelli.
20 THE COURT: He's looking. He settled the Whittemore
21 case, so now that opened up that --
22 MR. PEEK: He's got lots of time.
23 THE COURT: Because that trial was supposed to be
24 going then. And you settled the Newton case, or got the
25 Newton case resolved in Bankruptcy Court, so you --

1 MR. PEEK: No, I haven't gotten it resolved in
2 Bankruptcy Court, Your Honor. It's actually just as bad in --
3 THE COURT: I heard it's being sold, the Ranch is
4 being sold.
5 MR. PEEK: It is, Your Honor. But actually we have
6 motion to remand the non parties back to you being heard on
7 the 29th, so it's going to come back to you, I believe.
8 THE COURT: And then you'll ask me for a
9 preferential trial setting again because they're older.
10 MR. PEEK: I will based upon the age of the -- both
11 plaintiff and defendants, Your Honor.
12 THE COURT: Just let me know when something happens
13 that I need to react to.
14 MR. PEEK: I will, Your Honor.
15 MR. PISANELLI: That week works.
16 THE COURT: All right. So how long do you think
17 you're going to need for this hearing?
18 MR. PISANELLI: Two days.
19 THE COURT: Okay. What two days of that week would
20 you like to use?
21 MR. PEEK: Does the week start on the 13th? Is that
22 what you're saying, Your Honor? I just want to make sure.
23 THE COURT: The week starts on Monday, May 13th,
24 2013.
25 MR. PEEK: I would like Monday and Tuesday, Your

1 Honor.

2 THE COURT: Okay. The problem with that is I can't
3 start until 1:00 on Monday because I do my Business Court
4 settlement conferences on Monday mornings still. So if you
5 think you can get it done in a day and a half or if you think
6 you may need to go into Wednesday, that's fine, I'll just --
7 I've got to write the number of days down so I don't set
8 something at the same time.

9 MR. PEEK: Why don't we do Monday -- start Monday
10 afternoon and go through Wednesday, Your Honor?

11 THE COURT: Is that okay with you Mr. Pisanelli and
12 Mr. Bice? Yes, Judge, that's great.

13 MR. BICE: Yes, Judge, that's great.

14 THE COURT: Okay. So you're 5/13 through 5/15.

15 MR. PISANELLI: What did we just agree to?

16 MR. PEEK: Your Honor, may I ask for some
17 clarification here, because --

18 THE COURT: As much as you want, Mr. Peek.

19 MR. PEEK: Thank you. And this is probably more Mr.
20 Jones's clarifications. But do I understand on -- it says,
21 your redactions appear to violative of your order. Are you
22 then saying to us that the 25,000 pages that we produced, we
23 go back and take the redactions off, or that's the subject
24 matter of whether you believe there's a degree of wilfulness?

25 THE COURT: I will tell you what has happened in

1 other cases where I have identified problems with discovery
2 and set these evidentiary hearings. Some people go back and
3 do some work and then they can say, gosh, there's not so much
4 prejudice and a monetary sanction would be appropriate. And
5 then we have a discussion about whether that's true or not.
6 But that requires you to go back and do that work. I'm not
7 ordering you to do that.

8 MR. PEEK: That's -- that really was my question.

9 THE COURT: I'm --

10 MR. PEEK: Because I don't violative of another
11 order. Because I don't think I'm in violation of the first
12 order, but I don't want to be --

13 THE COURT: You and I have a difference of opinion
14 about --

15 MR. PEEK: We do.

16 THE COURT: -- that conversation. But with respect
17 to the custodians I've ordered you to do that.

18 MR. PEEK: Well, that's the next question that's
19 going to come up, is that now you're ordering us to search
20 twenty -- the twenty custodians on --

21 THE COURT: That were identified --

22 MR. PEEK: -- their merits discovery -- I just want
23 to make clear, the twenty custodians on their merits discovery
24 requests.

25 THE COURT: The twenty custodians identified on the

1 July 20th, 2011 --
2 MR. PEEK: Which is merits discovery.
3 THE COURT: I understand.
4 MR. PEEK: And you're saying that those should be
5 inclusive for jurisdictional discovery and we should search
6 those. And then I guess you will determine whether we should
7 or should not redact for personal data, names.
8 THE COURT: No. I've told you you can't redact for
9 personal data --
10 MR. PEEK: Okay. I just want to make sure. You're
11 saying --
12 THE COURT: -- but if you decide that because of
13 your risks in Macau you want to redact for personal data, then
14 I weigh that in my wilfulness balancing of issues.
15 MR. PEEK: Or we may come back to you and say in an
16 appropriate objection, appropriate motion or something, or we
17 just do. And then you weigh that on -- is that what I
18 understand?
19 THE COURT: What I'm trying to convey to you, and I
20 hope this is really clear is, I am not ordering you to produce
21 at this time documents responsive to the ESI search that you
22 do that would only relate to merits discovery. If you choose
23 to withhold those at this time, great. It's --
24 MR. PEEK: Choose to withhold those. What do you
25 mean "those"? I don't know what "those" is.

1 THE COURT: A document that talks about why Mr.
2 Jacobs was terminated. Remember how I have the who, what,
3 where, when, how --
4 MR. PEEK: I do.
5 THE COURT: -- but we can't ask about why?
6 MR. PISANELLI: And, Your Honor, if I can make the
7 record clear --
8 MR. PEEK: So we're just --
9 MR. PISANELLI: I'm sorry, Mr. Peek. Go ahead.
10 THE COURT: Wait. We've got to let Mr. Peek finish,
11 Mr. Pisanelli.
12 MR. PISANELLI: Yes.
13 MR. PEEK: Thank you. I wasn't because, Your Honor,
14 the -- that type of discovery of the who, what, where, when,
15 how has not been the subject matter of their request for
16 production. And we have search terms associated with those
17 requests for production. That's how we came up with the
18 search terms, was based upon the specific jurisdictional
19 discovery that you allowed in you March 8th order, not what
20 propounded but what you allowed. So --
21 THE COURT: So are you telling me that it's your
22 position that Luis Melo has nothing to do with any of the
23 requests for production that were served?
24 MR. PEEK: We are, Your Honor. We are telling you
25 that.

1 THE COURT: And you're telling me that Ian Bruce has
2 nothing to do with any of the --

3 MR. PEEK: We are -- with the discovery that you
4 permitted, Your Honor, we --

5 THE COURT: Then here -- here's what I'm going to
6 tell you. Run the searches and then list them on a privilege
7 log. And I am permitting you to raise the relevance issue
8 related to merits discovery as opposed to jurisdictional
9 discovery. But please understand, if I go through and do an
10 in-camera review and it's not something that's a how and it's
11 a repetitive process, there will be sanctions.

12 MR. PEEK: So you're allowing them now to do more
13 discovery on document production than what you allowed them to
14 do in your March 8th order. Because they --

15 THE COURT: I am requiring you to do the ESI search
16 related to the twenty custodians identified on the July 20th,
17 2011, letter and produce any information that is responsive to
18 the discovery requests --

19 MR. PEEK: Thank you.

20 THE COURT: -- and to withhold anything that goes
21 only to merits discovery.

22 MR. PEEK: We understand now, Your Honor.

23 MR. PISANELLI: And so the point the I was going to
24 make, Your Honor, is I get the impression, and maybe I'm
25 wrong, but I'm going to be careful here, that Mr. Peeks

1 remarks about our twenty custodians being merit based is to
2 create an improper impression that they are not also our
3 custodians for jurisdictional discovery, which I have already
4 said in this court so I'll repeat it again --

5 THE COURT: Mr. Pisanelli, I got that. Did you just
6 hear the part about --

7 MR. PISANELLI: I'm just making --

8 THE COURT: -- how I said you can hold the how stuff
9 -- or the why stuff, because I've talked about this over the
10 last several months --

11 MR. PISANELLI: Agreed.

12 THE COURT: -- repeatedly and I know it's a hard
13 path to negotiate. But jurisdictional discovery is not a
14 black-and-white issue especially in this case.

15 MR. PISANELLI: I agree.

16 THE COURT: And that's why we've had so many
17 conference calls and so much motion practice related to it.
18 And I do not fault you folks for that practice. I think it's
19 appropriate. I'm just trying to make sure that you run the
20 ESI search, okay.

21 MR. PISANELLI: And so the point -- the point I was
22 getting to, Your Honor, on the evidentiary hearing, if we --
23 would we be permitted to --

24 THE COURT: I can't throw these away. Sorry.

25 MR. PISANELLI: That's okay.

1 THE COURT: I can't throw your stuff away because I
2 set another hearing.

3 MR. PISANELLI: A Freudian slip.

4 THE COURT: I'm trying to get rid of you guys. Yes.
5 Keep going.

6 MR. PISANELLI: Assuming that this evidentiary
7 hearing will permit us to rebut the suggestion that, for
8 example, Mr. Melo's emails have nothing to do with
9 jurisdiction and if we can establish that they have been
10 improperly withheld that will be taken into consideration for
11 the sanctions under this motion. Because this is the
12 discovery we're waiting for by this case in this motion, and
13 that's what was supposed to have been produced on January 4th.

14 THE COURT: The custodian issue I think is a more
15 complicated issue, Mr. Pisanelli, and I don't know that you
16 will be in that position at this hearing. Part of the reason
17 is because, as we all know, ESI searches and review of
18 information is a time-consuming practice. And so I don't know
19 that we will be ready given the trial schedule that some of
20 you have with the Suen case to address the custodian issues at
21 the time of this evidentiary hearing. I will certainly listen
22 to them, but they are not the primary focus of my problem. My
23 problem -- my primary focus is going to be the improper
24 redactions which have resulted, you claim, in prejudice to
25 your clients and the examples you have given me relate to the

1 delays and the duplication of other discovery activities.

2 MR. PISANELLI: Can we have a response date for the

3 searches and production of these missed custodians?

4 MR. PEEK: Your Honor, we should look at Mr. Lackey

5 I think in the --

6 THE COURT: Okay. I'm now looking at you, Mr.

7 Lackey. How long you think you --

8 MR. LACKEY: Wow. Twenty custodians. I believe,

9 what, six of them have already been done, so it's fourteen

10 more custodians. Obviously, the more time the better, Your

11 Honor, since we don't have anything going here. But if we

12 could have six weeks, that -- would that fit with Your Honor's

13 idea?

14 THE COURT: Hold on a second. Six weeks should push

15 you to about April 12th.

16 MR. LACKEY: Let's see. The hearing's going to be

17 on May 13th --

18 THE COURT: Which is about a month before that.

19 MR. LACKEY: I would ask the Court's indulgence

20 since -- as much time as we could get. As you just said, it's

21 a lot of data.

22 THE COURT: Well, let's shoot for the April 12th.

23 MR. LACKEY: Okay.

24 THE COURT: I understand it is a large process. And

25 what I am trying to communicate to you is you've got to do the

1 ESI search to then make the determination as to whether it's
2 merits or jurisdictional. And if you don't do the ESI search,
3 then you're not going to know the answer, which is what
4 disturbed me the most about how the ESI search was run.

5 MR. LACKEY: Can I just respond for one moment, Your
6 Honor --

7 THE COURT: Yes.

8 MR. LACKEY: -- on that point? Tried to target the
9 custodians who are most reasonably likely to have the
10 information --

11 THE COURT: I saw that in your brief.

12 MR. LACKEY: -- and -- okay. And it's obviously --

13 THE COURT: I understand the process.

14 MR. LACKEY: If we are having trouble, Your Honor,
15 with that April 12th date, because I have no idea what the
16 volume is going to be --

17 THE COURT: I would rather hear about it sooner,
18 rather than later, Mr. Lackey. As they all tell you, I do all
19 the discovery in my cases for a reason, to try and control our
20 delays that are related to discovery issues. And if you
21 perceive there is a problem, I'd rather have a hearing about
22 it, a status conference, and try and get it set up to try and
23 identify the problems, whether it's going to impact other
24 things we have scheduled.

25 MR. LACKEY: Thank you, Your Honor.

1 THE COURT: And I'm going to again thank all of you
2 for the minutes you took to speak to the school children this
3 morning. And, you know, they come, and the presentations that
4 we do in Business Court really aren't very helpful for them,
5 but talking to you guys they do gain some information. I
6 think it makes it a helpful experience. So thank you very
7 much for taking that time and speaking to them.

8 MR. PEEK: Your Honor, is this --

9 MR. BICE: Your Honor, we do have -- sorry.

10 MR. PEEK: -- an order you want plaintiff to draft
11 and pass by us, or is the Court going to draft this order?

12 THE COURT: Sure. Draft it, Mr. Pisanelli. Send it
13 over to them to look at and --

14 'Bye, Mr. Jones. Have fun cross-examining your
15 expert witness, hopefully you'll get out of trial some day.

16 MR. RANDALL JONES: Thank you, Your Honor.

17 THE COURT: I got done with mine, so I'm feeling
18 good about life.

19 MR. PEEK: Did you make a decision on it?

20 THE COURT: I issued a decision. It was in the
21 paper today. You should read about it.

22 MR. BICE: Your Honor, we have one --

23 MR. PEEK: I was busy preparing for this, Your
24 Honor.

25 MR. BICE: We have one sort of housekeeping matter

1 that I'm not --

2 THE COURT: Of course you do.

3 MR. BICE: We filed our reply -- or we submitted our
4 reply yesterday, and Max informed us and --

5 THE COURT: You've got to do better on your sealing
6 process. You need to read the rule from the --

7 MR. BICE: Here --

8 THE COURT: -- Nevada Supreme Court.

9 MR. BICE: But here's the thing. And here's the
10 problem. And I will and try and work this out with them, but
11 we -- we're done with the every document is designated as
12 confidential. We've told them that in correspondence. It
13 hasn't changed anything.

14 THE COURT: So there is a protocol that you're
15 supposed to use when you object to the designation of
16 confidential. You're supposed to file a motion and say, dear
17 Judge, we think they're bad, they're overusing the word
18 "confidential" --

19 MR. BICE: No, actually --

20 THE COURT: -- please make them do it differently.

21 MR. PEEK: They have a different view of that, Your
22 Honor, and --

23 MR. BICE: Our order -- actually, our order says the
24 opposite. Our order says that we are to point out to them
25 that they're abusing it and it's their burden to come to you.

1 MR. PEEK: And, Your Honor, we understand that
2 burden, and we'll come to you with that.

3 THE COURT: All right. I haven't read the order
4 recently. I'm sorry. I was using the more common version.

5 MR. BICE: That's all right.

6 MR. PEEK: But we'll come to you with a motion
7 practice on that, Your Honor.

8 THE COURT: Okay. But you've got to file the motion
9 to seal when you file the pleading.

10 MR. BICE: And every -- and that's why we objected
11 to this over a month ago and told them we were not going to
12 accept any more of these. And --

13 THE COURT: You've still got to file the motion to
14 seal if it's still identified as confidential.

15 MR. BICE: And that's the reason -- here's the
16 problem with that, Your Honor. That's why you don't have a
17 motion from them. This has been going on for two months
18 because --

19 THE COURT: Mr. Peek said he's going to give me a
20 motion now.

21 MR. BICE: Okay.

22 THE COURT: Maybe I'll get it. Anything else?

23 MR. BICE: We look -- we look forward to that.

24 THE COURT: I know you do. It's so nice of you all
25 to be so cooperative.

1 MR. BICE: Thank you, Your Honor.
2 MR. PEEK: Thank you, Your Honor.
3 THE COURT: And I really truly appreciate you
4 talking to the school children.
5 MR. PEEK: Thank you, Your Honor. It's our pleasure
6 -- it was my pleasure anyway.
7 THE PROCEEDINGS CONCLUDED AT 11:40 A.M.
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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

3/1/13

DATE

Original

Alan D. Quinn

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 DEFENDANTS' MOTION FOR ORAL ARGUMENT

THURSDAY, MARCH 14, 2013

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD BICE, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
MARK JONES, 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.

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MAR 18 2013

14

CLERK OF THE COURT

1 LAS VEGAS, NEVADA, THURSDAY, MARCH 13, 2013, 8:56 A.M.
2 (Court was called to order)
3 THE COURT: Can I ask a Sands-Jacobs question. Are
4 we arguing the motion for the return of the documents today,
5 or are we --
6 MR. MARK JONES: No, Your Honor.
7 THE COURT: Come on up.
8 MR. PEEK: We're just asking you -- we want oral
9 argument is all, and scheduling.
10 MR. BICE: Good morning, Your Honor.
11 THE COURT: Good morning.
12 So here's my question for you, Mr. Peek. Part of
13 the issues related to this motion is whether I am someday
14 going to make a determination as to an assertion by your
15 client of privilege related to those documents; right?
16 MR. PEEK: Yes.
17 THE COURT: How are you going to tee that issue up,
18 and how long is it going to take? Because that's sort of how
19 I'm going to decide when to set the motion for oral argument.
20 MR. BICE: The motion is set for --
21 THE COURT: I know when it's set.
22 MR. BICE: Okay.
23 MR. PEEK: The motion --
24 THE COURT: Good morning, Mr. Peek. These are
25 questions you didn't anticipate, aren't they?

1 MR. PEEK: Well, are you talking about the motion
2 for the return of documents that is -- we've asked to have set
3 -- or set for oral argument?

4 THE COURT: Okay.

5 MR. PEEK: Or are you talking about something
6 generally different on a motion regarding privilege issues of
7 Las Vegas Sands?

8 THE COURT: Here's the deal. I read your
9 opposition. Their motion is, Judge, give us back the
10 documents --

11 MR. PEEK: Right.

12 THE COURT: -- there's no issues left. they've
13 waived them. Your position is, Judge, it's too early for you
14 to say we've waived them because you haven't evaluated the
15 privilege issues.

16 MR. PEEK: Correct.

17 THE COURT: When are you going to put me in a
18 position where I can evaluate the privilege issues, Mr. Peek?

19 MR. PEEK: I thought that that's the way they had
20 teed it up. But perhaps if I'm mistaken, which is that we
21 have said all of the documents on which we have claimed a
22 privilege on the privilege log that we said to them that these
23 -- I don't remember the number, what the count of the
24 documents was, Your Honor, but it was I think 10,000 documents
25 -- these documents we claimed a privilege either of attorney-

1 client or work product. The say, you have waived the
2 privilege. And they give reasons and points and authorities
3 as to how that waiver occurred. So I thought the issue was
4 teed up. But if I'm mistaken, you want to do more, say in the
5 nature of an evidentiary hearing on those documents --
6 THE COURT: I need more specific information, I
7 believe, in order to resolve the privilege issues.
8 MR. PEEK: Okay. Is --
9 THE COURT: I understand what Mr. Bice is saying,
10 which is, Judge, they've already waived it all. And I think I
11 need to make a further inquiry than that.
12 MR. PEEK: Well, I think so, too. And I think it's
13 their burden, Your Honor, on both of those counts.
14 THE COURT: No. You're the one asserting a
15 privilege.
16 MR. PEEK: Okay.
17 THE COURT: So how are you going to put me in a --
18 which I'm asking you -- how are you going to put me in a
19 position where I can resolve the issue? Because you're
20 asserting a privilege. I'm happy to evaluate the claim of
21 privilege, and I know you've done this in other cases --
22 MR. PEEK: I have.
23 THE COURT: -- in Northern Nevada, and I'm happy to
24 deal with it. But I've got to have it teed up. And I know
25 you're getting ready to start the Suen trial again.

1 MR. PEEK: Right. And we've already --
2 THE COURT: Unless you've settled it.
3 MR. PEEK: We've already talked about scheduling.
4 We've already talked about scheduling this motion, Your Honor.
5 It seems to me, then, following on what you're saying is the
6 first burden of the waiver has to be decided by you, then the
7 next burden, as you're suggesting to me, is my burden to say,
8 I didn't waive and, oh, by the way, all of the documents on
9 which I claimed a privilege you now, Judge, if they're going
10 to assert that there is no privilege or that I have overstated
11 the privilege -- that's a different issue than waiver, Your
12 Honor.
13 THE COURT: Let me see if I could --
14 MR. PEEK: Maybe I --
15 THE COURT: -- refocus this. For two and a half
16 years I have been hearing from various folks, not just you,
17 not Mr. Jones, because he's new, that these documents are
18 privileged and that Mr. Jacobs couldn't take them because they
19 were privileged. I have been waiting patiently for somebody
20 to address the basis of the privilege related to those
21 documents. Patiently. I'm done being patient. So when are
22 we going to tee it up?
23 MR. PEEK: Your Honor, respectfully to you, we
24 didn't get to even see those documents to even claim the
25 privilege until the fall or late summer of 2012, was the first

1 time those documents were released to us. We went through the
2 steps that were in the protective order that you approved in
3 March of 2012, and identified those that we claimed are
4 privileged, completed that log preliminarily in September, and
5 finalized that log in November, 1st of November.

6 They have now said, okay, you have waived the
7 privilege and for the various reasons that they say as a
8 matter of law you have waived the privilege. So --

9 THE COURT: Right.

10 MR. PEEK: So I think that the first threshold issue
11 that you should decide is as a matter of law under the
12 principles that they have cited have we waived the privilege
13 based upon the fact that Jacobs, at the time that he may have
14 received some of the documents, was the chief executive
15 officer and the president of Sands China Limited and was
16 receiving those documents in his capacity as president and
17 therefore is entitled to have those documents and his lawyers
18 are entitled to have those documents. That to me is a
19 threshold legal issue. Then the subsequent issue is not the
20 waiver, but are these documents in fact --

21 THE COURT: Okay. I understand.

22 MR. PEEK: -- attorney-client privileged documents.

23 THE COURT: I now understand what you're trying to
24 tee up, which is different.

25 Mr. Jones, good morning. How are you?

1 MR. MARK JONES: Good morning, Your Honor. Thank
2 you. Fine. How are you?

3 THE COURT: I'm well.

4 MR. MARK JONES: Good. Thank you.

5 Just a couple of things to add. I wanted to state
6 that we have a bit of a scheduling issue with --

7 THE COURT: Not if I deny the motion you don't.

8 MR. MARK JONES: Not if you deny the motion. Your
9 Honor, I would just otherwise like to add that again -- and we
10 did ask as early -- we don't think that there's any prejudice
11 or any urgency here. We did ask as early as July 2012 for the
12 other side to meet and confer with regard to the privilege
13 log, and then we also asked again in September.

14 THE COURT: We've been discussing the privilege
15 issues related to this document since Ms. Glaser was involved
16 in the case.

17 MR. PEEK: Well, Your Honor, that's a different --
18 there's a different issue there, too, is whether or not --
19 those privilege issues were embodied, Your Honor, in the
20 Court's order in November. Those privilege issues were
21 embodied in the stipulated protective order of March of 2012,
22 and it wasn't until, as we said, September -- or, excuse me,
23 August that we even got the documents on which we could even
24 review them to claim a privilege.

25 THE COURT: Okay.

1 MR. PEEK: So, you know, we haven't been delaying
2 this.
3 THE COURT: I'm on Mr. Jones --
4 MR. PEEK: Okay.
5 THE COURT: -- your sort of co-counsel.
6 MR. MARK JONES: And there was -- and again, as
7 early as November, I believe, of 2011 Mr. Pisanelli thought
8 that they would be able to put those documents that originated
9 -- and it wasn't until June or July of 2012 when they actually
10 were put in.
11 I would also just like to point out that there isn't
12 any deposition set at this point and that with regard to
13 scheduling Mr. Randall Jones, assuming that you are going to
14 grant the oral --
15 THE COURT: He's never getting out of that trial.
16 MR. MARK JONES: He actually is.
17 THE COURT: They were working on jury instructions
18 yesterday, and I don't think they're ever going to get done.
19 MR. MARK JONES: Your Honor, he is -- he's doing
20 closing on Monday and he on the 21st and 22nd of March, when
21 you have this set for chambers calendar, he will be out of
22 state, I believe in Minnesota.
23 THE COURT: But if it's on the chambers calendar,
24 nobody needs to come.
25 MR. MARK JONES: Well, I'm just saying if you were

1 going to grant the argument and allow it. Otherwise,
2 again, we would submit that he's going to be out the week
3 of March 25th. And with regard to the dark days on Tuesdays,
4 Wednesdays, and Thursdays of the Suen trial, there's
5 availability --

6 MR. PEEK: Dark mornings.

7 MR. MARK JONES: Dark mornings, excuse me.

8 THE COURT: All morning?

9 MR. PEEK: Yeah. Your Honor, Mr. Jones --

10 MR. MARK JONES: Anyways, the point is --

11 THE COURT: Okay. I understand there's scheduling
12 issues.

13 MR. MARK JONES: -- the point is --

14 THE COURT: Let me address the motion first.
15 Anything else you want to tell me about why you think it's
16 important on your oral argument on this motion related to the
17 waiver issue, which isn't nearly as complex as the privilege
18 issue?

19 MR. MARK JONES: Well, other than the fact -- what
20 we say is we supported Mr. Peek's affidavit that -- you know,
21 for the record, all of the other motions we've had oral
22 argument is did the Court think it's a very important issue
23 other than one and that we want to be able to make a full
24 record and opportunity to address any positions that might be
25 taken. There are new points in the reply brief.

1 THE COURT: Okay. The motion is denied --

2 MR. PEEK: Your Honor, there's nothing more
3 important --

4 THE COURT: The motion is denied, Mr. Peek.
5 However, I will give both sides an opportunity, if they want
6 -- because I am going to decide only the waiver issue at this
7 point, and I need you to more fully address after reading your
8 brief the issues of when there is litigation between the
9 officer who has left who was entitled to see the documents at
10 the time he was there, who has agreed to a protective order
11 not to disclose to the outside world that information, the
12 effect of the privilege.

13 MR. PEEK: Your Honor, that was the exact same issue
14 in eTrepid and Montgomery.

15 THE COURT: I know.

16 MR. PEEK: I litigated that issue, Your Honor.

17 THE COURT: I read your --

18 MR. PEEK: And you may not agree with Judge Cook,
19 Magistrate Judge Cook on that case --

20 THE COURT: I respect Valerie Cook. She's a very
21 bright and hard-working lady. But I need you -- when I read
22 your opposition I had concerns. So I'm going to let you do a
23 supplement, and I want you to specifically address with
24 respect to the factual issues in this case whether the waiver
25 is appropriate. I'm going to do it on the briefs, and there's

1 a reason I'm going to do it on briefs in this case this time.

2 MR. PEEK: I'd like to hear that, Your Honor,
3 because this is an important issue to us on the attorney-
4 client privilege.

5 THE COURT: Because the playing field changes
6 constantly when you guys are here, and I get new issues in
7 argument that weren't raised in briefs. And we're not going
8 to do it on this issue. This issue is one that you're going
9 to take your position and you're going to stop. And that's to
10 all sides, not to any one of you in this room. Because all of
11 you are excellent lawyers, you're very creative, and the
12 arguments change during our oral presentations. And they're
13 not going to on this issue. On this issue you're going to be
14 based on your briefs and I'm going to make a ruling.

15 So how long, Mr. Peek, to do a supplemental
16 opposition that more specifically identifies the factual
17 issues in this specific case?

18 MR. PEEK: Well, Your Honor, I think that's really,
19 respectfully, something that should be addressed to Mr. Bice
20 and Mr. Pisanelli, because I think it should be their brief,
21 and then we should then have an opportunity to put in an
22 opposition, unless you're saying we do blind briefs. And I
23 don't know what the Court's pleasure is here.

24 THE COURT: I'm not saying you do blind briefs.

25 MR. PEEK: Pardon?

1 THE COURT: I'm saying I read your opposition. I
2 think you need to do a supplement to your opposition.
3 MR. PEEK: You think just the -- just the Las Vegas
4 Sands, Sands China Limited defendants need to do the
5 supplement? Okay.
6 THE COURT: At this point in time, yes.
7 MR. PEEK: Thank you, Your Honor. Then we would ask
8 for two weeks.
9 THE COURT: Okay. Two weeks from today?
10 MR. PEEK: Mark, what's your --
11 MR. MARK JONES: Tomorrow? Two weeks from --
12 THE COURT: Two weeks from Monday?
13 MR. PEEK: Yeah. I think that's really -- that's --
14 THE COURT: Hold on a second.
15 MR. PEEK: -- the 1st of April.
16 THE COURT: So can you have your brief to me on
17 April 1, your supplemental brief?
18 MR. PEEK: We well, Your Honor.
19 THE COURT: Then, Mr. Bice, if you can have your
20 supplemental brief to me by April 8.
21 MR. BICE: It really won't be a supplemental brief,
22 Your Honor. Our --
23 THE COURT: Your reply brief. Sorry.
24 MR. BICE: Our reply otherwise would have been due
25 tomorrow.

1 THE COURT: April 8th.
2 MR. BICE: So I'll wait.
3 THE COURT: April 8th.
4 MR. BICE: Understood.
5 THE COURT: And then I will have it on my chambers
6 calendar for April 12th.
7 MR. BICE: Thank you.
8 THE COURT: And I will issue a written decision.
9 MR. BICE: Thank you, Your Honor.
10 MR. PEEK: Let me see if I understand exactly, Your
11 Honor, how to frame this issue, because I don't want to get it
12 wrong.
13 What you have said to me is in the context of
14 litigation where there is a stipulated protective order in
15 place approved by the Court does it -- and dealing with the
16 litigation between a former executive, president and chief
17 executive officer of one of the defendants, who then sues, who
18 then has possession, plain documents on which the party by
19 whom he was employed claims privilege, is does a protective
20 order that the Court has entered change that dynamic of
21 privilege? Am I --
22 THE COURT: Yes, Mr. Peek, that's what I'm asking
23 you. Because as to the rest of the world there may be no
24 waiver and no entitlement for those individuals to see it.
25 But just like when you have a joint defense agreement, which

1 occurs in litigation, there are certain waivers or limitations
2 with respect to those privileges.

3 MR. PEEK: So that the lawyers for that party would
4 be entitled to see the attorney-client privileged documents
5 under the stipulated protective order, as well as the client.

6 THE COURT: Which their client has already seen and
7 in fact dealt with as part of his job duties.

8 MR. PEEK: Just trying to understand, Your Honor,
9 how to frame the issue, not making my argument here today,
10 although I'm still going to respectfully request as part of my
11 supplemental briefing -- unless you're telling me, I'm denying
12 this with prejudice, don't bring it up to me again --

13 THE COURT: You can always --

14 MR. PEEK: -- I'm going to ask it in the
15 supplemental brief for oral argument. Because this is a very
16 important issue to us.

17 THE COURT: You can always ask over and over again.
18 You're not in the Second, where you never get a hearing and
19 it's highly unusual. But on this particular issue the parties
20 are going to be bound by their briefs. So I'm not going to
21 take oral argument.

22 MR. PEEK: Okay. I get it, Your Honor. And I --

23 THE COURT: Because I want the playing field to be
24 well defined for purposes of the appellate review.

25 MR. PEEK: Yes. So do we, Your Honor, want to --

1 THE COURT: Which is why we're not going to have
2 oral argument, because you guys are really good and creative
3 and sometimes create new issues during argument.

4 MR. PEEK: I don't know if we take that as a
5 compliment, Your Honor, or --

6 THE COURT: It's intended as a compliment.

7 MR. PEEK: Thank you.

8 THE COURT: But it makes my job as a judge who's
9 being reviewed on a regular basis by the appellate court
10 difficult.

11 MR. PEEK: I understand, Your Honor.

12 THE COURT: So on this issue we're not going to have
13 any oral argument.

14 MR. PEEK: Your Honor, there was -- by the way,
15 there was an order, I believe, that -- from the 28th hearing
16 -- I don't think --

17 THE COURT: I was at the judicial college for the
18 last several days teaching, so I just got back yesterday. So
19 if it's in Max's pile, he's been trying to get time with me,
20 and we've been going through and I've been signing stacks, so
21 I may not have hit it if we have it. But I intend to get
22 through the rest of it today, the rest of the pile.

23 MR. PEEK: Doesn't sound like -- from what Mr. Bice
24 said, I don't think he's submitted it. We haven't seen it, so
25 I was just wondering if --

1 THE COURT: I was out of town, in Reno.
2 MR. BICE: Mr. Peek may be right that -- I just
3 talked to Mr. Jones. I think it's due tomorrow. It may be
4 that we did not send them drafts. I will -- as soon as I get
5 out of here --
6 THE COURT: Mr. Bice --
7 MR. BICE: I know.
8 THE COURT: -- you're being scolded.
9 MR. BICE: I know. As soon as I get back to the
10 office I'll make sure that they get it so they could look at
11 it today. Sorry about that. We have not --
12 THE COURT: I was in Reno, so --
13 MR. BICE: No. We would not send it over to you
14 without getting their input. So you don't have it. You don't
15 -- it's not that we sent it over to you without giving --
16 THE COURT: I'm not behind?
17 MR. BICE: No, you're not.
18 THE COURT: Okay.
19 MR. BICE: This is on us, not them or you.
20 THE COURT: Lovely.
21 MR. PEEK: Thank you, Your Honor.

22 THE PROCEEDINGS CONCLUDED AT 9:12 A.M.

23 * * * * *

CERTIFICATION

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

AFFIRMATION

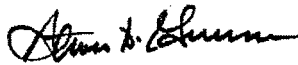
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

3/16/13

DATE



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

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

**ORDER REGARDING PLAINTIFF
STEVEN C. JACOBS' RENEWED
MOTION FOR NRCP 37 SANCTIONS
ON ORDER SHORTENING TIME**

Date: February 28, 2013

Time: 10:00 a.m.

AND ALL RELATED MATTERS.

Presently before this Court is Steven C. Jacobs' Renewed Motion for NRCP 37 Sanctions on Order Shortening Time ("Renewed Motion"). James J. Pisanelli, Esq. and Todd L. Bice, Esq. of the law firm PISANELLI BICE PLLC, appeared on behalf of Plaintiff Steven C. Jacobs ("Jacobs"). J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on behalf of Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China"). J. Randall Jones, Esq. and Mark M. Jones, Esq., of the law firm Kemp Jones & Coulthard, LLP, and Michael E. Lackey, Jr., of the law firm Mayer Brown LLP, appeared on behalf of Defendant Sands China. The Court considered the papers on file and the oral argument of counsel finds as follows:

1. On September 14, 2012, this Court entered its Sanctions Order. One of the sanctions imposed is that neither Defendant is permitted to raise the Macau Personal Data Protection Act ("MPDPA") as "an objection or as a defense to admission, disclosure or production of any documents."

1 2. On December 18, 2012, this Court held a hearing and subsequently entered an
2 order requiring Sands China to produce all information in its possession, custody or control
3 that is relevant to jurisdictional discovery, including ESI, no later than January 4, 2013.

4 3. By January 4, 2013, Sands China produced what it maintains are all responsive
5 documents. On January 8, 2013, Sands China filed a status report with this Court representing
6 that it had complied with the Court's December 18 Order.

7 4. On February 8, 2013, Jacobs filed his Renewed Motion for Sanctions asserting
8 that Sands China had not complied with the December 18, 2012 Order and the September 14,
9 2012 Sanctions Order.

10 BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND
11 DECREED that:

12 1. Jacobs has made a prima facie showing as to a violation of this Court's orders
13 which warrants an evidentiary hearing;

14 2. Sands China violated this Court's September 14, 2012 order by redacting
15 personal data from its January 4, 2013 document production based upon the MPDPA and,
16 therefore, an evidentiary hearing on the Renewed Motion shall commence on May 13, 2013 at
17 1:00 p.m. to determine the degree of willfulness related to those redactions and the prejudice, if
18 any, suffered by Jacobs; and,

19 2. By April 12, 2013, LVSC and Sands China shall search and produce the records
20 of all twenty (20) custodians identified on Exhibit 6 to the Renewed Motion for documents that
21 are relevant to jurisdictional discovery, which includes documents that are responsive to
22 Plaintiff's discovery requests as permitted by this Court's March 8, 2012 Order. Following the
23 search, and to the extent there are privilege issues with respect to those documents or the
24 documents are responsive to merit-based discovery but not jurisdictional discovery, LVSC and
25 Sands China may appropriately redact documents and provide a privilege log in compliance
26 with Nevada law¹ for any and all documents withheld or redacted based upon privilege or
27

28 ¹ For each communication or document, the party withholding a document shall

1 because the documents are only relevant to merits-based discovery. But as previously ordered,
2 LVSC and Sands China are precluded from redacting or withholding documents based upon the
3 MPDPA.

4 DATED:

27 March 2013

5
6 

7 ELIZABETH GONZALEZ
8 EIGHTH JUDICIAL DISTRICT COURT
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25 specifically identify the author (and their capacity) of the document; the date on which
26 the document was created; a brief summary of the subject matter of the document; if the
27 document is a communication -- the recipient, sender and all others (and their respective
28 capacities) provided with a copy of the document; other individuals with access to the
document (and their respective capacities); the type of document; the purpose for
creation of the document; and a detailed, specific explanation as to why the document is
privileged or otherwise immune from discovery.


1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on or about the date filed, I mailed a copy of the ORDER
3 REGARDING PLAINTIFF STEVEN C. JACOBS' RENEWED MOTION FOR NRCP 37
4 SANCTIONS ON ORDER SHORTENING TIME, or placed a copy in the attorney's folder, to:

5 James J. Pisanelli, Esq., Todd L. Bice, Esq. and Debra L. Spinelli, Esq. (Pisanelli Bice)
6 *Attorneys for Plaintiff*

7 J. Stephen Peek, Esq. and Robert J. Cassity, Esq. (Holland & Hart)
8 *Attorneys for Las Vegas Sands Corp. and Sands China, Ltd.*

9 J. Randall Jones, Esq. and Mark M. Jones, Esq. (Kemp Jones & Coulthard)
10 *Attorneys for Sands China, Ltd.*

11 
12 Maximilien D. Fetaz

ORIGINAL

Ann D. Quinn

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

TELEPHONIC HEARING ON DEFENDANTS' MOTION TO SEAL

TUESDAY, APRIL 9, 2013

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.

FOR THE DEFENDANTS:

JON RANDALL JONES, ESQ.
JENNIFER BRASTER, ESQ.
ERIC ALDRIAN, ESQ.
ROBERT CASSITY, 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.

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CLERK OF THE COURT

PA488

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 9, 2013, 12:59 P.M.
2 (Court was called to order)
3 THE COURT: Good afternoon.
4 MR. PISANELLI: Good afternoon, Your Honor.
5 (Pause in the proceedings)
6 THE COURT: Who all is on the telephone?
7 MR. RANDALL JONES: Your Honor, this is Randall
8 Jones on the phone.
9 MR. CASSITY: And Robert Cassity, Your Honor, for
10 the Las Vegas Sands Corporation and Sands China Limited.
11 THE COURT: Have we heard from Mr. Bice or
12 Pisanelli?
13 MR. KUTINAC: They sent an email saying they were
14 going to attend yesterday, Your Honor.
15 THE COURT: Okay. Who just joined us?
16 MR. BICE: Todd Bice, Jen Braster, and Eric Aldrian,
17 Your Honor.
18 THE COURT: All right. Mr. Jones, it's your motion.
19 MR. RANDALL JONES: Thank you, Your Honor. And
20 thank you for -- obviously, for doing this on very short
21 notice. I appreciate that. I think the point is pretty
22 straightforward, Judge. We have filed the writ. My client is
23 -- as you are very well versed in the facts, I won't belabor
24 the point. The biggest and I think most significant point is
25 the sort of Hobson's choice we're dealing with with the MPDPA

1 and producing the documents on Friday, and are concerned that
2 we will be either in violation of your order or in violation
3 of Macanese law. And so we would just ask this Court for a
4 stay. And I think we need the standard set forth in Hansen
5 versus District Court. I'm happy to go into the details if
6 the Court feels it's necessary or appropriate, but I think, as
7 I said, you are very familiar with the issues and the concerns
8 we have, and that's why we're asking for this stay.

9 THE COURT: Mr. Jones, other than my recent order
10 that was entered I think March 26th and the September 14th
11 order I entered on the sanctions, what's different than when
12 Ms. Glaser raised this issue in the spring, I think, of 2011?

13 MR. RANDALL JONES: Well, Your Honor, you know,
14 again, I'm at somewhat a disadvantage, as I don't remember the
15 details of that transcript. There's been a lot of
16 transcripts. I tried to read [unintelligible] today, but I
17 think the difference in this specific instance is we are now
18 specifically faced with a letter from the OCDP -- I can never
19 get the acronym correct, but the government authority in Macau
20 of the MDPDA that has indicated to us that we cannot produce
21 these documents unredacted, which I don't believe we had back
22 when Ms. Glaser was involved. We have had meetings with the
23 Macanese authorities, and they have indicated, both publicly
24 and I guess directly to co-counsel or counsel in Macau that
25 the violation of Macanese law would have to be addressed. And

1 your business in Macau if you need government permission to
2 look at your own records.

3 Rhetorical as it may be, let's just look at
4 something far more specific. Sheldon Adelson and Mike
5 Kostrinsky both gave us a little peek behind the curtain.
6 There has been a free flow of information from Macau to Las
7 Vegas Boulevard since the inception of the Macau enterprise.
8 Every single thing Mike Kostrinsky ever wanted he got.
9 Sheldon Adelson has information coming on a daily basis to his
10 office on Las Vegas Boulevard until one thing happened. And
11 Your Honor saw right through it and referenced it in your
12 order. The discovery in this case and perhaps the discovery
13 in a criminal investigation, that's when they said, oh, we
14 can't review our records in Macau, with a wink and a nod,
15 we've actually been doing it from day one, but now to comply
16 with discovery we're not permitted to do that. It is contrary
17 to what the record in this case tells us.

18 And you know what else it's contrary to, Your Honor,
19 what the prior counsel told us. You saw in our papers that
20 Steve Ma told us in June of 2011 -- I'm sorry, wrong date --
21 that Steve Ma told us that he was -- in June 2012 that he was
22 gathering and reviewing documents for CSL, gathering and
23 reviewing, he said in a letter to us. And then he said he
24 would produce them on a rolling basis. He did, all of those
25 15 staggering documents that we got.

1 Then Patty Glaser came in this courtroom and she
2 said to Your Honor, we sent a team of lawyers to do it, that's
3 a fact. Remember, she was very emphatic. We had a little bit
4 of a confrontation at the time. That's a fact. She may have
5 even been pointing her finger at me when she said it. We
6 spent a lot of money, the client's money, we sent lawyers to
7 Macau to review documents in Macau. Your Honor that is
8 irreconcilable with what they're saying now. Patty Glaser and
9 Steve Ma say not only that they can and they will, but they
10 had reviewed Macau documents. And now the newest team comes
11 in and says, we're handcuffed and not permitted to.

12 THE COURT: Well, but you know they took -- you know
13 they reviewed Macau documents because Mr. Kostrinsky carried
14 them back.

15 MR. PISANELLI: That's part of my sanction motion.

16 THE COURT: I mean, we know.

17 MR. PISANELLI: So I'm beating this drum here
18 because it is just outrageous to me. I will wrap it up. I
19 understand your point. But it's outrageous that this company
20 would come in here and as soon as this group of lawyers takes
21 a turn, that admits something they're not supposed to,
22 produces a piece of paper the Sands management didn't want to
23 get out of their hands, my prediction is we're going to see a
24 new team here. Because every single time someone stands up
25 and tries or at least promises you that they'll start doing a

1 better job than their predecessor, then guess what happens, we
2 have a new set of lawyers coming in.

3 I'm overlapping a little bit on the basis of the
4 motion.

5 THE COURT: I don't want to do the sanctions
6 motions, yet.

7 MR. PISANELLI: So I won't do that.

8 THE COURT: Thank you.

9 MR. PISANELLI: The point is very simply you never
10 told them not to produce it, and they didn't do it.

11 THE COURT: Thank you.

12 The motion for protective order is denied. I am
13 going to enter an order today that within two weeks of today,
14 which for ease of calculation because of the holiday we will
15 consider to be January 4th, Sands China will produce all
16 information within their possession that is relevant to the
17 jurisdictional discovery. That includes electronically stored
18 information. Within two weeks.

19 So I can go the motion for sanctions. The motion
20 for sanctions appears to be premature since I've not
21 previously entered an order requiring that certain information
22 that is electronically stored information in Macau be
23 provided. About two weeks from now you might want to renew
24 your motion if you don't get it.

25 Can I go to the motion for the protective order on

1 the videotape.

2 MR. PEEK: Your Honor, can we have some
3 clarification?

4 THE COURT: Yes.

5 MR. PEEK: And here's the challenge that we have, is
6 you're telling us to produce all of the documents that are
7 responsive to the requests for production, and --

8 THE COURT: If a motion is renewed, Mr. Peek, and
9 there is an impediment to production which Sands China
10 believes relates to the Macau Data Privacy Act, when I make
11 determinations under Rule 37 I will take into account the
12 limitations that you believe exist related to the Macau Data
13 Privacy Act. But, believe me, given the past history of this
14 case there seems to be different treatment of the Macau Data
15 Privacy Act at different times.

16 MR. PEEK: Your Honor, I appreciate what we went
17 through in September. I appreciate what the Court's ruling
18 was. And I think Mr. Jones has certainly made it clear how
19 serious we take this. The motion for protective order
20 certainly goes to who are the custodians, what are the search
21 terms --

22 THE COURT: Your motion for protective order is
23 really broad. Your motion for protective order says, "For the
24 foregoing reasons Sands China urges the Court to enter an
25 order providing that SCL has no obligation to search the ESI

1 in Macau of custodians other than Jacobs or to use any more
2 expansive search terms on the Jacobs ESI in Macau that was
3 used to search the Jacobs's ESI that was transferred to the
4 United States in 2010."

5 The answer is no. Denied.

6 MR. PEEK: Okay. I'll let --

7 MR. PISANELLI: Your Honor, on the Rule 37 issue of
8 whether there's an order --

9 THE COURT: Hold on a second, Mr. Pisanelli. Let me
10 go back to Randall Jones.

11 MR. PISANELLI: Okay.

12 THE COURT: Not Jim Randall, Randall Jones.

13 MR. RANDALL JONES: Thank you, Your Honor. I do
14 want to make clear because of what was said there's never been
15 said and if it was misstated by me, then I want to make sure
16 it's clear on the record. It's never been our position that
17 our client can't look at the documents. The issue is whether
18 or not we can take certain information -- our client is
19 allowed to take certain information out of the country. And
20 so I just want to make sure that's clear on the record. Our
21 client can look at the documents, and our client's Macanese,
22 we've just found out, can look at the documents. And from
23 there it becomes more complicated. So I just want to make
24 sure that's clear to the Court.

25 We understand what you're saying, and we will

1 continue to do our best to try to comply with the Court's
2 orders as best we can. And that's -- and I hope the Court
3 does appreciate this is a complicated situation, and we -- I
4 can -- I'll just tell you again, Your Honor, we're trying to
5 make sure that we -- the lawyers and our client comply with
6 your discovery.

7 THE COURT: I understand.

8 MR. PEEK: Yeah. We need to have redactions as part
9 of that, as well, as that's -- I understood --

10 THE COURT: I didn't say you couldn't have
11 redactions.

12 MR. PEEK: That's what I thought.

13 THE COURT: I didn't say you couldn't have privilege
14 logs. I didn't say any of that, Mr. Peek.

15 MR. RANDALL JONES: As I understand it, Your Honor,
16 you said we can still otherwise comply with the law as we
17 believe we should and then you ultimately make the call as to
18 whether or not we have appropriately done that.

19 MR. PISANELLI: We will indeed --

20 THE COURT: I assume there will be a motion if there
21 is a substantial lack of information that is provided.

22 MR. PISANELLI: So, Your Honor, on this issue of the
23 Court order, we're saying it again. As part of your sanction
24 order you were very clear and you said that they're not hiding
25 behind that anymore.

1 THE COURT: I did.

2 MR. PISANELLI: And they're giving us a precursor
3 that they don't hear you, they just never hear you.

4 THE COURT: Well, Mr. Pisanelli, I've entered
5 orders, I've now entered an order that says on January 4th
6 they're going to produce the information. They're either
7 going to produced it or they're not. And if they produce
8 information that you think is insufficient, you will then have
9 a meet and confer. And then if you believe they are in
10 violation of my orders, and I include that term as a multiple
11 order, then you're going to do something.

12 MR. PISANELLI: I will. I want --

13 THE COURT: And then I'll have a hearing.

14 MR. PISANELLI: I will. I want to make this one
15 point, because you've made a statement that they have not yet
16 violated an order, and that's of concern to me.

17 THE COURT: Well, they've violated numerous orders.
18 They haven't violated an order that actually requires them to
19 produce information. I have said it, we discussed it at the
20 Rule 16 conference, I've had people tell me how they're
21 complying, I've had people tell me how they're complying
22 differently, I've had people tell me how they tried to comply
23 but now apparently they're in violation of law. I mean, I've
24 had a lot of things. But we've never actually entered a
25 written order that says, please produce the ESI that's in

1 Macau within two weeks.

2 MR. PISANELLI: Well, you haven't entered anything
3 that specific, but you have entered an order that calls for
4 ESI protocol that calls for this production --

5 THE COURT: I know.

6 MR. PISANELLI: -- and you directed from this bench,
7 which is no different than an order, for them to create a log
8 --

9 THE COURT: Nevada Supreme Court thinks written
10 orders are really important. So we're going to have a written
11 order this time, Mr. Pisanelli --

12 MR. PISANELLI: We are indeed. But --

13 THE COURT: -- especially since I am under a limited
14 stay which only permits me to deal with jurisdictional
15 information, which I've been trying to get to for a year and a
16 half.

17 MR. PISANELLI: As have we.

18 THE COURT: And I have a note that says, "Find a
19 place for the Sands-Jacobs evidentiary hearing." But I can't
20 find a place for you until you actually have your discovery
21 done or at least close to done.

22 MR. PISANELLI: I will remind Her Honor and the
23 battery of lawyers de jure [sic] that Your Honor told this
24 team I think a year and a half ago, create --

25 THE COURT: Well, it wasn't this team, it was a

1 different team.

2 MR. PEEK: Your Honor, I certainly appreciate Mr.
3 Pisanelli's remarks about how he wants to characterize what
4 the Court's order was.

5 THE COURT: Okay.

6 MR. PEEK: And I certainly disagree.

7 THE COURT: Okay. Will you stop arguing about this.
8 I've ruled.

9 MR. PEEK: I'm happy to do that.

10 THE COURT: I now want to go to your motion for
11 protective order on the videotaping of the deposition. That's
12 your motion, Mr. Bice's motion.

13 MR. BICE: This our motion. It's actually not a
14 videotaping of the deposition, Your Honor. It's a videotaping
15 of opposing counsel --

16 THE COURT: No, I know, Mr. Bice.

17 MR. BICE: -- which is what this is, without any
18 Court authorization, without seeking any leave of the Court to
19 do so. You know, Your Honor, we've submitted our motion, we
20 went over the history of this. I didn't receive any written
21 opposition. I don't know if the Court has received a written
22 opposition from them or not.

23 THE COURT: I don't remember.

24 MR. BICE: The point here is, Your Honor, Rule 30 --
25 we have been videotaping all of the depositions without any

1 issues, and then we got this claim by Mr. Peek that, well, we
2 want the videotape -- we want to put a camera behind the
3 witness, I guess, from the other side of themselves and
4 videotape you and your client during these depositions.

5 We objected to that. We told them, you know, you
6 want to do that, you have to get permission of the Court to do
7 that. Their position was now we're going to do it anyway. We
8 thought that that issue was sort of -- they dropped it with
9 the Mr. Leven deposition as long as I would move up his
10 deposition by a half an hour. And then we found out because
11 we got a cross-notice of deposition dropped in the mail to us
12 that says that they're going to videotape opposing counsel
13 during the deposition.

14 As we cite the caselaw to Your Honor, The Federal
15 Courts under the exact same rule have said that that's
16 inappropriate. They have sought any leave of the Court, so we
17 ask the Court to enter a protective order. This is, with all
18 due respect --

19 THE COURT: Thank you.

20 MR. BICE: -- it's simply harassment.

21 THE COURT: Mr. Mark Jones.

22 MR. MARK JONES: Thank you, Your Honor.

23 This was on an order shortening time, so, if I -- if
24 I may address it, we did not file any written opposition.

25 Your Honor, I'd like to emphasize one statement, and

1 that is the first sentence of plaintiff's motion for
2 protective order, because that's really what this is all
3 about. It says, "The games, harassment, and unprofessional
4 conduct continue." And, Your Honor, I want to tell you that I
5 do not play games in my practice. I do not need to play
6 games. One of the games that Mr. Bice believes that I am
7 playing is with the timing. There's a lot going on with this
8 case, Your Honor, and it got filed -- when it got filed there
9 was no --

10 THE COURT: And the CityCenter case, which you guys
11 got dragged into, too.

12 MR. MARK JONES: The point is that I received an
13 email from Mr. Bice that a colleague and I read about the
14 protocol of the counsel. One of the first things we filed --
15 I've already talked to them about it and apologized. If I'm
16 going to apologize for anything it's only that we did not
17 email it to him. I think that was my assistant's fault. I
18 didn't know anything about it, Your Honor, and just realized
19 last night when Mr. Bice was talking about it. And we
20 appreciate an extension that he had given us recently. And,
21 of course, we in the normal course expect to get extensions
22 back as they may ask for them on their end.

23 Now, as to the merits of the motion, yes, this was
24 filed and served right before the deposition, but you don't
25 hear them say it is late. And in fact it is not late, Your

1 Honor. It is timely filed under Rule 30, NRCP Rule 30, and
2 that is that a cross-notice such as the one we had filed must
3 be served upon five days' notice. And it was.

4 They say in their motion that a party needs leave of
5 the Court to tape other parties or counsel. They cite to two
6 Federal Court cases in FRCP with regard to that. The two
7 cases are distinguishable. And in the Langsea [phonetic] case
8 Mr. Adelson actually walked into a deposition, they've cited
9 to that, with his own videographer with no prior notice. The
10 Posorive [phonetic] case, in that case the plaintiff deponent
11 brought his own camera to tape a deposition in violation of
12 the court's explicit order prohibiting him to do so. Again,
13 we think that those two cases are distinguishable. It's a
14 federal -- they're federal rulings with regard to the Federal
15 Court Rule, FRCP 30, and we think that there's is a
16 significant difference in NRCP 30 and Nevada law with regard
17 to that.

18 THE COURT: So can I interrupt you. Why do you
19 think that it's appropriate in this particular case to depart
20 from our long history in Nevada of only having the camera on
21 the deponent? The only time I remember attorneys ever being
22 on camera in a deposition was when they introduced themselves.
23 And then it would go back to the deponent.

24 MR. MARK JONES: Your Honor, thank you. To answer
25 that I would now go a little bit out of order. I was going to

1 get to the why. The genus of this is -- and I would
2 characterize my involvement in coming into this case as an
3 extremely contentious matter. I think that's fair to say.
4 And I would estimate that I have taken -- excuse me, called
5 the Court perhaps two times in my -- average in my career,
6 every couple years. To my recollection, in this case the
7 Court has been called I think about an average of twice for
8 each deposition that has been taken.

9 The cross-notice stems from the Sheldon Adelson
10 deposition and, frankly, the smirking and we would submit very
11 inappropriate engaging of counsel with Mr. Adelson. And I
12 wasn't there. Mr. Peek was, though. He's prepared to back me
13 up on what exactly happened there, if the Court wants him to
14 do that.

15 I'd like to back up one -- if that answers your
16 question, I'd like to back up one minute to discuss NRCP 30,
17 which is I think very important here, Your Honor. First of
18 all, we found nothing in the rule and no caselaw holding that
19 leave of the court is required for such a cross-notice under
20 the circumstances. And I want to read to you from NRCP
21 30(b)(4), which has a very enlightening statement it about
22 three fourths of the way down. And it says, "The appearance
23 or demeanor of deponents or attorneys shall not be distorted
24 through camera or sound recording techniques." Why do they
25 include attorneys in that? That's right in the rule, Your

1 Honor. Again, we found nothing to say that this cannot take
2 place.

3 And why are we doing this really? Your Honor, we
4 would submit this. It's a safeguard to assure that this
5 behavior does not happen again. We'd ask that you consider
6 that in court or in trial there is a judicial officer that is
7 monitoring and regulating order and monitoring such
8 proceedings. And a court at trial that kind of behavior does
9 not exist. The courts won't put up with that. Unfortunately,
10 under the circumstances with the contentiousness, we believe
11 and would submit that such a cross-notice would do the same.
12 We think that it is harassing of professional conduct. And I
13 don't know about the other -- I can't remember the last time I
14 was called unprofessional, Your Honor, but welcome to this
15 case.

16 We also, Your Honor, are bearing the cost -- we
17 would bear the cost of the videographer, and we don't submit
18 this puts any additional burden upon Mr. Jacobs.

19 And lastly, at the end of the motion they say that
20 we've resorted to harassment in trying to intimidate our
21 opponents because we can win any legitimate debates. This
22 cross-notice isn't oppressive or harassing, Your Honor. I
23 can't imagine having -- or Mr. Bice or Mr. Pisanelli being
24 intimidated by having a camera on them. And it keeps
25 professionalism in the depositions. It's almost like having

1 Your Honor sitting there and reminding everybody during the
2 deposition if they behave and they act professionally and they
3 don't engage, what's the problem? And if they don't, we
4 submit that a deposition can be used for any purpose at the
5 time of trial, and we'll see what -- whether or not we might
6 we able to use it at the time of trial.

7 In sum, it's a motion for protective order. And we
8 would submit, of what? We don't find anything that says that
9 you have to ask leave of the court within the rule. We think
10 the cases are distinguishable that they cited. We don't think
11 that Mr. Bice or Mr. Pisanelli will be intimidated in
12 deposition. And we think it's within accordance of the rules,
13 and we're paying for it.

14 And finally, if the Court says that leave is
15 required under some long-standing rule, we're asking for it
16 now.

17 THE COURT: Thank you.

18 The motion is granted. Only under unusual
19 circumstances would the Court issue permission to videotape
20 counsel who are taking the deposition. The audio record of
21 the videotape does certainly provide a basis for protecting
22 against misconduct of counsel. If for some reason you believe
23 there is in fact misconduct, as opposed to a facial expression
24 that someone takes exception to, I would be happy to
25 reconsider on a case-by-case basis permitting the camera to be

1 on counsel.

2 All right. Goodbye.

3 MR. RANDALL JONES: Your Honor, just to clarify
4 that, with respect to a case-by-case basis. So if something
5 comes up at a deposition --

6 THE COURT: Here's the deal, Mr. Jones. I will tell
7 you that Kathy England I both in separate cases had occasions
8 where a specific attorney came across the table and threatened
9 us. From that point forward that person was on the camera, as
10 well, not just the deponent. And that was approved -- my
11 recollection, mine was approved by Discovery Commissioner
12 Biggar, Kathy's was approved by a magistrate. But that was
13 where the attorney was doing something other than, you know, a
14 facial expression or smirking. You know, you guys do that in
15 court all the time. What am I supposed to do? 'Bye.

16 MR. RANDALL JONES: Thank you, Your Honor.

17 THE PROCEEDINGS CONCLUDED AT 8:55 A.M.

18 * * * * *

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CERTIFICATION

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

AFFIRMATION

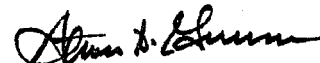
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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12/30/12

DATE



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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; SHELDON G. ADELSON,
in his individual and representative capacity;
DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A627691-B

DEPT NO.: XI

Date: n/a

Time: n/a

**DEFENDANT SANDS CHINA LTD'S
REPORT ON ITS COMPLIANCE WITH
THE COURT'S RULING OF
DECEMBER 18, 2012**

1 Defendant Sands China Ltd. ("SCL") hereby provides the Court with a Report of its
2 compliance with the Court's ruling of December 18, 2012. This compliance resulted in the
3 production to Plaintiff of more than 5,000 documents (consisting of more than 27,000 pages) on
4 or before January 4, 2013.

5 **I. THE COURT'S DECEMBER 18, 2012 RULING**

6 After Plaintiff served his jurisdictional discovery requests, Defendants began searching for
7 and producing responsive documents. In this process, the parties eventually reached an impasse
8 on SCL's position that, as to jurisdictional issues, a search of the ESI of custodians other than
9 Plaintiff in Macau would be largely duplicative of LVSC's production.

10 Accordingly, on December 6, 2012, Defendants filed a motion for a Protective Order
11 seeking the Court's guidance on whether the Macau search would have to include custodians
12 other than Plaintiff. At that time, SCL was proceeding with an ESI search in Macau, but only for
13 documents contained in Plaintiff's own ESI.

14 At a hearing held on December 18, 2012, the Court denied Defendants' motion and stated
15 that it would enter an order directing SCL to produce all information relevant to jurisdictional
16 discovery:

17 The motion for protective order is denied. I am going to
18 enter an order today that within two weeks of today, which for ease
19 of calculation because of the holiday we will consider to be January
20 4th, Sands China will produce all information within their
possession that is relevant to the jurisdictional discovery. That
includes electronically stored information. Within two weeks.

21 (Dec. 18, 2012 Tr., Ex. A, at 24). In so doing, the Court expressly noted that its ruling did not
22 foreclose SCL from making appropriate redactions. (*Id.*, at 27).

23 As of January 4, 2013, the above-described order had not yet been entered. Nevertheless,
24 after the hearing, SCL immediately began taking steps to expand its on-going efforts in Macau to
25 comply with the Court's ruling.

26 **II. SCL'S COMPLIANCE WITH THE COURT'S RULING**

27 SCL's production of more than 27,000 pages of documents resulted from an extended
28 process that included seven major stages: (1) the recruitment of additional Macau lawyers to

1 assist the existing team in reviewing the documents generated by the expanded search; (2) the
2 engagement of an additional vendor with sufficient expertise, technology and resources to assist
3 SCL in completing the expanded search; (3) the identification of relevant custodians and search
4 terms using accepted principles of electronic discovery; (4) the physical review of all documents
5 retrieved by these search terms to determine responsiveness to Plaintiff's jurisdictional discovery
6 requests; (5) the identification of all "personal data" in responsive documents within the meaning
7 of the Macau Personal Data Protection Act ("MPDPA"); (6) the subsequent redaction of personal
8 data from those identified documents; and (7) a review in the United States for privilege and
9 confidentiality determinations.

10 To oversee and manage this document production effort (both before and after the Court's
11 December 18, 2012 ruling), SCL engaged the law firm of Mayer Brown LLP, including lawyers
12 from the Firm's Hong Kong office.

13 **A. The Recruitment of Macau Lawyers to Review Documents**

14 The first challenge following the Court's December 18, 2012 ruling was to recruit on short
15 notice and during the holiday season a sufficient number of Macau attorneys to assist in
16 completing the expanded search and review of documents in Macau. As SCL previously
17 informed the Court, on November 29, 2012, the Office of Personal Data Protection ("OPDP")
18 notified SCL that it could not rely on Hong Kong lawyers (or any other non-Macau lawyers) to
19 review or redact Macau documents containing "personal data." (Ex. B). This restriction imposed
20 a significant limitation on the pool of potential reviewers because Macau has fewer than 250
21 licensed lawyers (excluding trainees and interns), and many of those attorneys work for firms that
22 cannot represent SCL because of pre-existing conflicts. In addition, the required review had to be
23 conducted between December 18, 2012 and January 4, 2013, when Macau had five days of public
24 holidays.

25 Notwithstanding these limitations, SCL succeeded in recruiting additional Macau lawyers,
26 until, by December 27, 2012, SCL had engaged a total of 22 Macau attorneys to review
27 potentially-responsive documents and redact personal data contained in those documents.

28 ///

1 **B. The Selection of an Additional Vendor**

2 To complete the discovery directed by the Court, SCL also had to enlist an additional
3 vendor to assist in processing and handling of the significantly increased volume of documents
4 that had to be reviewed and produced. The existing vendor used a software application that
5 repeatedly encountered several technical difficulties in attempting to “de-duplicate” the increased
6 volume of documents and in preserving redactions throughout the production process. By
7 December 19, 2012, SCL concluded that these difficulties would likely prevent the vendor from
8 completing the project by itself.

9 Accordingly, on December 19, 2012, SCL engaged another vendor, FTI, to assume most
10 of the technical aspects of the review and redaction process. Between December 19 and January
11 4, FTI not only re-processed all data that the initial vendor had processed, but also logged more
12 than 500 hours in processing additional data, training reviewers and redacting responsive
13 documents—all at a cost of more than \$400,000.

14 **C. The Identification of Relevant Search Terms and Custodians**

15 In addition to engaging a qualified vendor and recruiting a sufficient number of reviewers,
16 SCL had to develop a strategy for the expanded search in Macau. In this process, SCL was left to
17 its own devices. As described in earlier court filings, Plaintiff declined to cooperate with
18 Defendants in identifying relevant custodians and search terms in either the United States or
19 Macau.¹ For example, in June 2012, Plaintiff announced to Defendants that they should develop
20 their own lists of search terms and custodians for the U.S. searches, while in October 2012,
21 Plaintiff simply ignored Defendants’ request to meet and confer about ESI discovery in Macau.²

22 To be sure, at the December 18, 2012 hearing, Plaintiff asserted for the first time that he
23 had sent a letter *more than two years ago* providing a list of relevant custodians:

24 ... We met for hours with his prior counsel explaining over
25 and over to the extent it was even needed if we’re talking about the
26 custodians that they didn’t know about in Macau, they needed only
27 look to *Colby Williams’s letter giving them 20 custodians that we*
28 *want that they’ve known for two years.*

1 *See, e.g.,* Defendants’ Opposition to Plaintiff’s Motion for Sanctions, at 7-8 and Exhibit BB.

2 *Id.*

1 (Dec. 18, 2012 Tr., Ex. A, at 23-24) (emphasis supplied). But this letter merely listed the
2 custodians that Plaintiff claimed were relevant to *merits* discovery, not to jurisdictional discovery.
3 Indeed, Plaintiff sent the letter long before he had even served his jurisdictional discovery
4 requests, and, in any event, the issues in jurisdictional discovery are very different from the merits
5 issues.

6 With respect to *jurisdictional* discovery, Plaintiff simply declined to participate in any
7 cooperative effort to reach agreement on search terms and custodians. In particular, after serving
8 his jurisdictional discovery requests, Plaintiff never (1) provided Defendants with a proposed list
9 of custodians for jurisdictional discovery; (2) participated with Defendants in finalizing an
10 expanded list of search terms for jurisdictional discovery;³ or (3) responded to Defendants'
11 October 6, 2012 request to meet and confer about jurisdictional discovery in Macau.⁴

12 As a result, SCL was forced to make its own determinations of relevant search terms and
13 custodians to comply with the Court's ruling. To this end, SCL first identified eight Macau
14 custodians (in addition to Plaintiff) whose ESI was reasonably likely to contain documents
15 relevant to jurisdictional discovery. (See Ex. C, attached to this Report). SCL then utilized (with
16 only minor variations) the same expanded set of search terms that Defendants had unilaterally
17 developed to conduct the jurisdictional searches in the United States—search terms that Plaintiff
18 has never challenged or even asked to review. (Attached to this Report is Exhibit C, which lists
19 the custodians and search terms used by SCL to identify and produce documents relevant to
20 jurisdictional discovery.).

21 This procedure comports with “best practices” in electronic discovery. The Sedona
22 Principles instruct parties responding to discovery requests to “define the scope of the
23 electronically-stored information needed to appropriately and fairly address the issues in the case
24 and to avoid unreasonable overbreadth, burden, and cost.” The Sedona Conference, Sedona
25 Principles Addressing Electronic Document Production, Cmt. 4.b (2d ed. 2007) (“Sedona
26

27 ³ In July and August 2012, Defendants expanded the list of search terms and custodians used for the searches
of LVSC's ESI after Plaintiff claimed that LVSC's production was inadequate.

28 ⁴ Defendants' Opposition to Plaintiff's Motion for Sanctions, at 7-8 and Exhibit BB.

1 Principles”), Cmt. 6.b. This process typically includes “collecting electronically-stored
2 information from repositories used by key individuals,” and “defining the information to be
3 collected by applying reasonable selection criteria, including search terms, date restrictions, or
4 folder designations.” *Id.*; *see also id.* Cmt. 11.a (instructing that “selective use of keyword
5 searches can be a reasonable approach when dealing with large amounts of electronic data”).

6 Consistent with these principles, the Nevada courts have repeatedly endorsed the use of
7 specified custodians and search terms to govern electronic discovery. *See, e.g., Cannata v.*
8 *Wyndham Worldwide Corp.*, No. 2:10-cv-00068-PMP-VCF, 2012 WL 528224, at *5 (D. Nev.
9 Feb. 17, 2012) (ordering parties to agree on a final list of search terms and custodians).

10 The courts have also held that when a party requesting discovery refuses to agree on
11 custodians and search terms, the responding party should develop its own search terms and list of
12 custodians. *See, e.g., Treppel v. Biovail Corp.*, 233 F.R.D. 363, 374 (S.D.N.Y. 2006). In these
13 circumstances, the party requesting discovery effectively waives its objections because it would
14 be unfair to allow the requesting party to refuse to participate in the process of developing a
15 search strategy and then later claim that the strategy was inadequate. *See, e.g., Covad Commc’ns*
16 *Co. v. Revanet, Inc.*, 258 F.R.D. 5, 14 (D.D.C. 2009).

17 Thus, in the absence of any meaningful participation by Plaintiff, despite being invited to
18 do so by Defendants, SCL relied on widely-accepted principles of electronic discovery to select a
19 list of custodians and search terms that could reasonably be expected to yield documents relevant
20 to the limited jurisdictional discovery the Court has allowed.

21 **D. The Review and Redaction of Documents**

22 After SCL developed its search strategy, it then applied the designated search terms to the
23 ESI of the relevant custodians. SCL also processed approximately 20,000 pages of hardcopy
24 documents maintained by Plaintiff and the other relevant custodians. Finally, SCL manually
25 reviewed more than 50,000 hardcopy documents maintained by Plaintiff to determine whether
26 they were copies of ESI or otherwise not relevant to any jurisdictional issues. This process
27 yielded a population of more than 26,000 potentially responsive documents. FTI then “tiffed”
28 each of these documents so that the Macau attorneys could redact personal data contained in the

1 documents.

2 In the next step, the Macau attorneys reviewed each of the documents identified as
3 potentially responsive to determine whether the document was, in fact, relevant to jurisdictional
4 discovery and, if so, whether it contained any "personal data" within the meaning of the MPDPA.
5 If the documents did contain "personal data," the reviewers then redacted that personal
6 information.⁵

7 To complete this process, the attorneys logged more than 1,326 hours over a nine-day
8 period, with several attorneys working up to 20 hours per day and on holidays. In total, the
9 reviewing attorneys billed more than \$500,000 to complete the work in Macau.

10 **E. The Privilege Review and Final Preparation of the Documents for Production**

11 After FTI incorporated the redactions into new tiff images to ensure that the redactions
12 could not be removed, the documents were transferred to the United States, where they were
13 reviewed for privilege and confidentiality determinations. After the completion of this review,
14 FTI created a new tiff image endorsed with a Bates number for each document. The new tiff
15 image was then processed to create a new text file for production that omitted the text in the
16 redacted area. The productions provided to Plaintiff contained the tiff images and text files
17 created in the United States.

18 **F. Ongoing Quality Control Review**

19 In addition to the above-described production, SCL is currently undertaking quality
20 control procedures to determine whether there are any documents relevant to jurisdictional
21 discovery that the above review did not capture. For example, on January 7, 2013, the Macau
22 reviewers identified approximately 17 hardcopy documents that had been maintained by some of
23 the relevant custodians and that are arguably relevant to jurisdictional issues. These 17
24 documents are currently being prepared for transfer to the United States and final production. In
25 addition, SCL is conducting an electronic search of the more than 50,000 hardcopy documents
26 that SCL manually reviewed prior to production. If this electronic search results in the

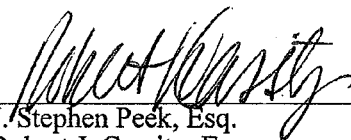
27
28 ⁵ The reviewers designated redactions based on the MPDPA as "Personal Redactions" and redactions based on the attorney-client privilege as "Privileged."

1 identification of any documents that are arguably relevant to jurisdictional discovery and that
2 have not already been produced, SCL will produce such documents to Plaintiff.

3 **III. CONCLUSION**

4 In this Report, SCL has summarized the document production that it undertook in
5 compliance with the Court's December 18, 2012 ruling. In addition to this production, SCL
6 understands that LVSC has produced the travel records ordered by the Court and that the
7 remaining depositions of Defendants' executives have now been scheduled, leaving only
8 Plaintiff's deposition to be scheduled. Accordingly, SCL believes that, subject to the Court's
9 schedule, a jurisdictional hearing can now be set following the completion of the depositions.

10 DATED January 8, 2013.

11 
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on January 8, 2013, I served a true and correct copy of the foregoing **DEFENDANT SANDS CHINA LTD'S REPORT ON ITS COMPLIANCE WITH THE COURT'S RULING OF DECEMBER 18, 2012** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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An Employee of Holland & Hart LLP

Dineen Bergsing

From: Dineen Bergsing
Sent: Tuesday, January 08, 2013 1:35 PM
To: JAMES J PISANELLI; dls@pisanellibice.com; tlb@pisanellibice.com; Kimberly Peets; see@pisanellibice.com
Subject: LV Sands/Jacobs - Sands China's Report on its Compliance with the Court's Ruling of December 18, 2012
Attachments: 1801_001

Please see attached Sands China's Report on its Compliance with the Court's Ruling of December 18, 2012. A copy to follow by mail.

Dineen M. Bergsing

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EXHIBIT A

Alvin L. Quinn
CLERK OF THE COURT

TRAN

COPY

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 FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
DEBRA SPINELLI, ESQ.
TODD BICE, ESQ.

FOR THE DEFENDANTS:

JON RANDALL JONES, ESQ.
J. STEPHEN PEEK, ESQ.
MARK JONES, ESQ.
MICHAEL LACKEY, 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.

CLERK OF THE COURT

RECEIVED
JAN 03 2013

33

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 18, 2012, 8:06 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Which motion do you guys
4 want to handle first, the protective orders?

5 MR. MARK JONES: Your Honor, I have a housekeeping
6 issue, if I may, first.

7 THE COURT: Sure.

8 MR. MARK JONES: Spoke with Mr. Bice. Thank you.
9 Yesterday was the last day for the other side to
10 oppose Mr. Lackey's pro hac admission for his -- excuse me,
11 pro hac application for his admission into this case, and
12 there's no opposition. So Mr. Bice had asked if the Court -
13 if I may --

14 THE COURT: Any objection?

15 MR. BICE: No.

16 THE COURT: All right. Then you can approach. I'll
17 be happy to sign, Mr. Jones. Here you go.

18 All right. Now which motion do you guys want to
19 argue first?

20 MR. RANDALL JONES: Your Honor, in a sense I guess
21 they're sort of mixed together, but perhaps our --

22 THE COURT: Well, the protective order on the
23 videotape deposition is different than the sanctions and the
24 other protective order motion.

25 MR. RANDALL JONES: And I guess what I was thinking

1 is maybe the protective order -- the first protective order
2 motion filed. But I don't know if the Court wants to do that
3 or not.

4 MR. PISANELLI: That's a convenient way for the
5 defendants to jump in front of an argument, but --

6 THE COURT: Actually, I want to do that way. And
7 you're going to be surprised why after the argument.

8 MR. PISANELLI: All right.

9 THE COURT: Mr. Jones.

10 MR. RANDALL JONES: I hope not pleasantly, Your
11 Honor.

12 THE COURT: Well, do you want to read my note?

13 MR. RANDALL JONES: Your Honor, I wouldn't mind
14 reading your note.

15 THE COURT: No, that's okay, Mr. Jones.

16 MR. RANDALL JONES: It might help sharpen my
17 argument.

18 THE COURT: It's all right. You're in trial in the
19 other department, so --

20 MR. RANDALL JONES: Thank you, Your Honor.

21 THE COURT: -- let's argue the motion for protective
22 order on the search of data in Macau.

23 MR. RANDALL JONES: Yes, Your Honor. As you know,
24 obviously I don't have the full -- well, have not been
25 involved in this case for very long, so the history has been

1 created before my time. And I've done my best to try to get
2 up to speed with that history in connection with these motions
3 and just in general tried to become familiar with this case.

4 I think I would start by talking a little bit about
5 that history and why we feel that that motion is appropriate.
6 And I guess the first order of that history would be a letter
7 that was sent back by defendants' counsel in May to the
8 plaintiffs, talking about the search parameters and what they
9 believe would be the appropriate way to do this process. And
10 I want to mention this because I think it is important as
11 relates to -- for this overall process and the relationship
12 with the motion for sanctions. And in that letter not only
13 did the defense counsel spell out what we intended to do, but
14 also made comment about willingness to meet and confer. So
15 that's sort of the first part of that process.

16 And the next part of the process was the joint case
17 conference statement, which also spelled out in great detail
18 and I think there's somewhat seven different points that were
19 spelled out about the process that the defense intended to
20 take in trying to comply with the discovery. And that spelled
21 out very specifically that we would look first at the -- our
22 client's, Jacobs's ESI information in the U.S. And again, the
23 whole point of this is, as far as we know, the best
24 information we have is that that's a ghost copy of what was
25 created in Macau. So presumably it's no different than what's

1 in Macau in the first instance. So we spelled that out and
2 said that's what we're going to do, then we're going to look
3 all -- of course, all the Las Vegas Sands information and
4 start producing that as quickly as we can.

5 And then there is a hearing the next day, June 28th,
6 where this two-step approach was spelled out to the Court and
7 counsel and was consistent with what was in the case
8 conference statement.

9 Then there's a July 30th letter which reinstated --
10 or, excuse me, reiterated that the defendants would review all
11 of the U.S. ESI first and then focus on Macau, and there was
12 some -- this wasn't just done, Your Honor, to try to delay
13 things. And I say that, Your Honor, because I have been
14 involved in discovery where you're talking about not just out
15 of the state, but out of the country. And this is a unique
16 circumstance. Certainly I would hope the Court would take
17 into account that we are dealing with the sovereign government
18 that may have a different idea of what we can and can't do.
19 So the idea was to let's look at that stuff first, the
20 information we have on the ghost hard drive here in the U.S.
21 and whatever we have we produce that, and then we go look at
22 what we know is going to be more of an issue in Macau.

23 And then, of course -- and I want to make sure to
24 point out that they've made some comments about this so-called
25 staggered approach which the Court said, no, you can't have

1 the staggered approach.

2 THE COURT: I've been saying that for a year and a
3 half already.

4 MR. RANDALL JONES: Absolutely. And, Your Honor,
5 you defined what a staggered approach was. Well, based on
6 what I've read in the file and your rulings, a staggered
7 approach was what we initially said, look, let's get the
8 plaintiff's ESI from the plaintiff, from Mr. Jacobs --

9 THE COURT: Every time someone brought that up I
10 said no.

11 MR. RANDALL JONES: Absolutely. And we understand
12 that. That is not what we are saying we are doing.

13 THE COURT: No, I know. Now you're saying, we want
14 to search what we have access to in the United States without
15 dealing with the Macau Data Privacy Act and then, depending
16 upon what we find, we may look at the stuff in Macau.

17 MR. RANDALL JONES: No, actually I don't think
18 that's what we're saying. That's not my understanding of what
19 we're -- in fact, that's not my understanding --

20 THE COURT: That's how I read this.

21 MR. RANDALL JONES: -- of what we're doing. In
22 fact, that -- I will tell the Court that is not what we were
23 doing. What we were doing was trying to make sure, especially
24 after the hearing in September, that we got access to the
25 Macau information. But we have to do it the way they let us

1 do it.

2 And so what happened after that hearing, we were
3 retained, Mr. Lackey's firm was retained, and action started
4 right away. This was within weeks of that hearing, Your
5 Honor. New counsel was brought in. The reason we were
6 brought in was to try to make sure that we complied with what
7 you wanted us to do. And, Your Honor, I've been practicing
8 here a long time and I've known you both in private practice
9 and on the bench, and I would hope the Court would understand
10 that we take our -- not only our oath, but our obligation on
11 discovery very, very seriously.

12 THE COURT: Oh, I have no doubt about that, Mr.
13 Jones. That's not the issue. The issue is not you or your
14 firm's credibility or Mr. Lackey or Mr. Peek or any of the
15 attorneys at this point. The issue is a -- what appears to be
16 an approach by the client to avoid discovery obligations that
17 I have had in place since before the stay.

18 MR. RANDALL JONES: And, Your Honor, I understand
19 that's your concern. And I understood that before you said
20 that just now. And I understand why that's your concern. I
21 have tried to make sure that I understand the history of this
22 case. And I will tell you the client understands the concern.
23 That's why new counsel this far along in the case was brought
24 in.

25 THE COURT: Third new counsel.

1 MR. RANDALL JONES: Understood. And we all hope the
2 lasting counsel. And a major part of that decision was to
3 make sure that any errors or issues that the Court was
4 concerned about in the past are addressed and addressed
5 appropriately. So with that in mind our firm was retained. I
6 was just about to start my jury trial, and so my brother Mark
7 Jones was tasked, with Mr. Lackey -- this was within weeks of
8 us being retained -- of flying to Macau and addressing the
9 issue directly. And we didn't know what we were going to find
10 out when we got there. We were going there to try to see what
11 we could do immediately. And so -- and, again, I hope the
12 Court appreciates that there's two different issues here. One
13 is -- from my perspective one is a party trying to hide behind
14 the law of another country or another state, for that matter,
15 to thwart the discovery process. That's one issue. The other
16 issue is also trying to make sure that if you have to deal
17 with the laws of another country you're in compliance with
18 those laws.

19 So to the extent the Court was concerned that the
20 OPDP law was being used to try to block discovery, that, I
21 will this Court in open court on the record as an officer of
22 the Court, is not what we are trying to do at this point. If
23 it was ever -- and I certainly don't believe it was ever being
24 done, but I will tell the Court to the extent there was some
25 miscommunication or misunderstanding of what our rights and

1 obligations were, two lawyers went to Macau to try to
2 straighten that out. And when they got there they were
3 informed of certain things. And I want to make sure the
4 Court's aware of the fact that before Mark Jones went to Macau
5 he sent an email again saying, look, we want to know what --
6 we want to meet with you, we want to talk to you before -- on
7 going -- this was mentioned in court the week before, I
8 believe, on going to Macau, I want to talk to you all to make
9 sure that we're all on the same page at least as to whether or
10 not you have different terms -- search terms or parameters
11 that you want us to look at, this is what we think we should
12 be doing. And I think it's important to the Court.

13 We tried to meet and confer with them over the
14 summer, before our firms were involved, but still, the record
15 is clear. We tried to meet with them on a couple of occasions
16 and ask them about what search terms they wanted to use to try
17 to expand the ESI discovery, and -- both in terms of names and
18 search terms. And they didn't meet with us. And so we
19 expanded those search terms on our own and made them broader
20 than what were initially spelled out. So that's -- and, Your
21 Honor, those are the facts as I understand them, that there's
22 documentation to that effect in the file. So I have every
23 reason to believe it's true.

24 So then before Mark Jones and Mike Lackey go to
25 Macau an email is sent, said, let us know, we're going. And

1 we get no response. They go there and they have a discussion.
2 They are told for the first time that, no, Macanese lawyers
3 can look at this information. And by the way, finally -- we
4 don't know this until November 29th. We've talked to the
5 Court, we sent the information to the Court. We are informed
6 that we can have the Macanese lawyers look at this information
7 and they can do the searches and to the extent there's any
8 personal data that may be redacted. Our hope is that because
9 it's Mr. Jacobs's ESI that there will be very little, if any,
10 personal data that's going to be redacted. But we believe
11 within the next week or two we're going to start getting
12 production. And as we get it, whatever we get, if it is
13 redacted, we're going to immediately produce it to the other
14 side. And to the extent it's redacted we will address that as
15 quickly as we can with the other side to see if there's any
16 way to address that issue with the Macanese government and --
17 assuming there's even a concern, depending on the type of
18 information that appears to be redacted. So, Your Honor, we
19 are trying to make sure we do what you want us to do.

20 But we have to try to -- and we did read your order
21 as saying that we don't have to try to comply with the laws of
22 another country. We can't use those laws inappropriately to
23 simply block discovery, and we're not trying to do that. But
24 we do have to try to comply with those laws. And I can't
25 believe this Court would ever issue an order that says you

1 have to violate the laws of another country in order to
2 produce documents here.

3 THE COURT: You already violated those laws, Mr.
4 Randall --

5 MR. RANDALL JONES: No.

6 THE COURT: -- Mr. Jones, Randall Jones. Sorry,
7 Randall.

8 MR. RANDALL JONES: That's all right. And we don't
9 want to compound the error. And I can't believe this Court
10 would want us to do that.

11 And so the question is -- we've done everything
12 else. We've produced 150,000 pages of documents since June.
13 We have spent an ungodly amount of money trying to make sure
14 we do this. So all we're asking this Court to is to allow us
15 to say, let's look at this information first -- and I know the
16 Court's impatient with this process, and I understand.

17 THE COURT: You know what, Mr. Jones, I'm not
18 impatient with this process. I am under a writ from the
19 Nevada Supreme Court to conduct an evidentiary hearing on
20 certain limited issues and enter findings of fact and
21 conclusions so that the Nevada Supreme Court can make some
22 additional conclusions related to the writ that is pending. I
23 am unable to accomplish what I have been ordered to do by the
24 Nevada Supreme Court in large part because of discovery
25 issues.

1 MR. RANDALL JONES: I understand. And I also
2 understand that this Court issued an order that said what the
3 parameters of discovery were going to be. And based on those
4 parameters we believe we are in compliance, with the exception
5 of the Macau ESI, which we're working on trying to get to the
6 Court.

7 So I guess I would ask this Court, well, Your Honor,
8 again, you know, we referenced the Sedona Principles. We're
9 in a -- somewhat of a brave new world as it relates to
10 discovery. That's -- electronic discovery is still new
11 territory in a lot of respects. And that's why you have
12 things like the Sedona Principles that are out there to try to
13 give litigants and the Court some guidance about this process.
14 And, you know, proportionality is a -- one of the principles
15 that is expressed in Sedona, and it relates to electronic
16 discovery.

17 THE COURT: Since you've mentioned the Sedona
18 Principles, Mr. Jones, has your client made an attempt to
19 obtain a protective order that is agreeable to the Macau
20 Government for the production of the information that would
21 otherwise be discoverable in this case?

22 MR. RANDALL JONES: No, Your Honor. And I'll tell
23 you why in a minute.

24 THE COURT: I asked that question a year and a half
25 ago. I asked the same question, and we still haven't done it.

1 MR. RANDALL JONES: And here's why. Because we are
2 hoping to be able to produce all the information that is in
3 Macau in that ESI. And, Your Honor, again, that's a ghost
4 image. And I know the Court is familiar -- more familiar
5 probably than most courts in this jurisdiction about
6 electronic discovery. So if it's a ghost image --

7 THE COURT: And Data Privacy Acts.

8 MR. RANDALL JONES: And Data Privacy Act. And a
9 ghost image is just that. It should be duplicative of what is
10 already here in the U.S. which has been produced. And, again,
11 there's a limit to what this Court has ordered to be produced
12 in this jurisdictional discovery. So the point is we believe
13 that this redundant. But, irrespective of that, a great deal
14 of time and expense has been incurred since September. Some
15 of these things should have been done before. What we're
16 asking this Court is to say, look -- we got to a point in
17 September where the Court made some findings, and the Court
18 made those findings based upon the information available to it
19 up to that point in time. We're trying to move forward. And
20 so since that time actions have been taken to try to make sure
21 we comply with the Court's order as it relates to the Macau
22 documents.

23 So if you expand the search terms -- remember, Your
24 Honor, in Sands China we're talking about -- the claim as
25 relates to Sands China is about an option agreement. The

1 search terms that we have used to try to find documents all
2 seem to be related to information that in fact is
3 overexpansive beyond what would be contacts that Sands China
4 might have with the United States, in particular with Nevada.
5 So we're essentially, we believe, getting a substantial amount
6 of overinclusive documents.

7 Let me just give you an example. In the depositions
8 two documents were used in Mr. Adelson's deposition of the
9 200,000 documents that have been discovered, and I think 19
10 were used in either in Mr. Goldstein or Mr. Leven's
11 deposition, I can't remember, but one of those two. But the
12 point is, Your Honor, is that we have been trying to
13 accomplish this discovery, and we believe that the Court has
14 set limits on what this discovery is. In fact, your order
15 says what the limits of discovery are. And so our --

16 THE COURT: You're referring to the March 8th, 2012,
17 order?

18 MR. RANDALL JONES: That's correct, Your Honor. And
19 so I guess I would ask the Court some questions to help us try
20 to understand where the Court has a concern that we are not in
21 compliance or at least attempting to comply and why the
22 parameters should be expanded beyond Mr. Jacobs's ESI in
23 Macau. We've given them everything we have in Las Vegas,
24 including the ghost image information of the Jacobs ESI. What
25 possibly could we expect to find with respect to contacts with

1 Nevada in Macau in the ESI of other people that would not be
2 duplicative of what is found in the Las Vegas Sands ESI that's
3 already been produced. And we haven't seen any indication
4 from the plaintiff that there is such information that they
5 expect to find or that they have not had full discovery.

6 We have answered their discovery, their requests to
7 produce. We've laid out, what we've answered, in our brief.
8 So, Your Honor, again, we don't know how -- and I guess under
9 Rule 26, you know, the rule itself provides that --
10 26(b)(2)(1) unreasonable -- discovery is limited is
11 unreasonable, cumulative, or duplicate documents. We believe
12 that to the extent -- and we're doing this anyway with the
13 Macau ESI, we're still producing that -- the party seeking
14 discovery has had an ample opportunity to discover and to
15 obtain the information sought. And we think that that has
16 been the case here. And, (3), the discovery is truly
17 burdensome or expensive, taking into account all the needs of
18 the case, the amount in controversy, and the limits of
19 resources and importance of the issues.

20 So here, Your Honor, we don't see the need -- and we
21 don't believe the need has been spelled out by the plaintiffs
22 as to why they need to go beyond the Macau ESI of Mr. Jacobs
23 in this discovery.

24 Now, the timing is a different issue. And we
25 certainly wish it could have been faster. And counsel

1 involved in this case at this point in time are doing
2 everything they can to try to make sure that it happens in
3 short order. We've told the Court we believe -- we think
4 we're going to have all this information with the extent
5 of possibly any personal information being redacted by
6 January 15th. But we hope to start having some of this
7 information within the next week. And as soon as we get it
8 we're going to start rolling it out.

9 So, Your Honor, we would ask that the Court have
10 some proportionality with respect to how far the Court goes in
11 allowing this discovery in Macau. And it further complicates
12 the case. We've got to then ask for information beyond Mr.
13 Jacobs's ESI which we don't see any grounds to --

14 (Pause in the proceedings)

15 MR. RANDALL JONES: And, Your Honor, and Mr. Peek is
16 helping me out here because, again, I'm trying to catch up
17 with all the information. You'd asked a question about a
18 protective order and whether there had been one asked for.
19 It's in Exhibit Y to our motion. The Macanese Government does
20 specifically reference page 18, also mentioned the, quote,
21 "protective order," and the related Jacobs litigation is
22 sufficiently protected in compliance with the guidelines
23 defined by the Personal Data Protection Act, Article 20,
24 Item 2.

25 So there has been such a request, and the Macanese

1 Government has apparently -- and this was something I was not
2 aware of digging through all of these exhibits, didn't find
3 this reference on page 18, so I was not aware of that. But
4 that has been addressed by the Macanese Government.

5 So I guess the biggest point is, Your Honor, is that
6 we would ask the Court to consider the proportionality of the
7 need for this information versus the burden and especially in
8 the limited scope that the Court has ordered in this
9 particular case.

10 So with that, Your Honor, if you have any questions,
11 I would do my best to answer them.

12 THE COURT: Thank you.

13 THE COURT: Mr. Pisanelli.

14 MR. PISANELLI: Thank you, Your Honor. I'm going to
15 do my best to exercise some restraint here, both in my
16 emotions over what I just heard and understanding that we're
17 talking about just a protective order so far.

18 First let me take an opportunity to correct Counsel,
19 because I know he's not intentionally trying to mislead you.
20 He is the newest person at the desk and clearly doesn't know
21 the real history of what happened. When he suggests to you
22 that we did not meet and confer in the summer or in the spring
23 or the fall or last winter or two years ago, he's mistaken.
24 Even in the circumstance in which he was referring me met for
25 hours with his prior counsel explaining over and over to the

1 extent it was even needed if we're talking about the
2 custodians that they didn't know about in Macau, they needed
3 only look to Colby Williams's letter giving them 20 custodians
4 that we want that they've known for two years. And the
5 suggestion that they don't know what to do here, if that's
6 what their client is telling Mr. Jones now, is something short
7 of the real truth.

8 Counsel also tells you something that needs to be
9 corrected. When he tells you that they have produced hundreds
10 of thousands or 150,000, I can't remember the number, of
11 documents and they're really working hard, remember we're
12 talking about Sands China here, Your Honor. They've produced
13 15 documents, 55 pages. That's what Sands China has produced.
14 So let's not get lost in them patting themselves on the back
15 over a two-and-a-half-million-dollar bill, they say, with the
16 all the hard work they did. Apparently that two and a half
17 million dollars was spent on obstructing discovery, not
18 actually finding.

19 And now this concept that will take us through the
20 entire motion about redundancy and the very limited nature of
21 discovery. I have to question whether Sands China has an
22 order that no one else in this Court has seen. The have taken
23 an approach in this motion and again in the presentation to
24 you this morning that the only thing they're obligated to do
25 is look at Steve Jacobs's ESI that is located in Macau

1 because, as they say, they have a ghost image here and why
2 produce it twice.

3 Well, there's so much wrong with that statement.
4 First of all, there's nothing in the Court's order that says
5 that this jurisdictional discovery is limited to Steve Jacobs.
6 And why would it be, Your Honor?

7 THE COURT: You're talking about the March 8th
8 order?

9 MR. PISANELLI: Yes.

10 THE COURT: The order related to certain depositions
11 that you noticed and what documents I was going to require be
12 produced related to those depositions.

13 MR. PISANELLI: Right. And in that order Your Honor
14 said that the discovery that Sands China was obligated to give
15 us had a time restriction on it, and the time restriction was
16 after Mr. Jacobs's termination up to the filing of the
17 complaint. Which one might then question, well, why in the
18 world would you limit your discovery to just Steve Jacobs's
19 ESI when the Court ordered discovery that occurred after he
20 wasn't even at the company anymore, is there even possibly a
21 reasonable interpretation from your words to say that, we
22 thought that all we needed to look for was the deduplication
23 -- the product of the deduplication to make sure we had all of
24 Steve Jacobs's ESI.

25 Recall this. Another handicap of Mr. Jones, because

1 he wasn't here. Henry Weissman stood before you on this exact
2 topic. This is what inspired Your Honor to make the no
3 staggering remark that is quoted in our reply at page 5. He
4 said, why would we produce the same document twice, we want to
5 get, he said -- and now I'm paraphrasing, that was a quote I
6 just gave you -- he said, we will get Steve Jacobs's ESI and
7 then we'll figure out what we have that he didn't already give
8 to us. And that's when Your Honor let him know the rules of
9 this Court, the rules of Nevada and how you govern discovery,
10 and you were very clear and unequivocal when you said, no,
11 that's not what you do, Mr. Weissman, quote, "We do not
12 stagger discovery obligations, period, end of story."

13 And so what Sands China did through the revolving
14 door of counsel that has come in this courtroom is did exactly
15 what Henry Weissman said he wanted to do and the exact
16 opposite of what you told them to do. They staggered
17 discovery, and now come in here hat in hand saying, well, we
18 thought this was a limited exercise of deduplication, Your
19 Honor, oh, we're so sorry, we thought this was all you
20 actually asked of us and it has cost us so much money to do
21 this. It really is an unbelievable position for Sands China
22 to take to come in here and tell you that they thought when
23 you said, we do not stagger, you meant we do stagger and go
24 ahead and just do your deduplication process. There isn't a
25 believable aspect of this position that they're sending -- or

1 saying to you.

2 Now we hear some new defenses from them. For the
3 first time we hear them say, Your Honor, we're not allowed to
4 review our own records and we would ask you to be
5 proportionate, I think that was the word, and not make us
6 violate some other country's laws. Again, I can't imagine
7 Sands China didn't hear your message loud and clear from the
8 sanctions hearing when you said, Sands China, you will no
9 longer be hiding behind the Macau PDPA. You were very clear
10 that not because of anything from a discovery perspective --
11 that's what we're here to do today, the Rule 37 motion has to
12 do with discovery issues. This was because of a lack of
13 candor to this Court, a lack of candor which Your Honor found,
14 as I understand it, to be directed and orchestrated from the
15 management offices of Las Vegas Sands on Las Vegas Boulevard.
16 You cannot hide behind the Macau Personal Data Privacy Act.

17 And what is the theme today? Your Honor, the Macau
18 Personal Data Privacy Act prohibits us from producing these
19 records, you wouldn't possibly tell us to do something in
20 violation of that order, would you, they say. We are not
21 permitted, they say for the first time, to even review our own
22 records. Can you imagine, Your Honor, the position that
23 they're offering? We need government approval to review our
24 own records in Macau. So the obviously, admittedly somewhat
25 sarcastic question I would ask is, how in the world do you run

1 your business in Macau if you need government permission to
2 look at your own records.

3 Rhetorical as it may be, let's just look at
4 something far more specific. Sheldon Adelson and Mike
5 Kostrinsky both gave us a little peek behind the curtain.
6 There has been a free flow of information from Macau to Las
7 Vegas Boulevard since the inception of the Macau enterprise.
8 Every single thing Mike Kostrinsky ever wanted he got.
9 Sheldon Adelson has information coming on a daily basis to his
10 office on Las Vegas Boulevard until one thing happened. And
11 Your Honor saw right through it and referenced it in your
12 order. The discovery in this case and perhaps the discovery
13 in a criminal investigation, that's when they said, oh, we
14 can't review our records in Macau, with a wink and a nod,
15 we've actually been doing it from day one, but now to comply
16 with discovery we're not permitted to do that. It is contrary
17 to what the record in this case tells us.

18 And you know what else it's contrary to, Your Honor,
19 what the prior counsel told us. You saw in our papers that
20 Steve Ma told us in June of 2011 -- I'm sorry, wrong date --
21 that Steve Ma told us that he was -- in June 2012 that he was
22 gathering and reviewing documents for CSL, gathering and
23 reviewing, he said in a letter to us. And then he said he
24 would produce them on a rolling basis. He did, all of those
25 15 staggering documents that we got.

1 Then Patty Glaser came in this courtroom and she
2 said to Your Honor, we sent a team of lawyers to do it, that's
3 a fact. Remember, she was very emphatic. We had a little bit
4 of a confrontation at the time. That's a fact. She may have
5 even been pointing her finger at me when she said it. We
6 spent a lot of money, the client's money, we sent lawyers to
7 Macau to review documents in Macau. Your Honor that is
8 irreconcilable with what they're saying now. Patty Glaser and
9 Steve Ma say not only that they can and they will, but they
10 had reviewed Macau documents. And now the newest team comes
11 in and says, we're handcuffed and not permitted to.

12 THE COURT: Well, but you know they took -- you know
13 they reviewed Macau documents because Mr. Kostrinsky carried
14 them back.

15 MR. PISANELLI: That's part of my sanction motion.

16 THE COURT: I mean, we know.

17 MR. PISANELLI: So I'm beating this drum here
18 because it is just outrageous to me. I will wrap it up. I
19 understand your point. But it's outrageous that this company
20 would come in here and as soon as this group of lawyers takes
21 a turn, that admits something they're not supposed to,
22 produces a piece of paper the Sands management didn't want to
23 get out of their hands, my prediction is we're going to see a
24 new team here. Because every single time someone stands up
25 and tries or at least promises you that they'll start doing a

1 better job than their predecessor, then guess what happens, we
2 have a new set of lawyers coming in.

3 I'm overlapping a little bit on the basis of the
4 motion.

5 THE COURT: I don't want to do the sanctions
6 motions, yet.

7 MR. PISANELLI: So I won't do that.

8 THE COURT: Thank you.

9 MR. PISANELLI: The point is very simply you never
10 told them not to produce it, and they didn't do it.

11 THE COURT: Thank you.

12 The motion for protective order is denied. I am
13 going to enter an order today that within two weeks of today,
14 which for ease of calculation because of the holiday we will
15 consider to be January 4th, Sands China will produce all
16 information within their possession that is relevant to the
17 jurisdictional discovery. That includes electronically stored
18 information. Within two weeks.

19 So I can go the motion for sanctions. The motion
20 for sanctions appears to be premature since I've not
21 previously entered an order requiring that certain information
22 that is electronically stored information in Macau be
23 provided. About two weeks from now you might want to renew
24 your motion if you don't get it.

25 Can I go to the motion for the protective order on

1 the videotape.

2 MR. PEEK: Your Honor, can we have some
3 clarification?

4 THE COURT: Yes.

5 MR. PEEK: And here's the challenge that we have, is
6 you're telling us to produce all of the documents that are
7 responsive to the requests for production, and --

8 THE COURT: If a motion is renewed, Mr. Peek, and
9 there is an impediment to production which Sands China
10 believes relates to the Macau Data Privacy Act, when I make
11 determinations under Rule 37 I will take into account the
12 limitations that you believe exist related to the Macau Data
13 Privacy Act. But, believe me, given the past history of this
14 case there seems to be different treatment of the Macau Data
15 Privacy Act at different times.

16 MR. PEEK: Your Honor, I appreciate what we went
17 through in September. I appreciate what the Court's ruling
18 was. And I think Mr. Jones has certainly made it clear how
19 serious we take this. The motion for protective order
20 certainly goes to who are the custodians, what are the search
21 terms --

22 THE COURT: Your motion for protective order is
23 really broad. Your motion for protective order says, "For the
24 foregoing reasons Sands China urges the Court to enter an
25 order providing that SCL has no obligation to search the ESI

1 in Macau of custodians other than Jacobs or to use any more
2 expansive search terms on the Jacobs ESI in Macau that was
3 used to search the Jacobs's ESI that was transferred to the
4 United States in 2010."

5 The answer is no. Denied.

6 MR. PEEK: Okay. I'll let --

7 MR. PISANELLI: Your Honor, on the Rule 37 issue of
8 whether there's an order --

9 THE COURT: Hold on a second, Mr. Pisanelli. Let me
10 go back to Randall Jones.

11 MR. PISANELLI: Okay.

12 THE COURT: Not Jim Randall, Randall Jones.

13 MR. RANDALL JONES: Thank you, Your Honor. I do
14 want to make clear because of what was said there's never been
15 said and if it was misstated by me, then I want to make sure
16 it's clear on the record. It's never been our position that
17 our client can't look at the documents. The issue is whether
18 or not we can take certain information -- our client is
19 allowed to take certain information out of the country. And
20 so I just want to make sure that's clear on the record. Our
21 client can look at the documents, and our client's Macanese,
22 we've just found out, can look at the documents. And from
23 there it becomes more complicated. So I just want to make
24 sure that's clear to the Court.

25 We understand what you're saying, and we will

1 continue to do our best to try to comply with the Court's
2 orders as best we can. And that's -- and I hope the Court
3 does appreciate this is a complicated situation, and we -- I
4 can -- I'll just tell you again, Your Honor, we're trying to
5 make sure that we -- the lawyers and our client comply with
6 your discovery.

7 THE COURT: I understand.

8 MR. PEEK: Yeah. We need to have redactions as part
9 of that, as well, as that's -- I understood --

10 THE COURT: I didn't say you couldn't have
11 redactions.

12 MR. PEEK: That's what I thought.

13 THE COURT: I didn't say you couldn't have privilege
14 logs. I didn't say any of that, Mr. Peek.

15 MR. RANDALL JONES: As I understand it, Your Honor,
16 you said we can still otherwise comply with the law as we
17 believe we should and then you ultimately make the call as to
18 whether or not we have appropriately done that.

19 MR. PISANELLI: We will indeed --

20 THE COURT: I assume there will be a motion if there
21 is a substantial lack of information that is provided.

22 MR. PISANELLI: So, Your Honor, on this issue of the
23 Court order, we're saying it again. As part of your sanction
24 order you were very clear and you said that they're not hiding
25 behind that anymore.

1 THE COURT: I did.

2 MR. PISANELLI: And they're giving us a precursor
3 that they don't hear you, they just never hear you.

4 THE COURT: Well, Mr. Pisanelli, I've entered
5 orders, I've now entered an order that says on January 4th
6 they're going to produce the information. They're either
7 going to produced it or they're not. And if they produce
8 information that you think is insufficient, you will then have
9 a meet and confer. And then if you believe they are in
10 violation of my orders, and I include that term as a multiple
11 order, then you're going to do something.

12 MR. PISANELLI: I will. I want --

13 THE COURT: And then I'll have a hearing.

14 MR. PISANELLI: I will. I want to make this one
15 point, because you've made a statement that they have not yet
16 violated an order, and that's of concern to me.

17 THE COURT: Well, they've violated numerous orders.
18 They haven't violated an order that actually requires them to
19 produce information. I have said it, we discussed it at the
20 Rule 16 conference, I've had people tell me how they're
21 complying, I've had people tell me how they're complying
22 differently, I've had people tell me how they tried to comply
23 but now apparently they're in violation of law. I mean, I've
24 had a lot of things. But we've never actually entered a
25 written order that says, please produce the ESI that's in

1 Macau within two weeks.

2 MR. PISANELLI: Well, you haven't entered anything
3 that specific, but you have entered an order that calls for
4 ESI protocol that calls for this production --

5 THE COURT: I know.

6 MR. PISANELLI: -- and you directed from this bench,
7 which is no different than an order, for them to create a log
8 --

9 THE COURT: Nevada Supreme Court thinks written
10 orders are really important. So we're going to have a written
11 order this time, Mr. Pisanelli --

12 MR. PISANELLI: We are indeed. But --

13 THE COURT: -- especially since I am under a limited
14 stay which only permits me to deal with jurisdictional
15 information, which I've been trying to get to for a year and a
16 half.

17 MR. PISANELLI: As have we.

18 THE COURT: And I have a note that says, "Find a
19 place for the Sands-Jacobs evidentiary hearing." But I can't
20 find a place for you until you actually have your discovery
21 done or at least close to done.

22 MR. PISANELLI: I will remind Her Honor and the
23 battery of lawyers de jure [sic] that Your Honor told this
24 team I think a year and a half ago, create --

25 THE COURT: Well, it wasn't this team, it was a

1 different team.

2 MR. PEEK: Your Honor, I certainly appreciate Mr.
3 Pisanelli's remarks about how he wants to characterize what
4 the Court's order was.

5 THE COURT: Okay.

6 MR. PEEK: And I certainly disagree.

7 THE COURT: Okay. Will you stop arguing about this.
8 I've ruled.

9 MR. PEEK: I'm happy to do that.

10 THE COURT: I now want to go to your motion for
11 protective order on the videotaping of the deposition. That's
12 your motion, Mr. Bice's motion.

13 MR. BICE: This our motion. It's actually not a
14 videotaping of the deposition, Your Honor. It's a videotaping
15 of opposing counsel --

16 THE COURT: No, I know, Mr. Bice.

17 MR. BICE: -- which is what this is, without any
18 Court authorization, without seeking any leave of the Court to
19 do so. You know, Your Honor, we've submitted our motion, we
20 went over the history of this. I didn't receive any written
21 opposition. I don't know if the Court has received a written
22 opposition from them or not.

23 THE COURT: I don't remember.

24 MR. BICE: The point here is, Your Honor, Rule 30 --
25 we have been videotaping all of the depositions without any

1 issues, and then we got this claim by Mr. Peek that, well, we
2 want the videotape -- we want to put a camera behind the
3 witness, I guess, from the other side of themselves and
4 videotape you and your client during these depositions.

5 We objected to that. We told them, you know, you
6 want to do that, you have to get permission of the Court to do
7 that. Their position was now we're going to do it anyway. We
8 thought that that issue was sort of -- they dropped it with
9 the Mr. Leven deposition as long as I would move up his
10 deposition by a half an hour. And then we found out because
11 we got a cross-notice of deposition dropped in the mail to us
12 that says that they're going to videotape opposing counsel
13 during the deposition.

14 As we cite the caselaw to Your Honor, The Federal
15 Courts under the exact same rule have said that that's
16 inappropriate. They have sought any leave of the Court, so we
17 ask the Court to enter a protective order. This is, with all
18 due respect --

19 THE COURT: Thank you.

20 MR. BICE: -- it's simply harassment.

21 THE COURT: Mr. Mark Jones.

22 MR. MARK JONES: Thank you, Your Honor.

23 This was on an order shortening time, so, if I -- if
24 I may address it, we did not file any written opposition.

25 Your Honor, I'd like to emphasize one statement, and

1 that is the first sentence of plaintiff's motion for
2 protective order, because that's really what this is all
3 about. It says, "The games, harassment, and unprofessional
4 conduct continue." And, Your Honor, I want to tell you that I
5 do not play games in my practice. I do not need to play
6 games. One of the games that Mr. Bice believes that I am
7 playing is with the timing. There's a lot going on with this
8 case, Your Honor, and it got filed -- when it got filed there
9 was no --

10 THE COURT: And the CityCenter case, which you guys
11 got dragged into, too.

12 MR. MARK JONES: The point is that I received an
13 email from Mr. Bice that a colleague and I read about the
14 protocol of the counsel. One of the first things we filed --
15 I've already talked to them about it and apologized. If I'm
16 going to apologize for anything it's only that we did not
17 email it to him. I think that was my assistant's fault. I
18 didn't know anything about it, Your Honor, and just realized
19 last night when Mr. Bice was talking about it. And we
20 appreciate an extension that he had given us recently. And,
21 of course, we in the normal course expect to get extensions
22 back as they may ask for them on their end.

23 Now, as to the merits of the motion, yes, this was
24 filed and served right before the deposition, but you don't
25 hear them say it is late. And in fact it is not late, Your

1 Honor. It is timely filed under Rule 30, NRCP Rule 30, and
2 that is that a cross-notice such as the one we had filed must
3 be served upon five days' notice. And it was.

4 They say in their motion that a party needs leave of
5 the Court to tape other parties or counsel. They cite to two
6 Federal Court cases in FRCP with regard to that. The two
7 cases are distinguishable. And in the Langsea [phonetic] case
8 Mr. Adelson actually walked into a deposition, they've cited
9 to that, with his own videographer with no prior notice. The
10 Posorive [phonetic] case, in that case the plaintiff deponent
11 brought his own camera to tape a deposition in violation of
12 the court's explicit order prohibiting him to do so. Again,
13 we think that those two cases are distinguishable. It's a
14 federal -- they're federal rulings with regard to the Federal
15 Court Rule, FRCP 30, and we think that there's is a
16 significant difference in NRCP 30 and Nevada law with regard
17 to that.

18 THE COURT: So can I interrupt you. Why do you
19 think that it's appropriate in this particular case to depart
20 from our long history in Nevada of only having the camera on
21 the deponent? The only time I remember attorneys ever being
22 on camera in a deposition was when they introduced themselves.
23 And then it would go back to the deponent.

24 MR. MARK JONES: Your Honor, thank you. To answer
25 that I would now go a little bit out of order. I was going to

1 get to the why. The genus of this is -- and I would
2 characterize my involvement in coming into this case as an
3 extremely contentious matter. I think that's fair to say.
4 And I would estimate that I have taken -- excuse me, called
5 the Court perhaps two times in my -- average in my career,
6 every couple years. To my recollection, in this case the
7 Court has been called I think about an average of twice for
8 each deposition that has been taken.

9 The cross-notice stems from the Sheldon Adelson
10 deposition and, frankly, the smirking and we would submit very
11 inappropriate engaging of counsel with Mr. Adelson. And I
12 wasn't there. Mr. Peek was, though. He's prepared to back me
13 up on what exactly happened there, if the Court wants him to
14 do that.

15 I'd like to back up one -- if that answers your
16 question, I'd like to back up one minute to discuss NRCP 30,
17 which is I think very important here, Your Honor. First of
18 all, we found nothing in the rule and no caselaw holding that
19 leave of the court is required for such a cross-notice under
20 the circumstances. And I want to read to you from NRCP
21 30(b)(4), which has a very enlightening statement it about
22 three fourths of the way down. And it says, "The appearance
23 or demeanor of deponents or attorneys shall not be distorted
24 through camera or sound recording techniques." Why do they
25 include attorneys in that? That's right in the rule, Your

1 Honor. Again, we found nothing to say that this cannot take
2 place.

3 And why are we doing this really? Your Honor, we
4 would submit this. It's a safeguard to assure that this
5 behavior does not happen again. We'd ask that you consider
6 that in court or in trial there is a judicial officer that is
7 monitoring and regulating order and monitoring such
8 proceedings. And a court at trial that kind of behavior does
9 not exist. The courts won't put up with that. Unfortunately,
10 under the circumstances with the contentiousness, we believe
11 and would submit that such a cross-notice would do the same.
12 We think that it is harassing of professional conduct. And I
13 don't know about the other -- I can't remember the last time I
14 was called unprofessional, Your Honor, but welcome to this
15 case.

16 We also, Your Honor, are bearing the cost -- we
17 would bear the cost of the videographer, and we don't submit
18 this puts any additional burden upon Mr. Jacobs.

19 And lastly, at the end of the motion they say that
20 we've resorted to harassment in trying to intimidate our
21 opponents because we can win any legitimate debates. This
22 cross-notice isn't oppressive or harassing, Your Honor. I
23 can't imagine having -- or Mr. Bice or Mr. Pisanelli being
24 intimidated by having a camera on them. And it keeps
25 professionalism in the depositions. It's almost like having

1 Your Honor sitting there and reminding everybody during the
2 deposition if they behave and they act professionally and they
3 don't engage, what's the problem? And if they don't, we
4 submit that a deposition can be used for any purpose at the
5 time of trial, and we'll see what -- whether or not we might
6 we able to use it at the time of trial.

7 In sum, it's a motion for protective order. And we
8 would submit, of what? We don't find anything that says that
9 you have to ask leave of the court within the rule. We think
10 the cases are distinguishable that they cited. We don't think
11 that Mr. Bice or Mr. Pisanelli will be intimidated in
12 deposition. And we think it's within accordance of the rules,
13 and we're paying for it.

14 And finally, if the Court says that leave is
15 required under some long-standing rule, we're asking for it
16 now.

17 THE COURT: Thank you.

18 The motion is granted. Only under unusual
19 circumstances would the Court issue permission to videotape
20 counsel who are taking the deposition. The audio record of
21 the videotape does certainly provide a basis for protecting
22 against misconduct of counsel. If for some reason you believe
23 there is in fact misconduct, as opposed to a facial expression
24 that someone takes exception to, I would be happy to
25 reconsider on a case-by-case basis permitting the camera to be

1 on counsel.

2 All right. Goodbye.

3 MR. RANDALL JONES: Your Honor, just to clarify
4 that, with respect to a case-by-case basis. So if something
5 comes up at a deposition --

6 THE COURT: Here's the deal, Mr. Jones. I will tell
7 you that Kathy England I both in separate cases had occasions
8 where a specific attorney came across the table and threatened
9 us. From that point forward that person was on the camera, as
10 well, not just the deponent. And that was approved -- my
11 recollection, mine was approved by Discovery Commissioner
12 Biggar, Kathy's was approved by a magistrate. But that was
13 where the attorney was doing something other than, you know, a
14 facial expression or smirking. You know, you guys do that in
15 court all the time. What am I supposed to do? 'Bye.

16 MR. RANDALL JONES: Thank you, Your Honor.

17 THE PROCEEDINGS CONCLUDED AT 8:55 A.M.

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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

12/30/12

DATE

EXHIBIT B

To whom this may concern,

The abovementioned official letter has been well received.

This is in connection with the letter from your company (Venetian Macau Limited) stating that the local court in Nevada, US would be trying a civil case (Proceedings No.: A627691-B) involving Steven C. Jacob and Sands China Limited (hereinafter referred to as "SCL") with "Steven C. Jacob v. Las Vegas Sands Corp.; Sands China Ltd; Sheldon G. Adelson, et al." as the case name. In order to deliberate on whether it has jurisdiction over the abovementioned case, the court has requested SCL to provide information evidencing its relationship with "Las Vegas Sands Corporation" (hereinafter referred to as "LVSC"). Since your company believes that there may be documents in Macau which are significant to SCL's preparation of its own defense in the abovementioned case, your company intends to engage a lawyer in Macau, and to engage a law firm in Hong Kong which shall collaborate with that lawyer in inspecting the documents and information at your company's headquarters in Macau through the signing and provision of a contract of service. Your company believes that the abovementioned acts of document inspection and the treatment of personal data in connection therewith comply with the stipulations of Article 6, Item (5) of Macau's *Personal Data Protection Act* (Act 8/2005), and accordingly shall give notice to our Office pursuant to Article 21, No. 1 of that Act, or, in cases where our Office deems that a notice shall not be given, request the granting of permission by our Office in accordance with the stipulations of Article 22, No. 1, Item (4)¹ of that Act. As a public authority as defined under Article 79, No. 3 of the *Macau Civil Code* and the *Personal Data Protection Act*, our Office is responsible for monitoring and coordinating the compliance with and implementation of the *Personal Data Protection Act* by virtue of the responsibilities conferred upon it by Chief Executive's Dispatch No. 83/2007 and Dispatch No. 6/2010.

Pursuant to the stipulations of Article 4, No. 1, Items (5) and (6) of the *Personal Data Protection Act*, the "entity responsible for processing personal data" refers to "*a natural person or legal person, public entity, department or any other body which decides, individually or jointly with others, upon the purposes and means of the processing of personal data*", while

¹ The original version of the incoming letter reads "nos termos do disposto na alínea 4) do artigo 22.º da Lei 8/2005."

"subcontractor" refers to "a natural person or legal person, public entity, department or any other body which is authorized by an entity responsible for processing personal data to process personal data."

In accordance with the content specified in the letter from your company, your company intends to inspect the documents and information at your company's headquarters through engaging a lawyer in Macau and a law firm in Hong Kong which shall collaborate on such inspection, in order to provide evidence of the relationship between SCL and LVSC. It is thus clear that your company has the control and decision rights regarding the processing of the abovementioned information, including the decision of engaging a lawyer in Macau and a law firm in Hong Kong which shall collaborate to inspect such documents and information. Consequently, your company is an entity responsible for processing personal data, while the lawyer in Macau and the law firm in Hong Kong, which are authorized, are subcontractors.

It should be noted that, based upon the fact that your company has authorized a law firm in Hong Kong to inspect documents containing personal data, as well as the fact that the specimen contract intended to be signed with the law firm in Hong Kong as provided by your company indicates that the services to be provided by such law firm shall include "defining the scope of the document disclosure requirements relating to the civil proceedings filed by Steven C. Jacob against Las Vegas Sands Corp. and Sands China Limited with the local court in Nevada, US and making responses thereto; and inspecting and analyzing all relevant documents under a mechanism complying with Macau's laws (including but not limited to Macau's *Personal Data Protection Act* (Act 8/2005))," our Office deems that the information relating to the documents containing personal data entailed in this case which an institution registered outside Macau has been authorized to inspect has been transferred to places outside Macau (including Hong Kong), and that under such circumstances, your company shall be allowed to proceed only when the stipulations of Article 19 or 20 of the *Personal Data Protection Act* are observed.

In view of the stipulations of Articles 19 and 20 of the *Personal Data Protection Act*, our Office deems that your company may only authorize a law firm in Hong Kong to inspect relevant documents subject to compliance with the stipulations of Article 20, No. 1, Item (1) or (2) of that

Act and upon giving notice to our Office. However, since your company has provided our Office with no information evidencing that your company has obtained the express consent of the parties relating to such information, nor any contract of employment signed between your company and its employees or such information as contracts signed between your company and its clients, our Office cannot deem that your company's authorization of a law firm in Hong Kong to inspect relevant documents complies with relevant stipulations of the *Personal Data Protection Act*.

In addition, the letter from your company states that it thereby notifies our Office of its act of engaging a lawyer for document inspection pursuant to the stipulations of Article 21, No. 1 of the *Personal Data Protection Act*, but that in cases where our Office deems that a notice shall not be given, it shall request the granting of permission by our Office in accordance with the stipulations of Article 22, No. 1, Item (4)² of that Act.

Article 21, No. 1 of the *Personal Data Protection Act* stipulates the following: "*The entity responsible for processing personal data or its representative (if any) shall notify the public authority in writing, within 8 days from the commencement of processing, of one or a series of totally or partially automated processing operations intended to achieve one or more interconnected purposes.*" The situations in which notification is exempted are stipulated in No. 2 and No. 4 of that Article.

In view of the abovementioned legal stipulations, it is clear that the responsible entity shall give notifications and make declarations based upon the various purposes of personal data processing, rather than in connection with discrete, individual operations of personal data processing. In this case, as an entity responsible for processing personal data, your company shall give notifications and make declarations with respect to automated processing with one or more interconnected purposes, and shall not notify our Office of merely one of the procedures (i.e. engaging a lawyer to inspect information) within an individual activity. Moreover, your company has not provided the information necessary for notification and declaration, such as an indication of the types of information being processed, in accordance with the stipulations of

² The original version of the incoming letter reads "nos termos do disposto na alínea 4) do artigo 22.º da Lei 8/2005."

Article 23 of the *Personal Data Protection Act*. Therefore, our Office cannot regard your company's previous letter as a fulfillment of its notification obligations.

Further, Article 22, No. 1, Item (4) of the *Personal Data Protection Act* stipulates that the use of personal data for purposes other than those of data collection shall be subject to permission by our Office. No inconsistency therefore exists between the notification obligations as stipulated in Article 21, No. 1 the *Personal Data Protection Act* and the application for permission as stipulated in Article 22, where the two Articles are concerned with different treatments of personal data. Consequently, an application for permission shall be directed to our Office pursuant to the stipulations of Article 22, No. 1, Item (4) and Article 23 of that Act in cases where personal data are used for purposes other than those of data collection, notwithstanding the fact that your company has effected notification and declaration with our Office in accordance with Article 21, No. 1 of that Act. Given that your company has provided neither sufficient information nor an account of the original purposes of data collection or the necessity of using personal data for purposes other than those of data collection, our Office cannot examine or approve the application for permission.

Based upon the foregoing, our Office shall archive your company's previous notification, declaration and application for permission, and we hereby recommend that your company re-examine its personal data processing situation, clearly define its need to fulfill notification and declaration obligations and to apply for permission, and provide our Office with statutory information for our examination and approval pursuant to the stipulations of Article 23 of the *Personal Data Protection Act*. Notifications and declarations may be effected and applications for permission may be made through submitting to us a *Declaration of Personal Data Processing*, which can be downloaded from the website of our Office (<http://www.gdp.gov.mo>).

Should your company wish to appeal against the decision of our Office, an objection may be directed to our Office within 15 days upon receipt of this official letter of reply in accordance with the stipulations of Article 149 of the *Approved Code of Administrative Procedures* (Decree-Law No. 57/99/M of October 11); alternatively, an optional hierarchical appeal may be lodged to

the Chief Executive within the designated period for filing a judicial appeal in connection with relevant acts in accordance with the stipulations of Articles 155 and 156 of that Decree-Law.

In addition, your company may also file a judicial appeal with the Administrative Court within the period as stipulated in Article 25 of the *Approved Code of Administrative Proceedings* (Decree-Law No. 110/99/M of December 13).

Yours faithfully,

APP0524

EXHIBIT C

CUSTODIANS AND SEARCH TERMS FOR MACAU REVIEW

- All search terms were run on documents using a date limiter of January 1, 2009 to and including October 20, 2010, except for Order ¶ 9 (RFP 6), which was run with the limiters as described in Paragraph 1 below.

1. March 8, 2012 Order ¶ 9 (RFP ¶ 6): Leven's services

Custodian: Steve Jacobs

Search terms:

Search terms for period between 10/14/09 and 7/23/10:

Leven w/25 ((Steve w/3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR Lionel OR Leonel or Alves OR ((SGA OR Adelson OR Sheldon) AND (SCL OR "Sands China" OR VML OR "Venetian Macau Limited"))) OR ((SCL OR "Sands China") w/10 (board or member* OR director)) OR "leverage strategy" OR (investigation* w/10 (government OR official*)) OR ((Stanley w/3 Ho) w/25 ((Parcel* 6 7) OR (Parcel* 6 pre/1 7) OR (P6 pre/1 7) OR (P6 and 7) OR (Site* 6 and 7) OR (Site* 6 pre/1 7) OR (P6 pre/1 7) OR (P6 and 7))) OR (Starwood) OR (st. w/3 regis*) or "advisor" or ("acting CEO or "interim CEO"))

Search terms for period between 7/23/10 and 10/20/10:

Leven or "acting CEO or "interim CEO"

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Gunter Hatt, Kevin Clayton, Matthew Pryor, Stephen Weaver

Search terms:

Search terms for period between 10/14/09 and 7/23/10:

Leven w/25 ((Steve w/3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR ((SGA OR Adelson OR Sheldon) AND (SCL OR "Sands China" OR VML OR "Venetian Macau Limited"))) OR ((SCL OR "Sands China") w/10 (board or member* OR director)) OR "advisor" OR ("acting CEO OR "interim CEO")) OR Lionel OR Leonel or Alves OR "leverage strategy" OR (investigation* w/10 (government OR official*)) OR ((Stanley w/3 Ho) w/25 ((Parcel* 6 7) OR (Parcel* 6 pre/1 7) OR (P6 pre/1 7) OR (P6 7) OR (Site* 6 7) OR (Site* 6 pre/1 7) OR (P6 pre/1 7))) OR (Starwood) OR (st. w/3 regis*) OR ("acting CEO or "interim CEO"))

Search terms for period between 7/23/10 and 10/20/10:

Leven w/25 ((Steve w/3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR (Toh w/3 Hock) OR (Ben w/3 Toh) OR (Matthew w/3 Pryor) OR (Peter w/3 Wu) OR (Mark w/3 McWhinnie) OR (David w/3 Sylvester) OR (Andrew w/3 Billany) OR (Ed w/3 Tracy) OR (Edward w/3 Tracy) OR (David w/3 Sisk) OR (David w/3 Fleming) OR (Kevin w/3 Clayton) OR (Jeff* w/3 Poon) OR (Virginia w/3 Lam) OR (Gus w/3 Liem) OR "Venetian Marketing Services" OR (Perry w/3 Lau) OR Alves OR ((SGA OR Adelson OR Sheldon) AND

(SCL OR "Sands China" OR VML OR "Venetian Macau Limited")) OR ("acting CEO OR "interim CEO"))

2. March 8, 2012 Order ¶¶ 10, 16 (RFP ¶ 7 and 20): Funding of Sands China

Custodian: Steve Jacobs

Search terms:

"Venetian Oriental Limited" OR "VOL Credit Agreement" OR ((Alves OR Leonel OR Lionel) w/25 (strata OR "4 seasons" OR condo* OR 4S OR "Four Seasons" OR apartment*)) OR ((BOCI OR "Bank of China") w/35 ("Four Seasons" OR 4S))

Custodians: Edward Tracy, Fiona Chan, Benjamin Toh, Stephen Weaver

Search terms:

Bella OR IPO OR "Venetian Oriental Limited" OR "VOL Credit Agreement" OR ((Alves OR Leonel OR Lionel) w/25 (strata OR "4 seasons" OR condo* OR 4S OR "Four Seasons" OR apartment*)) OR ((BOCI OR "Bank of China") w/35 ("Four Seasons" OR 4S))

3. March 8, 2012 Order ¶¶ 11, 16 (RFP ¶ 8, 16): Base Entertainment

Custodian: Steve Jacobs

Search terms:

"Base Entertainment" OR (Brian w/3 Becker) OR (Scott w/3 Zeiger) OR (Jason w/3 Gastwirth)

Custodians: Edward Tracy, Fiona Chan, Matthew Pryor, Kevin Clayton, Stephen Weaver

Search terms:

"Base Entertainment" OR (Brian w/3 Becker) OR (Scott w/3 Zeiger) OR (Jason w/3 Gastwirth)

4. March 8, 2012 Order ¶¶ 11, 16 (RFP ¶ 18): Bally Technologies

Custodian: Steve Jacobs

Search terms:

Bally OR Merlin OR (Robert w/3 Parente) OR (Ken w/3 Campbell)

Custodians: Edward Tracy, Fiona Chan, Gunter Hatt, Stephen Weaver,

Search terms:

Bally OR Merlin OR (Robert w/3 Parente) OR (Ken w/3 Campbell)

5. March 8, 2012 Order ¶ 12 (RFP ¶ 9): Goldstein's services

Custodian: Steve Jacobs

Search 1 (Phase 2/3):

(Goldstein w/35 ((player w/10 (funding OR credit OR development OR collection)) OR marketing OR promotion OR advertising OR Kwok OR Clayton OR (Steve w/3 Chan)

OR (Ben w/3 Lee) OR (Raymond w/3 Lo) OR (Isabel w/3 Leong) OR (David w/3 Law) OR VIP OR Junket OR (Cheung w/3 Chi) OR (Cheung w/3 Tai) OR (Chi w/3 Tai) OR CCT OR (Charles w/3 Heung) OR VMSL OR SCL OR Sands China)) OR (Goldstein w/25 (Steve Jacobs OR Jeffrey Schwartz OR Irwin Siegel OR Stephen Weaver OR Iain Bruce OR Chiang Yun OR David Turnbull OR Toh Hock OR Ben Toh OR Matthew Pryor OR Ed Tracy OR Edward Tracy OR David Fisk OR David Fleming OR "Venetian Marketing Services")) or (Charles /4 (Heung or Wah or Keung) OR (VIP* w/5 promoter*) or (("high-roller" or "whale*") w/25 (Macau or Macao)) or ((unlicensed or (no* /3 license*)) w/25 junket) OR 71646 or 530636 or 746600 or 3272980 or 3898206 or 3728791

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Kevin Clayton, Matthew Pryor, Stephen Weaver

Search terms:

(Goldstein w/25 ((Steve /3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR (Toh w/3 Hock) OR (Ben w/3 Toh) OR (Matthew w/3 Pryor) OR (Peter w/3 Wu) OR (Mark w/3 McWhinnie) OR (David w/3 Sylvester) OR (Andrew w/3 Billany) OR (Ed w/3 Tracy) OR (Edward w/3 Tracy) OR (David w/3 Sisk) OR (David w/3 Fleming) OR (Kevin w/3 Clayton) OR (Jeff* w/3 Poon) OR (Virginia w/3 Lam) OR (Gus w/3 Liem) OR "Venetian Marketing Services" OR Perry Lau) OR (Charles /4 (Heung OR Wah OR Keung) OR (VIP* w/5 promoter*)) OR (("high-roller" OR "whale*") w/25 (Macau OR Macao)) Or ((unlicensed OR (no* /3 license*)) w/25 junket) OR 71646 OR 530636 OR 746600 OR 3272980 OR 3898206 OR 3728791

6. March 8, 2012 Order ¶ 13, 15 (RFP ¶ 10, 22): LVSC Services on behalf of SCL

Custodian: Steve Jacobs

Search terms:

(Yvonne w/3 Mao) OR (((Eric w/3 Chiu) OR Yeung) w/25 Hengqin) OR (Chu Kong Shipping) OR CKS OR (basketball w/10 team) OR (Adelson Center) OR ("International Risk" OR IR) OR (collection w/20 (customer OR patron OR junket)) OR Vickers

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Stephen Weaver

Search terms:

(Yvonne w/3 Mao) OR (((Eric w/3 Chiu) OR Yeung) w/25 Hengqin) OR (Chu Kong Shipping) OR CKS OR (basketball w/10 team) OR (Adelson Center) OR ("International Risk" OR IR) OR (collection w/20 (customer OR patron OR junket)) OR Vickers

7. March 8, 2012 Order ¶¶ 15(1), 16 (RFP ¶ 11 and 21): Parcels 5 and 6

Custodian: Steve Jacobs

Search terms:

((Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6)) AND (Gensler OR KNA OR (Shema w/3 Dougall) OR Manzella OR Pryor OR (Timothy w/3 Baker) OR (Paul w/3 Gunderson))

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Kevin Clayton, Matthew Pryor, Stephen Weaver

Search terms:

((Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6)) AND (Gensler OR KNA OR (Shema w/3 Dougall) OR Manzella OR Pryor OR (Timothy w/3 Baker) OR (Paul w/3 Gunderson))

8. March 8, 2012 Order ¶ 15(2) (RFP ¶ 12): Recruitment of SCL executives

Custodian: Steve Jacobs

Search terms:

(Spencer Stuart) OR (Tracy w/20 (resume OR interview)) OR (Sisk w/20 (resume OR interview)) OR (Egon Zehnder) OR ((Resume OR Recruit* OR Interview OR Curriculum Vitae OR CV) w/30 (candidate OR executive OR VP OR "Vice president" OR "Chief Operating Officer" OR COO OR "Chief Financial Officer" OR CFO OR "Chief Development Officer" OR CDO))

Custodians: Edward Tracy Fiona Chan, Gunter Hatt, Stephen Weaver,

Search terms:

(Spencer Stuart) OR (Tracy w/20 (resume OR interview)) OR (Sisk w/20 (resume OR interview)) OR ("Egon Zehnder") OR ((Resume OR Recruit* OR Curriculum Vitae OR CV) w/25 (candidate* OR executive* OR VP OR "Vice president" OR "Chief Operating Officer" OR COO OR "Chief Financial Officer" OR CFO OR "Chief Development Officer" OR CDO))

9. March 8, 2012 Order ¶ 15(3) (RFP ¶13): Marketing of Sands China properties

Custodian: Steve Jacobs

Search terms:

"International marketing" OR (Chairman* Club) OR (Rom w/3 Hendler) OR (Larry w/3 Chiu) OR (Kirk w/3 Godby) OR (Matthew w/3 Kenagy) OR (Dennis w/3 Dougherty) OR (Cheung w/3 Chi) OR (Cheung w/3 Tai) OR (Chi w/3 Tai) OR CCT OR (Jack w/3 Lam) OR (Charles w/3 Heung) OR (Heung w/3 Wah Keung) OR "frequency program" OR ("Lotus Night Club" w/10 "VIP") OR (Goldstein w/35 ((Kevin w/3 Clayton) OR (Raymond w/3 Lo) OR (Steve w/3 Chan) OR (Ben w/3 Lee) OR (Kerwin w/3 Kwok)))

Custodians: Fiona Chan, Kevin Clayton, Stephen Weaver, Edward Tracy

Search terms:

"International marketing" OR (Chairman* Club) OR (Rom w/3 Hendler) OR (Larry w/3 Chiu) OR (Kirk w/3 Godby) OR (Matthew w/3 Kenagy) OR (Dennis w/3 Dougherty) OR (Cheung w/3 Chi) OR (Cheung w/3 Tai) OR (Chi w/3 Tai) OR CCT OR (Jack w/3 Lam) OR (Charles w/3 Heung) OR (Heung w/3 Wah Keung) OR "frequency program" OR ("Lotus Night Club" w/10 "VIP") OR (Goldstein w/25 ((Kevin w/3 Clayton) OR (Chris w/3 Barnbeck) OR (Kirk w/3 Godby) OR (Raymond w/3 Lo) OR (Steve w/3 Chan) OR (Ben w/3 Lee) OR (Kerwin w/3 Kwok)))

10. March 8, 2012 Order ¶¶ 15(4), 16 (RFP ¶¶ 14, 19): Harrah's

Custodian: Steve Jacobs

Search terms:

Harrah* OR Loveman

Custodians: Fiona Chan, Stephen Weaver, Edward Tracy

Search terms:

Harrah* OR Loveman

11. March 8, 2012 Order ¶ 15(5) (RFP ¶ 15): Negotiation with SJM

Custodian: Steve Jacobs

Search 1 and 2 (Phase 2/3 and 4):

(SJM OR (Stanley w/3 Ho) OR (Ambrose w/3 So)) w/20 ((Parcel* 7 8) OR (Parcel* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Site* 7 and 8) OR (Site* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6))

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Stephen Weaver

Search terms:

(SJM OR (Stanley w/3 Ho) OR (Ambrose w/3 So)) w/20 ((Parcel* 7 8) OR (Parcel* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Site* 7 and 8) OR (Site* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6))

12. March 8, 2012 Order ¶ 16 (RFP ¶ 17): Cirque du Soleil

Custodian: Steve Jacobs

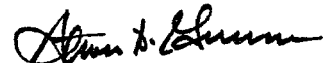
Search terms:

(Daniel w/3 Lamarre) OR (Jerry w/3 Nadal) OR Zaia OR CDS OR Cirque or (Jason w/3 Gastwirth) OR (Sundust)

Custodians: Edward Tracy, Fiona Chan, Kevin Clayton, Ruth Boston

Search 1 and 2 (Phase 1 and 4):

- (Daniel w/3 Lamarre) OR (Jerry w/3 Nadal) OR (Jason w/3 Gastwirth) OR ((Zaia OR CDS OR Cirque OR Sundust) w/10 (talk* OR communicat* OR discuss* OR refer* OR spoke OR speak*))



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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; SHELDON G. ADELSON,
in his individual and representative capacity;
DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED MATTERS.

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

Date: December 18, 2012
Time: 9:00 a.m.

ORDER REGARDING (1) DEFENDANT SAND CHINA LTD.'S MOTION FOR PROTECTIVE ORDER ON ORDER SHORTENING TIME; (2) PLAINTIFF STEVEN C. JACOBS' MOTION FOR NRCP 37 SANCTIONS; and (3) PLAINTIFF STEVEN C. JACOBS' EMERGENCY MOTION FOR PROTECTIVE ORDER AND SANCTIONS ON ORDER SHORTENING TIME

The parties came before this Court on the following motions on December 18, 2012:

(1) Defendant Sand China Ltd.'s Motion For Protective Order On Order Shortening Time;

(2) Plaintiff Steven C. Jacobs' Motion For NRCP 37 Sanctions; and (3) Plaintiff Steven C. Jacobs' Emergency Motion For Protective Order And Sanctions On Order Shortening Time.

Todd L. Bice, Esq., James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Plaintiff Steven C. Jacobs ("Jacobs"). J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on behalf of Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China"). J. Randall Jones, Esq., and Mark M. Jones, Esq., of the law firm Kemp Jones & Coulthard, LLP, and Michael E. Lackey, Jr., Esq., of the law firm Mayer Brown LLP, appeared on behalf of Defendant Sands China. The Court considered the papers filed on behalf of the parties and the oral argument of counsel, and good cause appearing therefor:

THE COURT HEREBY STATES as follows:

1. On March 8, 2012, the Court entered its written order granting in part and denying in part Jacobs' Motion to Conduct Jurisdictional Discovery and Sands China's Motion for Clarification, consistent with its oral orders at the hearings held on September 27, 2011 and October 13, 2011 respectively;

2. On December 23, 2011, Jacobs propounded written jurisdictional discovery on Sands China and LVSC;

3. On November 21, 2012, Jacobs filed a Motion for NRCP 37 Sanctions arguing that sanctions should issue because Sands China had not begun reviewing documents in Macau that may be responsive to Jacobs' jurisdictional discovery requests; and

4. On December 4, 2012, Sands China filed a Motion for Protective Order to be excused from reviewing and/or producing any documents in Macau but for documents for which Jacobs was the custodian.

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

2 1. Sand China's Motion For Protective Order On Order Shortening Time is DENIED;

3 2. Sands China shall produce all information in its possession, custody, or control
4 that is relevant to jurisdictional discovery, including electronically stored information (ESI),
5 within two weeks of the hearing, or on or before January 4, 2013;

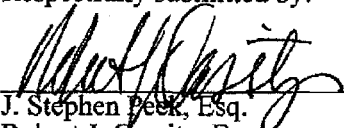
6 3. Jacobs' Motion For NRCP 37 Sanctions is DENIED at this time without prejudice
7 as being premature; and

8 4. Jacobs' Emergency Motion For Protective Order And Sanctions On Order
9 Shortening Time is GRANTED IN PART as to the presence of videographers on those other than
10 the deponent and DENIED IN PART as to the fee sanction sought.

11 DATED this 15th day of January 2013.

12
13 
14 DISTRICT COURT JUDGE

15 Respectfully submitted by:

16 
17 J. Stephen Peek, Esq.
18 Robert J. Cassity, Esq.,
19 Holland & Hart LLP
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Las Vegas, Nevada 89134
Attorneys for Las Vegas Sands Corp. and Sands China Ltd.

20 J. Randall Jones, Esq.
21 Mark M. Jones, Esq.
22 Kemp Jones & Coulthard, LLP
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23 Michael E. Lackey, Jr., Esq.
24 Mayer Brown LLP
25 71 S. Wacker Drive
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Attorneys for Sands China, Ltd.

ORIGINAL

Ann L. Quinn

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 RENEWED MOTION FOR NRCP 37 SANCTIONS

THURSDAY, FEBRUARY 28, 2013

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD BICE, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
MICHAEL LACKEY, 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.

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1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 28, 2013, 10:08 A.M.

2 (Court was called to order)

3 THE COURT: Okay. Are we ready? Mr. Pisanelli, are
4 you arguing today, or is Mr. Bice?

5 MR. PISANELLI: I am, Your Honor.

6 THE COURT: All right. Please use regular people
7 language today.

8 MR. PISANELLI: I will. And if I slip, please feel
9 free to interrupt me, and I'll do my best to rephrase it.

10 For the record and for the audience, Your Honor,
11 James Pisanelli on behalf of the plaintiff, Steven Jacobs.

12 Your Honor, I'm going to be blunt. There is a lot
13 of reasons to be angry in this case. This case has been
14 corrupted. And when I say there's a lot of reasons to be
15 angry I don't mean personally, I mean virtually every
16 participant in this case, certainly Mr. Jacobs. His justice
17 is being denied. Through just simply the delay his justice is
18 being denied, his fair trial appears to be out of reach in
19 light of what we've seen. Your Honor has as much reason to be
20 angry as anyone. You've been given a mandate, an instruction
21 from the Supreme Court to conduct a hearing on jurisdictional
22 discovery, and the defendants' conduct in this case has gotten
23 in the way of you doing your job. Certainly Mr. Bice and I
24 have expressed some anger to you in the past, both in written
25 word and at this podium, to a degree at times when we were

1 both regretful and wished we could take it back and calm down
2 a little bit.

3 And I would even go so far as to say that the
4 defendants' counsel has enough reason to be angry, too. They
5 have been put in a challenging position, certainly
6 reputational capital has been spent on behalf of these
7 defendants. So we all have a lot of reason to be angry.

8 But today I believe and I hope is a new day, the
9 beginning of a new chapter in this case where we can just take
10 the anger and put it aside and focus on how we cure the poison
11 that has infected this case. Challenging, but not impossible.
12 Actually, I think we have a clear path, and the path has been
13 set forth by the defendants themselves. And what we do in
14 order to cure the poison that's in this case in my view is we
15 simply accept the reality of this case, where we find
16 ourselves, and the reality of these defendants and how they've
17 conducted themselves. We'll accept it. We know who they are,
18 we know what they want.

19 What I think we need to do to cure the poison, to
20 fix the corruption that has occurred in this case is simply
21 give these two defendants what they have so obviously been
22 asking of you for going on two-plus years now, and that is the
23 default judgment that they ultimately would rather have than
24 having the consequence of shining light on their company and
25 what's going on in particular in Macau.

1 So what we can't do is allow this to stand. If
2 there's anything we know from the rules of procedure, from the
3 rules of this court, from the rules of the Supreme Court, and
4 from the rules across the land is that parties that behave so
5 badly as the defendants in this case have cannot under any
6 circumstance benefit from that bad behavior. And so we have
7 options available to them -- to us to fix this problem; but
8 ignoring and simply accepting good enough, is what we hear
9 from the defendants today, is not going to cure the problem.

10 So how do we do it? Now, let me take a step back.
11 How do we know that what Las Vegas and Sands China is really
12 angling for in the end of the day is for you to simply do what
13 you need to do so that they don't actually have to stand trial
14 in this case on the merits. How do we know they'd rather
15 serve -- or just be defaulted?

16 First of all let's look at the history of this case
17 very, very briefly. And by history of this case I mean the
18 history of this defense table. That tells us a lot in and of
19 itself. We have had a series of some of the most experienced
20 and skilled and reputable lawyers come in and out of this
21 case, and we have one person who fits all of those
22 characteristics who has been a mainstay, and he's still in
23 this case. All of these lawyers have behaved identically one
24 after another, and they all have behaved identically in
25 relation to this discovery, which is out of their character,

1 out of their own reputation, and out of their own reputation
2 of their law firms. They have come in and acted
3 extraordinarily different than anything we have seen, I
4 personally have seen, from any of them in past dealings.

5 And so the question is why is that. And the answer
6 is very obvious. Every one of them has said to Your Honor in
7 either writing or standing at this podium in one form or
8 another the same exact thing Mr. Peek said when he was on that
9 stand. His words were "constrained," I was constrained, I did
10 what I could do. And I'm paraphrasing Mr. Peek. Take it in
11 context, out of context, that's the theme we've heard from
12 this collection of incredibly talented lawyers that are doing
13 things that they must know cannot and should not be done in
14 civil litigation ever. And they are all doing it, and the
15 reason they're doing it is their client. This is a client-
16 driven strategy, and these lawyers, my prediction, Your Honor,
17 we haven't seen the end of the revolving door of these
18 lawyers. They will either quit, I predict, or they will be
19 fired, I predict; but we will see other lawyers come in and
20 out when this strategy of Las Vegas Sands continues, that they
21 would rather suffer consequences than shine light as the
22 discovery rules require on their company.

23 So what we have here is not -- even as I have argued
24 to you before, this is not someone butting heads with you,
25 this is not somebody who is acting belligerent about their

1 power being greater than yours. This is someone making in my
2 view what it appears by all measures is a business choice, a
3 business choice of lesser evils. Point being there's nothing
4 that can come out of this courtroom by way of sanctions for
5 discovery or even a default judgment that is worse than the
6 consequences on this company of shining light on all of their
7 business practices, both Macau and here. They have made that
8 so crystal clear to us that my suggestion in order to cure the
9 poison in this case is to let them make that business choice.
10 They can say to Your Honor, as they're entitled to say, no,
11 we're not going to give our discovery, no, we're not going to
12 let you see who wrote emails to whom when, where and what it
13 was about, no, we're not going to give Steve Jacobs the
14 evidence he's entitled to prove every aspect of his case,
15 including damage, no, we won't do it. I would assert to Your
16 Honor they're entitled to say that. But there's consequences
17 to that choice, and today is the beginning of those
18 consequences, I hope.

19 So if there's anything we know about this group of
20 defendants is they're not shy. They're not shy about painting
21 themselves as victims, they're not shy about taking advantage
22 of any misstep along the way, and so we can't just simply say
23 that, you're transparent, Las Vegas Sands, it's time to end
24 this charade and enter a default against you; we have to
25 create a record. Because the Supreme Court will look at it

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE DAVID BARKER,
DISTRICT JUDGE, DEPT. 18,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
Feb 23 2016 09:22 a.m.

Case Number: Tracie K. Lindeman
Clerk of Supreme Court

District Court Case Number
A627691-B

**APPENDIX TO PETITION FOR
WRIT OF PROHIBITION OR
MANDAMUS RE ORDERS
DENYING MOTION TO
DISQUALIFY JUDGE
ELIZABETH GONZALEZ
WITHOUT A HEARING**

**VOLUME II of XIII
(PA246-490)**

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING – VOLUME II OF XIII (PA246-490)** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY (CD)

Chief Judge David Barker
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
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Respondent

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DATED this 22nd day of February, 2016.

By: /s/ Fiona Ingalls

**APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR
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1 message from the Court that the Court is going to say is that
2 they're going to be allowed to ask questions about the who,
3 the where, and the what, in other words, where were you when
4 you did an act, what act did you undertake, and who undertook
5 that act and what role he took that at.

6 We haven't -- you know, we had a disagreement in Mr.
7 Adelson's deposition. We resolved that. We had a
8 disagreement in Mr. Leven's deposition -- we had two
9 disagreements in Mr. Leven's deposition. As you said, I was
10 not really surprised, because I thought I was right when I
11 made my objection, but you did sustain one of those
12 objections, and you overruled one of my objections. And that
13 was an objection the first time of the when, when was it in
14 Singapore did Mr. Adelson and Mr. Leven discuss termination.

15 But I want to look really at the deposition of Mr.
16 Adelson. And we know and I've cited to the pages and the
17 lines within the deposition where we have seen disagreements
18 and where I had instructed him not to answer under 30(b) and
19 then the 30(b)(3) to come back to this Court.

20 Mr. Adelson testified that Leven had the power to
21 negotiate a resolution with Jacobs when he was terminated.
22 But instructed him not to answer more questions to explore the
23 extent of his settlement authority. Mr. Adelson testified
24 that he had a conversation with Mr. Leven about his
25 dissatisfaction with Jacobs at the road show in London. I

1 instructed him not to answer questions about what precisely
2 his concerns were, because that goes to the merits.

3 So that's certainly -- the who, the where, and the
4 what was part of that examination, but the substance of the
5 why was not to be part of that. It's not relevant as to
6 substance of the why he was terminated, what the basis and
7 what the grounds were.

8 Your Honor, as Mr. Jones has said, we've produced
9 over -- since June, of course -- a hundred and some-odd
10 thousand, but over 200,000 documents have been produced by
11 plaintiffs for this theory of both general jurisdiction and
12 specific jurisdiction. And we understand now that the
13 plaintiffs are pursuing an agency theory. They're pursuing an
14 agency theory of Las Vegas Sands Corporation, when it
15 undertook acts, was being directed by its subsidiary, it's
16 71-percent-owned subsidiary, to take those -- take on those
17 acts on behalf of Sands China Limited. They gave up, Your
18 Honor, the alter ego claim. Maybe they are going to revive
19 it. I don't know. But that seems to be from the -- their own
20 presentation to the Court in September and even from their
21 papers now as to what they're going to be undertaking. They
22 cite, of course, to the Doe versus Unical case, which is the
23 agency issue.

24 Moving on to Mr. Goldstein, again I instructed Mr.
25 Goldstein not to answer when they were getting into the

1 merits. They seemed to think that Mr. Goldstein was being
2 directed by somebody in Macau -- I guess that would have been
3 Mr. Jacobs, because Mr. Jacobs was the CEO and the president
4 of Sands China Limited, that he was directing Mr. Goldstein to
5 undertake certain actions so therefore the agency theory is
6 that there is a presence in Nevada of Sands China Limited by
7 Mr. Jacobs directing Mr. Goldstein to take acts or by
8 directing Mr. Adelson to take acts. I don't think, Your
9 Honor, that that theory -- well, if they want to pursue that
10 theory, that's their theory.

11 But the point is, Your Honor, they argue that -- in
12 their opposition -- that we seem to be focused and have a
13 disagreement on specific jurisdiction. That is not where the
14 disagreement lies. The disagreement lies on them getting into
15 the merits. And I -- you know, and I've also asked that Mr.
16 Adelson, Mr. Leven -- now Mr. Leven, who was deposed on
17 Tuesday, and Mr. Goldstein, who have all been deposed for a
18 day, not be required to come back. Because, if you look at
19 the transcript of both the Goldstein and the Adelson
20 deposition you will see that they wasted an awful lot of time
21 in areas that really don't go to their one single theory now
22 of agency. And we need to move on, as Mr. Jones said, get
23 this case set for an evidentiary hearing, as we're directed by
24 the Court, and not fuss around now that they have 200,000
25 pages, three depositions, and one to go. Thank you, Your

1 Honor.

2 THE COURT: Thank you.

3 Mr. Mark Jones, is there something you want to add
4 before I hear from Mr. Bice?

5 MR. MARK JONES: Just one point, Your Honor.

6 THE COURT: Okay.

7 MR. MARK JONES: The only thing I would like to add
8 to this issue, Your Honor, is some context and remind the
9 Court that the only claim for relief against Sands China
10 Limited in this case is a claim for an alleged breach of a
11 stock options agreement. And we would submit that there is no
12 relations between plaintiff's questions regarding the details
13 and the whys of his termination and his attempts to establish
14 personal jurisdiction.

15 THE COURT: Thank you.

16 MR. MARK JONES: Thank you.

17 THE COURT: Mr. Bice.

18 MR. BICE: Yes, Your Honor. Good morning.

19 THE COURT: 'Morning.

20 MR. BICE: There seems to be from our end a rather
21 large disconnect between what's presented this morning and
22 actually what their motion says. If you read their motion,
23 which I know the Court has done, the motion is all about a
24 regurgitation of something that we've argued I think this will
25 be at least fourth time, might be the fifth. I've sort of

1 lost track. This is the argument that Ms. Glaser made. Ms.
2 Glaser made it again, seeking what she called clarification.
3 Then when Munger Tolles & Olson entered the case they made the
4 argument again, and then when Mr. Peek took on the role of
5 representing both defendants they made the argument again, and
6 now we have another set of new counsel, and the argument has
7 returned. And so I don't want to -- I'm not going to waste a
8 lot of your time rehashing that whole history about this
9 argument about specific jurisdiction, which, let's be clear,
10 that is what this dispute is really all about.

11 But since this is a court of law, I do want to just
12 sort of talk about the law for a minute. Let's remember what
13 the Supreme Court's actual order says. What it is says is
14 that you are directed -- "You shall stay the underlying action
15 except for matters relating to a determination of personal
16 jurisdiction." That stay was sought, as we all remember, by
17 Sands China, claiming that it had -- and I don't remember the
18 number, Your Honor, was it -- a certain number of terabytes of
19 documents in Macau that it was going to have to review that it
20 didn't think it should have to review, it was burdensome,
21 onerous, while it was contesting jurisdiction. That's the
22 basis for the stay request.

23 So the Nevada Supreme Court didn't say that it
24 stayed jurisdictional discovery, and it didn't say that there
25 would be some other standard than the traditional rules under

1 Rule 26 and the traditional discovery mechanisms that apply to
2 that jurisdictional discovery.

3 So let's remember what the standard is about
4 discovery. Unlike a trial which we're addressing on the
5 merits, we're going to have an evidentiary hearing on
6 jurisdiction. So the rule is is the discovery being sought
7 reasonably calculated to lead to admissible evidence that will
8 be admissible at that jurisdictional hearing. That's the
9 legal standard that we apply, are the questions designed to
10 elicit testimony that could very well be admissible and
11 determinative ultimately of the question of jurisdiction.
12 That's the legal standard that governs. And that, of course,
13 is being completely glossed over here by the defendants.

14 We have our -- again, I don't need to belabor our
15 explanation for jurisdiction. We've asserted that there's
16 agency, we've asserted that it's Sands China does here. No,
17 we have not abandoned the alter ego theory. We've asserted
18 specific and transient, as well. Now, they don't identify
19 really what it is -- any specific questions, contrary to the
20 argument about what they claim we shouldn't be allowed to get
21 into it, but most of it seems to turn on this issue about,
22 well, how much detail can one get into relative to the
23 termination.

24 And that's important, Your Honor, because you've got
25 to remember in a jurisdictional issue -- and this is the

1 dispute we had when Munger Tolles got into this case. When
2 they came into the case they made this offer to us. They
3 said, well, we'll stipulate to certain facts. But what they
4 wanted to stipulate to were just sort of some basic facts
5 about Mr. Adelson and Mr. Leven participated in board meetings
6 via phone from Las Vegas, those sorts of things. And our
7 objection to that was and the reason we said no to that was
8 what matters in jurisdiction is magnitude, context, what is
9 the substance of the contact. It's not just the, to use Mr.
10 Peek's terminology, the who, the what -- or the who, the
11 where, and the what. It's actually more than that. It is the
12 who, the where and the what, but it's also and what was done
13 relative to that contact, what is the substance of the
14 contact, not just, well, Mr. Leven was in Las Vegas and talked
15 about the termination, you can't get into anything else
16 because we don't want to get into the merits of the case.

17 Your Honor, unquestionably, especially when you're
18 talking about specific jurisdiction, merits and facts that go
19 to merits and facts that go to jurisdiction are likely going
20 to overlap. No one is disputing that's going to be an
21 overlap. But that doesn't mean that the default is, okay, if
22 there's an overlap then you don't get into it. No. If
23 there's an overlap, we should be allowed to get into it,
24 because we're allowed to develop the factual record to
25 establish the jurisdiction of what would be admissible in the

1 evidentiary hearing. And that's all we are trying to
2 accomplish here. Remember, they got the stay on the theory
3 that they shouldn't have to produce all these documents. It's
4 not burdensome or onerous to have to answer questions. And
5 these are Las Vegas Sands executive who say they shouldn't
6 have to answer questions that go to their activities in Nevada
7 on behalf of Las Vegas -- or on behalf of Sands China Limited.
8 And that's why, Your Honor, the stay shouldn't be extended to
9 protect them from having to answer questions that will lead to
10 the admissible evidence that goes to the question of
11 jurisdiction, especially in the context of specific
12 jurisdiction.

13 Let me give you an example of that, Your Honor. We
14 had the story from Mr. Leven, and Mr. Peek made a point of it
15 in his brief. Well, Mr. Leven said that he talked about
16 termination with Mr. Adelson in Singapore. Ah. -- So that's it.
17 So now you don't need to know any more. Well, yes, we do,
18 Your Honor, because that was a month before the termination,
19 and there was a month of activities by Mr. Leven. And guess
20 where we believe he likely undertook those activities. Right
21 out of Las Vegas before the termination was hatched. The
22 letter was drafted here. Who all was involved in that? Who
23 all reviewed it? Those are the specifics, because we need to
24 understand the context and we need to understand the magnitude
25 of the contact, where is the situs of the termination, where

1 was it hatched, executed, where did all of the things occur
2 relative to it and what was the substance of it. It's not
3 enough to just say, well, Mr. Leven said Singapore so now you
4 just have to live with that answer. No. And that's what, of
5 course, they want to do. And the answer is, no, that's not
6 right. The law turns upon not just the who, the where, and
7 the what, but the magnitude, the substance of it.

8 And so under the rules, Your Honor, if there's some
9 question about, okay, well, maybe it goes to jurisdiction,
10 maybe it goes to merits both, well, then we're entitled to do
11 that discovery as long as it's reasonably calculated to lead
12 to evidence that would aid us in establishing the
13 jurisdictional facts. And that's all we have tried to
14 accomplish relative to the depositions of these witnesses.
15 And we have, of course, been obstructed in doing so. And
16 that's why -- you know, I hear them telling us, you know,
17 we're late on other things. Mr. Adelson's deposition was
18 September the 6th, Your Honor. We're here now three months
19 later over this issue? Because our point is we want and are
20 entitled to develop the facts that are relevant to
21 jurisdictional discovery.

22 And we've also brought a counter-motion in this, Your
23 Honor, for production of some travel records, because we have
24 Mr. Adelson claiming he -- you know, he's travelling all over
25 the world. He doesn't want to acknowledge that he's doing

1 business in Nevada -- or doing these events from Nevada. I
2 don't know, and I'll address this as part of our other motion,
3 Your Honor. I don't think we sufficiently highlighted it to
4 you, but, you know, Mr. Adelson in his New York defamation
5 claim, this is what he has to say about Nevada.

6 This has to do with the prostitution issue, Your
7 Honor.

8 THE COURT: Your Honor, Mr. Bice is under a
9 protective order in the Jacobs-Adelson case with respect to
10 the Adelson deposition. He knows that. He negotiated it.
11 And this is not to be part and parcel of a publication.

12 MR. BICE: They withdrew their -- there is no
13 confidentiality designations on that order.

14 MR. PEEK: This is -- you're reading from the
15 Adelson deposition in --

16 MR. BICE: No.

17 MR. PEEK: Oh. I apologize. I thought you were
18 reading from the Adelson deposition in the Florida case.

19 MR. BICE: Well, first of all, I'm not. But second
20 of all, even if I was --

21 MR. PEEK: I'm addressing the Court, Your Honor.

22 THE COURT: I understand.

23 MR. PEEK: Yeah.

24 MR. BICE: Mr. Adelson's counsel has withdrawn any
25 confidentiality designations of Mr. Adelson's deposition

1 transcript in Florida. So --

2 THE COURT: The Florida deposition?

3 MR. BICE: Yes.

4 THE COURT: Well, but, see, I'm not the Florida
5 judge.

6 MR. BICE: I understand.

7 THE COURT: And I'll get to that in a minute on the
8 administrative hearing.

9 MR. BICE: But all I'm quoting here, Your Honor,
10 is --

11 MR. PEEK: What I don't know is whether he's reading
12 from the Florida deposition or from the --

13 THE COURT: The deposition that's protected or the
14 deposition that's no longer protected. Interesting question,
15 Mr. Peek.

16 MR. PEEK: I'm unaware of the fact that it was --
17 that it's no longer protected. But that's fine.

18 THE COURT: How about I don't need to worry about
19 what's happening in New York right now.

20 MR. PEEK: And Florida.

21 THE COURT: Florida I have to worry about, but I
22 don't need to really worry about that.

23 MR. BICE: I agree with you. All I wanted to point
24 out to the Court is in his brief what he says is, "Mr. Adelson
25 promulgates these policies and conducts his business from

1 Nevada, the state where he manages his personal funds." This
2 is about his casino. "Indeed, the defamatory statements
3 attack Mr. Adelson's casino business, which he unquestionably
4 oversees from his residence in Nevada." This all -- this is
5 his position --

6 THE COURT: Okay.

7 MR. BICE: -- in another court.

8 THE COURT: I don't think that's new information to
9 us here.

10 MR. BICE: Well, it seemed to be when we deposed Mr.
11 Adelson, because he had, of course, an altogether different
12 story about how he couldn't tell us where he was at. That's
13 why we've asked for the travel records.

14 THE COURT: Well, at some point in time we'll get to
15 an actual evidentiary hearing, and I'll weigh testimony and
16 make determinations on credibility.

17 MR. BICE: Right. So that's -- that's why we've
18 asked for the countermotion for the travel records, Your
19 Honor.

20 THE COURT: I understood that.

21 MR. BICE: So now let me just briefly address Mr.
22 Jones. I guess --

23 THE COURT: Mr. Mark Jones, or Mr. Randall Jones?

24 MR. BICE: Mr. Randall Jones's I guess opening
25 introduction.

1 THE COURT: At least I don't have Jim Randall here,
2 too, because then I get truly confused.

3 MR. PEEK: Or Justin.

4 THE COURT: Or Justin Jones, yes.

5 MR. BICE: Mr. Jones says that we are filing these
6 motions I guess as some cover for our own discovery lapses --
7 of course, he doesn't tell us what those are -- and that both
8 sides have to be afforded procedural due process. We
9 absolutely agree with that, and in fact we were the one -- as
10 Mr. Jones doesn't know, we're the ones who weren't being
11 afforded that at all at the conduct of the defendants when
12 they were concealing information from us and from the Court
13 for over a year.

14 They've also boasted to the Court about how much
15 money they have spent producing documents since June. By our
16 count, Your Honor, I think more than half of what they
17 produced to us are in fact Mr. Jacobs's documents, the
18 documents that we submitted to Advance Discovery and that they
19 have reviewed. And that process, as Your Honor might know,
20 has taken way longer than they had claimed it was going to.
21 And all the money that they have incurred is because, as you
22 will recall, Ms. Glaser -- and I think they have stuck to this
23 position -- is they were going to review every piece of paper
24 for privilege and produce a privilege log. Of course, our
25 position was, and you might recall, was they were doing that

1 because that would inevitably delay the process. They
2 insisted that that's not why they were doing it. But that's
3 where they're incurring all their expense. They could have
4 conducted a search of the documents, had they wanted to,
5 relative -- by word terms, and then produced the documents.
6 But I don't think a party can intentionally undertake a
7 process that slows it down and then ask to be patted on the
8 back for having incurred a lot of expense in a process that
9 they wanted to undertake to simply give us our own documents.
10 And that's really what has been going on since July of this
11 year, Your Honor.

12 THE COURT: Thank you.

13 Mr. Peek, anything on the countermotion only?

14 MR. PEEK: I know you've said countermotion only,
15 Your Honor, but there is --

16 THE COURT: I did.

17 MR. PEEK: And I understand that. But may I, with
18 the Court's permission, correct some statements by Mr. Bice,
19 who --

20 THE COURT: You can keep it under five minutes.

21 MR. PEEK: I can keep it all under five minutes.

22 Mr. Bice and I were apparently not at the same deposition of
23 Mike Leven when he asked Mike Leven after the where were you
24 in Singapore all of the questions about the then conversation
25 Mr. Leven had with the individual members of the board of

1 directors of Sands China Limited, where he was when that
2 happened. He must not have been at the same deposition I was
3 when he asked Mr. Leven who drafted the letter, where was the
4 letter drafted, and did you carry it to Macau with you, did
5 you have it in your possession when you went to Macau. I
6 guess he wasn't at the same deposition I was with Mr. Adelson
7 when he asked Mr. Adelson the very same questions. So when he
8 says that I've been obstructive, I have allowed those types of
9 questions. It is the questions that go beyond that where I
10 have not -- where I have said, no, you're getting into merits.

11 When he talks about scope of discovery, remember,
12 the Court set the scope of discovery, so you don't have the
13 very broad standard of Rule 26. And also, Your Honor, the
14 Supreme Court order talking about evidentiary hearing set
15 forth that which was going to be heard at the evidentiary
16 hearing. The Court knows that, and he's not trying to go
17 beyond that by this broad scope, travel records.

18 What they now say is, we need to know where he was.
19 Mr. Adelson testified, I was in the air many times, I was at
20 my home in France many times, I was at my home in Tel Aviv
21 many of those times, I was at my home in Nevada on many of
22 those occasions, I was at my home in Boston on many of those
23 occasions when I had phone calls, when I talked to Mr. Jacobs,
24 when I talked to somebody else about activities of Sands China
25 Limited. Those travel records that you allowed them to have

1 were travel records of what trips and when -- what trips do
2 you take to Macau and Hong Kong, that's all. Now they want
3 broader records. They talk about wanting international
4 travel, they now want to talk about having calendars. That's
5 one of those areas where the Court denied them discovery into
6 calendars, specifically said in its order of March 8th, no
7 calendars. So now they're trying to go back and relitigate
8 that very same issue when they were denied access to
9 calendars. They now want to change the scope of discovery to
10 all international travel that each of the individuals had, as
11 opposed to travel to Macau and as opposed to travel to Hong
12 Kong, as opposed to travel to China. Those are the three
13 areas in which they sought discovery, Your Honor.

14 THE COURT: And you've produced those records.

15 MR. PEEK: I have produced -- well, Your Honor, with
16 the travel records -- I have produced those related to others,
17 but with respect to Mr. Adelson and Mr. Leven I have not
18 produced the individual travel records. I have, as I said,
19 Your Honor, in my papers and as I said given that a
20 spreadsheet of the number of times they travelled to Macau in
21 2010, 2009, number of times they've travelled through Hong
22 Kong 2009-2010. That we had a dispute over back in March.
23 But they came to this Court and said four weeks ago, we're
24 ready to go. Haven't raised an issue at all about the
25 specific days, the specific flight logs until just now, Your

1 Honor.

2 So they say on the one hand, we're ready to go; on
3 the other, we're not. But they asked Mr. Adelson, they asked
4 Mr. Leven, they asked Mr. Goldstein those very same questions
5 about travel and where were you when certain things occurred,
6 where were you when you did this activity, where were you when
7 you did this activity. Mr. Adelson said, I can't tell you
8 where I was specifically when that helped, I could have been
9 in Vegas, I could have in the air, because I have wi-fi
10 connection, satellite connection in my airplanes, I could have
11 been in France, I could have been in Tel Aviv, I could have
12 been in Boston. And we've said, Your Honor, in terms of the
13 stipulation we'll stipulate that in terms of when he went to
14 board meetings he was in Las Vegas.

15 But, Your Honor, getting to those specific travel
16 records it's coming now too late to do that. They should have
17 brought this motion to compel a long time ago, as opposed to
18 the last minute. We've given them the information that the
19 Court allowed them to have with respect to trips to Macau,
20 trips to Hong Kong, trips to China. Thank you.

21 THE COURT: Thank you.

22 The countermotion is granted in part. It is granted
23 as to those travel records that were ordered in paragraph 8 of
24 my March 8th, 2012, order, which were the travel records for
25 the four individuals that I've previously identified, as well

1 as any other LVSC executives that were having meetings related
2 to Sands China.

3 Now, with respect to the protective order, I said on
4 Tuesday when I spoke to you that my concern was navigating the
5 stay that the Nevada Supreme Court has told me to enter
6 related to discovery in the jurisdictional portion of this
7 case. As a result, after a lot of briefing we entered the
8 March 8th, 2012, order to govern the discovery in that case.

9 So while, Mr. Bice, I agree with you that typically
10 we would have a broader discovery, we don't, because I've
11 already limited the discovery in this case based on my
12 interpretation of the stay order the Nevada Supreme Court has
13 issued in the writ that was sent to me.

14 For that reason I'm going to grant the protective
15 order in part. We are not going to inquire into the substance
16 of any determinations, but the process of the decision making,
17 the who, what, where, when, how, why, and then the
18 implementation of the decision making --

19 MR. PEEK: Your Honor, you said why. Did you --

20 THE COURT: Sorry. I didn't mean why. "But not
21 why" is what it says in my notes.

22 MR. PEEK: Okay. Thank you.

23 THE COURT: Who, what, where, how, when, and the
24 implementation of those decisions. Because it's not just how
25 a decision was made, it's also how the decision was

1 implemented.

2 MR. PEEK: Your Honor, I've allowed all of that
3 examination already.

4 THE COURT: There have been some issues.

5 MR. BICE: Well, I disagree that he has, but we'll
6 address --

7 THE COURT: And I am not going to limit the
8 depositions of the four executives to the one day that has
9 been asked. However, if the depositions become harassing
10 because people are trying to get into the substance of the
11 decision of the termination or the substance of any of the
12 settlement negotiations, those would be inappropriate under
13 the stay that I currently have in place.

14 Any other questions on that motion before I go to
15 the administrative action issue?

16 MR. PEEK: Your Honor, I do have some more
17 questions. When you say you're not going to permit the
18 harassment, you're going to allow them to come back?

19 THE COURT: I am.

20 MR. PEEK: Is there any limitation at all? Because,
21 Your Honor, with 200,000 pages of documents, one full day for
22 each of them, and this sort of minutia because they want to
23 say "the magnitude" of the contacts, if you will, is important
24 to them, could extend well beyond two days, three days, and
25 four days. I've already been in one day with Mr. Pisanelli

1 and two other days with Mr. Bice on the other depositions, and
2 I know where it's going.

3 THE COURT: I don't think they could ever in any
4 case finish a deposition in a day.

5 MR. PEEK: I know that, Your Honor. And that's what
6 concerns me. I don't want to bring senior executives --

7 THE COURT: I'm not saying that they're not
8 competent, I'm saying they're very thorough, and this is an
9 issue that as a result of the writ that's been taken has a lot
10 of attention that's going to be paid to it. So I'm not going
11 to limit them. However, if you believe under Rule 37 that the
12 deposition is becoming -- is it 37 or 26?

13 MR. PEEK: It be 37, Your Honor, if --

14 THE COURT: 37 --

15 MR. PEEK: It's been 26. But I already believe it
16 is that way.

17 THE COURT: I disagree --

18 MR. PEEK: But you've told me I --

19 THE COURT: -- at this point.

20 MR. PEEK: You told me that I'm wrong.

21 THE COURT: Well, so far. I did agree with you once
22 this week. So -- but if it gets to a point, Mr. Peaks and Mr.
23 Joneses, that you believe that the depositions are becomes
24 harassing, you may suspend the deposition and, you know -- you
25 know what happens then.

1 MR. PEEK: I know what happens, Your Honor.
2 THE COURT: You'll come over here.
3 MR. PEEK: I don't want to put myself at that kind
4 of risk. That's why I'm asking the Court --
5 THE COURT: I'm not going to limit the time.
6 MR. PEEK: -- to limit them just like we do in a
7 trial, Your Honor.
8 THE COURT: I'm not going to limit the time.
9 MR. PEEK: To limit that.
10 THE COURT: I understand. However, if they're still
11 going and they've gone for three days, I might think it's too
12 many.
13 MR. PEEK: That's a -- that, Your Honor, sort of
14 tells me something I really frankly didn't want to hear, that
15 they should be allowed to even go three days. Even allowed to
16 go two days, Your Honor, is rather excessive.
17 THE COURT: Two days is not of concern to me.
18 MR. PEEK: Pardon?
19 THE COURT: Two days is not of concern to me.
20 MR. PEEK: And I don't know how we're ever going to
21 get to an evidentiary hearing, Your Honor, that we want to
22 have right away.
23 THE COURT: I have a note right there.
24 MR. PEEK: I know.
25 THE COURT: I'm getting there.

1 Okay. If I could go to the administrative action in
2 Florida. Let me make a statement. I'm not the judge in
3 Florida. Now do you want to make your motion?

4 MR. PEEK: Your Honor, I don't think there's a whole
5 lot more to say, because that really is the theme, is that
6 this is going to be heard on the 13th of this month in Florida
7 by the judge in Florida as to what the scope of the
8 depositions will be that are being requested to be taken here.
9 And there are actually six. I only represent three of the
10 individuals. And we don't want to get into a debate here, as
11 they want to, about the merits of the Adelson action and what
12 he does in Florida versus what happened here in Nevada. We
13 don't want to get into the issue of whether there are merits
14 -- that they're allowed merits discovery here. That's an
15 issue for the Florida courts. If they didn't like the
16 questions in the deposition of Mr. Jacobs about merits, they
17 could have suspended that deposition and gone to a Florida
18 judge and said, there is a stay in place in Nevada and these
19 folks are trying to violate that stay. These are issues, Your
20 Honor, for the Florida court, and let's let the Florida court
21 make these decisions, as opposed this court make those
22 decisions. And that Florida court will tell all of us what
23 the scope ought to be, because there's no coordination between
24 this case and the Florida case.

25 THE COURT: I can't coordinate with another state

1 court judge unless the state court judge wants to.

2 MR. PEEK: Yeah. So, Your Honor, I think -- I think
3 that really -- you know, I certainly -- we have set forth the
4 request for production, we have that already. They have a
5 motion to compel on that.

6 With respect to those documents, Your Honor, again,
7 the custodian is Las Vegas Sands Corporation, not these
8 individuals who are being sought -- from whom they're seeking
9 documents. If they have that, they should seek those from Las
10 Vegas Sands.

11 Your Honor, the subpoenas and the questioning of
12 Leven and Goldstein should be limited to the issue of --
13 that's framed by the complaint and not in the entire merits,
14 because they want to try to get to merits of the termination.
15 And certainly, Your Honor, we hope to get to the merits
16 ourselves very soon.

17 And then with respect to the subpoena to Mr. Reese,
18 as we've said, that ought not to be -- that deposition ought
19 not go forward at all. Mr. Reese said, I know nothing about
20 prostitution in Macau or the issue or the statements made by
21 Mr. Jacobs in his declaration to this Court in June of this
22 year about the so-called prostitution strategy. Thank you.

23 THE COURT: Thank you.

24 Mr. Bice.

25 MR. BICE: Your Honor, I'm a little confused because

1 it's their motion, but apparently they don't want you to
2 really address their motion. It seems like let's have the
3 Florida judge decide the motion. They didn't make this motion
4 -- these employees didn't make this motion in Florida. There
5 were six. Only three of them have filed a motion, and, of
6 course, it's the three that currently work there, because this
7 is, again, Mr. Adelson directing the litigation relative to
8 claims that he has asserted in the state of Florida that grow
9 out of this lawsuit and this Nevada proceeding.

10 So I don't need to spend a lot of time on this,
11 because you can just simply look at the gentleman's complaint,
12 look at his own lawyer's acknowledgements in Florida, and they
13 contradict everything that now Mr. Adelson through these three
14 employees has submitted relative to the current motion before
15 this Court.

16 What they have tried to claim is that the stay in
17 this action or the stay in your action that you are the judge
18 on stays or insulates Mr. Adelson and these executives from
19 discovery relative to the Florida action. Now, one only has
20 to look at the caselaw to know that simply isn't the law, and
21 in fact Mr. Adelson's lawyer acknowledged that quite gleefully
22 when he was deposing Mr. Jacobs. Unremarkably in our
23 experience with Mr. Adelson and his litigation tactics, that
24 tune quickly changed, of course, once we started seeking
25 discovery from Mr. Adelson and Mr. Adelson's executives. Now

1 all of a sudden this stay has great impact upon the Florida
2 proceedings.

3 The reason that I think -- and the reason that we
4 sought coordination to have this in front of you is in no
5 small part because I think it is important that the Nevada
6 court does address whether or not its stay order impacts or
7 has any extension into that Florida proceeding. We've cited
8 the caselaw to you. It does not. And we don't believe that
9 it's appropriate for a litigant --

10 Let's also remember something. You know, Mr.
11 Adelson is out of the Nevada action. He obtained 54(b)
12 certification. He's not even a party in terms of his personal
13 capacity to that stay. So where he gets off trying to now
14 invoke it to insulate his employees from questions about a
15 lawsuit he brought I think is a bit much.

16 Our point here, Your Honor, is a party has asserted
17 defamation in another court. They have asserted in that
18 defamation claim as the malice and the motive that Mr. Jacobs
19 brought this lawsuit, the Nevada action, and filed the
20 affidavit in the Nevada action as supposed retaliation in
21 order to earn an unearned windfall because he was terminated
22 for cause. That's their explanation to the Florida court
23 about what the lawsuit is about. All right. Mr. Jacobs is
24 entitled to disprove that supposed motive. He is entitled to
25 conduct discovery to challenge that supposed malice. And that

1 includes the facts and circumstances surrounding his
2 termination, the facts and circumstances surrounding the
3 declaration that he filed in this action, and why he has
4 brought this action, as opposed to the story that Mr. Adelson
5 and company now wants to tell -- or wants to claim in the
6 Florida lawsuit, that somehow Mr. Jacobs brought this
7 litigation solely as a means of trying to earn an unearned
8 windfall, as opposed to a legitimate attempt by Mr. Jacobs to
9 recover what he believes he's rightfully owed for being
10 wrongfully terminated by someone who was insistent upon taking
11 a course of unethical and illegal business activities. And
12 that, of course, is all fair game when someone opens up and
13 files a defamation lawsuit and says, no, none of that was true
14 and you were just trying to extort me for money. Having
15 elected to file that cause of action, Mr. Adelson has opened
16 the door for that discovery, properly so, and Mr. Jacobs is
17 entitled to defend himself.

18 And, Your Honor, we have pointed out in this
19 proceeding -- and when I say this proceeding, the proceeding
20 in which you are the judge, you know, I don't need to go back
21 into the whole history of what was going on relative to
22 document production and the withholding of evidence and the
23 attempt to prejudice Mr. Jacobs through that maneuver. This
24 is simply -- this present motion is simply an extension of
25 that same strategy, and that is let's obstruct whenever we can

1 as much as we can.

2 And I'm asking this Court -- that happened already
3 in the proceeding in front of you by Mr. Adelson's companies.
4 I'm asking that it not be allowed to extend elsewhere. And so
5 therefore this motion should be denied in its entirety, Your
6 Honor.

7 The story about Mr. Reese not knowing anything,
8 well, perhaps they didn't bother to look at Mr. Adelson's
9 deposition when he says he specifically discussed this issue
10 with Mr. Reese and in fact Mr. Reese is the one who went and
11 issued the press release about it. And Mr. Reese is the one
12 who has tremendous knowledge about all the other issues that
13 are impacting Mr. Adelson's reputation, the ongoing criminal
14 investigation by the Department of Justice and the Securities
15 and Exchange Commission, as well as the U.S. Attorney's Office
16 out of Los Angeles, which is conducting a money laundering
17 investigation, and there are newspaper articles with Mr.
18 Adelson's picture painted all over headlines about a money
19 laundering investigation.

20 This individual's reputation is being impacted not
21 because of an affidavit that references prostitution in Macau
22 casinos, of which there are also newspaper articles where the
23 Macau Government raided one of his casinos after Mr. Jacobs
24 was gone and arrested 120 prostitutes and pimps on the casino
25 floor while Mr. Adelson was present at the property. So to

1 sit there and say, well, his reputation is being harmed by
2 this prostitution issue, we're entitled to demonstrate and to
3 conduct discovery to show, no, no, no, no, your reputation is
4 being harmed by all of the other investigations that the
5 government and all of the other nefarious activities that were
6 going on and that you were supervising and directing. And
7 that is all an appropriate subject matter for a defamation
8 lawsuit on an individual who claims that his reputation has
9 been harmed, especially considering -- and this is where we
10 had attached the New York pleadings -- when he claims that his
11 reputation in Nevada law governs and it primarily all occurred
12 in Nevada. And that's why we are entitled to that discovery,
13 and the motion should be denied.

14 With respect to the documents, Your Honor, we've
15 cited you the caselaw. These are high-ranking corporate
16 executives. Mr. Leven is the president and COO of Las Vegas
17 Sands. By definition he has control over those documents, and
18 the courts -- the Federal Courts -- and, again, we have the
19 parallel rules in Nevada, the Nevada Supreme Court hasn't
20 addressed it, but the Federal Courts have addressed it, and
21 they say high-ranking executives have control over the
22 documents and you can subpoena them -- the documents from them
23 directly, you do not have to issue a separate subpoena to the
24 company itself.

25 THE COURT: So why haven't you issued a separate

1 subpoena to the company itself?

2 MR. BICE: We haven't issued because, Your Honor, we
3 have -- we have difficulty, unremarkably, getting subpoenas,
4 getting cooperation out of Mr. Adelson's Florida counsel about
5 getting these depositions set. So we issued a subpoena for
6 the individuals, to take their depositions and issued with
7 that subpoena a request for the documents, which we are
8 entitled to do. Could we -- could we go through the same
9 rigmarole and get a whole separate subpoena and issue it and
10 bring it back here? Well, that'd take a bunch of time. And
11 are they going to, of course, obstruct us in the Florida
12 proceedings to do that? Of course they are.

13 So the question is -- and I appreciate your
14 question, Your Honor, but I would pose the point to the Court
15 why should I have to do that when the law doesn't say that we
16 have to do that.

17 THE COURT: Okay. Thank you.

18 MR. BICE: Thank you, Your Honor.

19 THE COURT: The stay order that has been issued by
20 the Nevada Supreme Court in their Case Number 58294 does not
21 apply to this administrative action. However, I disagree with
22 Mr. Bice with respect to the scope of the document requests
23 that are attached to the subpoenas and believe that it would
24 be more appropriate for the subpoena for almost all of the
25 documents requests to be directed to the Las Vegas Sands, as

1 opposed to the individuals. However, with certain exceptions,
2 which are those documents, for instance, Number 25 and 26 --
3 24, 25, and 26 with respect to Mr. Leven's document requests,
4 those clearly relate to documents that are personally in his
5 possession or information that is personally maintained by
6 him, and those are fair subject of this --

7 MR. PEEK: 24 through 26 of the subpoena.

8 THE COURT: Well, as examples. As examples.

9 MR. PEEK: Well --

10 THE COURT: All the others appear to me to be items
11 that are corporate in nature.

12 MR. PEEK: Okay.

13 THE COURT: However, if Mr. Leven has his own
14 personal file that he keeps at home, then that's fair game.

15 MR. PEEK: And, Your Honor, I agree with that. I
16 have not disputed that.

17 THE COURT: So -- but with respect to those
18 documents which are being sought in his position as the
19 president of the Las Vegas Sands it would be more appropriate
20 to direct the subpoena to the Las Vegas Sands.

21 I am not going to limit the scope of any examination
22 of these gentlemen. That determination, if one is going to be
23 made, needs to be made by the judge in Florida. But my stay
24 that I'm subject to does not apply to these. But if the
25 Florida judge decides it does, that's his problem or her

1 problem.

2 MR. PEEK: That's sort of a point of clarification.
3 There's going to be a hearing in Florida on the 13th. It's
4 going to address this very same issue. So I don't know
5 whether you're saying, I'm ordering them to go forward, or
6 you're saying, I'm going to defer and be bound by the ruling
7 in Florida of the Florida judge.

8 THE COURT: I am ordering them to go forward unless
9 a judge in Florida makes a different decision.

10 MR. PEEK: So you're taking -- because, you know --

11 THE COURT: I'm not ruling on the scope. I don't
12 know what the scope of the Florida litigation is going to be,
13 because that's the Florida judge's job. If the Florida judge
14 makes a determination like I did in my March 8, 2012, order
15 the limit the scope of discovery, that would clearly apply to
16 these depositions, because they're being taken in that case.
17 I don't know that that's going to happen. But if it does
18 happen, I'm going to defer to that.

19 MR. PEEK: That's really what I was asking you, is
20 to defer now, Your Honor, to that --

21 THE COURT: I'm not going to defer now, because I
22 have no idea when or ever -- I've deferred to judges and I got
23 stuck waiting for six months for somebody in South Carolina.
24 And so I'm not doing it again.

25 MR. PEEK: And I've been in here when you've had

1 that issue, Your Honor. But what Mr. Bice says to you is, I
2 should be allowed to do all of these things about defamation
3 and the scope of the defamation action should allow me to do
4 all of these things. That's -- Florida law is different than
5 Nevada law. And I didn't want to brief that, because I
6 thought it was more appropriate that a Florida judge make
7 those decisions, as opposed to a Nevada judge make those
8 decisions.

9 THE COURT: And I don't disagree. But in the
10 absence of a Florida judge having made that decision I am
11 permitting the depositions to forward, but limiting the
12 document responses as I said.

13 MR. PEEK: Thank you, Your Honor.

14 THE COURT: All right. Anything else?

15 Let's go to the request for additional discovery
16 related to your sanctions motion that is currently pending for
17 December 27th and whether you really want to have any
18 additional stuff or you just want to talk to me about
19 attorneys' fees based on the findings I've already made.

20 MR. BICE: No, I do want to talk to you about
21 additional stuff, Your Honor. You have made findings. But,
22 as you will recall from the -- both the discovery that you
23 permitted preceding the evidentiary hearing on your sanctions
24 motion -- or not your -- yeah, it was really the Court's
25 sanctions motion.

1 THE COURT: It was.

2 MR. BICE: It was.

3 THE COURT: It was sua sponte.

4 MR. BICE: It was sua sponte.

5 As you will recall, there were a lot of issues that
6 had come up in that discovery, both in the discovery and at
7 the evidentiary hearing itself, relative to the scope of
8 questions and our ability to determine the involvement of
9 executives at Las Vegas Sands and at Sands China in the
10 involvement in the concealing of evidence from us and from the
11 Court. And the Court had indicated to us that it wasn't --
12 that was beyond the scope of its particular hearing and
13 therefore would address that at a subsequent point in time
14 relative to a Rule 37 motion to be brought by us, which is
15 what we have brought, in part not just because of the past
16 conduct, but because we believe that that conduct has
17 continued even past the evidentiary hearing that you have
18 directed, and that's what's on the -- that's what's part of
19 our motion that is set at the end of the month.

20 THE COURT: So let me ask you a question, Mr.

21 Bice --

22 MR. BICE: Yeah.

23 THE COURT: -- because I am clearly confused.

24 MR. BICE: All right.

25 THE COURT: My brief review -- because, understand

1 I'm in a different trial, so I'm looking at stuff, but I may
2 not be paying as much attention to things that are on the end
3 of December as I would usually.

4 It looks like what you're asking in that motion is
5 largely duplicative of the substantive issues that I've
6 already made determinations on.

7 MR. BICE: Part is true. Not completely.

8 THE COURT: Okay. What part are you trying to carve
9 out that's different than what I've already had a hearing on?

10 MR. BICE: Relative to -- well, there's two parts, I
11 would say. Part of that motion that is going to be heard at
12 the end of the month is the ongoing -- what we believe is the
13 ongoing noncompliance with your directive and instructions to
14 them to review the documents in Macau, which we do not believe
15 -- again, we were here a month ago, and we seem to be getting
16 very conflicting stories about what has transpired. After Mr.
17 Weissman was here, as you will recall, from Munger Tolles, we
18 had a hearing in front of you where Mr. Weissman had indicated
19 they wanted to do the sequencing, and you shut that down
20 immediately. We were led to believe then that the review was
21 going on in Macau and we were going to either get a log of
22 some sort that told us what it is that they claimed to have
23 there relevant to the jurisdictional discovery or not.

24 We were here about a month ago, and Mr. Peek and Mr.
25 Jones were here and told you they were going to be going to

1 Macau to review documents. After that hearing Ms. Spinelli
2 and I were a little bit confused, because it didn't sound like
3 anybody had been there, and we wanted to confirm that process
4 had been underway.

5 Well, then we get a response that we believe just
6 indicated that they had done nothing. And now we get a motion
7 that was -- I guess it's on today, another motion that was --
8 there's an OST signed for it, yes, that --

9 THE COURT: Max is handing it to me.

10 MR. BICE: -- which was given to us the day before
11 yesterday at about 4:30. Which is really an attempt to
12 preempt that issue. And we find that motion to be
13 fascinating, Your Honor, in many respects, because now there
14 are documents that are from back in August that they refused
15 to give to us, but now they're giving them to the Court.

16 THE COURT: -- the OST. Did I?

17 MR. PEEK: You did, Your Honor. We were actually
18 surprised that you did.

19 MR. BICE: Not as surprised as I was.

20 MR. PEEK: I was -- I was -- Your Honor, I have to
21 say I was surprised that you signed it for today, because we
22 did submit it to you at about 4:30 in the afternoon.

23 THE COURT: Okay. Keep going, Mr. Bice.

24 MR. BICE: Well, I haven't had a chance to address
25 that motion. Obviously --

1 THE COURT: We're going to move it, because I didn't
2 take this one home last night.

3 MR. BICE: Understood, Your Honor. So the point
4 being here we've got a lot going on relative to documents in
5 Macau and whether they reviewed those documents and whether
6 they have been reviewing them since I believe it was sometime
7 in May when they led -- when you told them the sequencing
8 story wasn't going -- or attempt wasn't going to work. They
9 never came back to you, they never sought any form of relief
10 from you on that.

11 Then we get an email from Mr. Jones, who was new to
12 the case, which gave us a firm belief that nothing has
13 transpired in terms of review. And then we get this motion
14 which we have only preliminarily reviewed, Your Honor, and it
15 seems to confirm that story, because now they're basically
16 asking you for a protective order that says that they don't
17 have to --

18 THE COURT: Okay.

19 MR. BICE: -- some six months later.

20 THE COURT: So let's talk for just a second about
21 that motion for protective order related to the search of the
22 ESI that's in Macau. When will you all be ready to talk to
23 me, understanding for some reason I didn't take this one home
24 last night?

25 MR. PEEK: I'll let the Jones brothers handle that,

1 Your Honor, even though it's my motion. Mark's the one that's
2 been to Macau.
3 MR. BICE: And we are obviously, Your Honor, going
4 to want to respond to it.
5 THE COURT: I know.
6 MR. BICE: It's very extensive.
7 THE COURT: I'm trying to find a time for us to talk
8 about it.
9 MR. BICE: Understood.
10 THE COURT: Scheduling.
11 MR. MARK JONES: Your Honor, we have been the
12 process throughout this, and since [inaudible] and before that
13 the short version is that we believe that if everything goes
14 according to plan [inaudible] the documents should make their
15 way out of Macau to the Court and to counsel, and we're still
16 confirming that we captured all of the Jacobs ESI, and we
17 don't know the volume as of yet, and that's the only --
18 THE COURT: So my question is do you want the
19 December 13th or December 18th is really my question.
20 MR. MARK JONES: I'm sorry, Your Honor?
21 THE COURT: December 13th or 18th for the hearing?
22 MR. PEEK: 18th would be better for me.
23 MR. BICE: Can we move it to the 27th, which we're
24 going to be here anyway, or theoretically we're going to be
25 here anyway.

1 THE COURT: Because somebody's going to tell me
2 they're having Christmas with their kids. I don't know which
3 one of the people in the room's going to say that. Okay. I
4 had a volunteer to say it.

5 MR. PEEK: I'm going to be with my two teenage
6 daughters in Reno, Your Honor. And one of my -- we'll just be
7 home that week.

8 THE COURT: Well, let's -- I'm going to talk about
9 scheduling in a minute. But do you want to move the motion
10 for protective order on whether you have to search the
11 information in Macau to the 13th or the 18th?

12 MR. MARK JONES: The 18th, Your Honor.

13 THE COURT: Okay. So we're going to start with that
14 on the 18th.

15 Now let's go back to your motion that you want to do
16 -- it sounds like this is really a motion to compel, Mr. Bice,
17 because I've had representations made to me in court that
18 certain discovery obligations were going to be done --

19 MR. BICE: Yes.

20 THE COURT: -- and maybe we haven't met that
21 schedule.

22 MR. BICE: Well, it is -- it is in addition to that.
23 And I don't disagree with you that --

24 THE COURT: Well, what's the in addition? I'm
25 trying to get to what's really the subject of the Rule 37

1 motion so I can determine if there's anything I should let you
2 do discovery on, because I'm not inclined to do so.

3 MR. BICE: Okay. Well, you shouldn't give me that
4 warning, because now I'm going to try and persuade you
5 otherwise. But I'm going to do so briefly.

6 THE COURT: I know. That's why I gave you the hint.

7 MR. BICE: Your Honor, as you will recall, you had
8 indicated at the hearing and both during the discovery process
9 -- they were refusing to provide information because the
10 testimony was principally coming from lawyers, and so they
11 were refusing to provide a whole host of information about
12 what executives were involved, when they were involved, who
13 reviewed the documents, where they sent them to, et cetera,
14 all of --

15 THE COURT: I had the IT guy tell me it was a
16 decision made by management. That's the guy who sat on the
17 stand, and he told me management made that decision.

18 MR. BICE: And we tried to get into more detail with
19 him in his deposition on that, and they claimed either
20 privilege or he hadn't been prepared on those subject matters.
21 That's why we had -- and as you'll recall, at the evidentiary
22 hearing itself we asked the lawyers these specific questions,
23 did Mr. Leven -- was Mr. Leven involved in that decision, was
24 Mr. Adelson involved.

25 THE COURT: We got attorney-client. That's why I

1 had Sam Lionel here.

2 MR. BICE: Privilege, privilege, privilege,
3 privilege. And you had indicated to us at that point in time
4 it was because we were asking the lawyers.

5 THE COURT: That's right.

6 MR. BICE: So what we're entitled to do is we're
7 entitled to find out what executives were involved in this
8 process of concealing the evidence from us. And I know that
9 they don't want to do that, but we're entitled to know that as
10 part of our Rule 37 sanctions --

11 THE COURT: Okay.

12 MR. BICE: -- both on the past activity, as well as
13 that going forward. Because you'll also recall they wouldn't
14 provide to us -- and this is what we find fascinating about
15 this latest motion -- they wouldn't provide to us their
16 contacts with the Macau Government. Well, now they want to
17 release some of them, the ones that they think are helpful to
18 them. And again it's this garbling of the truth, as the
19 Nevada Supreme Court says, when you try and selectively waive
20 information that you think is helpful to yourself but then you
21 invoke privilege on any questions or followup.

22 THE COURT: It's called the sword and shield
23 doctrine.

24 MR. BICE: Yes.

25 THE COURT: So basically what you're trying to tell

1 me is that, since I wouldn't let you take the depositions of
2 certain executives during the discovery before my Rule 37
3 sanctions, you want me to now let you take those executives'
4 depositions understanding you may be faced with all the
5 privilege issues again.

6 MR. BICE: We may be. But we think that we can
7 certainly have a better shot at --

8 THE COURT: So what is the purpose, since I've
9 already granted you all the fees related to the work that
10 would have been accomplished related to those decisions by
11 executives?

12 MR. BICE: We are seeking additional forms of
13 sanctions, Your Honor, in addition to fees under Rule 37.

14 THE COURT: Okay. We're not going to do any more
15 discovery, then.

16 MR. BICE: What's that?

17 THE COURT: We're not going to do any more
18 discovery. You can ask me for the additional sanctions, but I
19 had testimony from the IT, the head of IT for the whole
20 company --

21 MR. BICE: I understand that.

22 THE COURT: -- and I understood what he told me. It
23 was a decision made by the company, not a decision made by the
24 lawyers. He told me that. I heard him. What was his name?

25 MR. BICE: Mr. Singh.

1 MR. PEEK: Manjit Singh, Your Honor.

2 THE COURT: Mr. Singh.

3 MR. BICE: But the problem with that, Your Honor, is
4 at the same time we asked questions about the involvement of
5 personnel, and there were claims of privilege, and you had
6 indicated to us we would get into that relative to our motion,
7 as opposed to the Court's motion, because that was directed at
8 representations to the Court.

9 THE COURT: I was surprised I heard that testimony
10 in my evidentiary hearing. And as a result of hearing that
11 testimony in my evidentiary hearing I believe I covered the
12 issue related to misconduct of management in making the
13 decision to mislead the Court, what I believed was a decision
14 to mislead the Court.

15 MR. BICE: So our --

16 THE COURT: I know the Sands still disagrees and
17 says it wasn't wilful, because I read your footnote.

18 MR. BICE: I understand that that is what they
19 claim. But, Your Honor, again, they invoke privilege
20 selectively, and they have done it yet again in this current
21 motion.

22 THE COURT: I'm not saying you won't be able to get
23 there some other day. I'm on jurisdictional discovery. I did
24 the sanctions hearing related to jurisdictional discovery.
25 You may well be able to get into some of those other issues

1 later, because it will certainly go to the credibility that
2 witnesses may have. But in getting ready for my
3 jurisdictional hearing I am not going to go there now.

4 MR. BICE: I will want to readdress this very point
5 with you when we address that motion, because --

6 THE COURT: Yes. I'm not precluding you.

7 MR. BICE: Yeah. It seems to be a very selective
8 disclosure of information, Your Honor.the

9 THE COURT: I'm not saying they weren't selective.
10 I saw what they did. I was here.

11 MR. BICE: Thank you.

12 THE COURT: I watched Sam Lionel and Charlie McCrea
13 do their job.

14 MR. BICE: Yes. I'm not criticizing them for doing
15 their jobs. My point is I just don't think you can cut off
16 some questions and allow others to be answered. That's been
17 our only point.

18 THE COURT: I understand.

19 December 27th is when the issue related to their
20 Rule 37 motion is scheduled. Do you want to move it up to
21 December 18th, since you're all going to be here?

22 MR. BICE: We would ask that you do so.

23 MR. RANDALL JONES: The only concern I have, Your
24 Honor, is that I know -- I think --

25 THE COURT: When are you going to be done with trial

1 with Judge Johnson?

2 MR. RANDALL JONES: Not till mid January.

3 THE COURT: Yeah. I'm not going to be done till mid
4 January, either. And I don't want to wait till mid January to
5 do this.

6 MR. PEEK: What you're talking about, you're just
7 talking about an oral argument on their motion?

8 THE COURT: All I'm having is an oral argument.

9 MR. RANDALL JONES: If we set it at 8:30, Your Honor
10 -- the 18th is what day of the week?

11 MR. PEEK: It's a Tuesday, Your Honor.

12 THE COURT: It's a Tuesday.

13 MR. RANDALL JONES: That's typically a very late day
14 for Judge Johnson. So if we set this early, I can --

15 THE COURT: You want to come at 8:20 on the 18th and
16 move the motion that's currently on the 27th to that day.

17 MR. BICE: We have Mr. Kaye's deposition that day,
18 Your Honor.

19 THE COURT: Can you start him a little later since
20 I've said you're not limited to a day?

21 MR. PEEK: He's noticed for 10:00 o'clock anyway,
22 Your Honor, I believe, because that's when they notice all
23 their depositions is for 10:00 o'clock.

24 THE COURT: Well, but sometimes it takes them a
25 little longer to argue motions.

1 MR. PEEK: I hadn't noticed that, Your Honor.

2 THE COURT: You're part of the problem.

3 MR. PEEK: I'm trying to be part of the solution,
4 Your Honor.

5 THE COURT: In fact, when I look at my calendar and
6 I'm in trial and I see your name on there, I move the trial
7 start time back.

8 MR. PEEK: Oh, my gosh. I'm crushed, Your Honor.

9 THE COURT: Yeah, I know you are. Anything else?

10 MR. BICE: No, Your Honor. Thank you.

11 MR. RANDALL JONES: Your Honor, just to be clear, I
12 was going to respond to that. But I take it that the Court
13 has denied that motion without prejudice.

14 THE COURT: The discovery motion?

15 MR. RANDALL JONES: Yes, Your Honor.

16 THE COURT: During this period of time where I am in
17 jurisdictional discovery only, yes.

18 MR. RANDALL JONES: Denied their motion, just for
19 the record, for all purposes at this time without prejudice?

20 THE COURT: Correct. On discovery.

21 MR. PEEK: And I'm assuming, Your Honor, you're also
22 denying their motion for an evidentiary hearing, as well.

23 THE COURT: I may change my mind --

24 MR. PEEK: That comes -- that comes after the 18th

25 THE COURT: -- during the 18th hearing that an

1 evidentiary hearing would be appropriate. Certainly if I make
2 a determination that evidentiary sanctions are appropriate,
3 Mr. Jones, I will make the offer, as I always do under Nevada
4 Power-Fluor, to the person who may be facing sanctions to have
5 an evidentiary hearing.

6 MR. BICE: Thank you, Your Honor.

7 MR. RANDALL JONES: Your Honor, again, the only
8 concern I have -- we didn't argue it, and I don't want to
9 belabor it. I know you've had a lot of people waiting a long
10 time. But there are -- there are issues that we want to make
11 sure we address at that hearing on the 18th that we did not
12 address today so that --

13 THE COURT: So are you going to file a brief?

14 MR. RANDALL JONES: Well, we did file an opposition
15 to this motion, and we also will file --

16 THE COURT: No. Are you going to file a brief in
17 response to the Rule 37 motion?

18 MR. RANDALL JONES: We will. Absolutely, Your
19 Honor.

20 THE COURT: Okay. That's really what I will need,
21 Mr. Jones.

22 MR. RANDALL JONES: Okay. Very good.

23 MR. PEEK: Your Honor, may we have -- and I -- maybe
24 I could just ask counsel here, because we've been dealing with
25 quite a few other motions so far, and I think that our

1 response date is due today on that motion, or maybe Monday on
2 that motion. You don't know, Ms. Spinelli?

3 MS. SPINELLI: I don't know your deadlines. I just
4 know mine.

5 MR. PEEK: Your Honor, we'd just like a little
6 additional time until like the --

7 MR. RANDALL JONES: Monday?

8 MR. PEEK: No. I think it's due on Monday. I can
9 look at my calendar, as well, Your Honor.

10 MR. BICE: I'm trying to check mine, Steve. I
11 apologize.

12 THE COURT: Mr. Bice has all this technology at his
13 fingertips. It's really odd when you're in a settlement
14 conference and people are quoting from stuff and all they have
15 is that little piece of plastic in front of them.

16 MR. BICE: I don't know what day it is due, but I
17 will -- Mr. Peek and I and Mr. Jones will chat, and we will
18 agree upon a time frame --

19 MR. PEEK: The deposition is due on the 10th, Your
20 Honor.

21 THE COURT: Agree on a reasonable schedule, and I
22 will need the reply brief by noon on the 17th.

23 MR. BICE: Understood, Your Honor. Thank you.

24 MR. PEEK: Our opposition's due the 10th, so we
25 probably want until the 13th.

1 MR. MARK JONES: The motion to seal, do you want to
2 deal with the motion to seal?

3 THE COURT: The motions to seal we handle on the
4 chambers calendar.

5 MR. PEEK: Sort of administratively.

6 MR. RANDALL JONES: Thank you, Your Honor.

7 MR. PEEK: May I just consult with counsel for a
8 moment, Your Honor, before you dismiss you?

9 THE COURT: Yes.

10 The motion to seal that's on calendar today, does
11 anybody have an objection to sealing or redacting Exhibits D
12 and F to the motion for protective order?

13 MR. BICE: Your Honor, I don't have -- for purposes
14 of right now I don't, because Mr. Goldstein's deposition, the
15 30 days is not --

16 THE COURT: So I'll grant it, and then if you need
17 to change it, you'll let me know.

18 MR. BICE: In respect to Mr. Adelson's deposition we
19 haven't had our meet and confer over those designations yet,
20 so we may -- we're not going to oppose it for right -- for
21 purposes of right now, but we may in the future.

22 MR. PEEK: Yeah. I understood that, Your Honor.

23 THE COURT: Okay.

24 MR. PEEK: They have an objection to some of the
25 designations that we've made, and we'll address those with

1 them.

2 THE COURT: Billie Jo, the motion that was on the
3 27th is now on the 18th.

4 'Bye. 8:00 a.m.

5 THE PROCEEDINGS CONCLUDED AT 9:41 A.M.

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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.

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CLERK OF THE COURT

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 FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
DEBRA SPINELLI, ESQ.
TODD BICE, ESQ.

FOR THE DEFENDANTS:

JON RANDALL JONES, ESQ.
J. STEPHEN PEEK, ESQ.
MARK JONES, ESQ.
MICHAEL LACKEY, 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.

CLERK OF THE COURT

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1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 18, 2012, 8:06 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Which motion do you guys
4 want to handle first, the protective orders?

5 MR. MARK JONES: Your Honor, I have a housekeeping
6 issue, if I may, first.

7 THE COURT: Sure.

8 MR. MARK JONES: Spoke with Mr. Bice. Thank you.

9 Yesterday was the last day for the other side to
10 oppose Mr. Lackey's pro hac admission for his -- excuse me,
11 pro hac application for his admission into this case, and
12 there's no opposition. So Mr. Bice had asked if the Court -
13 if I may --

14 THE COURT: Any objection?

15 MR. BICE: No.

16 THE COURT: All right. Then you can approach. I'll
17 be happy to sign, Mr. Jones. Here you go.

18 All right. Now which motion do you guys want to
19 argue first?

20 MR. RANDALL JONES: Your Honor, in a sense I guess
21 they're sort of mixed together, but perhaps our --

22 THE COURT: Well, the protective order on the
23 videotape deposition is different than the sanctions and the
24 other protective order motion.

25 MR. RANDALL JONES: And I guess what I was thinking

1 is maybe the protective order -- the first protective order
2 motion filed. But I don't know if the Court wants to do that
3 or not.

4 MR. PISANELLI: That's a convenient way for the
5 defendants to jump in front of an argument, but --

6 THE COURT: Actually, I want to do that way. And
7 you're going to be surprised why after the argument.

8 MR. PISANELLI: All right.

9 THE COURT: Mr. Jones.

10 MR. RANDALL JONES: I hope not pleasantly, Your
11 Honor.

12 THE COURT: Well, do you want to read my note?

13 MR. RANDALL JONES: Your Honor, I wouldn't mind
14 reading your note.

15 THE COURT: No, that's okay, Mr. Jones.

16 MR. RANDALL JONES: It might help sharpen my
17 argument.

18 THE COURT: It's all right. You're in trial in the
19 other department, so --

20 MR. RANDALL JONES: Thank you, Your Honor.

21 THE COURT: -- let's argue the motion for protective
22 order on the search of data in Macau.

23 MR. RANDALL JONES: Yes, Your Honor. As you know,
24 obviously I don't have the full -- well, have not been
25 involved in this case for very long, so the history has been

1 created before my time. And I've done my best to try to get
2 up to speed with that history in connection with these motions
3 and just in general tried to become familiar with this case.

4 I think I would start by talking a little bit about
5 that history and why we feel that that motion is appropriate.
6 And I guess the first order of that history would be a letter
7 that was sent back by defendants' counsel in May to the
8 plaintiffs, talking about the search parameters and what they
9 believe would be the appropriate way to do this process. And
10 I want to mention this because I think it is important as
11 relates to -- for this overall process and the relationship
12 with the motion for sanctions. And in that letter not only
13 did the defense counsel spell out what we intended to do, but
14 also made comment about willingness to meet and confer. So
15 that's sort of the first part of that process.

16 And the next part of the process was the joint case
17 conference statement, which also spelled out in great detail
18 and I think there's somewhat seven different points that were
19 spelled out about the process that the defense intended to
20 take in trying to comply with the discovery. And that spelled
21 out very specifically that we would look first at the -- our
22 client's, Jacobs's ESI information in the U.S. And again, the
23 whole point of this is, as far as we know, the best
24 information we have is that that's a ghost copy of what was
25 created in Macau. So presumably it's no different than what's

1 in Macau in the first instance. So we spelled that out and
2 said that's what we're going to do, then we're going to look
3 all -- of course, all the Las Vegas Sands information and
4 start producing that as quickly as we can.

5 And then there is a hearing the next day, June 28th,
6 where this two-step approach was spelled out to the Court and
7 counsel and was consistent with what was in the case
8 conference statement.

9 Then there's a July 30th letter which reinstated --
10 or, excuse me, reiterated that the defendants would review all
11 of the U.S. ESI first and then focus on Macau, and there was
12 some -- this wasn't just done, Your Honor, to try to delay
13 things. And I say that, Your Honor, because I have been
14 involved in discovery where you're talking about not just out
15 of the state, but out of the country. And this is a unique
16 circumstance. Certainly I would hope the Court would take
17 into account that we are dealing with the sovereign government
18 that may have a different idea of what we can and can't do.
19 So the idea was to let's look at that stuff first, the
20 information we have on the ghost hard drive here in the U.S.
21 and whatever we have we produce that, and then we go look at
22 what we know is going to be more of an issue in Macau.

23 And then, of course -- and I want to make sure to
24 point out that they've made some comments about this so-called
25 staggered approach which the Court said, no, you can't have

1 the staggered approach.

2 THE COURT: I've been saying that for a year and a
3 half already.

4 MR. RANDALL JONES: Absolutely. And, Your Honor,
5 you defined what a staggered approach was. Well, based on
6 what I've read in the file and your rulings, a staggered
7 approach was what we initially said, look, let's get the
8 plaintiff's ESI from the plaintiff, from Mr. Jacobs --

9 THE COURT: Every time someone brought that up I
10 said no.

11 MR. RANDALL JONES: Absolutely. And we understand
12 that. That is not what we are saying we are doing.

13 THE COURT: No, I know. Now you're saying, we want
14 to search what we have access to in the United States without
15 dealing with the Macau Data Privacy Act and then, depending
16 upon what we find, we may look at the stuff in Macau.

17 MR. RANDALL JONES: No, actually I don't think
18 that's what we're saying. That's not my understanding of what
19 we're -- in fact, that's not my understanding --

20 THE COURT: That's how I read this.

21 MR. RANDALL JONES: -- of what we're doing. In
22 fact, that -- I will tell the Court that is not what we were
23 doing. What we were doing was trying to make sure, especially
24 after the hearing in September, that we got access to the
25 Macau information. But we have to do it the way they let us

1 do it.

2 And so what happened after that hearing, we were
3 retained, Mr. Lackey's firm was retained, and action started
4 right away. This was within weeks of that hearing, Your
5 Honor. New counsel was brought in. The reason we were
6 brought in was to try to make sure that we complied with what
7 you wanted us to do. And, Your Honor, I've been practicing
8 here a long time and I've known you both in private practice
9 and on the bench, and I would hope the Court would understand
10 that we take our -- not only our oath, but our obligation on
11 discovery very, very seriously.

12 THE COURT: Oh, I have no doubt about that, Mr.
13 Jones. That's not the issue. The issue is not you or your
14 firm's credibility or Mr. Lackey or Mr. Peek or any of the
15 attorneys at this point. The issue is a -- what appears to be
16 an approach by the client to avoid discovery obligations that
17 I have had in place since before the stay.

18 MR. RANDALL JONES: And, Your Honor, I understand
19 that's your concern. And I understood that before you said
20 that just now. And I understand why that's your concern. I
21 have tried to make sure that I understand the history of this
22 case. And I will tell you the client understands the concern.
23 That's why new counsel this far along in the case was brought
24 in.

25 THE COURT: Third new counsel.

1 MR. RANDALL JONES: Understood. And we all hope the
2 lasting counsel. And a major part of that decision was to
3 make sure that any errors or issues that the Court was
4 concerned about in the past are addressed and addressed
5 appropriately. So with that in mind our firm was retained. I
6 was just about to start my jury trial, and so my brother Mark
7 Jones was tasked, with Mr. Lackey -- this was within weeks of
8 us being retained -- of flying to Macau and addressing the
9 issue directly. And we didn't know what we were going to find
10 out when we got there. We were going there to try to see what
11 we could do immediately. And so -- and, again, I hope the
12 Court appreciates that there's two different issues here. One
13 is -- from my perspective one is a party trying to hide behind
14 the law of another country or another state, for that matter,
15 to thwart the discovery process. That's one issue. The other
16 issue is also trying to make sure that if you have to deal
17 with the laws of another country you're in compliance with
18 those laws.

19 So to the extent the Court was concerned that the
20 OPDP law was being used to try to block discovery, that, I
21 will this Court in open court on the record as an officer of
22 the Court, is not what we are trying to do at this point. If
23 it was ever -- and I certainly don't believe it was ever being
24 done, but I will tell the Court to the extent there was some
25 miscommunication or misunderstanding of what our rights and

1 obligations were, two lawyers went to Macau to try to
2 straighten that out. And when they got there they were
3 informed of certain things. And I want to make sure the
4 Court's aware of the fact that before Mark Jones went to Macau
5 he sent an email again saying, look, we want to know what --
6 we want to meet with you, we want to talk to you before -- on
7 going -- this was mentioned in court the week before, I
8 believe, on going to Macau, I want to talk to you all to make
9 sure that we're all on the same page at least as to whether or
10 not you have different terms -- search terms or parameters
11 that you want us to look at, this is what we think we should
12 be doing. And I think it's important to the Court.

13 We tried to meet and confer with them over the
14 summer, before our firms were involved, but still, the record
15 is clear. We tried to meet with them on a couple of occasions
16 and ask them about what search terms they wanted to use to try
17 to expand the ESI discovery, and -- both in terms of names and
18 search terms. And they didn't meet with us. And so we
19 expanded those search terms on our own and made them broader
20 than what were initially spelled out. So that's -- and, Your
21 Honor, those are the facts as I understand them, that there's
22 documentation to that effect in the file. So I have every
23 reason to believe it's true.

24 So then before Mark Jones and Mike Lackey go to
25 Macau an email is sent, said, let us know, we're going. And

1 we get no response. They go there and they have a discussion.
2 They are told for the first time that, no, Macanese lawyers
3 can look at this information. And by the way, finally -- we
4 don't know this until November 29th. We've talked to the
5 Court, we sent the information to the Court. We are informed
6 that we can have the Macanese lawyers look at this information
7 and they can do the searches and to the extent there's any
8 personal data that may be redacted. Our hope is that because
9 it's Mr. Jacobs's ESI that there will be very little, if any,
10 personal data that's going to be redacted. But we believe
11 within the next week or two we're going to start getting
12 production. And as we get it, whatever we get, if it is
13 redacted, we're going to immediately produce it to the other
14 side. And to the extent it's redacted we will address that as
15 quickly as we can with the other side to see if there's any
16 way to address that issue with the Macanese government and --
17 assuming there's even a concern, depending on the type of
18 information that appears to be redacted. So, Your Honor, we
19 are trying to make sure we do what you want us to do.

20 But we have to try to -- and we did read your order
21 as saying that we don't have to try to comply with the laws of
22 another country. We can't use those laws inappropriately to
23 simply block discovery, and we're not trying to do that. But
24 we do have to try to comply with those laws. And I can't
25 believe this Court would ever issue an order that says you

1 have to violate the laws of another country in order to
2 produce documents here.

3 THE COURT: You already violated those laws, Mr.
4 Randall --

5 MR. RANDALL JONES: No.

6 THE COURT: -- Mr. Jones, Randall Jones. Sorry,
7 Randall.

8 MR. RANDALL JONES: That's all right. And we don't
9 want to compound the error. And I can't believe this Court
10 would want us to do that.

11 And so the question is -- we've done everything
12 else. We've produced 150,000 pages of documents since June.
13 We have spent an ungodly amount of money trying to make sure
14 we do this. So all we're asking this Court to is to allow us
15 to say, let's look at this information first -- and I know the
16 Court's impatient with this process, and I understand.

17 THE COURT: You know what, Mr. Jones, I'm not
18 impatient with this process. I am under a writ from the
19 Nevada Supreme Court to conduct an evidentiary hearing on
20 certain limited issues and enter findings of fact and
21 conclusions so that the Nevada Supreme Court can make some
22 additional conclusions related to the writ that is pending. I
23 am unable to accomplish what I have been ordered to do by the
24 Nevada Supreme Court in large part because of discovery
25 issues.

1 MR. RANDALL JONES: I understand. And I also
2 understand that this Court issued an order that said what the
3 parameters of discovery were going to be. And based on those
4 parameters we believe we are in compliance, with the exception
5 of the Macau ESI, which we're working on trying to get to the
6 Court.

7 So I guess I would ask this Court, well, Your Honor,
8 again, you know, we referenced the Sedona Principles. We're
9 in a -- somewhat of a brave new world as it relates to
10 discovery. That's -- electronic discovery is still new
11 territory in a lot of respects. And that's why you have
12 things like the Sedona Principles that are out there to try to
13 give litigants and the Court some guidance about this process.
14 And, you know, proportionality is a -- one of the principles
15 that is expressed in Sedona, and it relates to electronic
16 discovery.

17 THE COURT: Since you've mentioned the Sedona
18 Principles, Mr. Jones, has your client made an attempt to
19 obtain a protective order that is agreeable to the Macau
20 Government for the production of the information that would
21 otherwise be discoverable in this case?

22 MR. RANDALL JONES: No, Your Honor. And I'll tell
23 you why in a minute.

24 THE COURT: I asked that question a year and a half
25 ago. I asked the same question, and we still haven't done it.

1 MR. RANDALL JONES: And here's why. Because we are
2 hoping to be able to produce all the information that is in
3 Macau in that ESI. And, Your Honor, again, that's a ghost
4 image. And I know the Court is familiar -- more familiar
5 probably than most courts in this jurisdiction about
6 electronic discovery. So if it's a ghost image --

7 THE COURT: And Data Privacy Acts.

8 MR. RANDALL JONES: And Data Privacy Act. And a
9 ghost image is just that. It should be duplicative of what is
10 already here in the U.S. which has been produced. And, again,
11 there's a limit to what this Court has ordered to be produced
12 in this jurisdictional discovery. So the point is we believe
13 that this redundant. But, irrespective of that, a great deal
14 of time and expense has been incurred since September. Some
15 of these things should have been done before. What we're
16 asking this Court is to say, look -- we got to a point in
17 September where the Court made some findings, and the Court
18 made those findings based upon the information available to it
19 up to that point in time. We're trying to move forward. And
20 so since that time actions have been taken to try to make sure
21 we comply with the Court's order as it relates to the Macau
22 documents.

23 So if you expand the search terms -- remember, Your
24 Honor, in Sands China we're talking about -- the claim as
25 relates to Sands China is about an option agreement. The

1 search terms that we have used to try to find documents all
2 seem to be related to information that in fact is
3 overexpansive beyond what would be contacts that Sands China
4 might have with the United States, in particular with Nevada.
5 So we're essentially, we believe, getting a substantial amount
6 of overinclusive documents.

7 Let me just give you an example. In the depositions
8 two documents were used in Mr. Adelson's deposition of the
9 200,000 documents that have been discovered, and I think 19
10 were used in either in Mr. Goldstein or Mr. Leven's
11 deposition, I can't remember, but one of those two. But the
12 point is, Your Honor, is that we have been trying to
13 accomplish this discovery, and we believe that the Court has
14 set limits on what this discovery is. In fact, your order
15 says what the limits of discovery are. And so our --

16 THE COURT: You're referring to the March 8th, 2012,
17 order?

18 MR. RANDALL JONES: That's correct, Your Honor. And
19 so I guess I would ask the Court some questions to help us try
20 to understand where the Court has a concern that we are not in
21 compliance or at least attempting to comply and why the
22 parameters should be expanded beyond Mr. Jacobs's ESI in
23 Macau. We've given them everything we have in Las Vegas,
24 including the ghost image information of the Jacobs ESI. What
25 possibly could we expect to find with respect to contacts with

1 Nevada in Macau in the ESI of other people that would not be
2 duplicative of what is found in the Las Vegas Sands ESI that's
3 already been produced. And we haven't seen any indication
4 from the plaintiff that there is such information that they
5 expect to find or that they have not had full discovery.

6 We have answered their discovery, their requests to
7 produce. We've laid out, what we've answered, in our brief.
8 So, Your Honor, again, we don't know how -- and I guess under
9 Rule 26, you know, the rule itself provides that --
10 26(b) (2) (1) unreasonable -- discovery is limited is
11 unreasonable, cumulative, or duplicate documents. We believe
12 that to the extent -- and we're doing this anyway with the
13 Macau ESI, we're still producing that -- the party seeking
14 discovery has had an ample opportunity to discover and to
15 obtain the information sought. And we think that that has
16 been the case here. And, (3), the discovery is truly
17 burdensome or expensive, taking into account all the needs of
18 the case, the amount in controversy, and the limits of
19 resources and importance of the issues.

20 So here, Your Honor, we don't see the need -- and we
21 don't believe the need has been spelled out by the plaintiffs
22 as to why they need to go beyond the Macau ESI of Mr. Jacobs
23 in this discovery.

24 Now, the timing is a different issue. And we
25 certainly wish it could have been faster. And counsel

1 involved in this case at this point in time are doing
2 everything they can to try to make sure that it happens in
3 short order. We've told the Court we believe -- we think
4 we're going to have all this information with the extent
5 of possibly any personal information being redacted by
6 January 15th. But we hope to start having some of this
7 information within the next week. And as soon as we get it
8 we're going to start rolling it out.

9 So, Your Honor, we would ask that the Court have
10 some proportionality with respect to how far the Court goes in
11 allowing this discovery in Macau. And it further complicates
12 the case. We've got to then ask for information beyond Mr.
13 Jacobs's ESI which we don't see any grounds to --

14 (Pause in the proceedings)

15 MR. RANDALL JONES: And, Your Honor, and Mr. Peek is
16 helping me out here because, again, I'm trying to catch up
17 with all the information. You'd asked a question about a
18 protective order and whether there had been one asked for.
19 It's in Exhibit Y to our motion. The Macanese Government does
20 specifically reference page 18, also mentioned the, quote,
21 "protective order," and the related Jacobs litigation is
22 sufficiently protected in compliance with the guidelines
23 defined by the Personal Data Protection Act, Article 20,
24 Item 2.

25 So there has been such a request, and the Macanese

1 Government has apparently -- and this was something I was not
2 aware of digging through all of these exhibits, didn't find
3 this reference on page 18, so I was not aware of that. But
4 that has been addressed by the Macanese Government.

5 So I guess the biggest point is, Your Honor, is that
6 we would ask the Court to consider the proportionality of the
7 need for this information versus the burden and especially in
8 the limited scope that the Court has ordered in this
9 particular case.

10 So with that, Your Honor, if you have any questions,
11 I would do my best to answer them.

12 THE COURT: Thank you.

13 THE COURT: Mr. Pisanelli.

14 MR. PISANELLI: Thank you, Your Honor. I'm going to
15 do my best to exercise some restraint here, both in my
16 emotions over what I just heard and understanding that we're
17 talking about just a protective order so far.

18 First let me take an opportunity to correct Counsel,
19 because I know he's not intentionally trying to mislead you.
20 He is the newest person at the desk and clearly doesn't know
21 the real history of what happened. When he suggests to you
22 that we did not meet and confer in the summer or in the spring
23 or the fall or last winter or two years ago, he's mistaken.
24 Even in the circumstance in which he was referring me met for
25 hours with his prior counsel explaining over and over to the

1 extent it was even needed if we're talking about the
2 custodians that they didn't know about in Macau, they needed
3 only look to Colby Williams's letter giving them 20 custodians
4 that we want that they've known for two years. And the
5 suggestion that they don't know what to do here, if that's
6 what their client is telling Mr. Jones now, is something short
7 of the real truth.

8 Counsel also tells you something that needs to be
9 corrected. When he tells you that they have produced hundreds
10 of thousands or 150,000, I can't remember the number, of
11 documents and they're really working hard, remember we're
12 talking about Sands China here, Your Honor. They've produced
13 15 documents, 55 pages. That's what Sands China has produced.
14 So let's not get lost in them patting themselves on the back
15 over a two-and-a-half-million-dollar bill, they say, with the
16 all the hard work they did. Apparently that two and a half
17 million dollars was spent on obstructing discovery, not
18 actually finding.

19 And now this concept that will take us through the
20 entire motion about redundancy and the very limited nature of
21 discovery. I have to question whether Sands China has an
22 order that no one else in this Court has seen. The have taken
23 an approach in this motion and again in the presentation to
24 you this morning that the only thing they're obligated to do
25 is look at Steve Jacobs's ESI that is located in Macau

1 because, as they say, they have a ghost image here and why
2 produce it twice.

3 Well, there's so much wrong with that statement.
4 First of all, there's nothing in the Court's order that says
5 that this jurisdictional discovery is limited to Steve Jacobs.
6 And why would it be, Your Honor?

7 THE COURT: You're talking about the March 8th
8 order?

9 MR. PISANELLI: Yes.

10 THE COURT: The order related to certain depositions
11 that you noticed and what documents I was going to require be
12 produced related to those depositions.

13 MR. PISANELLI: Right. And in that order Your Honor
14 said that the discovery that Sands China was obligated to give
15 us had a time restriction on it, and the time restriction was
16 after Mr. Jacobs's termination up to the filing of the
17 complaint. Which one might then question, well, why in the
18 world would you limit your discovery to just Steve Jacobs's
19 ESI when the Court ordered discovery that occurred after he
20 wasn't even at the company anymore, is there even possibly a
21 reasonable interpretation from your words to say that, we
22 thought that all we needed to look for was the deduplication
23 -- the product of the deduplication to make sure we had all of
24 Steve Jacobs's ESI.

25 Recall this. Another handicap of Mr. Jones, because

1 he wasn't here. Henry Weissman stood before you on this exact
2 topic. This is what inspired Your Honor to make the no
3 staggering remark that is quoted in our reply at page 5. He
4 said, why would we produce the same document twice, we want to
5 get, he said -- and now I'm paraphrasing, that was a quote I
6 just gave you -- he said, we will get Steve Jacobs's ESI and
7 then we'll figure out what we have that he didn't already give
8 to us. And that's when Your Honor let him know the rules of
9 this Court, the rules of Nevada and how you govern discovery,
10 and you were very clear and unequivocal when you said, no,
11 that's not what you do, Mr. Weissman, quote, "We do not
12 stagger discovery obligations, period, end of story."

13 And so what Sands China did through the revolving
14 door of counsel that has come in this courtroom is did exactly
15 what Henry Weissman said he wanted to do and the exact
16 opposite of what you told them to do. They staggered
17 discovery, and now come in here hat in hand saying, well, we
18 thought this was a limited exercise of deduplication, Your
19 Honor, oh, we're so sorry, we thought this was all you
20 actually asked of us and it has cost us so much money to do
21 this. It really is an unbelievable position for Sands China
22 to take to come in here and tell you that they thought when
23 you said, we do not stagger, you meant we do stagger and go
24 ahead and just do your deduplication process. There isn't a
25 believable aspect of this position that they're sending -- or

1 saying to you.

2 Now we hear some new defenses from them. For the
3 first time we hear them say, Your Honor, we're not allowed to
4 review our own records and we would ask you to be
5 proportionate, I think that was the word, and not make us
6 violate some other country's laws. Again, I can't imagine
7 Sands China didn't hear your message loud and clear from the
8 sanctions hearing when you said, Sands China, you will no
9 longer be hiding behind the Macau PDPA. You were very clear
10 that not because of anything from a discovery perspective --
11 that's what we're here to do today, the Rule 37 motion has to
12 do with discovery issues. This was because of a lack of
13 candor to this Court, a lack of candor which Your Honor found,
14 as I understand it, to be directed and orchestrated from the
15 management offices of Las Vegas Sands on Las Vegas Boulevard.
16 You cannot hide behind the Macau Personal Data Privacy Act.

17 And what is the theme today? Your Honor, the Macau
18 Personal Data Privacy Act prohibits us from producing these
19 records, you wouldn't possibly tell us to do something in
20 violation of that order, would you, they say. We are not
21 permitted, they say for the first time, to even review our own
22 records. Can you imagine, Your Honor, the position that
23 they're offering? We need government approval to review our
24 own records in Macau. So the obviously, admittedly somewhat
25 sarcastic question I would ask is, how in the world do you run