break, Mr. Peek.

MR. PEEK: Thank you, Your Honor.

(Court recessed at 10:29 a.m., until 10:35 a.m.)

THE COURT: Are we ready?

MR. RANDALL JONES: We're ready, Your Honor, I believe.

THE COURT: Come on back up, sir. Let's swear you in.

IRA RAPHAELSON, PLAINTIFF'S REBUTTAL WITNESS, SWORN

THE CLERK: Please state and spell your name for the record.

THE WITNESS: Ira, I-R-A, Raphaelson, R-A-P-H-A-E-L-S-O-N.

DIRECT EXAMINATION

BY MR. BICE:

Q Good morning again, Mr. Raphaelson. And I thank you for coming back. And I apologize for the delays, to the extent we have participated in those, for your schedule. Mr. Raphaelson, There was some testimony yesterday from Mr. Toh, and I think it relates to something you had testified on your first day of testimony, and I want to pursue that with you a little bit. It is my recollection that you testified, and if I'm wrong you'll correct me, that O'Melveny & Myers represented the Las Vegas Sands Audit Committee. Is that true?

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Attorneys for Sheldon G. Adelson

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

DECLARATION OF RUBEN REYES IN SUPPORT OF BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

I, Ruben Reyes, hereby declare and under penalty of perjury state as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am currently employed as a security officer at The Venetian | The Palazzo.
3. I was working at the security podium in The Venetian casino on February 6, 2015, when, at approximately 12:30 p.m., I was approached by a man who requested to be escorted into the corporate office.
4. The attached Security Department Voluntary Statement is a true and correct copy of my statement about my encounter with that man, which I executed and provided to my employer on February 7, 2015.

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

Dated this ___ day of February, 2015.

Ruben Reyes—Las Vegas, Nevada

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THE VENETIAN® | THE PALAZZO®

SECURITY DEPARTMENT

VOLUNTARY STATEMENT

PAGE 1 OF 1 IR _____

TYPE OF INCIDENT: _____

DATE OCCURRED: 02-06-15 TIME OCCURRED: 1257 am / pm

LOCATION OF OCCURRENCE: Venetian Security Podium

NAME OF PERSON GIVING STATEMENT: Ruben Reyes

GUEST OF THE HOTEL? YES: ☐ NO: ☐ HOME PHONE #: _____ CELL PHONE #: _____

SUITE #: _____ BUSINESS PHONE #: _____ PAGER #: _____

LOCAL ADDRESS OR PHONE IF DIFFERENT FROM HOME: _____

RESIDENCE ADDRESS : On File with HR

BUSINESS ADDRESS: _____

SOCIAL SECURITY NUMBER: _____ DATE OF BIRTH: _____

BEST TIME TO CONTACT: _____ (am / pm) BEST PLACE TO CONTACT: _____

DETAILS:

On 02-06-2015, at approximately 12:30 while working as Venetian Security Officer on the Podium. I was approached by a White Male Adult casually dressed and and requested that he be escorted to the corporate Office. I asked what would be his reason to go and he stated that he had papers that he wanted to serve to a few employees and did not state who he was referring to. I advised him that he would not be able to go to the offices. He then stated that he would just go up there without an escort and I told him that he could be Trespassed for being in an unauthorized area. He then requested to speak to someone that would allow him to be escorted. I then asked Field Training Officer (FTO) Marquez to speak to the male. He at no time would identify himself and who he represented. He just kept pointing to the envelope he had in his hand. I at this time called the Venetian surveillance department to look at him in case he was to become disruptive. The person then told FTO Marquez to call our manager for further assistance. I contacted the Security Shift Manager Mosier, Chris and explained the person's request. During this time FTO Marquez was talking to the person. Upon arrival of the security manager the person then directed his attention to him. The security manager spoke to the person and they walked away.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (location): Venetian Security Office

ON THE 7th DAY OF February AT 4:28 pm (am/pm) 20 15

WITNESS: _____

25769

signature of person giving statement

WITNESS: _____

Exhibit B

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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

DECLARATION OF RAUL MARQUEZ IN SUPPORT OF BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

I, Raul Marquez, hereby declare and under penalty of perjury state as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am currently employed as a security officer at The Venetian | The Palazzo.
3. I was working at the security podium in The Venetian casino on February 6, 2015, when, at approximately 12:57 p.m., I was approached by a man who requested to be escorted into the corporate office.
4. The attached Security Department Voluntary Statement is a true and correct copy of my statement about my encounter with that man, which I executed and provided to my employer on February 7, 2015.

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

Dated this 8th day of February, 2015.

Raul Marquez—Las Vegas, Nevada

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SECURITY DEPARTMENT
VOLUNTARY STATEMENT

PAGE 1 OF 2 IR _____

TYPE OF INCIDENT: _____

DATE OCCURRED: 1-6-15 TIME OCCURRED: 12:57 am / pm

LOCATION OF OCCURRENCE: Venetian Security Podium

NAME OF PERSON GIVING STATEMENT: Raul Marquez 18796

GUEST OF THE HOTEL? YES: ☐ NO: ☐ HOME PHONE #: _____ CELL PHONE #: _____

SUITE #: _____ BUSINESS PHONE #: _____ PAGER #: _____

LOCAL ADDRESS OR PHONE IF DIFFERENT FROM HOME: _____

RESIDENCE ADDRESS : ON FILE WITH HR

BUSINESS ADDRESS: _____

SOCIAL SECURITY NUMBER: _____ DATE OF BIRTH: _____

BEST TIME TO CONTACT: _____ (am / pm) BEST PLACE TO CONTACT: _____

DETAILS:

I was standing at the Venetian Security Podium when a white male casually dressed in biege shorts and a t-shirt approached and asked if he could go to corporate offices to serve a subpoena. The male did not give any information on who he was going to serve or any personal information of his own. Security Officer Reyes advised the male that per Venetian policy he could not go to corporate office to serve subpoenas. The male asked if the persons could be brought down to the casino to be served. Both myself and Mr. Reyes advised the male that would not be possible either. I advised the male that per Venetian policy he would have to contact Venetian Legal Department to get the information he needed to serve his subpoena. The male advised that he did not want to be a "dick" but was there any way he could be allowed to go up to corporate. Again we advised that he would not be allowed in Corporate offices. The male asked Mr. Reyes if he could go to corporate

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (location): Venetian Security Office

ON THE 7th DAY OF February AT 4:30 (am /pm) 20 15

WITNESS: _____

_____
signature of person giving statement

WITNESS: _____

VOLUNTARY STATEMENT CONTINUATION

offices on his own and Mr. Reyes advised him that if he went to that area unauthorized he could possibly be trespassed. The male asked "So your going to trespass me?" and I advised him that no we are not going to trespass you however if you go to the corporate offices without proper authorization he could possibly be trespassed. The male again stated that he was not trying to give us a hard time or trying to be a "dick" but he would like to speak with a Supervisor or Manager. The male stated he needed to hear this from someone with authority and that Myself and Mr. Reyes were not managers. At that time Mr. Reyes telephoned Assistant Security Manager Mosier, Christopher and advised him of the situation. Mr. Mosier advised Mr. Reyes that he would be en route to the Security podium and speak with the male. Shortly after being advised of the situation Mr. Mosier and Assistant Security Manager Johnson, Jacob arrived and spoke with the male for several minutes. After speaking with the male the male departed the area without further incident.

WITNESS:_____

SIGNATURE OF PERSON GIVING STATEMENT

WITNESS:_____

PRINT NAME OF PERSON GIVING STATEMENT

Exhibit C

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Attorneys for Sheldon G. Adelson

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

DECLARATION OF CHRISTOPHER MOSIER IN SUPPORT OF BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

I, Christopher Mosier, hereby declare and under penalty of perjury state as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am currently employed as a managing security officer at The Venetian | The Palazzo.
3. I was working in The Venetian casino on February 6, 2015, when, at approximately 1:00 p.m., I was asked by officers Ruben Reyes and Raul Marquez to offer assistance at the casino security podium regarding a man who had asked to be escorted into the corporate office.
4. The attached Security Department Voluntary Statement is a true and correct copy of my statement about my encounter with that man, which I executed and provided to my employer on February 7, 2015.

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

Dated this 8th day of February, 2015.

Christopher Mosier—Las Vegas, Nevada.

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SECURITY DEPARTMENT
VOLUNTARY STATEMENT

PAGE 1 OF 2 IR _____

TYPE OF INCIDENT: Process Server

DATE OCCURRED: 2/6/15 TIME OCCURRED: 1:00 am / (pm)

LOCATION OF OCCURRENCE: Security Podium

NAME OF PERSON GIVING STATEMENT: CHRISTOPHER MOSIER #26118

GUEST OF THE HOTEL? YES: ☐ NO: ☐ HOME PHONE #: _____ CELL PHONE #: (702) 672-2146

SUITE #: _____ BUSINESS PHONE #: _____ PAGER #: _____

LOCAL ADDRESS OR PHONE IF DIFFERENT FROM HOME: _____

RESIDENCE ADDRESS : _____

BUSINESS ADDRESS: _____

SOCIAL SECURITY NUMBER: _____ DATE OF BIRTH: _____

BEST TIME TO CONTACT: _____ (am / pm) BEST PLACE TO CONTACT: _____

DETAILS:

On 2/6/15, at approximately 1:00pm, Security officers Ruben Reyes and Raul Marquez requested my assistance at the casino podium. When I arrived I was directed to a man standing at the podium, wearing shorts and a t-shirt. He was carrying a stack of paperwork. I introduced myself as the Security manager, and he responded by telling me his name is "Mark." The man stated the company he works for represents a client in a legal matter, and he was here to serve subpoenas to four people in the Corporate offices. "Mark" stressed that the subpoenas were for "witnesses," and that he needed access to the Corporate offices so he could personally serve the subpoenas. I asked "Mark" if he had a business card or identification, but he refused to provide either. He also refused to identify his client, or the business he works for. He stated the subpoenas are for four individuals, Sheldon Adelson, Rob Goldstein, Gail Hyman, and Robert Rubenstein, but he would not provide any further information. He would not allow me to examine the paperwork her was holding, however the papers appeared to have hand-written, unprofessional letterhead. I told "Mark" that based on the information he had provided to me, I would not allow him access to the Corporate

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (location): VENETIAN SECURITY OFFICE

ON THE 7th DAY OF FEB AT 4:52 (am / (pm)) 20 15

WITNESS: _____

WITNESS: _____

26118
signature of person giving statement

VOLUNTARY STATEMENT CONTINUATION

Offices. "Mark" then demanded that I call the aforementioned individuals, and have them come down to meet him. I told "Mark" this was an unreasonable request, and that business such as his needed to be conducted via the Legal department. "Mark" then asked me, "Are you refusing to allow me to serve these papers?" I one again explained that his business should be conducted via the Legal department. "Mark" had a confrontational demeanor and tone, which became more pronounced throughout the conversation. "Mark" seemed to be trying to goad me into a stronger response, and held his phone in his hand in such a manner as to lead me to believe that he was recording us. I did not at any point consent to being audio recorded. "Mark" ended our conversation by saying, "I'm going to the Legal department now. On Howard Hughes, right?" I told "Mark" that he ought to call to schedule an appointment first, however he ignored me and said nothing further as he departed. As Mark left the area, I noticed that he met up with another man and immediately departed the area together with him. Video coverage shows that Mark and the unknown male arrived together shortly before going to the Security podium.

WITNESS:_____

SIGNATURE OF PERSON GIVING STATEMENT

WITNESS:_____

CHRISTOPHER MOSIER

PRINT NAME OF PERSON GIVING STATEMENT

Exhibit D

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Attorneys for Sheldon G. Adelson

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

DECLARATION OF JACOB JOHNSON IN SUPPORT OF BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

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3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

I, Jacob Johnson, hereby declare and under penalty of perjury state as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am currently employed ~~as a security officer~~ Assistant Security Manager at The Venetian | The Palazzo.
3. I was working at The Venetian casino on February 6, 2015, when, at approximately 1:03 p.m., I accompanied ~~officer~~ Assistant Security Manager Christopher Mosier, who was asked to offer assistance at the casino security podium regarding a man who requested to be escorted into the corporate office.
4. The attached Security Department Voluntary Statement is a true and correct copy of my statement about my encounter with that man, which I executed and provided to my employer on February 7, 2015.

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

Dated this 8th day of February, 2015.

Jacob Johnson – Las Vegas, Nevada

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SECURITY DEPARTMENT
VOLUNTARY STATEMENT

PAGE 1 OF 2 IR _____

TYPE OF INCIDENT: Process Server

DATE OCCURRED: 02/06/15 TIME OCCURRED: 1:03 pm am / pm

LOCATION OF OCCURRENCE: Venetian Security Podium

NAME OF PERSON GIVING STATEMENT: Johnson, Jacob TM# 25575

GUEST OF THE HOTEL? YES: ☐ NO: ■ HOME PHONE #: _____ CELL PHONE #: 702-332-3891

SUITE #: _____ BUSINESS PHONE #: _____ PAGER #: _____

LOCAL ADDRESS OR PHONE IF DIFFERENT FROM HOME: _____

RESIDENCE ADDRESS : _____

BUSINESS ADDRESS: _____

SOCIAL SECURITY NUMBER: _____ DATE OF BIRTH: _____

BEST TIME TO CONTACT: 10:00 (am / pm) BEST PLACE TO CONTACT: Cellphone

DETAILS:

On 02/06/2015 at 1303 I accompanied Security Assistant Manager Mosier, Christopher TM# 26118 to the Venetian Security Podium in reference to a process server. Upon arrival, Mosier and I identified ourselves to the male, who identified himself as Mark. Mark reported he has some subpoenas for Mr. Adelson, Mr. Goldstein, Hyman, Gayle and Rubenstein, Robert. Mark reported all four were listed as witnesses in a case. Mark reported he promised his client he would deliver the subpoenas personally. Mosier notified Mark that he could not gain access to the corporate Office and I explained we would not accept service on their behalf. Mosier asked if Mark had a business card for him or his client, to which he reported he did not. Mark refused to provide the name of his client or attorney involved in the subpoena. Mosier directed Mark to contact the legal department via telephone. Mark reported he would visit the Office of the legal department and asked if it was still in the Howard Hughes building. Mosier

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (location): Venetian Security Office

ON THE 7th DAY OF February AT 1619 (am /pm) 20 15

WITNESS: _____

WITNESS: _____

signature of person giving statement

VOLUNTARY STATEMENT CONTINUATION

answered in the affirmative and advised Mark he should call prior as they may not meet with him without a phone call in advance. Mark departed the area with an unknown associate who was watching the interaction from a nearby slot machine. Mark and the unknown associate exited using the escalators leading to the self-parking garage.

WITNESS:_____

WITNESS:_____

25575
SIGNATURE OF PERSON GIVING STATEMENT

Johnson Jacob
PRINT NAME OF PERSON GIVING STATEMENT

Exhibit E

Serving Your Complaint

Learn the requirements for "serving" (delivering) your summons and complaint to the party you are suing, including tips on how to serve individuals, how to serve businesses, and what to do if you are unable to serve your summons and complaint.

Overview

After you file your complaint and have the summons issued, a copy of the summons and complaint must be delivered to each defendant. This is called "service of process." It is good practice to serve all defendants immediately after filing the complaint. After the defendants have been served, proof of that service must be filed with the court.

Q&A – Service Of Process

Who can serve my summons and complaint?

Service of process must be completed by a person who is not a party in the lawsuit and who is over the age of eighteen. Service of process can be performed by the constable, sheriff, or a private process service.

The fee for service is usually about $17.00 plus $2.00 for each mile traveled, but it varies widely so check.

If you use the constable, you will need to provide the constable with four copies of your summons complaint and other documents to be served. If you use the sheriff or a private process service, check to see how many copies they will require.

Click to visit Constables & Sheriffs for contact information.

How do I prove to the court that my summons and complaint was served?

The person who serves your summons and complaint must complete an Affidavit of Service that states when and how your summons and complaint was served. The affidavit must be filed with the court to show that the defendant was properly served.

If you use the constable, sheriff, or a private process server, they will either file the Affidavit of Service with the court or give it to you to file in your case. Proof of service should be filed with the court as soon as possible.

If the court is not satisfied that the defendant was served, your case might not be heard. If service is incorrect for any reason, your case could be dismissed or continued.

If you use the Self-Help Center summons form, that form contains an Affidavit of Service. You can also get an Affidavit of Service, free of charge, at the Self-Help Center, or you can download the form on your computer by clicking one of the listed formats underneath the form's title below:

DISTRICT COURT AFFIDAVIT OF SERVICE

Pdf Nonfillable

JUSTICE COURT AFFIDAVIT OF SERVICE

Pdf Nonfillable

Click to visit Basics of Court Forms and Filing for information about how to file in the district and justice court. Or click to visit District Court or Justice Courts for links and contact information for your court.

How long do I have to serve a defendant?

Your summons and complaint must be served within 120 days after you file the complaint. (NRCP 4(i); JCRCP 4(i).) If you fail to serve the defendants within 120 days, your complaint will be dismissed.

If you will not be able to serve within 120 days, file a motion asking the court to enlarge time for service before your 120 days run. (NRCP 4(i); JCRCP 4(i).) You can file the motion after the 120 days too, but you will need to explain to the court why you failed to file you motion earlier.

A generic motion you can use (just title it "Motion to Enlarge Time for Service") is available for free at the Self-Help Center, or you can download the form on your computer by clicking one of the listed formats underneath the form's title below:

DISTRICT COURT MOTION (GENERIC)

Pdf Nonfillable

JUSTICE COURT MOTION (GENERIC)

Pdf Fillable | **Pdf Nonfillable**

Click to visit Basics of Court Forms and Filing for specific information about how to fill out forms and file in the district and justice court. Or click to visit District Court or Justice Courts for links and contact information for your court.

How do I serve an individual?

Each defendant must be personally served with their own copy of your summons and complaint, even if they live at the same address. (And a separate Affidavit of Service must be completed and filed for each defendant served.)

"Personal service" means that the defendant must be handed a copy of your summons and complaint. The only exception to this rule is if the summons and complaint are served at the defendant's home. A process server can leave the summons and complaint at defendant's home address with any suitable adult (someone at least fourteen years old who lives there). However, the summons and complaint must be given to a person and cannot simply be left in the doorway.

You may want to research the Nevada Revised Statutes to determine whether there is any alternative method of service allowed in your type of case. For example:

- If your case involves damages or loss you suffered as the result of the defendant's use of a motor vehicle in Nevada, you might be able to serve the defendant through the Nevada Department of Motor Vehicles. (NRS 14.070.)
- If your defendant lives in a guard-gated community, you may be able to serve the defendant by leaving a copy of the summons complaint with the guard. (NRS 14.090.)
- In an action against a landlord, you may be able to serve your summons and complaint on the property manager or the party who entered into the rental agreement on the landlord's behalf (when there is no other agent designated in the lease). (NRS 118A.260.)

How do I serve a business?

If you are suing a corporation or other business, you generally must serve a person called the "registered agent." All corporations, limited partnerships ("LPs"), and limited liability companies ("LLCs") are required by law to designate an agent to accept service of lawsuits. (NRS 14.020, 78.090.) Corporations must provide the name and address of this agent to the Nevada Secretary of State's office. To find a company's registered agent, click to visit the Nevada Secretary of State Business Entity Search page.

If a business has designated a registered agent, you can serve your lawsuit on the business by arranging to have your summons and complaint delivered to the registered agent. (NRS 14.020, 78.090.) You can have the registered agent served personally or by leaving a copy of the summons and complaint with a person of suitable age and discretion at the registered agent's address listed on the Secretary of State's website.

TIP! Don't name the registered agent as a defendant in your lawsuit! The registered agent is simply an entity that accepts paperwork on behalf of the business. Think of the registered agent as a mailbox for the business you're suing.

Sometimes businesses change their registered agent, but do not update their information with the Secretary of State's office. In such a case, you may have several alternatives for service. For instance, a corporation incorporated in Nevada may also be served by personal service on the corporation's president, secretary, cashier, or managing agent. (NRCP 4(d)(1); JCRCP 4(d)(1).) If the corporation is incorporated outside the State of Nevada, a lawsuit may be served on the foreign corporation's managing agent, cashier, or secretary if they are within Nevada. (NRCP 4(d)(1); JCRCP 4(d)(2).)

If a corporation, LP, or LLC has not complied with the requirement to provide an agent who will accept lawsuits, and there is no other person you can serve, you may be able to serve the business by mailing a copy to the Nevada Secretary of State, posting another copy in the office of the court clerk in the court where you filed your suit, and mailing copies of the complaint to any corporate representative located out of state. (NRCP 4(d); JCRCP 4(d); see also NRS 14.030.) However, before you do this, you will need to get permission from the court by submitting an affidavit to the court explaining everything that you did to try to serve the corporation or partnership and why serving the Secretary of State's office is your only viable alternative.

The rules on serving businesses and other entities can be complicated. If you are not sure how to serve your opposing party you can click to visit District Court Rules or Justice Court Rules and study Rule 4 on service. You can also click to visit Nevada Statutes to review Chapter 14 of the Nevada Revised Statues.

TIP! You may want to research whether there's a Nevada statute that provides some alternate way to serve your particular type of defendant. For example, there are statutes that discuss service on banks (NRS 666A.120, 666A.390), dance studios and health clubs (NRS 598.944), employment agencies (NRS 611.150), real estate brokers and salespersons (NRS 645.495), and the State of Nevada (NRS 41.031).

Generally, a domestic corporation that has gone out of business can be sued up to two years after the corporation dissolves. If you are planning on suing a corporation that has gone out of business, click to visit Nevada Statutes and read NRS 78.585 to make sure you are fulfilling all the requirements.

What if I have been unable to serve the defendant?

If you have made several failed attempts to serve your defendant, you can ask the court for permission to serve the defendant by publication. (NRCP 4(e)(1); JCRCP 4(e)(1).) The court can authorize service by publication if the defendant resides outside Nevada, has departed from Nevada, cannot be found in Nevada (after you have tried), or is trying to avoid being served.

To get the court's permission to serve by publication, you must file a motion. You will need to demonstrate to the court that you have a valid cause of action against the defendant and that the defendant you are trying to serve is necessary to the case. You will also need to describe all your past attempts to serve the defendant.

The Self-Help Center does not currently have forms to request service by publication. But you might be able to find them at your local law library. Click to visit Law Libraries for location and contact information.

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 13 2015

BY: DULCE MARIE ROMEA, DEPUTY

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE MOTION FOR SANCTIONS - DAY 4

THURSDAY, FEBRUARY 12, 2015

A-10-627691-B
TRANS
Transcript of Proceedings
4441831

APPEARANCES:

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

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

COURT RECORDER: 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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LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 12, 2015, 9:00 A.M.

(Court was called to order)

THE COURT: Good morning. All right. We were to offering -- or providing a copy of 354, which was admitted yesterday.

MR. RANDALL JONES: Yes, Your Honor.

THE COURT: Did we get that?

THE CLERK: Yes,Your Honor.

THE COURT: And then we were going to offer 355 and some additional exhibits.

MR. RANDALL JONES: That's correct.

THE COURT: What are those proposed numbers?

And, Mr. Raphaelson, I'm sorry about the scheduling disaster.

MR. RAPHAELSON: No worries, Your Honor. I told the Court I serve at the Court's pleasure. I meant it.

THE COURT: I appreciate that, sir. But I still don't like to inconvenience people.

MR. RANDALL JONES: Your Honor -- and I believe your clerk has this list, as well, but it's 355 --

THE COURT: To where?

MR. RANDALL JONES: I'm sorry?

THE COURT: What's the last number?

MR. RANDALL JONES: The last number through -- so 355 through 369A. I know we got through [inaudible].

THE COURT: This list goes all the way to 374.

MR. RANDALL JONES: That sounds right.

THE COURT: But my question is yesterday we talked about some that were portions of an exhibit that I was not going to let you parse because it was 200,000 pages, and so I told you you had to pull out the separate sheets --

MR. RANDALL JONES: That's right.

THE COURT: -- provide them to counsel last night --

MR. RANDALL JONES: We did.

THE COURT: -- and give me the numbers. And so you're telling me it's 354 through 374 are all those?

MR. RANDALL JONES: Yes, they are, Your Honor.

THE COURT: Because some of them don't appear to be from those documents. For instance, starting at 370 I have a different document description.

MR. RANDALL JONES: Court's indulgence, Your Honor.

I now understand what the confusion is. The -- what is it? So it'd be 374. I believe, and I'll have to verify this, it's either 370 or 371 through 374 are the unredacted versions of the exhibits used in Mr. Leven's original deposition that are a part of that overall exhibit.

THE COURT: Okay. So are there any objections to Proposed 354 through 374?

MR. BICE: Yes. There's -- we got these last night. I don't know whether they are part of this 200,000-page

purported exhibit or not.

THE COURT: That's Proposed 325.

MR. BICE: Yeah. Because we got them at -- about 9:00 o'clock we got these last night.

THE COURT: They didn't hit my aspirational goal of before 8:00, huh?

MR. BICE: I know. So we did not be able to check all these, Your Honor. But we aren't going to stipulate to their admission. They need to put a witness on, because what they're trying to do, Your Honor, is suggest that they gave us these redacted documents before the depositions. And --

THE COURT: So let me ask a question.

MR. BICE: -- let's see a witness who will testify to that.

THE COURT: Let me ask a question. There are some that are -- in the descriptors say, "to plaintiff's renewed motion," and then there are others that say, "Replacement." To the extent there are ones that say "to plaintiff's renewed motion," can you stipulate to those?

MR. BICE: To the extent that those are the real exhibits to our renewed motion?

THE COURT: Well, no. I just want to know if they are or not.

MR. BICE: Yeah. Our versions, Your Honor, were the redacted ones that they gave us.

THE COURT: Okay. So, for instance, let's look at Proposed Exhibit 355, everybody but me.

MR. BICE: Okay.

THE COURT: Is Proposed 355 what was attached as Exhibit 9 to your renewed motion for sanctions?

MR. BICE: No, it is not.

THE COURT: Okay. So, Mr. Jones, I seem to have an issue.

MR. RANDALL JONES: Well, Your Honor, the only issue you have -- we never said that these were documents they had a particular point in time.

THE COURT: That's not what I asked. What is asked Mr. Bice was very simple, was Proposed Exhibit 355 Exhibit 9 to plaintiff's renewed motion. And he said no. You told me yesterday these were all documents that were attached to their renewed motion.

MR. RANDALL JONES: I guess it would be a semantic point there, Your Honor. Those were all the unredacted documents to their motion for sanctions.

THE COURT: Okay.

MR. RANDALL JONES: We have -- so, to be clear, and I certainly would -- did not intend to imply this, what I was trying to convey to the Court is we have since Mr. Leven's deposition and since that motion provided them with the unredacted versions of those documents, which they've had well

before, months and months before this hearing. Or in some cases months and months before.

THE COURT: That may be true. But remember, this is an evidentiary hearing, so I have to have evidence related to that issue.

So let me go back. Yesterday you told me that you wanted to admit certain documents that were attached to the plaintiff's renewed motion, and I said that shouldn't be an issue. You said they were within this 200,000-page range. Do you still want to admit the actual documents that were attached to plaintiff's renewed motion?

MR. RANDALL JONES: I do.

THE COURT: Which ones are they of this list?

MR. RANDALL JONES: They're every one that is not with an A. I'm sorry. They're the ones --

THE COURT: Well, but Mr. Bice just looked at 355 and he said it's not Exhibit 9 to his renewed motion.

MR. RANDALL JONES: I'm sorry. It's all the ones without the A. We did it in reverse. I'm sorry. It's been a long night, Judge.

THE COURT: I can understand.

MR. RANDALL JONES: With the A is the version that was attached to the motion.

THE COURT: Okay. So let me try again. Let's look at 358, which has as its descriptor "Exhibit 12 to plaintiff's

renewed motion."

Mr. Bice, is Proposed 358 Exhibit 12 to plaintiff's renewed motion?

MR. BICE: It is.

THE COURT: Do you stipulate to that one?

MR. BICE: Yes.

THE COURT: Okay. How about Proposed 359? Is that Exhibit 13 to plaintiff's renewed motion?

MR. BICE: It is.

THE COURT: Okay. Do you stipulate to that one?

MR. BICE: Yes.

THE COURT: How about 360? Is that proposed exhibit Exhibit 14 to your plaintiff's renewed motion?

MR. BICE: It is not.

THE COURT: Okay. So I have some that are, and some that aren't. 9 wasn't, 14 wasn't. How long will it take somebody to figure out which ones of the proposed exhibits that don't have an A are really the copies that were attached to the motion?

MR. RANDALL JONES: Well, Your Honor, any one that is listed as an exhibit to the motion, I took them out of the motion. So I can't understand why --

THE COURT: But Mr. Bice is telling me they're not the same.

MR. SMITH: With a couple exceptions to -- and we

should also probably check with 359 and 358. Some of the exhibits to our actual motion were longer. And I don't remember if these particular documents were the entire exhibit or just portions of them. I know the defendant only identified portions of some exhibits, not the full exhibit.

MR. RANDALL JONES: Well, Your Honor, I guess if there's an issue here -- what they may be talking about -- I don't -- if there are other pages to it, I have no problem incorporating the entire document. That was not the intent.

THE COURT: Okay.

MR. RANDALL JONES: There's certain pages I was going to use in my PowerPoint. So if they want the whole document, I have no problem with that.

THE COURT: For those documents that are actual copies, identical to what was marked as an exhibit to plaintiff's renewed motion for sanctions, I will admit those in their entirety if you want me to. But I need somebody to go through this list and identify which ones match, which ones are incomplete, and which ones just don't match.

MR. PISANELLI: I assume they're going to do that. It's their proposed exhibits.

THE COURT: You know, you've told me you object, so it shifts back to them.

MR. RANDALL JONES: Understood, Your Honor.

THE COURT: Okay. So the A-s are a different issue.

The A-s are documents that were not attached to plaintiff's renewed motion, but were produced in discovery at some point in time. Is that what you're telling, Mr. Jones?

MR. RANDALL JONES: That is true.

THE COURT: What is your evidentiary basis for that?

MR. RANDALL JONES: The same evidentiary basis that the plaintiffs used when they were able to get their documents that they wanted to be admitted into evidence where they said -- and I would not agree to stipulate to the admission of those, and this Court said, I'm going to admit them even without the stipulation. Where I offered the stipulation and said, if they will stipulate to our documents that have been produced in the case I would be happy to stipulate to theirs. And they refused to do so, and this Court admitted every one of their documents.

THE COURT: I did not admit every one of the documents.

MR. RANDALL JONES: Every one of the --

THE COURT: I did documents that had a foundation that had been laid.

MR. RANDALL JONES: What foundation had they laid, Your Honor? They had no witnesses --

THE COURT: I had witnesses who testified yesterday, the day before, and the day before that.

MR. RANDALL JONES: They had no witness -- no. I

would like to know who the witnesses were that laid the foundation for the admission of their documents. They didn't put any of the people that were on the emails on the witness stand to authenticate any of those documents.

MR. BICE: He's absolutely right on that, Your Honor. He -- we didn't have a witness to authenticate them, because they redacted all of the names from all the emails. What you did, Your Honor, is you correctly observed that we were offering those documents to demonstrate that they couldn't be -- it's impossible to authenticate them, it's impossible to admit them.

THE COURT: Well, and based on the testimony that I heard from the witnesses who were involved they couldn't identify.

MR. BICE: Exactly. So that was the basis for the admission.

MR. RANDALL JONES: Your Honor, if I may respond.

THE COURT: There were others that there was actually a foundation laid for.

MR. BICE: Yes.

MR. RANDALL JONES: Actually -- well, there's certain -- some documents they had a foundation.

THE COURT: Yes.

MR. RANDALL JONES: Which I didn't object to foundation. When they --

THE COURT: Mr. Jones, what you're going to have to do, and I've been waiting for you to do this this whole hearing, is have someone, and I thought it was going to be your ESI guy, testify about the matching process that occurred where the hash codes did not match but they matched a document that was in the U.S. And I don't know who's going to tell me about that so I can then link up the substituted documents and figure out exactly how many documents that were produced in a redacted form have not been matched to a document that was in the U.S.

MR. RANDALL JONES: First of all, Your Honor, I believe Mr. Ray did testify about the matching process. He didn't testify about a particular document, I agree with that.

THE COURT: That's correct.

MR. RANDALL JONES: And so I guess had I been made aware that Mr. Bice would not need to lay a foundation for his emails that he got in -- and I would also make a point to the Court that is not true about certain people are not -- that there's no people on those documents. Mr. Adelson is on those documents, Mr. Leven is on those documents, Mr. Goldstein and Mr. Kaye are on those documents. And he got many --

THE COURT: Mr. Leven testified by deposition that he couldn't tell anything about the documents that he reviewed in his deposition. And we admitted, what, three of them.

MR. RANDALL JONES: And yet, Your Honor -- that's a

perfect example. Those are examples of exhibits they got into evidence where the only foundation they purportedly laid was to play the testimony of Mr. Leven, who clearly said, I don't know what those documents are. Yet in spite of that testimony you said those documents come in. So based upon the Court's prior ruling --

THE COURT: Here's part of why they are coming in for purposes of this evidentiary hearing and coming in from plaintiff. They are documents that were undisputedly produced by your client as part of the discovery process in this case. They are the documents that are subject to redaction, at least many of them. They are the documents to which I have to make a determination as to whether there has been prejudice to the plaintiffs and, if I make the determination there has in fact been prejudice to the plaintiff, whether there was a wilful violation or whether you guys had plenty of excuses to do what did. I'm still waiting for the evidence that gets me there. You may be able to show me they're not prejudiced at all because every single one of those documents or 85 percent of those documents were produced by Las Vegas Sands in an unredacted form. But I don't have that information. It's evidence that I need, not argument of counsel. That's why I'm waiting for evidence. They can give me documents that you produced in the litigation because you produced it, it has your Bates number on it, and you redacted it through a process

that none of us had -- none of the lawyers in the room had any control over.

MR. RANDALL JONES: Your Honor, there's no dispute, as far as I'm aware, and there's certainly been nothing filed by the other side to indicate that the production of the unredacted documents was not part of our production. They have those documents.

THE COURT: It was not --

MR. RANDALL JONES: There's no dispute that we produced the unredacted documents that they have. So on that basis, Your Honor, we're here certainly -- and I would also make this additional point. You're right. This is a sanctions hearing against my client. There is evidence that this Court can consider to show that in fact my client has at a bare minimum mitigated or substantially ameliorated any prejudice to them by producing the unredacted documents.

THE COURT: Who's going to testify to that evidence? That's the person I need. I asked you who your witnesses were, and I haven't heard anybody who might be that person.

MR. RANDALL JONES: Your Honor, the only person that could attest to that at this point in time would be counsel who would say, these documents were produced by our -- by my client. So, yeah, I could put up Mr. McGinn and say, yes --

MR. PEEK: Your Honor, those are my documents produced by LVSC.

THE COURT: Well, see, and that's part of the concern I have, Mr. Peek, from the description that was provided to me by the ESI group who came and testified. He talked about a process. He didn't give me a single specific. And so what I'm trying to identify is whether there is in fact prejudice or not other than going through this process, whether there still exists a prejudice.

MR. RANDALL JONES: Your Honor --

THE COURT: Because if in fact there has been a matching -- and I understand the matching process that occurred, but I don't know what the exact results of the matching were. Nobody's told me. Nobody's testified to it. I'm waiting to hear that testimony, because that will affect whether they are in fact prejudiced. And as I told you, they bear the burden of showing the prejudice. And then if you want to show there's been amelioration or mitigation, I am happy to listen to that evidence. But I have to have evidence, not argument of counsel.

MR. RANDALL JONES: Your Honor, again, I don't understand this process whereby the plaintiff does not have to lay the foundation for the -- and over my objection those exhibits were admitted. And --

THE COURT: You've admitted those are documents that you produced out of your production, and they are the subject of my hearing.

MR. RANDALL JONES: But, Judge, what -- that is not an evidentiary basis as I understand the law for admission of those documents. If I admitted --

THE COURT: At a sanctions hearing related to the particular documents it absolutely is. They bear your Bates number. You've told me today there is no dispute that you produced those documents. They have a dispute as to whether the documents that you have identified on the list that's been provided to me this morning, which is different than what you told me you were going to do last night, whether, for example, Proposed Exhibit 355A is in fact a document that was produced as part of this litigation. And the problem -- one of the problems is it bears the identical Bates number to Proposed 355. And I have never in my life seen that, where two different versions of a document bear the exact same Bates number.

MR. RANDALL JONES: Those documents have been replaced with an unredacted document, Your Honor. And Mr. Ray testified in detail about the matching process, how they got the hash codes, they took them back --

THE COURT: He did.

MR. RANDALL JONES: And then he testified about even when they couldn't find identical hash codes, he testified how they did the searches and they were able to find matches even where the hash codes did not coincide identically.

THE COURT: He did testify about that.

MR. RANDALL JONES: And we have examples of those. So at a bare --

THE COURT: I don't have a single, though, document that he told me here is a document we matched.

MR. RANDALL JONES: Well, Your Honor, because there's 267-odd thousand of them. There's no way any human being could say, I could sit here on the witness stand and tell you that this document was -- I remember seeing this document as a part of our production and I know this is a true and correct copy of one of the documents that we produced. Nobody can do that. So --

And, Your Honor, I'll tell you -- here's my problem. When you told Mr. Bice he could admit those documents, and you just told me that my argument is not evidence, yet when Mr. Bice says -- he gets up there apparently his position is he can say, well, they produced these documents to us and therefore they are automatically admitted, but when --

THE COURT: For purposes of an evidentiary hearing on sanctions related to those documents, yes.

MR. RANDALL JONES: And here -- Your Honor, my client is in a position where they are subject to sanctions. They're asking for $7.67 million in sanctions against my client. With respect to sanctions, by the way, the caselaw provides that in a sanctions hearing the rules of evidence

need to be flexible where you're dealing with these kinds of issues because of the due process concerns the Court should have in issuing sanctions. So at a minimum --

THE COURT: And if I was going to strike your answer, we'd be doing something a little bit different. But I wasn't considering striking your answer.

MR. RANDALL JONES: Well, even --

THE COURT: Or, I'm sorry --

MR. RANDALL JONES: -- with a lesser sanction -- Your Honor, $7.6 million is not an insignificant sanction, at least in my neighborhood. But in addition --

THE COURT: Remember I took a pay cut to become a judge, so mine, neither.

MR. RANDALL JONES: I understand, Your Honor. My point is that a substantial penalty under any circumstances. And I'd be happy to make -- to demonstrate to the Court -- to show the documents to the Court as an offer of proof. Because if you're going to -- if you're going to deny the admission of those documents, I need to at least present them to the Court.

THE COURT: Oh. They're proposed exhibits already. They're presented to the Court. My concern, though, Mr. Jones, is two. One, I don't have anybody who links the documents for me as evidence.

MR. RANDALL JONES: Other than Mr. Ray.

THE COURT: There may be a number of different

people who can do that, and I'm happy to listen to any of them.

The other concern I have is I am very concerned about the reuse of the Bates number. I've people who on redacted have put an R on it. I've had people when they produce it unredacted they give it an A. I've never had anybody just use the same number over because of the confusion that can potentially cause.

MR. RANDALL JONES: Your Honor, if we can have a five-minute recess, I'd like to talk to my colleagues, and then discuss this further.

THE COURT: Mr. Bice, you were going to give a filing today that related to the offer you made yesterday that I didn't take you up on. And I can't remember what the subject matter was. But I wrote down "brief from plaintiff."

MR. BICE: isn't it true what I said, Your Honor -- and if I misspoke or wasn't clear, I apologize. I think what I said was that after Raphaelson we would make a decision and tell you whether we intended to file any formal brief with you on this. Did I misunderstand what --

Oh. No. Mr. Smith -- Your Honor, I was just misunderstanding the issue.

THE COURT: Aren't you glad that you have associates who are competent?

MR. BICE: I'm glad I have somebody a lot smarter

than I am. Makes my life a lot easier.

This is just our offer of proof regarding Mr. Leven. These are the excerpts, Your Honor, that we would ask to file in open court and the exhibits that the Court said it would not consider because of [inaudible].

MR. PEEK: Do you have an extra one for me, Mr. Bice?

MR. BICE: Yes, I do, Mr. Peek and Mr. Morris both.

THE COURT: Mr. Peek --

MR. PEEK: Yes, Your Honor.

THE COURT: -- you indicated to me yesterday you wanted to review and then you might want to make a filing. So -- that's what you said yesterday. And I said, sure. So please let me know if you want to make a filing. I'm not going to read it right now because we're in the middle of doing a number of other things. I may read it while I'm sitting at the doctor's office this afternoon.

MR. PEEK: The only thing this is, Your Honor, this is not a briefing; this is just a Exhibit 1 when they excluded excerpts and associated exhibits for the deposition.

MR. BICE: Yes.

MR. PEEK: It's not briefing on it.

MR. BICE: It's not a brief, it's --

MR. PEEK: So I don't know how I -- other than -- I don't think I have any different objection than I had

yesterday, but I'll have to review this. But it's not a brief.

THE COURT: I know.

MR. BICE: I'll just represent to the Court it is -- and to Mr. Peek it is the transcript with the depo exhibits from that section that I had proffered and that she excluded with Mr. Jones's objection. That's all it is. There's no caselaw, no argument. It's just, here's the evidence that was excluded.

THE COURT: Because I told you to move on in playing the deposition yesterday.

MR. BICE: That is what --

MR. PEEK: I thought there was also, Your Honor, an inquiry of Mr. Bice as to whether he wanted to brief the issue of whether or not there was a privilege.

THE COURT: Yes. He told me he would answer that question after Mr. Raphaelson's rebuttal testimony.

MR. BICE: That is correct, Your Honor.

THE COURT: So I haven't gone to that question yet. I have a list. It's just apparently not very accurate.

All right. So Mr. --

MR. PEEK: Your Honor, I'm wondering -- I don't know whether -- and I guess I should talk to my colleagues, as well, is whether we could just get Mr. Raphaelson on and off so he doesn't have to sit here during the course of this

argument.

THE COURT: Well, here was my concern with that yesterday, and this is what I said.

MR. PEEK: That's why I'm wondering.

THE COURT: One of you said you wanted to call Ms. Spinelli, and one of you said you wanted to call Mark Jones. And then we had a nice little discussion about how professional and well mannered you all were, and you went home.

MR. BICE: Correct.

THE COURT: So my question is do you really want to do that, or have you --

MR. PEEK: I leave that up to these folks.

THE COURT: Okay. Well, I'm going to take a break while --

MR. PEEK: -- Mr. Jones on the one side and that group on the other side.

THE COURT: -- because I need the remainder of the live witnesses to testify so that I can make an appropriate determination as to the scope of rebuttal.

MR. PEEK: Okay.

MR. BICE: Thank you, Your Honor.

MR. PEEK: And we will --

THE COURT: People who were U.S. attorneys probably understand rebuttal much better than any of you civil lawyers.

(Court recessed at 9:25 a.m., until 9:37 a.m.)

THE COURT: All right. You said you could use my time wisely and productively.

MR. RANDALL JONES: Yes, Your Honor.

THE COURT: You can be seated, if you want.

MR. RANDALL JONES: One point with respect to the documents that we're trying to get into evidence and the manner --

THE COURT: And these are 355A and other related documents in that sequence with the A designations.

MR. RANDALL JONES: That's right.

THE COURT: Okay.

MR. RANDALL JONES: And, Your Honor, just so it's clear to the Court, I was not aware that the Bates number of the replacement documents was the same until I was preparing for this hearing. So I understand your point, and I would make this offer to the Court. To the extent that these exhibits are allowed into the record, not only with respect to the documents that we're talking about moving the admission of today, we would propose that we put a U next to those documents to indicate that they have been unredacted and that we would go back, obviously at our expense, and have our IT people do another run where we address this issue and assign a different Bates number to any unredacted document and provide that to opposing -- provide that to opposing counsel at the

earliest possible time.

THE COURT: Okay.

MR. RANDALL JONES: And that's just an offer. I understand that the Court -- I just wanted to tell the Court that I apologize for that situation. And, candidly, had I known about that beforehand I would have suggested that was not a good idea. But I was not --

THE COURT: All it does is it's create confusion is my concern.

MR. RANDALL JONES: Your Honor, trust me, when I found out about it I thought it was confusing myself. So I hear what the Court says, and I apologize to the Court and I apologize to counsel. That was not the best way to do that.

THE COURT: Okay. So we're going to try and fix that. And you've got a process going on that you're going to tell me about in bit after you've got some papers and a person, and we're going to deal with it.

MR. RANDALL JONES: Yeah. And I would have been able to have done that quicker, but, as fate would have it, our printer broke yesterday, and they were trying to get part, so -- otherwise I could print it out here in the courtroom, and we could speed this process along. So it's been -- it's been one of those mornings, Your Honor.

THE COURT: I understand. And, next, you said there was something you could do to use my time productively.

MR. RANDALL JONES: Yes. With respect to Exhibit 350, which was the Okada discovery response, or at least as Ms. Spinelli acknowledged -- well, I don't want to put words in her mouth, but I think she said words to the effect that this was not a complete document.

THE COURT: That was correct.

MR. RANDALL JONES: That it was not the entire production. Your Honor, in the evening hours looking into this -- and Mr. Morris has actually been helpful to me, because I was somewhat preoccupied getting ready for this morning and closing, and we were talking and looking at this issue, and he reminds of the common-law rule of completeness, which provides that first of all interrogatories and requests for production responses are not -- they are not evidence per se in terms of a separate document, and that under the common-law rule of completeness they stand alone. Each answer is as if it's its own document, and each -- or excuse me, each request is its own document and each answer is its own document. So what we did --

THE COURT: Along with anything that is referenced as an attachment related to that and any objection related to that if the Court needs to rule on those.

MR. RANDALL JONES: Agreed. And so --

THE COURT: So I usually have a caption page, an interrogatory, an answer, and a verification page.

MR. RANDALL JONES: And that's precisely -- and I could make an offer of proof, but that is precisely what I -- these interrogatories -- excuse me, these --

THE COURT: I haven't looked at them, because they're not admitted.

MR. RANDALL JONES: I know. I know. That's why I'm talking about an offer of proof. And I understand the issues with an offer of proof. But because they are voluminous -- and I have not seen the rest of the document, but my understanding is that they are voluminous, there's several hundred RFPs, that the only RFPs that are being offered to the Court were the ones we thought were relevant to this issue that had to do specifically to an objection to the Macau -- or based upon the Macau Data Privacy Act, which is complete. There's nothing deleted, and I'm happy to have counsel confirm that. I don't need to have them do it on the witness stand.

THE COURT: Well, can I ask a question. Are they general objections, or are they specific objections to a particular request?

MR. RANDALL JONES: No. They're particular to a particular request.

THE COURT: Okay. Because I've seen it other ways, and then I --

MR. RANDALL JONES: Sure.

THE COURT: -- have other issues that happen.

MR. RANDALL JONES: And if it was that -- if it was that format, Your Honor, I very, very likely would not even have offered them to the Court. But they are specific to a particular request for particular documents, and they're -- this is -- and I'll just be candid, it's one of several objections made to the interrogatory or the RFP, but it is we believe, as I already pointed out to the Court, relevant, and I think the Court has already found based upon my representation to the Court that a would be relevant. So the only thing I'm suggesting is -- let me -- I don't want to put words in the Court's mouth. They could be relevant.

So what we have, if I made the offer of proof, is the caption page, so the first page; we have a particular RFP and the following answer to that RFP in total, including all other related objections; and then we -- at the very end we have the electronic verification of the responses.

THE COURT: Okay.

MR. RANDALL JONES: So that would be my offer of proof. And again, I would certainly like to avoid having to put --

THE COURT: Well, yesterday Ms. Spinelli indicated it wasn't complete.

MR. RANDALL JONES: And I don't disagree with that from what I --

THE COURT: And I don't know whether it's complete

or not, because I haven't looked at it, and I haven't looked at any discovery in that case. At least I don't think I've looked at -- I haven't looked at any discovery in that case recently. So, you know, I took her at her word when she said it was incomplete. If you have a different format that you want to deal with, we can talk about it. But my concern was I need a foundation laid for it, since it's not a document that's in my court file. The only way I can find a foundation is one lawyer or the other lawyer.

MR. RANDALL JONES: And, Your Honor, and since Ms. Spinelli is the one that signed for them, I thought -- and again, this is a hotly contested issue, but I have no desire to put a lawyer on the witness stand, but I thought she would be the most appropriate of the lawyers, since it was her responses, and Mr. Peek could only testify that he saw the responses. And she could confirm that that is the complete response to a particular RFP. And, you know, rather than put somebody on the witness stand, I don't believe -- and I could be wrong, certainly -- that there is any dispute that if asked Ms. Spinelli would I believe confirm that that is a full request that I'm presenting to the Court of a particular request and the full response, including the objection based upon the MPDPA. And there are I think three different requests within that document that we thought were relevant to this inquiry, and those are the only three that I would want

to put up. And so again my offer of proof to the Court is we are offering the caption page of the responses from Pisanelli Bice, the specific RFPs that were related the Macau Data Privacy Act with the corresponding full answer, and the last page with Ms. Spinelli's electronic signature. So that would be my offer, Your Honor.

THE COURT: And when you say full answer, does that include the objections related to the full answer?

MR. RANDALL JONES: Correct. That's exactly -- everything that I understand they said in that response to that RFP is contained in that document.

THE COURT: So what you're seeking to do is to excise those requests for production of documents to which the response doesn't deal with the MDPA issues.

MR. RANDALL JONES: Correct. I felt it was -- I don't even have access.

THE COURT: I'm just trying to make your record clear as to what it is you're trying to do so that -- I have already made a determination that I'm not going to exclude it based on relevance. The question has been other issues now and foundation issues, and I haven't seen it, so I don't know.

MR. RANDALL JONES: Sure.

THE COURT: But maybe you could show a copy of whatever it is that you're trying to admit at this point to the other side so they can see if it appears to be a true and

accurate portion of those portions that relate to the objection that referenced the MDPA.

MR. RANDALL JONES: Be happy to do so.

THE COURT: And you don't have to stipulate. I'm not going to ask you to stipulate, because you've already objected. All I'm going to ask is does it appear to accurately represent what he described. Otherwise I have to ask Ms. Spinelli again.

MR. PISANELLI: Well, Your Honor, may I be heard on this point?

THE COURT: Yes. But first will you look at it and see if it appears to accurately reflect what we just talked about.

MR. BICE: I'll let him address that while I'm looking at the document.

THE COURT: Okay.

MR. PISANELLI: So this is a troubling issue from several different perspectives. They have a Club Vista problem, we have a foundational problem, and we have a relevance problem.

(Pause in the proceedings)

MR. PISANELLI: So the problems with this exercise I think is at least threefold. I'll repeat it because of the record. We have what I believe is a Club Vista problem, we have a foundational problem, then we have a relevance problem.

Starting at the end, and I'm not going to dwell on that point, but Your Honor heard comment and argument from counsel yesterday about trying to get evidence in that you rejected when they said, we wanted to show you why it was appropriate for us to assert the PDPA. And Your Honor correctly interrupted and said, this isn't a hearing about whether you were entitled or should have asserted the PDPA, I already told your client they could not, this hearing is about the appropriate sanction for violating my order. I think that is the crux to the relevance issue. Since we don't have a parallel situation in the Okada matter, this cannot have any connection or relevance. All it can go to is the issue you rejected, as to whether it was appropriate for them to assert the PDPA in response to a request for production document.

THE COURT: I think it goes to the issue of the challenges they face in Macau and whether it is a wilful violation or whether in balancing their interests they had other things. So I think it is -- and that's one of the reasons I'm going to permit to it to be used if they can satisfy me that it is a true and accurate copy of what was used. It may not have much weight to me because of the status of this case compared to the others, but they're trying to show me that another casino recognizes that there are issues related to the MPDA [sic] and the regulatory and licensing issues related to that.

MR. PISANELLI: But since we are in a sanction hearing, it also appears to me that this becomes a Pandora's box. Because there is an inference they want to draw from the fact that the assertion of the PDPA occurred in another case, which -- and hoping to get you to the conclusion that their behavior was in good faith and reasonable. And the rebuttal that now is required from us is to show the distinguishing characteristics between the cases, that Wynn didn't ever lie to you, Wynn didn't ever get sanctioned, Wynn didn't ever get denied the ability to assert the PDPA as a reason why it could or should not have to produce particular documents.

THE COURT: That part I know, because those are proceedings that have occurred in front of me in my court. So that part I know. In fact, I raised those issues when we originally had this discussion as to why it is a distinguishing issue. And so I understand what you're saying, which is why I said the weight may not be very much with me but for purposes of whether you're going to go for review I think it is important that it be considered by me for whatever purpose is appropriate.

MR. PISANELLI: On this concept of rebuttal and this Pandora's box I appreciate that Your Honor recognizes that you know the distinguishing characteristics and that there is only one party in this mix -- or parties, the defendants here, that have violated your orders. So can we assume, then, when you

say that you are aware of those characteristics, that you will take judicial notice of the distinguishing characteristics between these two cases that Wynn at the beginning of the discovery process, who asserted the PDPA as an objection, is not in the same or even nearly similar circumstances as the group of defendants here that have openly and knowingly continually on a day-to-day basis violated your orders.

THE COURT: What I think I will take judicial notice of is that I have not even been asked to do a motion to compel related to those responses related to Wynn. As a result of not even being asked to do a motion to compel, there has, of course, been no sanction hearing --

MR. PISANELLI: Okay.

THE COURT: -- or any other hearing related to the assertion of the Wynn's ability to use the MDPA. Not that I know what I'll do when I hear that, because I haven't heard anything related to that because they were served in December, Ms. Spinelli, and Mr. Peek has yet to file a motion to compel if he thinks a motion to compel may be appropriate. So that case is procedurally very different than this one, and I can take judicial notice of those things that have occurred in front of me, which is no one has yet filed a motion to compel related to those documents, so I haven't had to address it.

MR. PISANELLI: Okay. So now let me go back to the beginning of the analysis. It's who should be called upon to

establish the foundation or the authenticity of these documents.

MR. BICE: Your Honor, I want to answer your question before he does that just that you know. The assertion that these are all stand-alone responses and objections is incorrect on its face. They specifically incorporate and cite other provisions or --

THE COURT: If they do that, we have to include the ones they cite.

MR. BICE: I mean, there's dozens of them that are cited.

THE COURT: Okay.

MR. PISANELLI: And so here's the other problem. We have Mr. Peek, apparently -- and he'll correct me if I'm wrong --

THE COURT: I don't know. Believe me, he'll argue with you if he thinks it's fun.

MR. PISANELLI: Fair enough.

-- the presumed recipient of this document, and he's volunteered to testify to matters that will benefit his client, but apparently doesn't have the same courage to come up and take this as his responsibility, since he apparently is the one that shifted it from one case to the other.

The troubling aspect of this is this. We have by the recipient, this group of defendants, an apparent violation

of the merits incentives decision from the Supreme Court of what are the ethical obligations of a party that receives discovery from a source outside of the case and outside of the discovery process. That case dealt with both the allegation of stolen documents, not at issue here, and the allegation -- or the circumstances of documents coming in voluntarily from a source outside the discovery process. Our Supreme Court set forth ethical obligations of what lawyers are supposed to do. That has now been triggered by what's occurred here. From the delivering parties' perspective we have a State Bar of Nevada Standing Committee on Ethics and Professional Responsibility that touches upon the confidential nature of the documents that were taken out of the Okada case and whether they could or should, whether there was consent required or not. And we don't know the extent of those ethical violations. Those will have to be addressed inside the Okada case.

And so now with what we have as at a minimum troubling circumstances from what we can see, we have the defendants saying, let me put --

THE COURT: Are the -- hold on a second.

MR. PISANELLI: Yes.

THE COURT: Are you saying that the responses to requests for production, not the documents produced, but the responses to the requests for production were designated as confidential?

MR. PISANELLI: They are not designated in that case as confidential.

THE COURT: I understand. But, remember, we had a special confidentiality order in that case --

MR. PISANELLI: Oh, yes. We've studied it.

THE COURT: -- that is different than the confidentiality order you have in this case.

MR. PISANELLI: That's exactly correct. And I --

THE COURT: So I'm trying to determine, because there's a lot of different things that are moving around --

MR. PISANELLI: Sure.

THE COURT: -- at the moment.

MR. PISANELLI: Sure. That is a fair question, and it is something that I looked at last night. And I will not represent to you as I sit here today that the response itself was designated as confidential, but I will tell you in drawing upon Formal Opinion Number 41 from the Standing Committee of Ethics and Professional Responsibility clearly it is a non-public confidential document as the State Bar in this opinion defines such. As I said, that's an issue for another day.

But we get to the troubling part is when we have these issues that I've just described and a party now wants to call someone else's lawyer, the lawyer of record in both cases, to help consummate what appears to be an inappropriate sharing of discovery from one case to the other. And, quite

frankly, Your Honor, and I mean this with all due respect, I think allowing them to put Ms. Spinelli on the stand puts her in an untenable and unfair position to have to --

THE COURT: That was why I was the one who asked the questions, because I only wanted to know if it was a true and correct copy, and I didn't want anybody to go into any substance at all.

MR. PISANELLI: I understand that. Since we have Mr. Peek, the person who can presumably say, yes, this is what I received from the Wynn, and we have Mr. Peek who is in the heart of this troubling behavior, and we have Mr. Peek who has agreed to take the stand for his client's own benefit, clearly if Your Honor is going to allow any form of foundation to be established -- and I would point out there's a difference between authenticating the document and establishing a foundation for it. But if he's so willing to take the stand for other documents that will benefit his client, he surely should be obligated to take the stand to try and establish the foundation for these one and not allow these defendants in what we believe would be a violation of Club Vista to call upon trial counsel in this case to help them get records inside. That is a position that is unfair and untenable.

THE COURT: All right. Mr. Bice has correctly noted that there is a missing cross-reference of --

MR. RANDALL JONES: I disagree with that, Your

Honor. And maybe I can make this simpler.

THE COURT: Okay.

MR. RANDALL JONES: We have filed a bench brief with the Court. It was filed on Tuesday. So this information is before the Court. I have a copy, electronic copy filed with the Court. The Court can see for itself. I went and looked -- after Mr. Bice said that, I went and read and read again. And so maybe he and I just have a different understanding about other information, it makes reference to other objections that are not related to the Macau Data Privacy Act, it makes reference to other laws that -- including other laws from China or Macau --

THE COURT: Is it okay with you guys if I look at simply for the purpose of determining whether it appears to me to be complete?

MR. RANDALL JONES: I certainly have no objection, Your Honor. I think it's appropriate for you to do so. And you have it. By the way, it's a part of the Court's record that you have as our bench memorandum to the Court with respect to this very issue. So we've asked the Court to look at the document.

THE COURT: Is this the nine-page brief you filed on February 11th?

MR. RANDALL JONES: It is a --

MR. BICE: Just so we're clear --

THE COURT: Hold on a second.

MR. BICE: I apologize, Your Honor.

THE COURT: Let me get an answer to my question.

MR. RANDALL JONES: It is a six-page brief that was filed on the 9th of February. And I have a copy, if the Court would like.

THE COURT: Hold on a second.

MR. BICE: So Mr. -- just so that the record --

THE COURT: Hold on a second, please.

MR. BICE: Oh. I apologize.

MR. RANDALL JONES: Your Honor, I could tell you the name.

THE COURT: Wait.

MR. RANDALL JONES: It was filed at 8:17 a.m. on the 9th.

THE COURT: I don't have a nine-page brief. I have about a twelve-page brief and I have a six-page brief.

MR. RANDALL JONES: Six pages. It's six pages, Your Honor.

THE COURT: Okay.

MR. RANDALL JONES: It's -- Memorandum of Sands China Limited Regarding Exhibit 350 is the title of the document.

THE COURT: Nope.

MR. RANDALL JONES: I have -- I have the --

MR. PISANELLI: So, Your Honor, even if it were there --

Excuse me, Counsel.

Even if it were there, if I'm reading between the lines, what the argument that was just made to you is this. we took a non-public document from another case that we have and appropriately disclosed how we got it, we made it public, so what's the difference, let us continue on this inappropriate path since we put it in the record anyway, whether it be a violation of counsel's duties from the Okada case or violation of counsel's duties in this case, I already made a non-public document public anyway so let's just make it easy and leave it in the record. That's what I just heard.

MR. RANDALL JONES: I disagree that that's in any shape -- way, shape, or form what I said, Your Honor. I do have the electronically file-stamped copy, if the Court would like to see it.

MR. BICE: I also need to Court to [inaudible] because I just didn't realize this, either, is there are actually other objections that are provided in the front of the interrogatories at the commencement, and none of those are included in these, either.

MR. PISANELLI: They're more generalized?

MR. BICE: Yeah. None of it's included.

THE COURT: Well, that was why I asked the question

about the general objections.

MR. RANDALL JONES: And, Your Honor, again, the relevant objection is to the Macau Data Privacy Act, and the objection to the specific request to produce --

THE COURT: But, Mr. Jones, I have to have a complete item that stands on its own. And if it's cross-referencing others, it would be better -- and I understand that you're not comfortable with that, but if I'm going to take it, I want one that includes the cross-references.

MR. RANDALL JONES: Your Honor, again, the only thing I could tell you is that I don't see -- maybe I'm misunderstanding how Mr. Bice is referring to cross-references, but I don't see any cross-references.

THE COURT: At what time do you think it was filed on February 9th?

MR. RANDALL JONES: According to this document, it was filed at 8:17:51 in the morning.

THE COURT: Does that include documents from Federal Court?

MR. PEEK: I think it does.

THE COURT: Because I was just going through the one that was filed at 8:17, and it had --

MR. RANDALL JONES: Yes, it does include documents from Federal Court.

THE COURT: -- it has articles, it has documents

from Federal Court --

MR. RANDALL JONES: Yes, it does include articles an documents from Federal Court, yes, as part of the exhibits.

THE COURT: Okay.

MR. RANDALL JONES: That is the document, Your Honor. And, Your Honor, I -- well, if you're reading I don't want to interrupt you.

THE COURT: And you're referring specifically to Request for Production Number 89?

MR. RANDALL JONES: That is one of the requests that we're --

THE COURT: Okay. Hold on.

MR. RANDALL JONES: Yes.

MR. PISANELLI: Your Honor, when you get a moment, I have another challenge that we face here.

(Pause in the proceedings)

THE COURT: Okay. So in reading this it skips in Exhibit A to the brief you've referred to from page 1, which is the caption page, to the page bearing the number 14.

MR. RANDALL JONES: That's correct, Your Honor.

THE COURT: That particular request appears -- the response appears to stand on its own, from my reading of it.

Then you have number 224, which is page 150.

MR. RANDALL JONES: That is correct, Your Honor.

THE COURT: So you skipped from page 15 to 150.

That request also appears to stand on its own.

MR. BICE: Your Honor, the -- I don't want to interrupt the Court.

THE COURT: Hold on. Let me keep reading.

(Pause in the proceedings)

THE COURT: Then we're on page 161.

MR. RANDALL JONES: That is correct.

MR. BICE: Your Honor, the request --

THE COURT: Okay. It was dated December 8th, 2014.

MR. BICE: The request doesn't stand on its own. The last objection to each one of these is -- talks about the fact that it is "duplicative of other requests to which have already been propounded and to which Wynn Resorts has already responded in this action." And we give the -- see which ones. Number 1s and Number 51. Then it goes on to say, "It is duplicative and/or overlaps with multiple other requests," lists them, which, of course, there are objections to and responses to those.

THE COURT: Okay. What page and line are you on?

MR. BICE: I'm on page 15, lines --

THE COURT: Hold on. Let me go back to page 15.

MR. BICE: Line 13, 14, and 15.

THE COURT: Okay. No. It stands on its own, Mr. Bice.

MR. BICE: And the general objections --

THE COURT: The general objections need to be included. MR. PISANELLI: So, Your Honor, the other point I wanted to make that I think it's important to the Court to know in addition to Formal Opinion Number 41 that I referenced is another reason why Mr. Peek should be called upon to lay the foundation himself here is I think he should be obligated to be forthright with this Court about the communications that occurred in the Okada case about limiting the distribution of non-public documents in an email communication that he agreed to and even thanked Ms. Spinelli for catching the point. Distribution lists were limited, and law firms were taken off the distribution lists because all parties agreed that non-public documents should not be openly distributed amongst these other parties. Yet here we are with a person to that agreement coming in and doing the exact opposite. And that's why he should be the one on the stand to somehow establish how and under what circumstances he thought this was appropriate and not an ethical violation in that case.

THE COURT: And if you think something needs to happen with that, it needs to happen in the Wynn-Okada case where that agreement exists.

MR. PISANELLI: Well, I bring these up not for any sanctions here, but for --

THE COURT: I understand.

MR. PISANELLI: -- further reason why he should

authenticate his own document that he has pilfered from one case to put inside of this one.

THE COURT: Okay. So this document, which is Proposed 350, remains incomplete.

MR. RANDALL JONES: Your Honor, just to be clear, it's my understanding it remains incomplete because it does not contain the general objections that appear I guess at the beginning of this response that apply to all responses.

THE COURT: That appears to be correct.

MR. RANDALL JONES: I just want to make sure I --

THE COURT: And I don't know how long those are, but they would start on 2 and end somewhere before 14, I would guess.

MR. RANDALL JONES: I understand.

THE COURT: So you can try again after you get that part. And I guess Mr. Peek will have to do that.

MR. RANDALL JONES: Your Honor, again -- and at the moment I do not have any additional documentation to offer the Court, so I don't have any further -- anyplace to go with that at this point in time, but I understand your ruling.

And with respect to the introduction or the attempt to introduce the remaining exhibits from the defendant Sands China, were waiting for those documents to arrive from Mr. Morris and Ms. Solis-Rainey's office, which I understand are on the way.

And with respect to --

THE COURT: From across the street.

MR. RANDALL JONES: From across the street, yes.

MS. SOLIS-RAINEY: They're walking over.

THE COURT: They're walking over. Thank you, Rosa.

MR. RANDALL JONES: And other than that, I'm not sure that we have on our side any other housekeeping matters to be addressed, unless Mark Jones maybe does.

THE COURT: I'm still listening. What else?

MR. MARK JONES: Your Honor, during the second day of David Fleming's testimony there was a discussion as to paragraph 9 of his August 21, 2012, affidavit. And in that -- and I'm looking at page 222 and 223 of the transcript of our proceedings, and that was where he had discussed a subordinate lawyer in his office that had also had some involvement with the OPDP. He was reluctant to give that name. He asked that -- or he said he would try to get a consent. And I just wanted to pass on -- you had given us 10 days to provide that consent for your consideration, but I just wanted to say we have not received that consent yet. But he -- I understand that -- or that the consent has been given, and wanted to tell the Court that that name is Graca Serava [phonetic] and that is spelled G-R-A-C-A.

THE COURT: He'd already given me that name.

MR. MARK JONES: He gave that name to you

previously.

THE COURT: Somebody gave me that name, because I have "Graca" written down. I couldn't spell the last name.

MR. PEEK: Mr. Raphaelson testified to Graca, Your Honor.

MR. RANDALL JONES: Right. I think it was [inaudible].

THE COURT: Yes. Before Exhibit 98 Graca and Fleming met with the OPDP regarding this case.

MR. MARK JONES: I just wanted to let the Court know --

THE COURT: So that's the individual Mr. Fleming was talking about.

MR. MARK JONES: That is -- that is correct on those pages of the transcript.

THE COURT: Thank you.

MR. MARK JONES: Thank you.

MR. RANDALL JONES: Your Honor, I don't know if you got the spelling of the last name, but we will get the written consent to the Court as soon as we get it.

THE COURT: Okay.

MR. PEEK: Your Honor, you inquired of me yesterday, too, about a production from the Jacobs -- I'll call it the Kostrinsky collection of the Jacobs documents.

THE COURT: Let's call it the transferred data,

because that's how I defined in what's now Exhibit 98. And if we use the same definition, we'd probably all be better off.

MR. PEEK: You asked me that question, because --

THE COURT: I did.

MR. PEEK: -- I remember the testimony of Mr. Ray. And so what I have been able to determine is that in fact in the fall of 2012, using search terms that we have identified previously, and I think that became an exhibit of Mr. Bice's through the email exchange between Ms. Spinelli and the Munger Tolles & Olson, that in fact those search terms were run against the transferred data of Jacobs, and documents from that were produced.

THE COURT: Mr. Ray specifically told me that was sequestered and they didn't do it. So I need a witness. I'm happy to take you at your word, but given --

MR. PEEK: You asked me the question, Your Honor, and so I --

THE COURT: I understand. But I've got Mr. Ray telling me that they didn't, and so in order for me to pull these things together so I have the evidence together I need a witness. Sorry.

MR. PEEK: That's fine, Your Honor.

THE COURT: Thank you for following up. Now you --

MR. PEEK: You asked me the question --

THE COURT: I did.

MR. PEEK: -- and so I'm answering the question. And obviously the reason --

THE COURT: I'm not going to make you rest until you figure out how you're going to address that issue.

MR. PEEK: Obviously the reason why Mr. Ray wasn't -- didn't do it is because it had already been done.

THE COURT: I don't know. He told me he didn't do it.

MR. PEEK: I understand that, that he said that.

MR. PISANELLI: As a matter of fact, he said was told not to do it.

THE COURT: It was sequestered data is what he said.

MR. PISANELLI: That's right. Not that it had been completed already.

THE COURT: So if you want to -- I'm not asking you to rest yet. You've noticed I've not asked the defendants if they rest.

MR. PEEK: I understand you have not asked us to rest yet, Your Honor. So I'm just trying to think of whether I call somebody from Munger Tolles & Olson who performed that or somebody else. But we'll figure that out.

THE COURT: Okay. So I -- you're waiting for some documents that are on their way over. It takes them longer to get up the elevator than it does to walk up the street -- or walk across the street. So as soon as those get here and

you're able to distribute what you have and identify whether it is something that needs to be marked as a separate exhibit or something that is going to require testimony related to it, let me know, and I'll come back in. In the meantime it doesn't sound like there's anything we can do productively. And it's 10:15, and I've been trying all morning to be --

MR. PEEK: So we still -- we still can't put Mr. Raphaelson on for that limited purpose of --

THE COURT: Well, the problem is I've been told he's a rebuttal witness. And the rebuttal information that I was told that he was going to testify to or be inquired about dealt with the O'Myer & Melveny [sic], something else that Mr. Fleming said, and I'm still not entirely sure I understand what that was, but Mr. Bice remembers what he --

MR. PEEK: I think you told Mr. Bice that he's already responded to that in his direct.

THE COURT: Well, one of them he did, but Mr. Bice said he didn't think so and said he was going to try and convince me. And there may have been another area. My concern is I don't want to put anybody in the position where they have to come back a third time or a fourth time.

MR. PEEK: Well, the third one was the documents related to whether they -- certain documents were shown to witnesses in Macau by O'Melveny I think was the third one.

THE COURT: Well, but that was all part of the first

one.

MR. PEEK: Maybe I'm wrong. I don't want to speak for Mr. Bice, but I'd like to have the proffer so that I can understand it.

MR. BICE: Whether those documents also came to the United States and were shown to other people.

THE COURT: Well, okay. So --

MR. RANDALL JONES: Your Honor, maybe -- I don't know if this helps at all, and maybe it's something that counsel can't agree to, but if -- unless there's -- the only other thing we're trying to do in the record before we formally rest is put in these exhibits. And then we're done. And they know what these exhibits are. I understand they can test the admissibility of them. But if these exhibits don't have anything to do with their questions for Mr. Raphaelson, presumably they would know that by now.

THE COURT: Well, here's the reason I'm concerned. Last night as I'm getting ready to leave somebody says they're going to call Mark Jones to talk about his meetings with the OPDP. Those are the kinds of things I usually as a lawyer would want to happen before I had rebuttal. So if what you're telling me is that's not happening, okay.

MR. RANDALL JONES: Well, I don't know if they --

MR. PEEK: I thought Mr. Jones was rebuttal, as well, but maybe --

THE COURT: I don't know. Somebody told me earlier today Mr. Jones is going to testify about this list that was coming over. So I don't know what's happening. I'm just the Judge.

MR. RANDALL JONES: I understand your point, Your Honor. Again, I was just -- we've taken lots of witnesses out of order to some extent. But I understand your concern about rebuttal, and I'm fine with that.

MR. PEEK: And I am, too, Your Honor. I have a hard stop at 11:00 to go down to see Judge Allf to place on the record --

THE COURT: You're going to put your settlement on the record?

MR. PEEK: Put my settlement on the record. We've delayed it, Your Honor, because of this proceeding. But I've been delayed too much, so I --

THE COURT: You need to go put that settlement on the record so it doesn't go sideways.

MR. PEEK: It's just at 11:00 o'clock, Your Honor, just that hard stop.

THE COURT: Is the list here?

MR. RANDALL JONES: I think Rosa went out to try to find where it is. We've got the letter, and we're working -- we're waiting for the spreadsheet, Your Honor.

MR. PISANELLI: Your Honor, we're a little confused

here. What is that we're waiting for? What is the spreadsheet supposed to be?

THE COURT: Somebody is going to testify about the comparison in work that was done to generate the unredacted copies of the redacted versions that were here in Las Vegas and then produced.

MR. PISANELLI: May I ask -- I'm asking you and not counsel --

THE COURT: Yes. I know. You're being very nice and not arguing with them. Thank you.

MR. PISANELLI: Thank you.

What we'd like to know is if they're intending to show you the totality of redacted documents, which we have our number, and the amount of documents that were replaced, and we have our number. We think the sum total is around just under 10,000 documents that remained unredacted with no replacement. Is that what we're getting from them, those numbers?

THE COURT: I don't know. I'm looking for some foundation for the documents that have A-s next to them. I know that you have a number that's 9,460 or so, and they've got another number, and the numbers aren't the same. And somebody's going to someday do math and try and explain to me in argument why you think those numbers are different. But I don't have an evidentiary basis related to these documents that people want me to admit in unredacted form. And I don't

know how many were replaced. I had the process described to me by the ESI guru, but I do not know the specific identification of any documents that were in fact replaced. And I don't know which remain as redacted documents. I probably should, because I think he gave me a redaction log at one point in time. But I don't --

MR. RANDALL JONES: Your Honor, for the record --

THE COURT: -- remember, because it was like long.

MR. RANDALL JONES: I didn't want to -- I'm sorry to interrupt, Your Honor. The redaction logs, both the original one, the supplement, and the second supplement, all actually came into the record through stipulation by being introduced by Mr. Pisanelli, if you may recall.

THE COURT: Was that the really long document?

MR. RANDALL JONES: That's actually -- you made reference to the fact that the second supplement is even bigger than the original one because it is -- as Mr. Ray testified, he believed his best recollection it was the original documents and then the supplemental production.

THE COURT: It didn't appear to have the originals on, because I compared it.

MR. PISANELLI: Exactly.

MR. RANDALL JONES: Actually, you may be right, Your Honor.

THE COURT: There may be some in there, but they

weren't in an understandable way that I could just sort by number.

MR. RANDALL JONES: But that -- the purpose of a redaction log was to provide that information.

MR. PISANELLI: I can have before you as part of our rebuttal case, if it's helpful to you, a CD that has the totality as we understand it of every redacted document that pushes 10,000 and put them into the record if you want every single --

THE COURT: That's probably something you want to do.

MR. BICE: Let's do it.

THE COURT: Because there seems to be a dispute as to how many there are.

MR. PISANELLI: We'll give it to you. It'll take an hour or so. It's being processed right now.

MR. BICE: We'll get it.

MR. PEEK: And is that going to be by evidence of each and every document that was produced to them?

THE COURT: Well, but didn't you guys give them a CD? How did you produce the documents to them, Mr. Peek?

MR. PEEK: I guess I'm trying to understand what the Court is asking me. We gave them -- Sands China Limited gave them the documents that they produced to them over the course of 2013 and some even more recently. Las Vegas Sands --

THE COURT: Some on January 5th of this year, apparently.

MR. PEEK: Pardon?

THE COURT: Some on January 5th or so of this year.

MR. PEEK: That is correct. Las Vegas Sands, Your Honor, then looked at its collection and produced those replacement documents in an unredacted form. I don't know if that's what you're talking about.

THE COURT: No. My question is much more basic. No. You know how the secretary or the paralegal prepares the stuff and gives the discovery responses or supplements to the other side.

MR. PEEK: Yes, Your Honor. They give them in a -- today they do thumb drives.

THE COURT: But what format did they use? A thumb drive. Okay.

MR. BICE: CD. They gave us CDs. We'll actually bring the CD, Your Honor.

THE COURT: Does it say "Holland & Hart" on it?

MR. PEEK: The letters, Your Honor, came from me --

MR. BICE: Correct.

MR. PEEK: -- for the replacement documents.

MR. MARK JONES: And one from me.

MR. PEEK: And one from Mark Jones. And that's what we're trying to establish so that we can at least lay the

foundation that the Court has asked us to lay.

THE COURT: I am happy, if you all agree those are actually what was transmitted and what was included in the transmission, to take them as evidence.

MR. PEEK: But Mr. Bice --

THE COURT: The problem has been you haven't agreed.

MR. PEEK: Right. Mr. Bice has not been willing to agree. So I'm just asking --

THE COURT: No. That's not true. He agreed on some. He didn't agree where he thought there was a difference of opinion as to whether it was actually what you sent him. That's where the disconnect keeps happening. And I keep trying to get you guys to drill down to where the difference of opinion is as to what was produced.

MR. PEEK: So let me see if I understand correctly, Your Honor, so we can make sure that we have clarity to this. Mr. Jones represented that Exhibit I think it was 355 is a replacement document for their Exhibit 9 to their brief. And Mr. Bice said it is not.

THE COURT: No. Mr. Jones represented that 355 was Exhibit 9 to plaintiff's renewed motion. Mr. Bice said it's not. Proposed Exhibit 355A, which bears the same Bates number, is ostensibly an unredacted version of 355.

MR. BICE: Correct.

MR. PEEK: Correct. And he's saying it's not.

MR. BICE: That's not --

THE COURT: Well, first, it wasn't a copy of Exhibit 9 to the plaintiff's renewed motion was the first step.

MR. BICE: We have -- I just want the record to be clear on this. We are the only party that has stipulated to hardly any exhibits. When we started this we stipulated to I think 25 or more of theirs, and we got no stipulation.

THE COURT: Yeah. I drew a line. I did a --

MR. BICE: Then what happened is -- remember, Mr. Toh -- this -- we were demonstrating that none of these documents can be used because they're inadmissible because, as they are right to point out, no one can ever lay a foundation for them. What they were trying to get us to do is, well, you stipulate to documents that don't relate to your point, a condition of you getting these documents in is you have to allow us to introduce whatever we want. That's the error in what they were doing.

THE COURT: Okay. Here's what I am trying to tell you. To the extent that someone wants to give me an entire production in this case --

MR. BICE: We're going to do it.

THE COURT: -- as it was made to the other side, I will take that.

MR. BICE: We are getting the CDs.

THE COURT: I am not going to take individual documents from those productions without a separate agreement related to that. And I'm certainly not going to take separate documents that have Bates numbers and nobody's sure where they came from. But if I have a CD that was transmitted from Jacobs to the defendants and everyone agrees that is --

MR. PEEK: The other way -- the other way around.

THE COURT: No. I'm using that as an example, because nobody should argue with me.

If I have a CD that was given by Jacobs to you, it wouldn't be an issue in this case. But if I had one and you said, yes, that is the CD they sent us and now we're going to fight about the documents that are part of that production, then for purposes of this discovery sanction hearing and sanction hearing related to my order dated September 14th, 2012, I would take that as part of my record. But you're not doing that. In a typical Rule 37 hearing I would actually have the answers to interrogatories that were verified and signed; my order saying, do better; the second supplement where you didn't do better again; the next order where I said, really I meant it when I said do better; and then I would have another supplement that would still be insufficient, and then I would have a hearing. And so I would have all of those steps in evidence. I seem to skip that here, and I think it's because of the volume of information and the fact that you're

dealing with ESI. And because you're dealing with ESI, I'm not willing to parse them out unless I have an agreement that the documents are actually part of the production. If you want to give me the entire production to be part of the record, I'm happy to do it.

MR. PEEK: And I think that's what we may --

THE COURT: Do you understand what I'm trying to say, though?

MR. PEEK: I do, Your Honor. And, frankly, I do understand it, and that may well be what we'll do. And I think that Mr. Jones did say to you yesterday that the exhibit -- I don't remember what the number was -- that was in electronic form with 200,000 --

THE COURT: The 200,000 pages.

MR. PEEK: -- with 200,000 pages, and then there was an objection to that, and so you said to us -- or Mr. Jones --

THE COURT: No, there wasn't an objection to that. There was 200-and-some thousand --

MR. PEEK: I don't want to say I --

THE COURT: No. I want the record to be clear. There were 200-and-some thousand pages, and I was told we have 10 or 15 out of that we want to admit. Under my electronic exhibit protocol if you want to change an electronic exhibit, I need a new submission, because I can't admit only portions of the electronic exhibit.

MR. PEEK: I get that, Your Honor.

THE COURT: That's how we got to where we are.

MR. PEEK: I understand, Your Honor. And I --

THE COURT: If somebody wants to offer the entire thing and it's in fact the production that occurred, I'm happy to take it.

MR. PEEK: And I misspoke, Your Honor.

THE COURT: But I don't have that and I can't get it.

MR. RANDALL JONES: Your Honor, I'm sorry. If I may address the Court. We have Exhibit 325, which is all of Sands China's production, and I've got the -- I believe I have the documentation to lay a foundation. It's Exhibit 325, and it contains 213,678 documents. We have provided that to the Court in electronic format.

In addition --

THE COURT: Apparently we don't have it.

MR. RANDALL JONES: Oh. I thought -- I thought we gave the Court a hard drive of that.

THE COURT: Is that in the envelope I keep trying to give back to Mr. Mark Jones?

MR. RANDALL JONES: It may be, Your Honor. They also had Exhibit 330 -- they also had Exhibit 330, which was Las Vegas Sands document production, which was 268,060 documents.

THE COURT: I don't have them.

MR. RANDALL JONES: Again, it was my understanding that a hard drive had been provided to the Court.

THE COURT: I don't have it.

MR. PEEK: We'll get it, Your Honor.

MR. PISANELLI: Your Honor, can we seek clarification? Does counsel intend to say pages, or documents? Because we've never gotten anything close to that type of document.

MR. RANDALL JONES: That's pages.

THE COURT: Okay. Well, what I'm hearing from you is you're trying to give me the database of your production.

MR. RANDALL JONES: Yes, Your Honor.

THE COURT: That's not what I said. What I said is I would take the productions as they were made.

MR. RANDALL JONES: And I understand that, as well. And I also have the letters related to each one of the productions of the replacement -- I have all of them, but I also have the ones specifically related to the production -- the replacement production, along with pages of the indexes related to those productions.

THE COURT: I am concerned about having duplicate Bates numbers. And I'm concerned about a database production without a stipulation. As I've said, if you want to give me the discovery responses as they were made in the format that

they were provided, I'm happy to take that. I understand from Mr. Bice that was on a CD. Mr. Peek thinks it was on a thumb drive. I don't really care. It can be in whatever electronic format you give it to me, but it has to be the same as what was produced.

MR. RANDALL JONES: I understand your statement, Your Honor. And we -- here's the issue. You have a very busy docket.

THE COURT: Me? I've set a whole week for you this week on a half-day hearing.

MR. RANDALL JONES: All I'm -- the only point I'm making is if that's what we need to do, we would ask the Court's indulgence, because I was not familiar with this particular concern of the Court's. We are now, and this is an important issue to us, and I would like to have the opportunity to make sure we get that type of production as you just described to the Court so that the Court can feel like it has a complete record or the record that it thinks is necessary in relation to these productions.

THE COURT: That's what I typically do on a Rule 37 discovery issue. And while this also relates to my order dated September 14th, 2012, it is -- when you come down to it it's still really a dispute related to discovery. I had just precluded you from using a particular method of not providing discovery, and so we've got a number of steps. But in a

regular Rule 37 sanctions here I would have every one of the discovery requests, my orders, the attempts to do better, my second order. And those were the steps I would go through before I would issue sanctions at a hearing. And I'm happy to let you guys do it however you want. My problem is you're going to go up to the Nevada Supreme Court, and some staff attorney's going to look at this, and they're not going to look at the whole thing, and they're never going to look at the whole thing. And the only way that I can make sure that what I'm doing is accurately represented in my findings of fact is to have the exhibits that I can reference in my orders. And having 200,000 pages as a database isn't going to satisfy that.

MR. RANDALL JONES: Understood, Your Honor. And I have not -- fortunately, I have not had the opportunity to be before you in a Rule 37 sanction motion prior to this one, and so I was not familiar with your procedure. But I certainly understand it now.

THE COURT: It's in a case called Foster versus Dingwall that they sent back and said I did right.

MR. RANDALL JONES: And I've read Foster versus Dingwall, but not --

MR. PEEK: And I did the appeal, Your Honor, but I did not do the underlying --

MR. RANDALL JONES: -- but not with respect to

production of electronic evidence. So, Your Honor, I don't know what -- again, I guess I'm asking for the Court's indulgence. If we could take a short recess so that we could then try to produce that --

THE COURT: So can we let Mr. Raphaelson go?

MR. RANDALL JONES: That would be -- we would -- we would like to do that so he doesn't just have to sit here and listen to us trying to explain the circumstances of the productions to you.

THE COURT: Do you want to try again tomorrow?

MR. BICE: I cannot be here tomorrow, Your Honor.

MR. PEEK: Your Honor, Mr. Raphaelson has just said to me he would like to go on the stand, and he's willing to come back -- if there's more that comes out of these other issues, he would be willing to come back. So we could at least put him on.

THE COURT: For partial rebuttal.

MR. PEEK: For partial rebuttal of whatever it is is true rebuttal.

THE COURT: That okay with you, Mr. Bice?

MR. BICE: Yes.

THE COURT: All right.

MR. PEEK: Can we take a short break? I need a restroom break, comfort break, Your Honor.

THE COURT: Yes, you can have a personal convenience

MR. RANDALL JONES: Thank you. So I just want to confirm with the plaintiff that there's no other discovery that they want to do or they think is necessary, that we have the universe of the documents.

Dispositive motions. There is a motion to amend the complaint -- excuse me. There is a third amended complaint that got filed on December 22nd. They never filed a second amended complaint, which they were authorized to do in August, which added two new claims against my client. So they just bypassed that. And they talk about dilatory conduct. Now they want to have an evidentiary hearing within two to three weeks on a complaint that we've never answered, Judge, which has new allegations that implicate jurisdiction. So we would like to file a dispositive motion as to those claims, because we think that those are vulnerable to a dismissal.

THE COURT: That's fine. Go ahead and file one.

MR. RANDALL JONES: So that needs to be briefed. So that --

THE COURT: Well, do it. Just do it.

MR. RANDALL JONES: I'm just alerting the Court. I'm just telling the Court --

THE COURT: That doesn't have anything to do with my jurisdictional hearing. If you need to file a motion to dismiss, go ahead and do it.

MR. RANDALL JONES: Here's how we think it does

implicate your jurisdictional hearing. The question is, Your Honor, is if the motion to dismiss is granted, then it will change what happens at the evidentiary hearing. If the motion is denied, there'll be different evidence presented at the jurisdictional hearing based upon the additional claims. So we think it makes a lot more sense efficiencywise -- and we wonder why they waited so long to file that complaint ultimately, but that was their choosing. I'm just noting for the record they waited until the 22nd of December even though they had an order going back to August 14th of last year to file those claims. So we believe it makes no sense, that it does not serve judicial economy or the parties to have a hearing on jurisdiction until the Court resolves the motions to dismiss on their third amended complaint and we know exactly what issues are going to be discussed at the evidentiary hearing.

We've talked about motions in limine. You yourself in the order that you just made -- the ruling that you just made with respect to the Vickers reports talk about the admissibility of the Vickers reports. Now that we understand your ruling there are certain things that are going to occur which certainly at a minimum would be our motion in limine to prohibit the introduction of those documents into the record because they're not relevant.

So that is my laundry list, Your Honor.

THE COURT: Okay. So let me summarize it and make sure that I've got it, because I've got it in a slightly different shape than you do.

MR. RANDALL JONES: Okay.

THE COURT: I have disclosure issues related to there hearing, that being witnesses, experts, and documents. I've got pretrial briefs, I've got the sanctions hearings position related to that, I have a definition of theories, and then I have a motion in limine. Did I miss anything?

MR. RANDALL JONES: Well, I think --

THE COURT: Because I'm leaving your motions to dismiss over on the other side, because those are something you're going to file and then we're going to hear them one way or the other, hopefully sooner, rather than later.

MR. RANDALL JONES: That was the only thing I was going to add, is that unless somebody else can point out something that I said that I --

MR. PEEK: I don't think so, Your Honor, because, although I think the motion to dismiss, as Mr. Jones says, will define --

MR. RANDALL JONES: That's the only other point I would make. But I think you've got everything that I mentioned.

THE COURT: Okay. I understand what you're saying.

MR. PEEK: Because they have to be heard before

that.

THE COURT: Anything else on your laundry list before I go back to my questions?

MR. RANDALL JONES: The only, I guess, is a clarification with respect to the sanctions hearing in terms of the procedure. I believe you did get about the disclosure of documents and witnesses.

THE COURT: I have --

MR. RANDALL JONES: I assume the same thing will apply to the sanctions hearing.

THE COURT: -- disclosure of witnesses, documents, and experts. Well, no. I'm probably going to have one disclosure list that goes because the whole point we're on the sanctions hearing at this point, Mr. Jones, we're way past the sanctions issue. I'm merely at the prejudice issue at this point, which is part of that balancing test that I make.

MR. RANDALL JONES: I understand the Court's position, and I believe I understand what you're telling me now is that essentially the disclosure -- requirement for disclosure to the extent you order that witnesses and documents will relate to both sanctions and to evidentiary -- to jurisdiction.

THE COURT: Yes. Because the prejudice issue is all I'm limited to at this point on the sanctions. I already made all the other findings on the sanctions. I'm just on the

evaluation of the prejudice and the appropriate sanction, if any.

MR. RANDALL JONES: You've clarified that issue for me. Thank you.

THE COURT: I keep trying to clarify it, but nobody listens.

All right. I've got a writ that the Nevada Supreme Court issued, just in case we forgot, on August 26, 2011, that told me to have an evidentiary hearing and make findings of fact related to personal jurisdiction. There does not appear to be any limitation as to the theories that the Nevada Supreme Court is imposing upon me, and I'm not going to impose any limits on theories. However, your request related to disclosure of witnesses, documents, and experts is an appropriate request. So somebody talk to me about when we should do those and how long it takes to get those together and what we're going to do so I can come up with a timeline so I can then give you a date that we're going to have a lot of time we're going to spend together.

MR. RANDALL JONES: Oh. Your Honor, no, I did not address the length of the hearing. I don't know if you asked me that question. I think you asked it of Mr. Bice.

THE COURT: I asked you a couple times. You said it depended on your laundry list, and then we went through your laundry list.

MR. RANDALL JONES: In any event, Your Honor, it certainly -- it does depend on the laundry list. And it really -- well, part of it depends on the number of witnesses that are disclosed by the other side. That would help me determine how long we're going to go. But my belief would be we're talking about two to three weeks of what I would consider to be real court time. And I know you have --

THE COURT: Five-hour days.

MR. RANDALL JONES: Yes. And again I understand sometimes a particular day might be taken up more than half a day with --

THE COURT: You guys take up a lot of my time. In fact, most cases Mr. Peek is on, even though he's not talking today, take up a lot of my time.

MR. RANDALL JONES: So with that in mind, based on my understanding of what the Court's calendar would be for the real availability of hearing, it would be two to three weeks realistically.

And I didn't address the issue of the trial setting, and I would at least like to --

THE COURT: I'm not there yet. I can't do anything on trial setting yet.

MR. RANDALL JONES: That's fine. Mr. Bice did. I just didn't want to --

THE COURT: I know he did. And I'm going to make

sure you get set before the five year rule runs, and it may mean that you guys don't like the date I give you. But, unless you stipulate, that's going to be the date you get.

MR. RANDALL JONES: And, Judge, just to clarify, I'm not asking the Court to limit their jurisdictional theories. That is not what I meant. I'm just asking him to tell me what they are, just to confirm what they actually are, not -- they can be every one that they could ever come up with and they could invent some new ones, I don't care. It's just I would like to know definitively at some point as soon as possible what they intend to pursue. Because if they are going to actually abandon some of the theories -- because they've thrown out pretty much every jurisdiction theory I ever understood from law school, but they may -- maybe they don't, but maybe they will abandon one. If they do, that would mean that the hearing would be shorter. It would also mean I would have to call less witnesses. So it impacts how we prepare for this. So I'm not trying to limit him, I'm just trying to find out exactly what they are.

MR. PEEK: Just a moment?

THE COURT: Yes, please.

(Off-record colloquy - Mr. Peek and Mr. Jones)

THE COURT: That's a legal argument that he can make later.

MR. RANDALL JONES: Actually, Mr. Peek -- I

appreciate him saying this, actually, or I would have regretted it if he had not. I strike my prior comment that we have not said at some point in time that they are barred from pursuing certain theories.

THE COURT: Said it repeatedly in written briefs.

MR. RANDALL JONES: Yeah. But I know if Mr. Peek had not corrected me that statement would have come back to haunt me in future hearings where Mr. Bice would have picked that statement up and said, Mr. Jones said they are not waiving any theory -- or waiving any arguments about jurisdiction.

So we would like to know exactly what they are, whether we contend they've waived them or not. Still I think it's appropriate for them to tell us beforehand, and the Court, what they believe they are going to pursue. And then the Court can decide whether they should be able to do that. Thank you.

THE COURT: All right. Because the Nevada Supreme Court has said I have to do an evidentiary hearing, I have to make findings, and I have to determine whether a prima facie basis for personal jurisdiction has been established, the burden of proof is the plaintiffs must demonstrate through the evidentiary hearing and I must make factual findings that there's a prima facie basis for jurisdiction. That's really low. I think we all understand it's really low. But the

Nevada Supreme Court has commanded that I do that. So we're going to spend the time necessary to do that.

With respect to the sanctions hearing I would like to do the sanctions hearing immediately before the start. In my mind, and this is what I've been trying to communicate to everyone, it is primarily issue at this point related to prejudice. And if the defendants wish to present evidence related to amelioration of their activities and why the what I think has been include a catch-22 by Mr. Jones affected them because of the Macau Data Privacy Act, I'm happy to weigh that in concern in making a determination as to the appropriate sanction, if any.

I do not need a disclosure of additional witnesses and evidence for that particular hearing. I think it can be done in conjunction with the disclosure for the evidentiary hearing on the jurisdictional issue, since they're interrelated.

I haven't gotten an answer yet as to how much advance notice you want on the disclosure for witnesses, of documents, and experts. And those may be different, but I need you to tell me the answer so I can figure out a schedule.

MR. BICE: I want to be heard on this purported expert issue, Your Honor.

THE COURT: I'm happy for you all to answer my question. And it doesn't matter who talks.

MR. BICE: I'm not aware of any expert report. They say they have an expert. I'm unaware of any report that's ever been done, that it's ever been disclosed. So if there is such an expert report, maybe I've overlooked it. But I don't believe one exists.

THE COURT: Well?

MR. RANDALL JONES: The expert is Christopher Howe, H-O-W-E.

THE COURT: Okay.

MR. BICE: Again, that doesn't -- I mean, there's no report, so I don't know where this supposed expert witness is coming from. I mean, you have to do a report if it's a retained expert. Rule says that. And I've not seen --

THE COURT: Well, it doesn't say that for evidentiary hearings on personal jurisdictions ordered by the Nevada Supreme Court pursuant to a writ.

MR. BICE: Any testimony -- actually the rule provides any testimony by an expert, a specially retained expert is not limited to trial. Any witness who's going to offer testimony under Rule 50 --

THE COURT: 26(c)(3).

MR. BICE: -- 26(c), but anyone who's going to offer testimony under it's 50.275 --

MR. PEEK: You mean the NRS?

MR. BICE: Yes. Anyone who's going to offer such

testimony, Your Honor, has to prepare a report.

THE COURT: Okay. So let's step back, then, and find out about reports. Does anybody intend --

MR. BICE: We talked about this --

THE COURT: -- to have experts?

MR. BICE: We talked about this two years ago.

THE COURT: I know.

MR. BICE: And the Court I believe -- we'll go back and find the transcripts, but I believe the Court even said that they had to have a report. So I'm a little surprised that we're now hearing that we have an expert and no report and we're just hearing the name now.

THE COURT: The rule only says at trial. I haven't read the statute lately, but the rule only says at trial.

MR. BICE: I'm sorry. What's that?

THE COURT: The rule only says expert at trial.

MR. RANDALL JONES: Your Honor, I believe what we're referring to is that we -- you asked -- you said, anybody who wants to call an expert -- this was a year ago or so -- has to designate or disclose the expert and provide a summary of their testimony to opposing counsel. Which we did. So we followed the Court's directive.

THE COURT: So you did that?

MR. RANDALL JONES: We did.

THE COURT: Okay.

MR. RANDALL JONES: Be that as it may, with respect to your other question about the timing --

THE COURT: Experts disclosures. Tell me how long.

MR. RANDALL JONES: We would like to know -- I would certainly like to have -- well, let me make sure I understand your question. You say expert disclosures. How long between now and when they get disclosed, or witnesses and documents?

THE COURT: If an expert has not been previously disclosed, what my typical thing is for a preliminary injunction hearing or other type of pretrial evidentiary hearing I require the old synopsis that people used to be able to do under our rules where you could say what the expert was going to say that providing a report, and the designation of them. Depending upon the case, I've had those earlier, I've had them later. It just depends on the case. So I'm trying to get input from you as to when you think it is important that you have that information if you don't already have it in your possession, and then to establish dates for disclosure of witnesses and documents to be used at the hearing to determine if there's anything else I've got to do before I set a hearing.

MR. RANDALL JONES: I understand. I have a better understanding of your question, Judge. So what I believe would be appropriate or necessary from our perspective, two to three weeks before we have those disclosures --

MR. PEEK: Two to three weeks before the hearing.

MR. RANDALL JONES: Yes. Two to three weeks before the hearing that we have those disclosures.

THE COURT: And can you have all the disclosures at the same time, or do you need them staggered? Do you need the experts and the documents different than the witness, or can they all be at the same time?

MR. RANDALL JONES: Well, let me put it this way. First of all, I at least want to preserve my right -- I understand where you're going, but I want to preserve my right to argue that they had the opportunity to designate an expert and they didn't do it, so we believe they've waived that.

THE COURT: Sure. We can always argue about stuff like that later.

MR. RANDALL JONES: I just wanted to make that on the record. And I understand your question, so with that said I think it'd be better to stagger them. So I would like to have the expert reports actually prior to the designation of the witnesses. So I would like to have those four weeks before the hearing. And then preferably the designation of witnesses and documents within three weeks before the hearing.

THE COURT: Mr. Bice. I'm trying to get timing down right now.

MR. BICE: Your Honor, I'm not quite sure what the basis for -- I think we'll have this -- if the defendants have

their way, we'll have this evidentiary hearing a year from now, because --

THE COURT: No. We're going to have the --

MR. BICE: -- the deadline just keeps getting --

THE COURT: We're going to have the evidentiary hearing in the next 60 days or so.

MR. BICE: -- pushed and pushed and pushed.

THE COURT: They're not going to get to do that. Let's finish this up.

MR. BICE: If they have their expert, we are not going to call any expert. So they have their expert. Let's depose their expert and be done with it. Let's just get this over with. If we're going to have an expert --

THE COURT: Are you going to depose their expert?

MR. BICE: Am I going to depose the expert? I would prefer to depose the expert. There's no report. We'll just depose them and get it over with.

MR. RANDALL JONES: I believe we complied with the Court's order to provide the summary and designate the expert. They've had that information for --

THE COURT: Do I have it?

MR. RANDALL JONES: You should have it, Your Honor.

THE COURT: Is it something filed with the Court?

MR. RANDALL JONES: I believe so.

THE COURT: When was it filed with the Court?

MR. McGINN: Before the last hearing, sometime in 2012.

MR. RANDALL JONES: Yeah, it was -- well, just in terms of the timing, you had ordered us to do all this -- we were going to have a hearing when the one writ was accepted and everything got stayed, so that was back more than a year ago.

MR. PEEK: Your Honor, I think it was -- and please correct me. I may have to correct myself. But I thought we did all of this back in May, June 2012. Because remember at that time --

THE COURT: No, I don't remember, Mr. Peek. I've been working on CityCenter --

MR. PEEK: No, no. I know you have, Your Honor. But I recall that we were trying to get the hearing set in June 2012, and then it got interrupted by the --

THE COURT: By the writ.

MR. PEEK: Well, no. By the sanctions -- the sanctions request on the part of the Court.

THE COURT: And a writ.

MR. RANDALL JONES: In any event, I think Mr. Peek is right, that it was either --

THE COURT: Hold on.

MR. RANDALL JONES: And he may have --

THE COURT: Just a moment, please.

MR. RANDALL JONES: It was either 2012 or 2013.

MR. PEEK: I thought it was 2012. And that's -- because that was the first time that we were really seriously --

THE COURT: No. I'm guessing it's not 2012, because you didn't enter into the confidentiality agreement and protective order until March of 2012, so --

MS. SPINELLI: Your Honor, I think that's right, though. If you recall, Ms. Glaser was pushing that hearing to have it when we first -- Pisanelli Bice first came aboard. So we did disclosures before what was supposed to be that evidentiary hearing in the fall.

MR. PEEK: Of '11 you think, Debbie?

MS. SPINELLI: Yeah. I think we came in in '11; right?

MR. BICE: Correct.

MS. SPINELLI: Yeah, in September of 2011.

MR. PEEK: You may be right.

MS. SPINELLI: So it had to have been in the fall of 2011, Your Honor. It would have been the pretrial -- or pre-evidentiary hearing disclosures.

MR. RANDALL JONES: Not for --

MS. SPINELLI: I don't know the answer to that. That's the only one that would have been filed before.

MR. PEEK: I believe we disclosed experts, though,

Your Honor.

THE COURT: My concern is I'd like to look at it if the disclosure was filed with the Court. Discovery and disclosure documents do not have to be filed with the Court, which is why I'm asking. And I don't see anything. That's why -- I'm trying to look at the scope of the witnesses' disclosure so I can make a determination as to whether I think it's broad or not broad, if I'm going to let a depo happen or not.

MR. RANDALL JONES: I'm pretty confident it was 2013, because it was after the March 27 -- June 28th of 2013. And you had --

THE COURT: Hold on a second.

MR. RANDALL JONES: And you had said we're going to have a hearing.

THE COURT: I was going to have a hearing.

MR. RANDALL JONES: Right. And you'd ordered that there be disclosures --

THE COURT: And I got a stay.

MR. RANDALL JONES: -- and we started doing that process. We engaged Mr. -- and I know it had to be then, because our firm was involved in that process, and we engaged Mr. Howe.

THE COURT: There it is. Expert Witness Designation. Hold on a second. Let me read.

MR. RANDALL JONES: Sure.

(Pause in the proceedings)

THE COURT: What's a heads for expert evidence?

MR. RANDALL JONES: What's a what, Your Honor?

THE COURT: Heads for expert evidence. Paragraph 1.7 of your disclosure.

MR. RANDALL JONES: I don't recall.

THE COURT: Hmm. So he's primarily going to talk about the Stock Exchange.

MR. RANDALL JONES: Well, he's going to talk about -- yes, how the Stock Exchange works with the -- in Macau with these kind of companies, how they're organized.

THE COURT: Have the sharing services agreement ever been provided?

MR. RANDALL JONES: Yes, Your Honor.

MR. BICE: Yes.

THE COURT: I only ask because the expert talks about it.

MR. RANDALL JONES: Right.

THE COURT: Have the notification transaction tests been provided?

MR. PEEK: The what, Your Honor?

THE COURT: Listed company activities policed by notification transaction tests in Chapter 14 and by connected transaction tests in Chapter 14(a) of the listing rules. Have

those documents been produced?

MR. RANDALL JONES: I can't say off the top of my head. But what I think you're referring to are regulations from Macau. Is that --

THE COURT: I don't think so.

MR. PEEK: It's the Hong Kong Stock Exchange, I think, regulations.

MR. RANDALL JONES: I'm sorry. Hong Kong, not Macau.

THE COURT: So we'll have those documents that are related to those analysis that are provided and been produced.

MR. RANDALL JONES: I can't say that they have, I cannot say that they have not, Your Honor. They -- I guess my other question is whether or not they're a matter of public record. And I believe they are, but we'll verify that. And I certainly don't think they've been requested.

MR. BICE: Your Honor, I don't have that in front of me, but it's Ms. Spinelli's recollection -- does he even state what his opinions are?

THE COURT: Oh, he does. Do you want me to read it to you? Because I'm not sure it's helpful. It says, "I conclude from what I have seen for the reasons set out above that it is highly unlikely that SCL could have been operated at the relevant time and presently other than is required by the listing rules and other regulatory instruments in Hong

Kong, and I see no difficulty, and neither did the regulatory regime in Hong Kong, and in particular the Stock Exchange with the compliance of SCL with the regulatory regime of Hong Kong.

"It is my opinion that SCL is a Cayman Island company," I think we all agree about that, "listed in Hong Kong," I think we all agree about that, "and it is operating independently and has complied and is complying with the regulatory regime in Hong Kong in its entirety."

MR. BICE: I'm not sure that that's an admissible opinion. But --

THE COURT: Well, I don't know, either.

MR. BICE: -- nonetheless -- but Your Honor is -- what is it that he supposedly has seen I guess is --

THE COURT: Well, there's a listing of documents, which is why I asked about the heads of opinions.

MR. BICE: And we also, of course, are entitled to see his communications with counsel --

THE COURT: Well, here's --

MR. BICE: -- I don't believe have been produced to us.

THE COURT: -- one of my concerns. I've got this list of things that he says that he's seen, but then he's got all this other stuff that he's talking about. And so I'm not entirely clear as to what he's seen or what he's used.

MR. RANDALL JONES: Judge, I mean, I would certainly

-- first of all, I would hope that the Court would not pre judge whether or not this testimony is --

THE COURT: I'm not pre judging. I'm just reading.

MR. RANDALL JONES: Well, you said you don't think this is very helpful. And I obviously haven't had a chance to hear the evidence. You've seen a part of the report, so I just want to be clear that I -- I assume the Court is not making a ruling at this point about the admissibility or appropriateness of Mr. Howe's testimony.

THE COURT: I am not.

MR. RANDALL JONES: Okay.

THE COURT: But I did read the conclusion, and based on the conclusion, which I read into the record, it doesn't seem particularly helpful to the evidentiary hearing that I have to conduct on jurisdictional issues.

MR. RANDALL JONES: And I understand you ultimately will make that call. But at this point --

THE COURT: It's a weight issue.

MR. RANDALL JONES: -- we're -- well, not just a weight issue. Obviously you haven't heard how I believe that might be relevant to the jurisdictional issues. And so I would ask the Court to simply wait to make that decision until the appropriate time.

THE COURT: Sure.

MR. RANDALL JONES: Having said --

THE COURT: I'm hopeful he will say more than he has in his conclusion.

MR. RANDALL JONES: As most experts do. But, having said that, my response to Mr. Bice's concern is --

THE COURT: Can I stop you.

MR. RANDALL JONES: Sure.

THE COURT: The whole reason I read it was to decide if I was going to let Mr. Bice take his deposition.

MR. RANDALL JONES: Okay.

THE COURT: Based upon what he put in his report I'm going to let Mr. Bice take his deposition. But I'm not going to require the witness to come here.

MR. RANDALL JONES: And that was I guess my next point, is that logistically Mr. Howe is not here, and --

THE COURT: He's in Hong Kong.

MR. RANDALL JONES: And so I just -- if you're going to allow that, that has to be taken into account with respect to this whole process and how we're going to do it.

THE COURT: That was why I was doing it this way. Okay.

MR. RANDALL JONES: And a related question, Judge. I understand Mr. Bice is saying they don't want an expert. And the only point here is that if they decide they want an expert after Mr. Howe's testimony, obviously that would change things, and I at least want to keep that -- make sure the

Court's aware. Our position would be if they do decide they want an expert at some point in time, that's going to affect the schedule.

THE COURT: Okay. So, Mr. Bice, how long is it going to take you to figure out if you want to go to Hong Kong to take Mr. Howe's deposition?

MR. BICE: We will decide that within a couple of days, whether we're going to go or whether we're going to arrange it by video. We will make a determination one way or the other on that.

THE COURT: Regardless of whether he's going or arranging to take it by video, all of his work file -- and if you need my 6-inch-long description of what a work file is -- needs to be provided. How long is it going to take to provide that? Because they need it before they take the depo.

MR. RANDALL JONES: I don't know, because I have to talk to Mr. Howe. But obviously we'll do what we can to make sure to expedite that process. And as soon as we leave the courtroom we'll start making calls. I think it's the middle of the night right now in Hong Kong, so we've got to deal with that. But we'll -- Judge, I will just say this. We will do whatever we can to expedite that process.

THE COURT: All right. So, Mr. Bice, if you get the work file and the work papers a week before the depo, will that be enough time?

MR. BICE: Should be, Your Honor.

THE COURT: Okay. So you will work together to make a determination if you're going to take the deposition. If you make a decision to take the deposition, if you're going to Hong Kong or if you're going to take it by videoconference, then you're going to let Mr. Jones know in the next week.

MR. BICE: I will.

THE COURT: Okay. Once you select a date you have one week prior to that date to produce the work papers related to Mr. Howe.

With respect to any additional expert disclosures or reports or any rebuttal expert disclosures or reports, those will be due two weeks after Mr. Howe's deposition completes.

MR. PEEK: And will we have time to take a deposition, Your Honor?

THE COURT: Yes.

MR. PEEK: Should we choose to do so.

THE COURT: If you choose to do so, and also get the work papers and all the stuff. But I don't know that they're going to actually have an expert. That's part of where my schedule is going to fall apart here in a minute.

So we're going to assume that sometime in the next 30 days you're going to have finished the deposition of Mr. Howe. So let's assume that's February 5th.

We're then going to have maybe some other stuff to

do, and you're going to produce your documents and hopefully all of your witness disclosures by March 13th. Those are any witnesses that you intend to use for either the evidentiary hearing or the remaining portions of the sanction hearing and the disclosure of any documents you intend to use.

MR. PEEK: That's on the 13th?

THE COURT: Of March.

Any pretrial briefs that you want to use or any dispositive motions related to issues or motions in limine that you want resolved prior to the evidentiary hearing need to be filed by March 22nd.

Any pretrial briefs that you want me to read and consider prior to the hearing need to be filed by April 10th.

Any proposed findings of fact and conclusions of law that you want me to consider as part of the hearing need to be submitted to me by April 17th, along with two copies, three-hole punched, in binders of any exhibits you actually intend to use at the hearing and the exhibit list. If you choose to submit them electronically, you can talk to the clerk about how we do that. We're happy to take them electronically.

And we will plan to start the hearing on April 20th at 1:00 p.m.

MR. PEEK: How much time are you giving us, Your Honor?

THE COURT: As long as it takes, Mr. Peek.

MR. PEEK: Okay. I want to be able to know that it's not the two to three days that Mr. Bice --

THE COURT: Are you in trial in here on April 20th on another case?

MR. PEEK: I hope not, Your Honor.

THE COURT: RSN? Your Harkavy case?

MR. PEEK: I thought that all got moved, Your Honor, consolidated and moved.

(Off-record colloquy - Clerk and Court)

MR. PEEK: So it's commence hearing until completed, then, Your Honor?

THE COURT: Yes.

MR. PEEK: So we will have --

THE COURT: And Dulce has reminded me that because I have a District Judges conference I'll be out probably half a day on the 22nd, the 23rd, and 24th.

MR. PEEK: What days are you gone?

THE COURT: I think the conference is Thursday and Friday, but it's up in Reno, so I've got to fly up there.

MR. PEEK: So -- but what dates?

THE COURT: 22, 23, 24. 22 will probably be a half day.

MR. PEEK: So gone 22 half day, all day 23, and all day 24?

THE COURT: Yes.

MR. PEEK: So we're back here on the 27th?

THE COURT: Yes. Hold on a second. I'm trying to figure something out here. I'm trying to figure out --

MR. PEEK: I just want to know what date we may be dark, Your Honor.

THE COURT: 23rd and 24th.

MR. PEEK: And afternoon of the 22nd?

THE COURT: Don't know yet. I haven't tried to make my flight arrangements, and the legislature's in session, so it's hard to tell, Mr. Peek.

Okay. That should be okay. You're not on that stack, Mr. Peek.

MR. PEEK: So on the week of the 27th, then, we'll have all that week, as well?

THE COURT: Yeah. We're going to just keep going until we're done.

MR. PEEK: Okay.

THE COURT: Did I miss anything that you think is important for you to know about the deadlines?

MR. RANDALL JONES: Let me double check, Your Honor.

Well, I just want to make sure -- I'm trying to write this all down. With respect to the briefing schedule do --

THE COURT: What briefing schedule?

MR. RANDALL JONES: The briefing schedule you gave

us as to when different briefs are due.

THE COURT: You mean the motions, or the briefs?

MR. RANDALL JONES: I'm sorry?

THE COURT: The motions, or the briefs?

MR. RANDALL JONES: Well, the motions and the briefs.

THE COURT: There are two different sets of briefing schedules.

MR. RANDALL JONES: Right.

THE COURT: The motions -- any motions related to issues you want me to dispose of or motions in limine where you want me to preclude things from being involved, those are the March 22nd date.

MR. PEEK: But are there hearing dates that we can schedule I think is where he's going with that, because we're going to be back here on the --

THE COURT: I don't know. You may not file any motions.

MR. PEEK: I understand, Your Honor. I'm just trying to --

THE COURT: I'm not setting the date ahead of time.

MR. PEEK: If we have a hearing on the 20th, just commence, obviously want to have all these decided before the 20th.

THE COURT: That's why I gave you March 22nd as the

date.

MR. PEEK: Okay.

MR. RANDALL JONES: And my question also went to -- with this briefing schedule, since --

THE COURT: That brief schedule on the motions or --

MR. RANDALL JONES: Both of them. It really applies theoretically to both of them. But I guess it depends on the type of motion. But if it's a motion with respect to a particular issue, it may be something that the plaintiffs have the burden and they have to file a motion and we have to file an opposition. My question is this briefing schedule contemplates a particular type of issues and that all parties would file that motion on that particular day. So my question is are there going to be any motions where -- well --

THE COURT: How's this? I don't want to see a single countermotion. If there's a motion, you need to file it. Don't wait and see if you can file it as a countermotion.

MR. RANDALL JONES: That helps clarify what you're telling us.

THE COURT: Okay. The brief which is April 10 is just you're both giving me briefs simultaneously if you want me to look at them. You don't have to give me a brief on the April 10th date. March 22nd you haven't got to file any motions if you don't want to. But if you want to file any motions related to the hearing or evidence that's going to

come in at the hearing, it has to be filed prior to -- March 22nd or before.

MR. RANDALL JONES: So here's my question, Judge. I'd asked you earlier, and I know you said you're not going to limit them to their jurisdictional theories. We've taken a position that some of those theories are barred. But, be that as it may, we would still like to know if they have -- what theories they're going to move forward on, and we would like that obviously sometime before at least April 10th, because then we would be in a better position to file our briefs.

THE COURT: So if you want to limit any of their theories, file a motion on or before March 22nd that limits their theories.

MR. RANDALL JONES: It would --

THE COURT: Because we've had so much discussion in the last two years about what theory they're pursuing. In fact, we had a motion for summary judgment on jurisdiction at one point in time that I denied. So, I mean, we've done a lot of this work already, and I'm not going to require them to limit.

If you want to file a motion and then they say, yeah, we're going to waive that one, great, it'll be off our list and we won't have to worry about it anymore.

MR. RANDALL JONES: I understand. I guess it just seemed like a more efficient process if they've abandoned some

theories, if they're not going to pursue them, why couldn't they tell us. But I understand your ruling.

THE COURT: Well, because we've had hearings and they've told me they haven't abandoned any.

MR. RANDALL JONES: That was then and this is now. So that was my only point, Judge.

THE COURT: Yeah. Well --

Mr. Morris, anything?

Mr. Peek, anything?

MR. PEEK: No, Your Honor. But may I consult just a moment?

THE COURT: Yeah.

(Pause in the proceedings)

MR. RANDALL JONES: Judge, the one thing that I did mention and you did not specifically address is the fact that we filed our motion -- or our brief related to sanctions originally on September 14th, and then we renewed that brief on October 17th, and they have never responded. So I guess my question is are they going to file -- are you going to allow them to file a brief with respect to the sanctions motions, and, if so, when is that due. Is that due on the April the 10th, or is that due on the 22nd of March?

THE COURT: If either of you wish to file additional briefing related to the sanctions issue, which I've already fully ruled on, went up to the Nevada Supreme Court, and came

back, you may file such a brief simultaneously on or before April 10th.

MR. RANDALL JONES: Okay.

MR. PEEK: And, Your Honor, that actually brought up another question, too. When you say commence the hearing on the 20th, are you starting, as you suggested, with the sanctions hearing on the --

THE COURT: I am. Because I may issue an evidentiary sanction related to that hearing. Because I did issue evidentiary sanctions at the last hearing. I'm not saying I will, but I may.

MR. PEEK: But certainly that, Your Honor, calls into question what --

THE COURT: So you want to do the sanctions hearing today, Mr. Peek?

MR. PEEK: No, I don't want to do it today, Your Honor.

THE COURT: You want to do it tomorrow? How about the next day?

MR. PEEK: No. I understand. But --

THE COURT: I've been trying to get this hearing done for six months, Steve.

MR. PEEK: Well, if you'd let me talk so I can make my -- so that I can just -- it seems to me that we'd have to have notice of what those evidentiary sanctions might be to be

able to address those issues as we go forward into the actual jurisdictional hearing. So I'm only just trying to make sure we have enough notice and opportunity to be heard and they were put on notice of what the Court is going to do.

THE COURT: And what and how long do you think you need for that? It's not sanctions against your client, it's sanctions against Sands China for --

MR. PEEK: Well, my client's also Sands China, Your Honor. I represent both. But I -- so I --

THE COURT: I forget that sometimes, Mr. Peek.

MR. RANDALL JONES: Well, I think Mr. Peek's point is well taken. And I hadn't really thought about that, but he makes a good point, depending on what the ruling is, is that I understand you want to get this done. That is abundantly clear, Your Honor. And that's fine. We also want to make sure we protect our clients' due process rights at that part of the process. So depending on what your decision is on sanctions, it may impact the evidentiary hearing in one way or the other. And so, yeah, I mean, some period of time I don't know. It's hard for me to gauge that in a vacuum. But, you know, a minimum of a day or so. If you're going to be dark anyway on the 22nd, 23rd, and 24th, then that may facilitate that process for us to understand --

THE COURT: So let me ask a question. Do you want to do the sanctions hearing next week?

MR. RANDALL JONES: We do not, Your Honor.

THE COURT: Okay. When do you want to do it?

MR. RANDALL JONES: April 20th at 1:00 p.m.

THE COURT: No. If you're telling me that because I may issue an evidentiary sanction in order to protect your clients' due process rights you need to have more notice, then tell me when within the next 10 days you'd like to conduct that hearing, Mr. Jones.

MR. RANDALL JONES: Your Honor, in light of your question to me and the schedule that you proposed I don't want to be put in a position to accelerate that date, because I don't think my client would have time to properly -- I certainly can tell you I wouldn't have time to properly prepare for that sanction hearing. Therefore, if you've set it for the 20th, we'll live with the schedule that you've set.

THE COURT: Okay. Then I'm not going to set it for -- it's now on the 9th, February 9th.

MR. BICE: Your Honor, they said --

THE COURT: No. Wait, guys. This is bullshit. It's not a legal term, it's not a judicial term. I have been trying to get this sanction issue resolved, which is very narrow. It's balancing your clients' challenges with the Macau Government and the production of items under the Macau Data Privacy Act with the disclosure obligations that I imposed on you. We've already done most of it. All I have

left is listening to an explanation from your client, listening to an explanation from the plaintiffs about what the prejudice is, and then making a determination as to what sanction, if any, is appropriate under the circumstances.

If you guys tell me you're concerned that an evidentiary sanction that I issue at the beginning of the hearing we've set up currently is going to cause a prejudice of your clients' due process rights, then, you know what, we'll do the hearing right away. And I've got time on February 9th before I start the last part of the CityCenter trial.

MR. RANDALL JONES: Your Honor, respectfully I would ask you to reconsider setting it earlier. I appreciate your willingness to put it on the 20th. We'll deal with it. I've heard --

THE COURT: No. You've raised an important point, which is your clients' ability to plan for the evidentiary sanction that may or may not be issued. I previously issued an evidentiary sanction as part of a sanctions hearing. I agree with the point you made that it is important that that issue be done well in advance of the other hearing, so we'll do it on February 9th.

What else?

THE CLERK: What time?

THE COURT: 1:00 o'clock.

MR. RANDALL JONES: Your Honor, how does that affect the schedule with respect to disclosure and briefing?

THE COURT: It doesn't. If anybody wants to have any witnesses or documents that you're going to use at the February 9th hearing, except for experts, which I don't think you're going to use, that's two weeks before the hearing you have to exchange them.

Anything else?

MR. RANDALL JONES: What does it do with respect to briefing, Your Honor?

THE COURT: If you want to give me any briefs, please give me a brief on February 6th. They're simultaneous.

Anything else?

MR. PEEK: How long have you set that sanctions hearing, Your Honor? I don't know --

THE COURT: As long as it takes. But my guess is it won't take you more than a few hours, because it's a very limited issue. It's for me to listen to an explanation from your client as to the challenges that they faced given the Macau laws, the Macau Data Privacy Act, and my disclosure requirements, and then the issue of prejudice raised by the plaintiffs. It's really limited. I've been trying to tell you guys that. Nobody listens.

So February 6th if you want to give me any additional briefs, two weeks before February 9th at 1:00

o'clock we'll do that hearing.

Anything else?

Okay. So I'm going to issue two orders. One order is going to be related to the evidentiary hearing on the amount, if any, of sanctions. The other is going to be related to the jurisdictional hearing that the Nevada Supreme Court ordered me to conduct when they issued the writ.

Anything else that you want me to talk about?

MR. BICE: Trial date.

THE COURT: I don't know that I can do a trial date. I think I would be violating the Nevada Supreme Court's order if I set a trial date before I finish the evidentiary hearing and issue my findings.

MR. BICE: All right.

THE COURT: But, believe me, there will be a trial date way before your five year rule. Maybe you might think about what your availability is the week of June 29th. But that's a different issue.

MR. PEEK: Your Honor, that's a pretty significant issue, because we don't even have a discovery schedule.

THE COURT: Then how on earth are you going to get done before the five year rule runs, Mr. Peek?

MR. PEEK: I understand where people are trying to put us in a position as to whether or not the five year rule has been tolled as a result of the Supreme Court order. I

know that's exactly where everybody's going here.

THE COURT: That's why I ordered briefing on the issue.

MR. PEEK: I understand that Your Honor. And perhaps that's something -- well, I'm not going to address that issue right here, just stand up, off the cuff address that issue.

THE COURT: No.

MR. PEEK: But I will say that it doesn't give us much time to have a discovery schedule on a very, very significant date.

THE COURT: Well, the reason I'm mentioning that date to you is because I previously asked for briefing on the 41(e) issue. Given the positions the parties take -- have taken, it's my intention that your trial is going to get set so that there is no doubt that I have commenced trial, however anyone defines that, prior to the expiration of the period under Rule 41(e) unless you all stipulate to a different time frame. And I'm happy to have you do that, but I'm not going to be the one who runs the risk that my analysis of the stays under Rule 41(e) is different than the positions ones of the parties has taken in this case.

MR. PEEK: Understood, Your Honor.

THE COURT: So that's a date that I just ask you to look at as pencilled in. Anything else?

So I will see you -- if you're going to file your motions to dismiss on this new complaint, please do it sooner, rather than later, so that I can resolve those issues which may in fact narrow other issues. Then I will issue orders on the sanction hearing, and I will issue orders on the jurisdictional hearing. Then hopefully one day we'll actually get to the part where you get to start real discovery in the case.

MR. BICE: Thank you, Your Honor.

THE COURT: That might be before your trial date and the discovery cutoff.

MR. PEEK: Thank you.

THE COURT: Goodbye.

THE PROCEEDINGS CONCLUDED AT 11:15 A.M.

* * * * *

CERTIFICATION

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

AFFIRMATION

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

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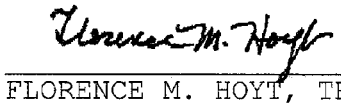

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

REPLY IN SUPPORT OF EMERGENCY MOTION TO QUASH SUBPOENAS AND FOR PROTECTIVE ORDER ON ORDER SHORTENING TIME; AND

OPPOSITION TO COUNTERMOTION TO DEEM WITNESSES SERVED WITH EVIDENTIARY HEARING SUBPOENAS

Date: February 6, 2015
Time: 8:30 a.m.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants Sands China Ltd. ("SCL"), Las Vegas Sands Corp. ("LVSC"), and Sheldon Adelson (collectively "Movants") moved this Court on several grounds to quash the subpoenas Plaintiff issued to Michael Leven, Robert Goldstein, Ira Raphaelson, Robert Rubenstein, Sheldon Adelson, Gayle Hyman, and three others who were identified only as SCL "designated witnesses" to testify on three specific issues. Plaintiff opposed the motion, but failed to adequately address the most glaring issue—failure to effectuate proper service.

Service of a subpoena under NRCP 45 must be made by personal service. Rule 45(c)(3)(A) provides that the Court "shall quash or modify the subpoena if it ... fails to allow reasonable time for compliance." Although the hearing is only three days away, Plaintiff still has not properly effectuated personal service of a subpoena on Michael Leven[1], Robert Goldstein, Ira Raphaelson, Robert Rubenstein, Sheldon Adelson, or Gayle Hyman. Three day notice is not reasonable under any circumstance and the subpoenas must be quashed for this reason alone.

The subpoenas also must be quashed and a protective order issued because Movants demonstrated that the subpoenas are unduly burdensome, improperly seek disclosure of privileged or other protected matter, and are made solely to harass. Plaintiff's conclusory statements that the witnesses have personal knowledge of non-privileged facts are not sufficient to justify the undue burden and threat to privileged and protected matters the subpoenas impose. Accordingly, Movants respectfully request that the Court grant their motion in its entirety.

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[1] Mr. Leven has not lived in the United States since the beginning of 2015.

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II.

ARGUMENT

A. Plaintiff's failure to personally serve the subpoenas is dispositive.

Plaintiff claims that the "Nevada courts have not stated what it means to effectively 'deliver[] a copy' of a subpoena." Opposition 08:06. That is not true. The Nevada Supreme Court expressly stated over 16 years ago that "Nevada Rules of Civil Procedure 45(c) **requires** that a subpoena be **personally** served." *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (emphasis added) ("*Consolidated*").[2] In light of the Nevada Supreme Court's clear statement on this point, Plaintiff's federal authorities interpreting FRCP 45 are inapposite.

The only evidence Plaintiff offers that he served any of these witnesses are affidavits of service concerning Mr. Adelson and Mr. Raphaelson. But through his countermotion to have service on counsel deemed "sufficient for Rule 45" with regard to Messrs. Adelson and Raphaelson, Plaintiff tacitly acknowledges that he has not effected proper service on either of them. Opposition 08:01–02. And "[u]nfortunately for [Plaintiff], notice is not a substitute for service of process. Personal service or a legally provided substitute must still occur in order to obtain jurisdiction over a party." *C.H.A. Venture v. G.C. Wallace Consulting Engineers, Inc.*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990) (collecting authorities). Nevada law, in fact, "requires that a subpoena be personal served." *Consolidated*, 114 Nev. at 1312, 971 P.2d at 1256. There is no legally provided substitute. Even Plaintiff's own authority recognizes that, unlike service of other litigation papers, serving a trial subpoena "upon a person's lawyer will not suffice." *Aristocrat Leisure Ltd. v. Deutsche Bank Trust Co.*, 262 F.R.D. 293, 304 (S. D. N.Y. 2009) (declaring that the "purpose of requiring delivery to a named person is to ensure

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[2] Now NRCP 45(b). *See* NEV. R. CIV. PROC. 45, Editors' Note, Drafter's Note 2004 Amendment ("Subdivision (b)(1) retains the text of former subdivision (c) with some minor changes to delete reference to the sheriff or his deputy and to limit the requirement for one day's attendance and mileage to subpoenas that command a person's attendance."). The Nevada Supreme Court's *Consolidated* decision appears in the "Case Notes" following NRCP 45 under the heading "**Personal service required.**"

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receipt, so that notice will be provided to the recipient, and enforcement of the subpoena will be consistent with the requirements of due process.'").

Plaintiff tries to side-step the fact that he has an obligation to provide these witnesses with actual and proper service—part of Plaintiff's duty "to take reasonable steps to avoid imposing undue burden or expense on a person subject to ... subpoena"—with vague claims that Messrs. Adelson and Raphaelson are evading service.[3] But there is no gamesmanship or evasive action here. Plaintiff's woes are a product of his own making: Plaintiff did not even attempt to serve Messrs. Adelson and Raphaelson until January 29, which is 11 days before the hearing. Unlike in the string of cases Plaintiff cites but does not analogize to the facts here, Opposition 8:12–09:02, Mr. Adelson was out of the country when Plaintiff attempted to belatedly serve him with a subpoena and Mr. Raphaelson was out of the state between January 23 and February 2, 2015.

Plaintiff asks this court to deem Mr. Adelson served with a subpoena based on Plaintiff's attempted service at Mr. Adelson's personal residence in Las Vegas on February 2, when Mr. Adelson was not at home or even in the United States. The sole authority Plaintiff points to in support of his imaginary service on Mr. Adelson is NRS 14.090, which provides that service of legal process may be accomplished when the subpoenaed party resides in a guard-gated community *and* the security guard *denies access* to the subject person's residence for personal service of process.

Plaintiff's countermotion, however, demonstrates that the security guard at gateway to Mr. Adelson's residence *not only did not deny the process server access*, he escorted him to the Adelson residence to permit him to attempt personal service. *See* Ex. 1 to Countermotion (stating "[o]n February 2, 2015, the Affiant [the process server] attempted to personally serve the above referenced documents upon Sheldon Adelson. The Affiant was initially permitted entry into the Ridges at Summerlin, and was escorted to the residence of Sheldon Adelson" but was unable to effect service because Adelson was not there on February 2, 2015). Plaintiff's

[3] Plaintiff does not argue that the other witnesses it has also failed to personally serve are likewise evading service.

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process server was *not* denied access to the Adelson residence. Plaintiff's process server likewise was not denied access to the Raphaelson residence.[4] Under these circumstances, NRS 14.090 has no application to this case. *Bank of the West v. Barton,* No. 2:14–cv–00770–APG–CWH, 2014 WL 3514978 (D. Nev. 2014) (permitting service to guard under NRS 14.090 where process server **was denied** access to guard gated community); *see also* NEV. REV. STAT. § 174.345 ("Except as otherwise provided in NRS 289.027, service of a subpoena **must be made by delivering a copy thereof to the person named.**" (Emphasis added)).

Additionally, Plaintiff's inappropriate reliance on a decision by a federal district judge in a case with completely distinguishable facts does not counsel granting Plaintiff's countermotion: Mr. Adelson's counsel did not interdict service on him by force of arms. Mr. Adelson *was not* "shielded" from personal service at his home by armed guards. The reason the process server could not elicit a response from interrogating Adelson's intercom has nothing to do with body guards or counsel. Mr. Adelson was out of the country on February 2, 2015.[5]

B. These witnesses have not been provided sufficient notice.

Plaintiff argues that sufficient notice was provided to these witnesses because counsel was served with a witness list two weeks before the hearing. Plaintiff's attempt to equate service of a witness list on counsel with service of a subpoena under NRCP 45 falls flat. As the United States Court of Appeals for the District of Columbia Circuit explained in *F.T.C. v. Compagnie De Saint-Gobain-Pont-a-Mousson*:

> The distinction between notice and compulsory process, and the implications of that distinction for permissible modes of service, is well illustrated in the context of civil litigation. Federal Rule of Civil Procedure 4, which governs service of process, is primarily concerned with effectuating notice. To that end, the rule provides for a wide range of alternative methods of service, including registered mail, each designed to ensure the receipt of actual notice of the pendency of the action by the defendant. **By**

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[4] The affidavit of service regarding Mr. Raphaelson makes absolutely no mention that the process server was denied access to the Raphaelson residence. Affiant simply states that he served "Brandon." *See* Ex. 2 to Countermotion.

[5] Should Plaintiff follow through with his footnoted threat to deposit an alleged video of service in an unrelated case pending before another court, Opposition 9 n. 6, Defendants request that the Court strike it as immaterial, impertinent, or scandalous under NRCP 12(f).

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> **contrast, Federal Rule 45(c), governing subpoena service, does not permit any form of mail service, nor does it allow service of the subpoena merely by delivery to a witness' dwelling place. Thus, under the Federal Rules, compulsory process may be served upon an unwilling witness only in person.**

636 F.2d 1300, 1312–13 (D.C. Cir. 1980) (citations omitted) (emphasis added). Magistrate Hunt's decision in *In re Stratosphere Corp. Securities Litig.*, 183 F.R.D. 684 (D. Nev. 1999) ("*Stratosphere*"), likewise does not support Plaintiff's claim that he provided "more than sufficient notice." The deponent in *Stratosphere* actually was served with a subpoena. The subpoena, however, provided "unreasonably short" notice of only six days. *Id.* 183 F.R.D. at 687. The hearing in this case, however, is only three days away (including the weekend) and Plaintiff still has not properly effectuated service on any of these witnesses.

C. Plaintiff does not pass the stringent test to examine attorneys.

As argued more fully in the Motion to Quash, the attorney-client privilege protects "[c]onfidential disclosures by a client to an attorney made in order to obtain legal assistance." *Fisher v. U.S.*, 425 U.S. 391, 403 (1976); NEV. REV. STAT. § 49.095(3) ("A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications ... [m]ade for the purpose of facilitating the rendition of professional legal services to the client, by the client or the client's lawyer to a lawyer representing another in a matter of common interest"). The work-product doctrine protects "work product of the lawyer," and prohibits "unwarranted inquiry into the files and the mental impressions of an attorney." *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947); *see also* NEV. R. CIV. P. 26(b)(3) (providing nearly absolute protection to opinion work-product).

Movants argued that Plaintiff's efforts to subpoena Mr. Raphaelson and Mr. Rubenstein were inappropriate because these individuals are attorneys for LVSC whereas the evidentiary hearing relates to the conduct of SCL—and testimony of LVSC's General and Deputy Counsel is irrelevant to the conduct of SCL. *See* Motion to Quash at 8:26-9:5. Rather than respond to or rebut this argument, Plaintiff chooses to ignore it entirely, presumably because he has no credible response. Plaintiff's failure to present evidence demonstrating that *LVSC*'s attorneys

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possess relevant knowledge relating to *SCL*'s redactions should be viewed for what it is: an admission that no such evidence exists.

Defendants' Motion to Quash, relying primarily on *Club Vista Financial Servs. v. Eight Jud. Dist. Ct.*, 128 Nev. Adv. Op. 21, 276 P.3d 246 (Nev. 2012), also argued that any testimony by Mr. Raphaelson and Mr. Rubenstein on SCL's litigation conduct is necessarily privileged. *See* Motion to Quash at 9:10-11:22. In Opposition to this, Plaintiff offers two factual contentions. First, Plaintiff argues that "Raphaelson and Rubenstein participated in the underlying facts and a required to disclose their non-privileged knowledge." Opp. at 5:24-26. Second, Plaintiff alleges that he has "adequate cause to believe that Raphaelson and Rubenstein participated in, and have percipient knowledge of, the underlying conduct . . . ." Opp. at 6:14-16. The principal flaw in these contentions is that they are purely conclusory and completely unsupported. Plaintiff cites to no documents, testimony, or other evidence to support the notion that Mr. Raphaelson or Mr. Rubenstein possess any non-privileged information relevant to SCL's redactions. Plaintiff's attempts to turn the privileged and protected knowledge of LVSC's in-house attorneys into unprotected generic factual information should be disregarded entirely.

Plaintiff's entire position with respect to Mr. Raphaelson and Mr. Rubenstein's personal knowledge flatly ignores that **any information they may possess relating to SCL's redactions was provided to them in their capacity as counsel for LVSC**. Plaintiff seems to argue that that the "relevant facts" known by Mr. Raphaelson and Mr. Rubenstein are known to them by virtue of their status as employees of the corporation and, therefore, must be disclosed. *See* Opp. at 5:21-24. However, as the Nevada Supreme Court made clear in *Wardleigh*, communication to corporate attorneys remain privileged. *See Wardleigh v. Second Judicial Dist. Court In & For Cnty. of Washoe*, 111 Nev. 345, 352, 891 P.2d 1180, 1184 (1995). Here, any fact Plaintiff seeks to elicit from LVSC's attorneys, unlike the communications at issue in *Wardleigh,* would have been either (1) a privileged "communication to a corporate attorney" or (2) "the mental impressions, conclusions, opinions, [and/or] legal theories" which are "not discoverable under any circumstances." *Id.* 111 Nev. at 352, 359, 891 P.2d at 1184, 1189.

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Plaintiff's efforts to hide the fact that he seeks to elicit privileged information falls short of the mark necessary to put LVSC's attorneys on the stand. Plaintiff has not even shown that the information he seeks to elicit from LVSC's in-house attorneys would not be privileged, a failure that is an admission that he cannot satisfy the "stringent three-factor test" adopted by the Nevada Supreme Court in *Club Vista Financial Servs. v. Eighth Jud Dist. Ct.*, 128 Nev. Adv. Op. 21, 276 P.3d 246 (Nev. 2012). Plaintiff has clearly and incurably failed to present any evidence or persuasive reasoning that the testimony he intends to elicit from Mr. Raphaelson or Mr. Rubenstein would not be privileged. Thus, Plaintiff's subpoenas against Mr. Raphaelson and Mr. Rubenstein must be quashed.

D. Neutral facts do not equal personal knowledge.

Plaintiff argues that he has met the "exceptionally high burden" imposed by the Apex Witness rule to examine Mr. Goldstein, Mr. Leven, and Mr. Adelson. He has not. In an effort to make the required showing that those witnesses have personal knowledge of the facts relevant to the lawsuit, Plaintiff offers only neutral facts—the witnesses served as executives for LVSC or directors on the board for SCL—and the skewed interpretation that Mr. Leven's deposition testimony that he did not recognize the redacted documents presented to him confirmed Plaintiff was prejudiced by the redactions. These neutral facts and deposition testimony are not sufficient cause to allow Plaintiff to seek hearing testimony from Mr. Goldstein, Mr. Leven, and Mr. Adelson.

III.

CONCLUSION

For the foregoing reasons, the Court should quash all of the subpoenas Plaintiff has issued and grant a protective order precluding Plaintiff from making any further attempts to serve those subpoenas and striking the names of those witnesses and the unnamed SCL

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"designees" from Plaintiff's witness list.

DATED this 7th day of February, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2015, the foregoing **REPLY IN SUPPORT OF EMERGENCY MOTION TO QUASH SUBPOENAS AND FOR PROTECTIVE ORDER ON ORDER SHORTENING TIME; AND OPPOSITION TO COUNTERMOTION TO DEEM WITNESSES SERVED WITH EVIDENTIARY HEARING SUBPOENAS** was served on the following parties through the Court's electronic filing system:

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

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

PLAINTIFF STEVEN C. JACOBS' BRIEF ON SANCTIONS FOR FEBRUARY 9, 2015 EVIDENTIARY HEARING

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I. INTRODUCTION

There can no longer be any pretending that Defendant Sands China Ltd. ("Sands China") has not engaged in a longstanding and willful violation of its discovery obligations, including (but hardly limited to) this Court's September 14, 2012, December 18, 2012,[1] and March 27, 2013 Orders. This Court imposed sanctions against Sands China and its Co-Defendant Las Vegas Sands Corp. ("LVSC"), precluding any use of the Macau Personal Data Privacy Act ("MPDPA") as grounds for nonproduction of documents in jurisdictional discovery. That sanction, which Sands China now seeks to circumvent and relitigate, stems from what can only be fairly

[1] The written order was entered January 16, 2013.

characterized as fraud upon the judicial process. Concealing evidence and making false arguments that the MPDPA precluded a production of documents in this action, Sands China and LVSC hid from this Court as well as Jacobs that volumes of highly relevant documents had long been located in the United States. On top of that, all the while that Sands China and LVSC were representing to this Court that the data could not be accessed, their counsel was secretly reviewing that same material while repeating the false representations that the data was inaccessible. There can be no debate as to the wholesale assault upon the integrity of the judicial process.

Sands China deployed false representations about its access and location to evidence for the very purpose of delaying this case. And, it worked. This action has been pending now for over four years. Yet, no merits discovery has occurred, precisely because of Sands China's longstanding and continuing misconduct. Thus, for good reason, this Court precluded Sands China from any further reliance upon the MPDPA for jurisdictional discovery or the jurisdiction hearing.

Contrary to Sands China's apparent hopes, it does not get to relitigate the propriety of that sanction under the guise of debating the consequences for violating the sanctions order. The evidence of Sands China's deceit of the Court has already been determined, as has been the sanction. Sands China's request that it receive a do-over – whether it should be sanctioned for using the MPDPA to delay and obstruct discovery – must fail. Indeed, what Sands China seeks is to undo the prior sanction altogether.[2] Sands China wants to ignore all of the prejudice inflicted upon Jacobs that resulted in the sanction in the first place, and then contend that all that prejudice should be disregarded and only the individual redactions – undertaken in violation of this Court's Sanctions Order – should be considered.

The sad fact is that Sands China has continually disregarded multiple Court orders with the express purpose of delaying this action and denying Jacobs access to long-ago-ordered jurisdictional discovery. From the near inception of this case, Sands China fraudulently employed the MPDPA to obstruct discovery and delay this case. It did so for the simple purpose of trying to

[2] A decision, as the Supreme Court agreed, Sands China and LVSC had failed to challenge in any of their various writ proceedings.

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preclude evidence from coming to light as to its jurisdictional contacts with Nevada. The law presumes prejudice from unnecessary delay and that is certainly true here where the case has largely been frozen for the benefit of Sands China because of its knowing noncompliance.

Because this Court's prior sanction has proven insufficient to bring this intransigent litigant into compliance, the time has come for severe sanctions, including striking its baseless affirmative defense as well as the imposition of other evidentiary and monetary sanctions. Accepting Sands China's present position, it wants to reargue to which documents it should be allowed to enlist the MPDPA. Brazenly, Sands China contends that this Court must examine its entitlement to enlist the MPDPA on a document-by-document basis, as opposed to examining the entirety of its conduct relative to the MPDPA and the prejudice that it has inflicted. In this convenient fashion, Sands China claims that the benefits of noncompliance necessarily outweigh any consequences.

II. STATEMENT OF RELEVANT FACTS

A. The Court's First Sanction Does Not Deter Further Discovery Abuses.

Ever since the Nevada Supreme Court ordered an evidentiary hearing on Sands China's personal jurisdiction defense, it has waged a near endless campaign of discovery obstruction. First, under cover of the MPDPA, Sands China knowingly and purposefully deceived this Court (and Jacobs) regarding the location and review of discoverable information. (Decision and Order, Sept. 14, 2012, on file.) Once it learned of Sands China's deception, the Court convened its first evidentiary sanctions hearing. (*See id.*)

Because Sands China appears to think that it can reargue its ability to rely upon the MPDPA, it bears recalling the conduct it employed against this Court and Jacobs for nearly two years: Sands China claimed that it could not produce any documents in the United States because of the MPDPA and that it would be a long, drawn out process to get any documents out of Macau. It went on to affirmatively represent that all of the documents were located in Macau and that they could not be reviewed in the United States. But, as established at the evidentiary hearing, these representations were repeatedly made to the Court by counsel for Sands China and these representations were false. To the contrary, even before this litigation commenced, Sands China

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had transferred volumes of relevant information to the United States and concealed its existence. Yet, all the while representations were being made of how documents could not be reviewed and accessed here in the United States, counsel was affirmatively reviewing them at the offices of LVSC's in-house counsel. Indeed, LVSC's Director of Information Technology openly admitted that Sands China and LVSC had a free flow of data until the fallout of this litigation and then a "stone wall" was erected so as to preclude access to data for purposes of complying with discovery obligations in this case as well as subpoenas from the United States government.

The Court determined that Sands China's "lack of disclosure appears to the Court to be an attempt to stall discovery, and in particular, the jurisdictional discovery in these proceedings .... Given the number of occasions the MPDPA and the production of ESI by Defendants was discussed there can be no other conclusion than that the conduct was repetitive and abusive." (*Id.* ¶¶ 32-32.) The Court found "willful and intentional conduct with an intent to prevent" Jacobs and the Court from accessing, and ruling upon, discoverable information in the jurisdictional proceedings. (*Id.* ¶¶ 35(a)-(b).) The Court recognized "[t]he delay and prejudice to the Plaintiff in preparing his case is significant ...." (*Id.* ¶ 36.)

In the face of this unprecedented lack of candor and deceit, this Court ordered that "[f]or jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China will be precluded from raising the MPDPA as an objection or as a defense to admission, disclosure or production of any documents." (*Id.* at p. 8(a).) Sands China was also ordered to make a $25,000 contribution to the Legal Aid Center of Southern Nevada and to pay Jacobs' reasonable attorneys' fees. (*Id.* at p. 9(c)-(d).)

B. Sands China Refuses to Produce Documents From Macau and Misleads the Court Again.

Unfortunately, this Court's first round of sanctions did not dissuade Sands China's conduct. It paid a nominal fine but continued to secure delay upon delay, and there have been no consequences ever since. In fact, even two months after the first sanctions were imposed, Sands China admitted that it had not even started producing documents from Macau. As a consequence, Jacobs filed a Motion for NRCP 37 Sanctions and Sands China reactively filed a

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Motion for Protective Order on Order Shortening Time. (Pl.'s Mot. for NRCP 37 Sanction, Nov. 21, 2012, on file; Def.'s Mot. Protective Order, Dec. 4, 2012, on file.)

During the December 18, 2012 hearing, the Court again recognized Sands China's history violating court orders. (Hr'g Tr. at 28:17, Dec. 18, 2012, on file ("Well, they've violated numerous orders.").) In a familiar refrain, the Court was understandably perturbed by Sands China's ongoing runaround by the revolving door of attorneys.

> The Court: I've had people tell me how they're complying. I've had people tell me how they're complying differently, I've had people tell me how they tried to comply but now apparently they're in violation of law. I mean, I've had a lot of things.

(*Id.* at 28:20-23.)

Again confronted with Sands China's continuing stalling and noncompliance, this Court ordered Sands China to produce all documents by January 4, 2013. (Court Minutes, Dec. 18, 2012, on file; Order, Jan. 16, 2013, on file ("Sands China shall produce all information in its possession, custody, or control that is relevant to jurisdictional discovery, including electronically stored information ('ESI'), within two weeks of the hearing, on or before January 4, 2013;").) But even then, the maneuvering continued, with Sands China attempting to renegotiate the consequences of its deception and its prohibited use of the MPDPA. Attempting to hedge, Sands China raised the question of redactions, which this Court made clear it was permitted to do for issues like privilege, but it was not modifying sanctions that the MPDPA was no longer a basis for continuing noncompliance:

> Mr. Peek: Yeah. We need to have redactions as part of that, as well, as that's - - I understood - -
>
> The Court: I didn't say you couldn't have redactions.
>
> Mr. Peek: That's what I thought.
>
> The Court: I didn't say you couldn't have ***privilege logs***. I didn't say any of that, Mr. Peek.

(*Id.* at 27:8:-14.)

Since it had paid a nominal $25,000 fine for its prior affirmative misrepresentations to this Court – and thereby delaying this case for well over a year – Sands China was not deterred from

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continuing noncompliance. At the deadline for production, Sands China represented that it had completed a Holiday miracle: the review and production of 5,000 documents. Of course, if this were true, then Sands China simply was admitting that its two years of delay in not complying with discovery in Macau had all been a ruse. If it could have actually complied with the production in just weeks, then it cannot pretend that it had any excuse for noncompliance for over two years.

Sands China filed a "Report on Its Compliance with the Court's Ruling of December 18, 2012." (Def.'s Report on Its Compliance with the Ct.'s Ruling of Dec. 18, 2012, Jan. 8, 2013, on file.) However, Sands China's Report admitted a violation of the Court's September 2012 Order.

> Macau attorneys reviewed each of the documents identified as potentially responsive to determine whether the document was, in fact, relevant to jurisdictional discovery, and if so, whether it contained any 'personal data' within the meaning of the MPDPA. ***If the documents did contain 'personal data,' the reviewers then redacted that personal information.***

(*Id.* at 7:2-6 (emphasis added).) Sands China boasted that it spent $500,000 to violate the Court's directive. (*Id.* at 7:7-9.) On February 7, 2013, Sands China produced a so-called "Redaction Log" for the 2,680 documents it redacted in violation of the Court's Order. Many of these documents were redacted beyond recognition or use.

Because Sands China's MPDPA redactions plainly violated the Court's September 2012 and December 18, 2012 Orders, Jacobs filed a Renewed Motion for NRCP 27 Sanctions on Order Shortening Time. (Pl.'s Renewed Mot. for NRCP 27 Sanctions on OST, Feb. 8, 2013, on file.) The Court granted Jacobs' Motion and found "Jacobs has made a prima facie showing as to a violation of this Court's orders which warrants an evidentiary hearing." (Order Regarding Pl.'s Renewed Mot. for NRCP 37 Sanctions on OST, March 27, 2013, p. 2, on file.) The Court stated, "Sands China violated this Court's September 14, 2012 Order by redacting personal data from its January 4, 2013 document production based upon the MPDPA . . . ." (*Id.*) The Court ordered Sands China to search and produce records for twenty custodians identified by Jacobs, including Jacobs' Court-approved discovery requests, by April 12, 2013. (*Id.*) The Court reiterated "as

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previously ordered, LVSC and Sands China are precluded from redacting or withholding documents based upon the MPDPA." (*Id.* at p.3.)

C. Sands China's Misdirection at the Nevada Supreme Court.

To secure further delay, Sands China sought writ review at the Nevada Supreme Court, challenging this Court's scheduling of an evidentiary hearing on additional sanctions. Pursuing that relief, Sands China made an incredible representation to the Supreme Court: It claimed that this Court's September 2012 Order did not preclude redactions of documents from Macau because, it says, the Court's order only applied to documents that were already located in the United States. (Pet'rs' Notice of Filing in Related Case Re: Correction of Record of March 3, 2014 Oral Argument at p. 4, March 24, 2014, S. Ct. Case No. 62944, on file.) Sands China went so far as to represent that this Court's September 2012 Order did not pertain to documents that were still located in Macau. (*Id.*) According to Sands China, this Court's sanction was meaningless because the MPDPA sanction only pertained to documents that were located in the United States, while it had already admitted to this Court that the MPDPA did not even apply to documents if they were in the United States.

On August 7, 2014, the Nevada Supreme Court denied Sands China's writ petition and endorsed the approach taken by this Court. *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 877 (2014) ("Here, the district court properly employed this framework when it found that the existence of a foreign international privacy statute did not excuse petitioners from complying with the district court's discovery order."). The Supreme Court held that the MPDPA does not relieve a litigant of its obligation to comply with discovery orders. *Id.*, 331 P.3d at 880.

D. Sands China's Continues to Willfully Disregard the Court's Orders.

Although this Court vacated the partial stay of its March 2013 Order after the Nevada Supreme Court's ruling, Sands China's noncompliance and obstruction has continued to this very day. It did not take any steps to remedy its noncompliance, and it has continued to use the MPDPA as a basis for nonproduction notwithstanding this Court's sanctions order which already precludes such redactions. As of October 2014, Sands China admits that approximately

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2,600 documents were improperly redacted. (Def.'s Revised Pre-Hearing Memorandum Re: Pl.'s Renewed Mot. for Sanctions at 3:24-4:1, Oct. 17, 2014, on file.) Confirming that its ongoing contempt is knowing and willful, just last month, January 5, 2015, Sands China produced approximately 7,627 additional documents with MPDPA redactions.

Although Sands China purports to have located some documents in the United States and subsequently produced them without redactions ("replacement images"), a large number of documents allegedly do not have counterparts in the United States. On January 23, 2015, Sands China provided only 569 replacement images related to its production earlier in the month.[3] Its "Second Supplemental Redaction Log" demonstrates that at least 5,876 documents contain MPDPA redactions. Sands China has even made MPDPA redactions to certain "replacement images" allegedly located in the United States and outside the jurisdiction of the MPDPA. Furthermore, the replacement images were effectively produced *after* Jacobs deposed Sands China's witnesses. Thus, these documents were rendered unavailable to Jacobs during the most useful part of discovery.

Sands China's engineered delay of the discovery process[4] has led to the irreplaceable loss of evidence. Key witnesses have left the companies, passed away, or have otherwise disappeared. The unending delay has brought this case to the brink of the five-year rule just as Sands China prefers. Sands China's maneuvering will force Jacobs to rush through merits discovery in an extremely shortened timeframe based upon its attempts to profit from its delays. The time has come for substantial – and meaningful – sanctions. Nothing short of that is going to convince this litigant that it cannot profit from violating Court orders.

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[3] These documents were produced after Sands China represented on December 18, 2012 that "[w]e've given them everything we have in Las Vegas, including the ghost image information of the Jacobs ESI." (Hr'g Tr. at 14:23-25, Dec. 18, 2012, on file.) Given the volume of subsequent productions, Sands China plainly had no basis for making such a representation.

[4] Including the three month holding pattern caused by Sands China's untenable privilege log.

III. ARGUMENT

A. Sands China's Noncompliance is Knowing, Intentional and Longstanding Which Warrants Severe Sanctions.

In *Las Vegas Sands v. Eighth Judicial District Court*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 880 (2014), the Nevada Supreme Court upheld this Court's refusal "to excuse [Sands China] for [its] noncompliance with the district court's previous [discovery] order." The Supreme Court determined that this Court acted well within its jurisdiction and did not act arbitrarily or capriciously in finding that Sands China had violated the Court's discovery orders. *Id.* The High Court also approved this Court's balancing approach wherein this Court indicated that "it intended to 'balance' [Sands China's] desire to comply with the foreign privacy law in determining whether discovery sanctions are warranted . . . ." *Id.* But as the Supreme Court also made clear, Sands China "did not challenge" this Court's Sanctions Order which precluded it from relying upon the MPDPA. *Id.* at 878.

The Nevada Supreme Court explained that "the mere presence of a foreign international privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply with Nevada discovery rules. Rather, the existence of an international privacy statute is relevant to the district court's sanctions analysis in the event that its order is disobeyed." *Id.* Citing the United States Supreme Court's opinion in *Societe Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522 (1987) and the RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 442(1)(c) (1987), the Supreme Court identified five factors to consider:

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

Id. Each of these factors weighs heavily in favor of substantial sanctions.

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1. The MPDPA was repeatedly and continuously misused to bar access to volumes of jurisdictional discovery.

Sands China attempts to neuter this Court's MPDPA sanction by claiming that this Court should only look at its application relative to redactions, as opposed to the nearly two-year delay Sands China secured through its wholesale use of the MPDPA to obstruct all jurisdictional discovery. Through this sleight of hand, Sands China wants to go through document-by-document as to the redactions it used under the MPDPA after years of wholesale obstruction – to argue over whether any single document (considered in isolation) is needed to establish jurisdiction. But of course, that is not the standard. Sands China has secured delay for years through misuse of the MPDPA, and that misuse is ongoing. Had Sands China not misused the MPDPA, the incessant delay would not have occurred.

Documents are considered "important" to the litigation where they are "directly relevant." *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1475 (9th Cir. 1992). "A court need consider ***only the relevance*** of the requested documents to the case; it need not find that the documents are vital to a proper [cause of] action." *Chevron Corp. v. Donziger*, 296 F.R.D. 168, 204-05 (S.D.N.Y. 2013) (quotations omitted) (emphasis added).

Here, there can be no question as to the importance and relevancy to the documents which Sands China obstructed access to through use of the MPDPA relative to establishing jurisdiction. *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) holds that the proper inquiry "is whether that corporation's affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Id.* at 761 (quotations omitted). Under *Daimler AG*, general jurisdiction will be found in the place of incorporation, the principal place of business, and where the corporate "nerve center" is located and primary decisions are made. *Id.* at 760 (citing *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010)); *see also Hertz Corp.*, 559 U.S. at 92-93 (a corporation's principal place of business is determined by its "nerve center," which is the "place where the corporation's officers direct, control and coordinate the corporation's activities).[5]

[5] *See also Topp v. CompAir Inc.*, 814 F.2d 830, 836 (1st Cir. 1987) ("[T]he method for deciding whether a parent is doing business in a state for the purpose of finding personal jurisdiction can be applied to the analogous issue of determining the principal place of business

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As this Court knows all too well, Sands China enlisted the MPDPA to block access to virtually all evidence relating to personal jurisdiction. It was not until it got caught deceiving this Court as to the MPDPA that virtually any documents were produced by Sands China. Indeed, even if the Court ignored that wholesale misuse, its continuing improper use of the MPDPA to make redactions is also withholding relevant information. For instance, Jacobs requested documents related to the location of Sands China's board meetings and participants, executive travel to Macau, the work of Leven and Goldstein, the decision to obtain financing, the execution of contracts with Nevada entities, decisions related to Parcels 5 and 6, the decision to terminate Jacobs, and other operational decisions. Jacobs also requested documents related to decisions to purchase goods, services, or financing, which are relevant to determining the location of Sands China's headquarters and nerve center.[6]

The redacted personal data obstructs Jacobs from ascertaining who attended the board meetings in person or telephonically; who traveled to Macau and from where; who made daily decisions, where were they made, to whom were the decisions communicated, and to which location were the decisions communicated. Moreover, the redacted documents and personal data are relevant to Jacobs' "agency theory" of jurisdiction. *Daimler AG* did not eliminate the agency theory of personal jurisdiction. The Supreme Court only rejected the Ninth Circuit's "less rigorous" approach based upon the "importance" of the activity and hypothetical readiness to

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for diversity jurisdiction."); *Suzanna Sherry, Don't Answer That! Why (and How) the Supreme Court Should Duck the Issue in Daimlerchrysler v. Bauman*, 66 Vand. L. Rev. En Banc 111, 118 (2013) ("A year before *Goodyear, Hertz Corp. v. Friend* had defined "principal place of business" for purposes of diversity jurisdiction as the corporation's "nerve center [], typically . . . [its] headquarters." Putting the two cases together suggests that MBUSA's maintenance of three facilities in California, none of them headquarters or a nerve center, was not sufficient to constitute continuous and systematic contacts.") (footnotes omitted).

[6] Merely entering into agreements in the forum may not give rise to general jurisdiction, but demonstrating where the decision was made to enter into the contracts is relevant to establishing a corporation's nerve center. Sands China's continued reliance on *Martinez v. Aero Caribbean*, 764 F.3d 1062 (9th Cir. 2014), is unavailing. In *Martinez*, a French company had "no offices, staff, or other physical presence in California, and it [was] not licensed to do business in the state." *Id.* at 1070. Under those circumstances, entering into contracts to purchase, advertising, and visits by representatives were insufficient to confer general jurisdiction. *Id.* By contrast, every decision is made in Nevada which, in conjunction with its contractual activities, confers jurisdiction in Nevada.

perform. *See Daimler AG*, 134 S. Ct. at 759 ("Daimler argues, and several Courts of Appeals have held, that a subsidiary's jurisdictional contacts can be imputed to its parent only when the former is so dominated by the latter as to be its alter ego . . . . But we need not pass judgment on invocation of an agency theory in the context of general jurisdiction, for in no event can the appeals court's analysis be sustained."). The redacted personal information is relevant to determining who was acting as an agent of whom and from where.

As this Court has already observed, the redacted documents and information are relevant to jurisdictional discovery and merits the imposition of sanctions. After all, each of these documents was triggered by the jurisdictional search terms confirming that they satisfy the requirement of "relevancy." (*See* Hr'g Tr. at 27:22-23, Aug. 14, 2014, on file ("I've already made a determination that you should produce them. You said you're not going to. I said, okay, that's bad, I'm going to sanction you.").)

2. Jacobs' discovery requests were specific.

Predictably, Sands China next tries to relitigate the propriety of Jacobs' discovery requests, pretending as though this Court has not already done so. Yet, on September 27, 2011, the Court held a hearing on Jacobs' Motion to Conduct Jurisdictional Discovery. (Order Re: Pl.'s Mot. to Conduct Jurisdictional Discovery & Def.'s Mot. for Clarification, March 8, 2012, on file.) The Court detailed the documents to which Jacobs is entitled. (*See generally id.*) The Court granted Jacobs' document requests regarding the following:

(1) The date, time, and location of each Sands China Board meeting, the location of each Board member, and how they participated in the meetings;

(2) Travels to and from Macau/China/Hong Kong by Adelson, Leven, Goldstein, and/or *any other LVSC executive* who has had meetings related to Sands China, provided services to Sands China or traveled to Macau/China/Hong Kong for Sands China business;

(3) Leven's service as CEO of Sands China and/or the Executive Director of Sands China Board of Directors;

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(4) The negotiation and execution of agreements for the funding of Sands China that occurred, in whole or in part, in Nevada.

(5) Contracts/agreements that Sands China entered into with entities based in or doing business in Nevada;

(6) The work Robert Goldstein performed for Sands China, including while acting as an employee, officer, or director of LVSC;

(7) Shared services agreements;

(8) Memoranda, emails, and/or other correspondence that reflect services performed by LVSC on behalf of Sands China;

(9) Work performed on behalf of Sands China in Nevada including, but not limited to, documents related to Cirque du Soleil and Harrah's;

(10) Reimbursements made to any LVSC executive for work performed or services provided related to Sands China; and

(11) Documents provided to Nevada gaming regulators.

(*Id.*) The Court also denied some of Jacobs' discovery requests. (*Id.*)

Thus, all of Jacobs' document requests were already vetted by this Court and sufficiently specific. Sands China's attempt to characterize Jacobs' approved discovery requests as "broad and generalized" is simply revisionist history attempting to manufacture an excuse for its knowing contempt of this Court's Orders. (Def.'s Revised Pre-Hearing Memorandum at 14:18-19.); *See Pershing Pac. W., LLC v. MarineMax, Inc.*, No. 10-CV-1345-L DHB, 2013 WL 941617, at *7 (S.D. Cal. Mar. 11, 2013) (finding discovery requests sufficiently specific where "the Court has imposed limitations on the scope of production for several of the Requests.").

3. Sands China redacted documents originating from the United States.

Sands China incorrectly states that "the only documents SCL produced with MPDPA redactions were documents that originated in Macau and could be located only in Macau." (*Id.* at 15:7-8.) It claims that it located duplicates and near duplicates in the United States and produced them without MPDPA redactions. (*Id.* at 15:3-4.) However, a number of documents produced as "replacement images" from the United States contain MPDPA redactions.

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Sands China is not employing the MPDPA to redact only documents emanating from Macau. It is utilizing the blocking statute to redact documents purportedly produced from this jurisdiction. This practice is inappropriate even under Sands China's own tortured interpretation of the MPDPA.

Furthermore, "where the information cannot be *easily obtained* through alternative means, the origin of the information can be counterbalanced with the inability to obtain the information through an alternative means, thus favoring disclosure." *Chevron Corp.*, 296 F.R.D. at 206 (S.D.N.Y. 2013) (emphasis in original, internal quotations omitted). But, as this Court already knows, none of the documents were "easily obtained" through alternative means. It was only after Sands China had got caught deceiving Jacobs and this Court that any of the documents were produced. Incredibly, Sands China wants to pretend that the Court can ignore the years of delay Sands China achieved through that course of conduct.

4. Sands China fails to prove that alternate means are available..

Sands China further misstates the law when it suggests that alternate means are available to obtain the redacted information. That is not what the law contemplates. "[T]he alternative means must be 'substantially equivalent' to the requested discovery." *Richmark Corp.*, 959 F.2d at 1475. Even if some documents can be obtained from the United States, there is no legitimate alternative means of securing the information when there is difficulty in obtaining *all* documents and when some of the requests do not relate to communications with other parties. *Pershing Pac. W., LLC*, 2013 WL 941617, at *8. Sands China must show that its feigned alternatives are substantially equivalent to the requested information. *See In re Air Crash at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. 374, 378 (C.D. Cal. 2002) ("However, defendant has not shown that the ASC report is substantially equivalent to the requested documents.")

In this case, Jacobs has no alternative means of obtaining "substantially equivalent" information. While some duplicative documents were located in the United States, and were produced without MPDPA redactions, Sands China admits that *thousands* of documents have no counter-part in the United States and will not be produced without redaction. Jacobs has no other method of obtaining the personal data identifying the decision-makers, attendees, senders,

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recipients, of subject(s) of the documents and communications. Sands China's so-called redaction logs are not an adequate substitute. The entity that created a document, or sent and received a communication, is not as important as the precise identity of the individuals involved. A directive from the Chairman is more relevant to the jurisdictional "nerve center" analysis than an email from a slot host.

And, the belated MPDPA consents from *only four witnesses* proves the point. These four witnesses were apparently involved in a suspiciously low number of email communications and thousands of other relevant documents involved people that Sands China has not even attempted to ask for consent. Sands China admits it has not made any other efforts to obtain MPDPA consent. Instead, it shrugs, "[i]t is not practical ***to attempt*** to secure consents from all of the ***many*** individuals whose names and other personal information were redacted from documents . . . ." (Def.'s Revised Pre-Hearing Memorandum at 17 n.16 (emphasis added).)[7] If it is not practical for Sands China to obtain consents, then it is not a substantially equivalent alternative. *See United States v. Vetco Inc.*, 691 F.2d 1281, 1290 (9th Cir. 1981) ("It is not substantially equivalent because of the cost in time and money of attempting to obtain those consents.").

5. The United States' interest outweighs Macau's supposed interests.

The balance of national interests is the most important factor. *Richmark Corp.*, 959 F.2d at 1476. The United States has a "substantial" interest in "vindicating the rights of American plaintiffs" and a "vital" interest "in enforcing the judgments of its courts." *Id.* at 1477. "[T]he United States has a substantial interest in fully and fairly adjudicating matters before its courts, [and] [a]chieving that goal is only possible with complete discovery." *Chevron Corp.*, 296 F.R.D. at 206 (internal quotations omitted).

When considering the strength of Macau's interests, the Court must consider "'expressions of interest by the foreign state,' 'the significance of disclosure in the regulation . . . of the activity in question,' and 'indications of the foreign state's concern for confidentiality ***prior to the controversy.***'" *Richmark Corp.*, 959 F.2d at 1476 (quoting RESTATEMENT (THIRD) OF FOREIGN

[7] Assuming *arguendo* that consent under the MPDPA must be "freely" given, Sands China has not made any efforts – gentle or otherwise – to obtain consents.

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RELATIONS LAW § 442 cmt. c) (bold added). In the absence of earlier statements of interest, a foreign government can express its interests by formally intervening in an action or filing an amicus brief. *See Chevron Corp.*, 296 F.R.D. at 206-07 (government can intervene); *see also In re Rubber Chemicals Antitrust Litig.*, 486 F. Supp. 2d 1078, 1082 & n.2 (N.D. Cal. 2007) (foreign government offering to submit amicus brief as it had done in other matters).

Sands China must submit actual evidence – not argument – that it faces serious consequences and show the extent to which Macau enforces its privacy laws. *See In re Air Crash at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. at 379. Letters to litigants are not such proof. *Id.* ("This letter is not persuasive proof that defendant or its officers or managing agents will be criminally prosecuted for complying with an order of this Court. Nor has defendant presented any evidence regarding the manner and extent to which Singapore enforces its secrecy laws."). Naked fear of prosecution is not sufficient. *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 197 (E.D.N.Y. 2010) *cited with approval Las Vegas Sands*, 130 Nev. Adv. Op. 61, 331 P.3d at 880.

The United States has an overwhelming interest in ensuring that Jacobs – and all of its citizens – receive full and fair discovery to uncover the truth of their judicial claims. Nevada's interest is no different. Sands China has no ***official*** statement of the Macanese government ***outside of this litigation*** regarding its interests in preventing Sands China's disclosure of information. To be sure, Sands China has letters purportedly from the OPDP but those letters did not express interest in the redaction of this information before the case. *See Richmark Corp*, 959 F.2d at 1476 (letters from PRC's State Secrecy Bureau sent during litigation ***do not*** constitute statement of interest because they were sent in response to the litigation in question).

And, despite being aware of this litigation and the grandiose claims of wide-reaching implications, the Macanese government has not moved to intervene or file an *amicus* brief to state its actual interests (if any). *Chevron Corp.*, 296 F.R.D. at 206-07; *In re Rubber Chemicals Antitrust Litig.*, 486 F. Supp. 2d at 1082 & n.2. And the evidence at the evidentiary hearing will show that this is no accident. Even Sands China's own witnesses will have to acknowledge that they transmit so-called personal data out of their Macau casinos every day in communications

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with individuals at the parent company, LVSC. They just do not want to release that information when it can be used against them as opposed to when they do so in pursuit of their own interests.

Additionally, Sands China has no evidence that it will actually be subject to any form of sanction, let alone a serious one. Again, the letters to Sands China do not constitute sufficient evidence and Sands China has no proof of any other material consequences for supposed violations of the MPDPA stemming from a court ordered production in the United States. *In re Air Crash at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. at 379.

6. Additional factors – Sands China is willfully disregarding the Court's orders in bad faith.

This is the case where the Court must also recognize the party's willful noncompliance. A party's good faith efforts to produce documents and to comply with the Court's Order may also be considered. *Chevron Corp.*, 296 F.R.D. at 213 ("[T]he final factor: whether defendants have acted in good faith in their attempts to produce the requested documents . . . and to comply with the Court's order."). Nevertheless, good faith and willful non-compliance is only relevant when the requesting party attempts to obtain the harshest sanctions – dismissal, default, or contempt. *Id.* Lesser sanctions, such as adverse evidentiary presumptions, can be imposed even in the absence of bad faith or willfulness. *Id.*

A party is willfully disregarding a court's order unless it is "factually impossible" to comply. For example, in *Richmark Corporation*, the resisting party made the same argument that Sands China advances here. It "contend[ed] that it has no 'present ability' to comply with the discovery order because doing so would violate PRC law." 959 F.2d at 1481. The Ninth Circuit soundly rejected this position. The court held "[t]o prevail here, [the resisting party] bears the burden of proving that it is *'factually impossible'* to comply with the district court's order – for example, because the documents are not in [the party's] possession or no longer exist." *Id.* Like Sands China, the resisting party never disputed that it had the ability to produce the documents, it only argued "that disclosing the information will result in negative consequences for it, in that it might be prosecuted by the PRC." *Id.* This was not enough to "make out a showing of present inability to comply." *Id.*

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Sands China's plea that it "cannot comply" is but empty rhetoric. It is not impossible for Sands China to comply with this Court's orders. Sands China could have told this Court the truth all along before it improperly stalled this case through the misuse of the MPDPA. And even as to its redactions, Sands China (and its vendor) can remove the redactions and produce the documents with ease. Again, Sands China routinely sends personally data out of Macau and into Las Vegas as part of its daily business operations without MPDPA problems. In other words, Sands China does not view the MPDPA as an obstacle if the transmission of personal data facilitates doing business, but the MPDPA is somehow an impediment to this Court's lawfully ordered discovery. Sands China is *choosing* to use the MPDPA to avoid this Court's orders because it does not want to be exposed. Selective use of the MPDPA does not make Sands China's non-compliance any less "willful."

In addition, Sands China's role in influencing Macanese officials to interpret the MPDPA in a draconian manner is also relevant to Sands China's good faith. *See Chevron Corp.*, 296 F.R.D. at 201 ("As will be seen below, there are troubling aspects as to the manner in which the *Córdova* ruling was sought and procured, matters that go to the good faith of the LAPs and their attorneys."). Previously, the MPDPA was never applied to prohibit the export of email address or names of senders and recipients. Sands China proposes that it is just a coincidence that the Macau government developed its current MPDPA policy at almost precisely the same moment that Sands China and LVSC needed an excuse not to comply with discovery in this case and with the subpoenas issued by the United States government. But as LVSC's own technology officer, Mangit Singh, confirmed, this was anything but a coincidence.

The correspondence exchanged between Sands China and the OPDP is not evidence of good faith as these letters were designed to be rejected. *See Linde*, 269 F.R.D. at 199 ("Defendant's letters requesting permission from foreign banking authorities to disclose information protected by bank secrecy laws are not reflective of an "extensive effort" to obtain waivers . . . . Instead, the letters were calculated to fail."). Sands China purposefully neglected to provide the OPDP with all of the necessary information. (Pl.'s proposed Ex. 102 at 305 ("However, since your company has provided our Office with no information evidencing that

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your company has obtained the express consent of the parties relating to such information, nor any contract of employment . . . our Office cannot deem that your company's authorization of a law firm in Hong Kong to inspect relevant documents complies with relevant stipulation of the *Personal Data Protection Act*.").) Sands China also failed to invoke the proper provision of the MPDPA when asking for permission. (*Id.* at 305-06.)

"Finally, the years of delay caused by defendant's refusals to produce weigh against a finding of good faith . . . It is now apparent that the delay was for no purpose at all; defendant never intended to produce certain documents, regardless of this court's rulings . . . ." *Linde*, 269 F.R.D. at 200.[8] Sands China has willfully disobeyed the Court's discovery order and has not acted in good faith.

B. NRCP 37 Supports the Issuance of Sanctions.

Nevada Rule of Civil Procedure 37 authorizes sanctions for "willful noncompliance with a discovery order of the court." *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). In addition to Rule 37, the Court has "inherent equitable powers" to impose sanctions for "abusive litigation practices." *Id.* (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987)) (citations omitted); *see also GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (noting that courts have the inherent authority to impose discovery sanctions "where the adversary process has been halted by the actions of the unresponsive party."). As the Nevada Supreme Court warned, "[l]itigants and attorneys alike should be aware that these [inherent] powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute." *Young*, 106 Nev. at 92, 787 P.2d at 779.

"Fundamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue." *GNLV Corp.*, 111 Nev. at 870, 900 P.2d at 325 (citing *Young*, 106 Nev. at 92, 787 P.2d at 779-80). The minimum sanction a court should impose is one that deprives the wrongdoer of the benefits of their violations. *See Burnet v.*

[8] As part of Sands China's delay, the Court can consider Sands China's other efforts to slow discovery, including its awful privilege log. *See Chevron Corp.*, 296 F.R.D. at 219 (accounting for "Defendants' Further Efforts to Block Discovery" and noting "Defendants' recalcitrance in the discovery process is not limited to the dispute over the Ecuadorian documents.").

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Spokane Ambulance, 933 P.2d 1036, 1041 (Wash. 1997) (*en banc*) ("The purpose of sanctions generally are to deter, punish, to compensate, to educate, and ***to ensure that the wrongdoer does not profit from the wrongdoing***." (emphasis added)); *Woo v. Lien*, No. A094960, 2002 WL 31194374, at *6 (Cal. Ct. App., Oct. 2, 2002) (upholding trial court's imposition of sanctions because not doing so "would allow the abuser to benefit from its actions.").

In cases similar to the case at hand, the United States Supreme Court has approved the striking of a party's personal jurisdiction defense. *See, e.g., Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982). As another court has recognized under like circumstances, the "sanction striking their personal jurisdiction defense would be appropriate for failure to comply with the order to produce insofar as it required production of documents bearing on their personal jurisdiction defense in this action." *Chevron Corp.*, 296 F.R.D. at 220. Indeed, that court decided to strike the personal jurisdiction defense but proceeded to make evidentiary findings as well so as to protect the record on appeal. *Id.* at 221 ("Nonetheless, the Court recognizes that a reviewing court may disagree with this resolution of the personal jurisdiction issue. Accordingly, in order to afford a reviewing court a full record on the issue, the Court will take evidence and making findings at trial on the question whether it has personal jurisdiction over the LAP Representatives independent of this sanctions order.").

At a minimum, Jacobs is entitled to both adverse evidentiary sanctions for the jurisdictional hearing and serious monetary sanctions. The RESTATEMENT (THIRD) OF FOREIGN RELATIONS Law § 442(1)(b) states that the "[f]ailure to comply with an order to produce information may subject the person to whom the order is directed to sanctions, including . . . a determination that the facts to which the order was addressed are as asserted by the opposing party." "[A] court or agency may, in appropriate cases, make findings of fact adverse to a party that has failed to comply with the order for production, even if that party has made a good faith effort to secure permission from the foreign authorities to make the information available and that effort has been unsuccessful." *Id.* at (2)(c). NRCP 37(b)(2) imposes a similar sanction for disobeying a court's discovery order. It provides that the "designated facts shall be taken to be

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established for the purposes of the action in accordance with the claim of the party obtaining the order." NRCP 37(b)(2).

"An adverse inference serves the remedial purpose of restoring the prejudiced party to the same position he would have been in absent the wrongful destruction of [or willful refusal to produce] evidence by the opposing party." *Chevron Corp.*, 296 F.R.D. at 222. Adverse inferences restore the evidentiary balance. *Linde*, 269 F.R.D. at 203. Again, a showing of bad faith is not required. "The inference is adverse to the [nonproducing party] not because of any finding of moral culpability, but because the risk that the evidence would have been detrimental rather than favorable should fall on the party responsible for its [nonproduction]." *Id.* at 200 (quotations omitted).

As this Court knows well, Sands China misused the MPDPA to disrupt and delay the jurisdictional hearing. The law presumes that the delay has imposed severe prejudice upon Jacobs. *Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042 (2010). Although that prejudice is irreparable at this point, this Court must, at a minimum, deprive Sands China of the benefits of its misuse of the MPDPA and draw all adverse inferences that Sands China's use of the MPDPA would contradict its denials of being subject to personal jurisdiction in Nevada.

Additionally, this is a case where serious monetary sanctions must be imposed. Tellingly, a case upon which Sands China relies[9] approves a sanction of $10,000 a day for refusing to produce documents based upon an alleged foreign privacy statute. In *Richmark Corporation v. Timber Falling Consultants*, a company resisted discovery, and refused to comply with court orders, based upon "State Secrecy Laws" of the People's Republic of China. 959 F.2d 1471-72. As a sanction, the district court awarded the discovery party its attorneys' fees and costs and $10,000 a day in contempt fines. *Id.* at 1472. The Ninth Circuit affirmed the sanction even though, by the time of the appeal, the sanction amount "surpassed the amount of the underlying [$2.2 million dollar] judgment . . . ." *Id.* at 1481. The Court further held that if $10,000 a day is insufficient to coerce compliance, that amount should be increased. *Id.* at 1482.

[9] (Def.'s Revised Pre-Hearing Memorandum at 7:3-4 (citing *Richmark*).

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The same level of monetary sanction should be imposed on Sands China. *i.e.* $10,000 a day from the January 4, 2013 date of compliance established at the December 18, 2012 hearing until the February 9, 2015 sanctions hearing. Such a fine would equal $7,660,000.00 and continue until Sands China stops making MPDPA redactions.[10] Respectfully, Jacobs believes that this Court's small $25,000 sanction had the effect of encouraging Sands China's ongoing belligerence. Sands China is more than happy to pay such nominal sums to avoid having to comply with its discovery obligations. This litigant has immeasurable financial resources and only a substantial sanction will have any hope of influencing its conduct and reducing the benefit that it has obtained from interminable delay.

Finally, Jacobs should be awarded his reasonable attorneys' fees and costs incurred in attempting to obtain discovery and dealing with Sands China's MPDPA redactions. Once granted, Jacobs will submit a proper and substantiated motion for attorneys' fees.

Jacobs' requested sanction comports with Nevada Supreme Court precedent. The Supreme Court has announced a number of factors to consider when assessing the propriety of a sanction.

> The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.

Young, 106 Nev. at 93, 787 P.2d at 780.

Sands China has knowingly and willfully failed to comply with its discovery obligations, including violating the Court's September 2012, December 18, 2012, and March 2013 Orders.

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[10] Alternatively, the Court could account for the stay pending the Nevada Supreme Court's consideration of Sands China's writ petition. In that case, the sanction would amount to $3,080,000. (1/4/13 to 2/9/15 = 766 days. 5/13/13 stay pending writ to 8/14/14 hearing lifting stay = 458 days. 766-458 = 308 days un-stayed X $10,000 = $3,080,000).

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This is not a litigant that has any entitlement to rely upon restrictions of the MPDPA. It lost that right when it got caught deceiving this Court as to the location of documents and the application of the MPDPA so as to delay this case and thwart jurisdictional discovery. Sands China does not get a do-over of the sanction simply because the sanction is now an inconvenience for it. It is not impossible for Sands China to comply. *Richmark Corp.* 959 F.2d at 1481. Rather, Sands China is choosing this Court's sanction over a hypothetical slap on the wrist from Macau. There are no other feasible sanctions to remedy the delay and evidentiary imbalance that have been caused by Sands China's misuse of the MPDPA. Even significant and severe monetary sanctions will not undo the harm that Sands China has already caused nor deprive it of the benefit that it has achieved.

IV. CONCLUSION

Sands China has successfully paralyzed this case through misuse of the MPDPA. Once that misuse was uncovered, this Court held that Sands China could no longer rely upon it for the jurisdictional phase of this case. Yet, Sands China thinks itself above the law. Thus, it secured another two years of delay by doing exactly what this Court said it could not do.

DATED this 6th day of February, 2015.

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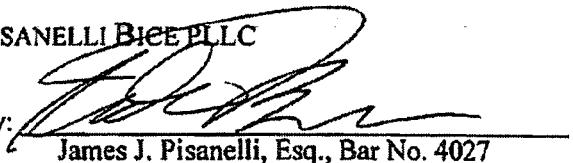
By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 6th day of February, 2015, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' BRIEF ON SANCTIONS FOR FEBRUARY 9, 2015 EVIDENTIARY HEARING** properly addressed to the following:

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ORIGINAL

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STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 09 2015

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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

BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

> Service of process is carefully prescribed by the Legislature, which affords litigants ample methods for serving natural persons. Regularity of process, certainty and reliability for all litigants and for the courts are highly desirable objectives to avoiding generating collateral disputes. These objectives are served by adherence to the statute and disserved by judicially engrafted exceptions. . . .[1]

Service of process is not simply a procedural nicety; it is a threshold requirement of due process and obtaining jurisdiction over a person. The Nevada Supreme Court has long recognized that "personal service or a **legally provided** substitute must still occur in order to obtain jurisdiction over a party." *C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc.*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990) (emphasis added). Nevada's rules of procedure and statutory framework define the legally acceptable methods of service. While a court has inherent authority to manage its affairs and the litigants before it, that authority does not extend to exercising jurisdiction over individuals that have not been afforded basic due process in the service of legal process.

"Nevada Rules of Civil Procedure 45[b] **requires** that a subpoena be **personally** served." *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (emphasis added). The Nevada Legislature created a substitute for the narrow circumstance when a process server is denied access to a "residence." NEV. REV. STAT. § 14.090. Plaintiff asks this Court to expand the statute to include the circumstance when a process server is denied access to the non-public, restricted area of a business. But "'it is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.'" *So. Nev. Homebuilders Assn. v. Clark County*, 121 Nev. 446, 451, 117 P.3d 171, 174 (2005). Accordingly, Las Vegas Sands Corp. ("LVSC"), Sands China, Ltd. ("SCL"), and Sheldon Adelson (collectively "Movants")

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[1] *Dorfman v. Leidner*, 76 N.Y.2d 956, 958, 565 N.E.2d 472 (N.Y. 1990) (citations omitted).

respectfully submit the following points and authorities supporting their position that creating alternative methods to serve individuals that a party wants to hail into court as involuntary testimonial witnesses—what Plaintiff seeks to have the Court do regarding Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein—would be error.

II.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The evidentiary hearing on February 9, 2015 concerns SCL and whether or not sanctions are appropriate for SCL's alleged violation of the Court's order that the company could not redact documents to comply with Macanese law. Plaintiff has designated a number of executives for LVSC[2] that he intended to subpoena to appear and offer testimony at the hearing. Movants filed an emergency motion to quash the subpoenas, on various grounds. Plaintiff opposed that motion and included a countermotion to deem each of the six executives served, none of which had been personally served with a subpoena.

On February 6, 2015, the Court heard Movants' motion to quash and Plaintiff's countermotion to deem the LVSC executives served. Despite asking the Court to "deem served" six LVSC executives, Plaintiff presented affidavits of service for only two of the executives—Messrs. Adelson and Raphaelson.[3] Plaintiff argued that the Court should find he had satisfied his service obligation because NRS 14.090 permits substitute service when the intended party resides in a guard-gated community and the process server is **denied** entry into the community. The Court orally ruled that Mr. Raphaelson, general counsel for LVSC, would be deemed served with process by substitute service on the front office at his residence on a day when Mr.

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[2] Plaintiff listed the following witnesses: Michael Leven (formerly the President and COO of LVSC); Robert Goldstein (the current President and COO of LVSC); Ira Raphaelson (Executive Vice President and General Counsel of LVSC); Robert Rubenstein (Senior Vice President and Deputy General Counsel of LVSC); Sheldon Adelson (CEO of LVSC); and Gayle Hyman (Senior Vice President of Corporate Affairs for LVSC). Mr. Leven no longer works for the company and on information and belief, no longer even lives in the State of Nevada.

[3] Mr. Adelson was travelling outside the country on the date of the purported service to him. Mr. Raphaelson was traveling outside the State of Nevada (in Washington D.C. and then Chicago)—departing Las Vegas on January 23 and returning the afternoon of February 1, 2015—including on the date of the purported service to him.

Raphaelson was not in the State of Nevada. The Court declined to "deem served" the other executives that Plaintiff also had not personally served. However, the Court expressed "concern" when Plaintiff claimed his process server had been refused entry into the LVSC's corporate offices and threatened with eviction if he tried to serve anyone on the premises, and suggested the Court *might* extend NRS 14.090 and deem the other unserved executives personally served if presented with evidence that efforts to serve them at the corporate offices were thwarted. The hearing adjourned shortly before noon.

Plaintiff wasted no time and immediately sent his process server to exploit the loophole for substituted service that he believed the Court had created. At 5:36 p.m. on February 6, Plaintiff served Defendants a "Notice of Submission of Affidavits" purporting that Plaintiff's process server had attempted to serve Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein at The Venetian, but was denied access and told he was "totally restricted from approaching the Corporate Offices," and for each of the individuals he sought, was told security "would not ask ... to come to the security booth, because of his monetary worth." All five of the affidavits have identical language—even attributing to Ms. Hyman the masculine gender.

But the security officers that Plaintiff's process server approached have a much different recollection of what transpired than what the server records in his affidavits. The officers' statements confirm that an attempt to serve certain executives at The Venetian was made at approximately 1 p.m. on February 6. A man approached the security podium near the casino cage—not the security podium near the executive offices—and asked to be escorted into the non-public executive offices. *See* Voluntary Statement of Ruben Reyes, attached as **Exhibit A**. The request was denied. Exhibit A. The man then stated that "he would just go up there without an escort" and was told that he could be trespassed if he went to a restricted area without proper authorization. Exhibit A; *accord* Voluntary Statement of Raul Marquez, attached as **Exhibit B**. The man then asked if the persons he wished to serve "could be brought down to the casino to be served." Exhibit B. He was informed "that would not be possible either." Exhibit B. When the man asked to speak with a manager, one responded. The manager asked the man for identification, which he refused to provide, but did identify himself as "Mark"—although the

affidavit provides the name Matthew Watts. Voluntary Statement of Christopher Mosier, attached as **Exhibit C**; *accord* Voluntary Statement of Jacob Johnson, attached as **Exhibit D** ("Upon arrival, Mosier and I identified ourselves to the male, who identified himself as Mark."). The man likewise refused to identify "his client or the business he works for." Exhibit C. The man did not allow The Venetian's security manager to look at the papers he claimed he was there to serve, which appeared disheveled and hand-written. Exhibit C. Officer Mosier advised the man that based on the information he provided (and declined to provide), that he could not allow him access into the corporate offices, and then referred him to the legal department. Exhibit C. The man then demanded the security manager call the four individuals and have them come down to meet him, which the officer explained was an unreasonable request (and as a practical matter would have been impossible because three of them were out of the country). Exhibit C. The man, who was confrontational and appeared to be trying to goad the officers, then said he was going to the legal offices. Exhibit C; *accord* Exhibit D. The officer confirmed the address for the man and suggested he call ahead for an appointment. Exhibit C; *accord* Exhibit D.

III.

ARGUMENT

A. Granting Plaintiff's request to engraft "business" onto NRS 14.090 would be error.

"[D]ifficulties in obtaining service of process cannot form the basis for ignoring the clear statutory requirements." *Geldermann & Co., Inc. v. Dussault*, 384 F.Supp. 566, 570 (N.D. Ill. 1974). Indeed, "**[t]he rule that requires personal service is not a technicality but rather a mainstay in the foundation of due process upon which our legal system is built.** The Court cannot lightly ignore the requirements of the rule merely because plaintiff has made a good—yet unsuccessful—attempt at compliance." *Id.* (emphasis added). But that is precisely what this Plaintiff seeks. Plaintiff asks this Court to engraft onto NRS 14.090 an exception for when a process server is denied access to a non-public, restricted area of a business. There is no basis in law or fact for the Court to acquiesce to Plaintiff's unprecedented request.

1. Rule 45 subpoenas must be personally served.

Rule 45 and Nevada Supreme Court precedent interpreting that rule state, in no uncertain terms, that "Nevada Rules of Civil Procedure 45(c) **requires** that a subpoena be **personally** served." *Consolidated Generator*, 114 Nev. at 1312, 971 P.2d at 1256 (emphasis added).[4] The Nevada Supreme Court held in *Consolidated-Generator* that the district court did not exceed its authority by quashing the subpoenas for out-of-state company employees who had been served through counsel, rather than in person. *Id.* Even the materials that the Clark County Courts make available to *pro se* litigants recognize: "[e]ach defendant must be personally served with their own copy of your summons and complaint, even if they live at the same address," and "**'personal service' means that the defendant must be handed a copy of your summons and complaint.**" *See* **Exhibit E** (emphasis added).[5] It would be improper and fundamentally unfair to hold a sophisticated Plaintiff with a cadre of seasoned lawyers to a different and lower standard for service of process. And Nevada is not alone in requiring Rule 45 subpoenas be personally served. A majority of federal decisions interpreting FRCP 45, in fact, require personal service and do not allow Rule 4 to supplement that requirement. Charles Alan Wright et al., *Federal Practice and Procedure* vol. 9A, § 2454 (3d ed., West 2014) ("The longstanding interpretation of [federal] Rule 45 has been that personal service of subpoenas is required.").

In view of the Rule's requirement for personal service, and the Nevada Supreme Court's holding in *Consolidated-Generator*, Plaintiff's suggestion that service of process was effectuated by listing the individuals on his list of witnesses and requesting that counsel accept service is wrong. *See also Nicholas M. v. Eighth Jud. Dist. Ct.*, No. 62955, 2013 WL 5763107

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[4] Now NRCP 45(b). *See* NEV. R. CIV. PROC. 45, Editors' Note, Drafter's Note 2004 Amendment ("Subdivision (b)(1) retains the text of former subdivision (c) with some minor changes to delete reference to the sheriff or his deputy and to limit the requirement for one day's attendance and mileage to subpoenas that command a person's attendance."). The Nevada Supreme Court's *Consolidated* decision appears in the "Case Notes" following NRCP 45 under the heading "**Personal service required.**"

[5] Obtained from Clark County Courts Website, http://www.civillawselfhelpcenter.org/self-help/lawsuits-for-money/pleading-stage-filing-a-complaint-or-responding-to-a-complaint/242-serving-your-complaint (last accessed February 8, 2015, at 11:56 a.m.).

*1 (Nev. Oct. 18, 2013) (citing *C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc.*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990) (holding that "notice is not a substitute for service of process. Personal service or a legally provided substitute must still occur in order to obtain jurisdiction over a party."). Plaintiff's assertion that the Court can expand NRS 14.090 to cover these circumstances is equally wrong.

2. A narrow substituted service exception exists only with regard to a "residence."

The Nevada Legislature created a single substitute for the narrow circumstance of when an individual "**resides**" behind a gate and the process server is denied access to the "**residence.**" NEV. REV. STAT. § 14.090 (emphasis added). The statute plainly applies only to individuals and then only to their place of residence. *See generally* NEV. REV. STAT. § 14.090. The statute does not apply to entities nor does it apply to an individual's place of business. This substitute method of service was added by the Nevada Legislature in 1993 in response to a request by process servers who sought to "make [their] job a little easier." Hrg. Before Nev. Senate Comm. J. on SB413, May 5, 1993 at 5. As previously noted, Plaintiff offered "affidavits of service" attempting service at the executives' homes for only two individuals. The statute, by its plain terms, permits substituted service to a guard when a process server is **denied access** to the intended recipient's residence in a guard-gated community.

The Nevada Supreme Court explained in *So. Nev. Homebuilders Assn. v. Clark County* that the Legislature's failure to include language in a statute or court rule will be interpreted as intentional. 121 Nev. 446, 451, 117 P.3d 171, 174 (2005). When a statute does not express a specific or heightened requirement, a court should "not take it upon itself to fill in such requirements, for 'it is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.'" *Id.* "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." *Botany Worsted Mills v. U.S.*, 278 U.S. 282, 289, 49 S.Ct. 129 (1929). Application of this "maxim of statutory construction" is referred to as "'*expressio unius est esclusio alterius*'" and its application here to preclude substitute service when a process server is denied access to the restricted, non-public area of a business is logical and consistent with the Nevada Legislature's

purpose. *U.S. v. Crane*, 979 F.2d 687, 690 n. 2 (9th Cir. 1992) (quoting *Botany Worsted Mills*, 278 U.S. at 289)). Because the Nevada Legislature failed to include an individual's place of business in NRS 14.090, this Court cannot read such a provision into that statue or Rule 45.

Statutes must be interpreted according to their plain meaning, unless doing so would "run contrary to the spirit of the statutory scheme." *Mineral County v. State, Bd. Equalization*, 121 Nev. 533, 535, 119 P.3d 706 (2005). The Nevada Supreme Court has held that it must be presumed that "the legislature intended to use words in their usual and natural meaning." *State v. Stu's Bail Bonds*, 115 Nev. 436, 439, 991 P.2d 469, 470 (1999); *see also City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006) ("when the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and **not go beyond it**" (emphasis added)). The plain and unequivocal meaning of the words in this statute, when read in their usual and ordinary manner, limit application of the statute to service on individuals where he or she "resides." NEV. REV. STAT. § 14.090; *Kilgore*, 122 Nev. at 334, 131 P.3d at 13.

Even if any ambiguity existed, and here it does not, the rules of statutory construction require that the statute be construed as the Legislature intended. The Nevada Supreme Court has reiterated that when construing ambiguous statutes, the objective of the judiciary is to give effect to the Legislature's intent. *Mason v. Cuisenaire*, 122 Nev. 43, 50, 128 P.3d 446, 450 (2006). Intent may also be discerned from the title of a statute. *Coast Hotels and Casinos, Inc. v. State, Labor Commn*, 117 Nev. 835, 841, 34 P.3d 546, 551 (2001). Moreover, statutes should be construed so as to give effect to all of their parts and language and make each word meaningful "within the context of the purpose of the legislation." *Id.* at 841, 34 P.3d at 550. Here, the legislative history clearly does not demonstrate any intent beyond easing a process server's job in serving individuals residing within gated communities. The title of the statute "Service of process **at residence** accessible only through gate" also evidences an intent to limit application of this statute to residences. NEV. REV. STAT. § 14.090 (emphasis added); *Coast* at 841, 34 P.3d at 551. The statute says nothing about places of employment. On its face, NRS 14.090 must be construed to apply to what it plainly says—service at a residence. Accordingly, the Court must

deny Plaintiff's request to deem Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein personally served with the subpoenas.

B. Plaintiff asks the Court to exceed its authority.

Courts have broad inherent authority, including the authority to manage a case, *Dornbach v. Tenth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 33, 324 P.3d 369, 374 (2014), sanction counsel for misconduct, *Hooker v. Eighth Judicial Dist. Court of State,* No. 65016, 2014 WL 1998741 *2 n.1 (Nev., May 12, 2014), and ensure the "orderliness of the proceedings." *Mitchell v. State*, 124 Nev. 807, 813, 192 P.3d 721, 725 (2008). This authority, however, is not without limit. The commonality between the cases recognizing inherent authority is that all involve subjects and persons properly before the court.

The doctrine of inherent authority does not empower a court to invade the province of the Legislature by rewriting a statute addressing substitute service to create a new basis for asserting jurisdiction over individuals without affording them due process of law. NEV. CONST. art. 3 § 1 (Distribution of Powers "no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution."). "Extending" the application of NRS 14.090 to service of employees at their workplace, as Plaintiff seeks, is beyond the province of the judiciary. The plain meaning of NRS 14.090's language limits its application to service at an individual's residence. By asking the Court to craft additional methods of service beyond those provided by the Legislature, Plaintiffs ask this Court to infringe on the province of the Legislature and violate the separation of powers doctrine. NEV. CONST. art. 3 § 1. Nevada law requires an individual called as a witness to appear before the court and testify, but only after that individual is "**duly served.**" Nev. Rev. Stat. § 50.165 (emphasis added) ("A witness, **duly served with a subpoena,** shall attend ..., to answer all pertinent and legal questions. . . ."). Plaintiff has failed to "duly serve" any of the individuals over which he seeks to extend NRS 14.090's application. The Court must therefore refuse Plaintiff's invitation to expand that statute and deem those witnesses personally served.

C. Extending NRS 14.090 to cover a business creates a slippery slope.

All legitimate businesses have valid reasons to control access to specific areas, e.g., health, welfare, and safety of their employees and members of the general public, security of information and property. *See e.g. Schramm v. Mineta*, No. 3:03-cv-7655, 2008 WL 397592 * 3 (N.D. Ohio Feb. 11, 2008) (unpublished) (finding decision to deny process server's request to enter radar tower at airport reasonable because it "reflects a neutral policy, meant to foster airport security and to insure the safety of employees, as well as incoming and outgoing flights"), *affirmed by Schramm v. LaHood*, 318 Fed. Appx. 337 (6th Cir. 2009) (unpublished) (finding district court's determination that plaintiff's conduct in assisting process server not protected because it violated FRCP 45(b)(1) erroneous, but not disturbing district court's finding regarding reasonableness of denying process server access to radar tower). Access to the LVSC corporate offices within The Venetian is limited, for the personal safety of LVSC's employees, to those invited into the offices. The general public, of which a process server is a member, is not permitted access to the private offices of LVSC's executives. This is a neutral policy that is geared to protect the health, safety, and welfare of The Venetian's employees as well as the security of The Venetian's confidential information and property. It has nothing to do with possible attempts at service of process. The slippery slope Plaintiff's request creates is evident when it is taken to the extreme. Court personnel, for example, could be personally served with process if the bailiff or marshal rightly refuses a process server access to chambers and the process server leaves the documents with the guard, or court personnel would be deemed served simply because the bailiff or marshal correctly refused the process server access to chambers. Plaintiff's request to expand application of NRS 14.090 from an individual's residence to his place of employment is an unjustifiable invasion into businesses' right to restrict access to their private property and provide a safe and orderly workplace, and should be rejected for that reason.

D. Plaintiff was neither reasonable nor diligent.

These circumstances do not present a good case for expanding coverage of NRS 14.090 to service at an individual's place of employment. The statements of The Venetian's security

officers who encountered Plaintiff's process server demonstrate that they were neither recalcitrant nor evasive. To the contrary, they show that Plaintiff's process server was unreasonable. Plaintiff's process server refused to identify his company, refused to identify his client, refused to provide identification, and identified himself as "Mark"—although the affiant's name is Matthew. Exhibits A–D. Plaintiff's process server made unreasonable demands—to be taken into a non-public area of a casino or have the employees he wanted to serve brought to him. Exhibits A–D. Worse, Plaintiff's process server acted in a cavalier fashion and "had a confrontational demeanor and tone, which became more pronounced throughout the conversation." Exhibit D. Plaintiff's process server appeared to be "trying to goad" The Venetian's security officers "into a stronger response, and held his phone ... in such a manner as to lead [Officer Mosier] to believe that he was recording" the events, although consent to record the conversations was neither requested or granted. Exhibit D. And Plaintiff's process server refused to allow the security officers to review the paperwork he intended to serve, which "appeared to be hand-written [on] unprofessional letterhead." Exhibit D. Given the appalling manner in which Plaintiff's process server presented himself, The Venetian's security personnel would have been remiss had they allowed him to proceed into a non-public area of a casino. And access would have been fruitless; Messrs. Adelson, Goldstein, and Rubenstein were not even in Nevada then.

Rule 45 requires reasonable notice, and provides that upon timely motion,[6] the court must quash a subpoena that "fails to allow a reasonable time for compliance." NEV. R. CIV. P. 45(c)(3)(A). Plaintiff cannot claim that good service on Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein was made on Friday, February 6, 2015, with **less than a single judicial day notice before the hearing**. To allow such service would be patently unreasonable. *See In re Stratosphere Cor. Sec. Litig.*, 183 F.R.D. 684, 687 (D. Nev. 1999) (finding six days was "unreasonably short" notice). And to the extent that Plaintiff claims service under an expanded version of NRS 14.090, service would nonetheless fail because the process server

[6] Given the unreasonable notice in this case, Movants anticipate that they will present an oral motion at the commencement of the Monday hearing.

would not even allow the Security Manager to look at the paperwork he was holding, which he then took with him. *See* NEV. REV. STAT. 14.090 (when access to a guarded community is denied for purpose of service of process, "service of process is effective **upon leaving a copy** thereof **with the guard.**").

IV.

CONCLUSION

The Court should not allow Plaintiff to circumvent the methods of effectuating service of legal process that the Nevada Legislature has prescribed. And it should not assist Plaintiff in those efforts. To do so would violate Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein's due process rights. Accordingly, Movants respectfully request that the Court refuse Plaintiff's request to deem those witnesses personally served with hearing subpoenas.

DATED this 8th day of February, 2015.

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Exhibit A

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.

Case Number:

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 IV of XIII
(PA738-980)

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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 IV OF XIII (PA738-980)** 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
Las Vegas, Nevada 89155

Respondent

VIA ELECTRONIC SERVICE
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DATED this 22nd day of February, 2016.

By: /s/ Fiona Ingalls

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

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03/14/2013	Transcript: Defendants' Motion for Oral Argument	II	PA467-483
12/11/2014	Transcript: Defendants' Motion for Partial Reconsideration of November 5, 2014 Order	IV	PA738-47

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12/24/2015	Transcript: Defendants' Motion for Protective Order and Scheduling Conference	VII and VIII	PA1709-68
09/02/2014	Transcript: Defendants' Motion to Establish Protocol	III	PA632-59
04/09/2013	Transcript: Defendants' Motion to Seal	II and III	PA488-509
02/12/2015	Transcript: Evidentiary Hearing re Motion for Sanctions Day 4	IV and V	PA916-1058
03/03/2015	Transcript: Hearing re Motion for Sanctions Day 6 (Closing Arguments)	V and VI	PA1123-1292
12/06/2012	Transcript: Motion for Protective Order	I and II	PA237-95
12/18/2012	Transcript: Motion for Protective Order	II	PA296-333
01/05/2016	Transcript: Motion for Protective Order re Patrick Dumont and Scheduling Conference	VIII	PA1769-1877
12/02/2014	Transcript: Motion for Reconsideration	III	PA707-37
08/14/2014	Transcript: Motions	III	PA586-631
03/19/2015	Transcript: Motions	VI	PA1355-1430
01/12/2016	Transcript: Motions	VIII and IX	PA1915-70
02/18/2016	Transcript: Motions	XI and XII	PA2682-2725
01/06/2015	Transcript: Motions re Vickers Report and plaintiffs' Motion for Setting of Evidentiary Hearing	IV	PA748-847
01/07/2016	Transcript: Motions to Compel and for Protective Order	VIII	PA1878-1914
02/26/2015	Transcript: Motions to Dismiss Third Amended Complaint	V	PA1059-1122
10/09/2014	Transcript: Plaintiff's Motion for Release of Documents from Advanced Discovery and Motion on Deficient Privilege Log	III	PA660-706

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12/17/2015	Transcript: Plaintiff's Motion to Reconsider or Amend Order and Defendants' Motions to Maintain Confidentiality and for Order to Show Cause	VII	PA1642-1708
02/28/2013	Transcript: Plaintiff's Renewed Motion for NRCP 37 Sanctions	II	PA398-466
07/29/2014	Transcript: Sands China's Motion for Summary Judgment on Personal Jurisdiction	III	PA510-72
07/22/2015	Transcript: Telephone Conferences	VI	PA1433-52

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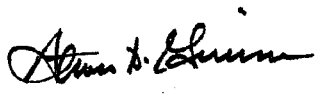


CLERK OF THE COURT

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 PARTIAL RECONSIDERATION OF NOVEMBER 5, 2014, ORDER

THURSDAY, DECEMBER 11, 2014

APPEARANCES:

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

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

LAS VEGAS, NEVADA, THURSDAY, DECEMBER 11, 2014, 8:04 A.M.

(Court was called to order)

THE COURT: Jacobs versus Sands. Good morning, gentlemen.

MR. JONES: Good morning, Your Honor.

(Pause in the proceedings)

MR. JONES: We will try to make this brief.

THE COURT: Well, it's not a complicated issue.

MR. JONES: It's not.

THE COURT: It's like, Judge, did you know what you were doing last time.

MR. JONES: And, Your Honor, you know, it's -- as you said, it's pretty straightforward. These documents were not in the possession of Advanced Discovery. They came up, as I see it, as a side issue. And by the name of the motion itself, clearly it's requesting release of Advanced Discovery documents. These are hard-copy documents that have watermarks on them. They -- and really, Judge, what we're just trying to do is make sure that the order accurately reflects what the motion -- the relief the motion was seeking. And I don't know that I need to say a whole lot more than that. As you said, it's a pretty straightforward issue.

THE COURT: Okay.

MR. JONES: There is a separate motion on that you probably haven't even seen yet, because it's not fully

briefed. It has to do with the confidentiality of these documents. And so --

THE COURT: That's a different issue.

MR. JONES: It is. Absolutely. And so today all we're talking about is just trying to make sure that the record accurately reflects the relief requested, and that's all that we're talking about.

THE COURT: Okay. Anything else?

MR. JONES: That's -- unless you have any other questions, like you said, I think it's pretty straightforward.

THE COURT: Fairly easy. That's why I didn't call and move you guys.

Mr. Bice, good morning. How are you?

MR. BICE: Yes, Your Honor.

THE COURT: Don't you like the lovely chairs that Mr. Ogilvie and his team have chosen to sit in?

MR. BICE: Yes, they're very nice. They're a lovely color, too.

MR. JONES: I just want to know who gets the big TVs when the trial's over.

THE COURT: They are actually County TVs.

MR. BICE: Your Honor, with respect to the motion I believe that everybody in the courtroom when we were here last time believed that the reports were buried somewhere in this privilege log. The plaintiffs thought that, as did the

defendants, because the defendants are the ones that offered up the reports as the only plausible thing that could have been waived in light of the position that they had taken at their letter. And now they're essentially claiming, well, we should get the benefit because that privilege log is such a mess no one could figure out where and if these reports were somehow buried in that I don't remember how many volumes of log. And so now they're saying, well, because we've now decided that it's not buried in that log anywhere these documents somehow couldn't have been the subject of the motion, even though they took the position when we were here that they were the subject of the motion. We took the position that they were the subject of the motion, and the Court took the position that they were the subject of the motion and ruled accordingly.

And so now all we're saying is the Court has already ruled on this issue. Those documents have -- are in Mr. Jacobs's possession, except for the one we cannot find. But, nonetheless, their position has been that it is in his possession. And the Court ruled appropriately that you knew that those documents were in his possession, it's confirmed by their own legal counsel Ms. Glaser that she was aware of that fact, and then she and their client made the conscious decision not to take any form of action anywhere concerning their claims of privilege. And so how can they --

First of all, Your Honor, if it's not on the privilege log, how is it privileged? That seems to be their argument now. And what is the privilege? Have they established any basis for privilege of an investigative report conducted by a non lawyer, a former Hong Kong Police detective I believe is what his role was years ago?

So, again, accordingly, Your Honor, the motion -- the documents were properly before this Court on this waiver question, and the Court has appropriately ruled upon them. All they're essentially trying to do is make us file the exact same motion and have a short do over right again. I mean, if the Court tells me, file that on an OST and the Court will hear it next week, fine. But --

THE COURT: That's what I'm probably going to say, Mr. Bice, because I think it's --

MR. BICE: Well, you know -- but again --

THE COURT: -- important enough that we do it the right way so that somebody in Carson City doesn't make a decision later that we missed a step.

MR. BICE: That's fine, Your Honor. If the Court would like me to, I'll file a motion, and --

THE COURT: That's what we should do, after reading it.

MR. BICE: -- I'll submit it on an OST to you.

THE COURT: Okay. So your motion is granted.

However, I've already made factual determinations related to the document, but I understand they may not arguably be covered under the scope of this particular motion. So I'm directing Mr. Bice to file a motion that deals specifically with these particular documents, and then I can enter an appropriate order after I have an opportunity to hear anything else you have to say related to it.

MR. JONES: Your Honor, understood. And I will prepare the order and provide it to Mr. Bice before we submit it to the Court.

THE COURT: Okay.

MR. PEEK: Your Honor, you say --

THE COURT: Wait. There's one other thing. Until a separate order is entered these documents, if they're produced, are going to be treated as confidential until I enter a separate order, okay.

MR. PEEK: Highly confidential, Your Honor?

MR. BICE: They're in Mr. Jacobs's possession today. How can they be highly confidential with just attorneys' eyes only?

THE COURT: I'm not going to call them highly confidential. I'm going to call them confidential. Then at some point you can file motion practice as to other stuff. But at this point in time I just want to make sure they're not released in the public sphere because of some of the

commercially sensitive information that's contained in that.

MR. JONES: And, Your Honor, in that regard, as I said, we have a motion pending that's not fully briefed. So we are pursuing that issue.

THE COURT: I understand. I'm just trying to make sure that if I enter the order on the OST before that we don't miss a step and for some reason somebody thinks they're not confidential for about five minutes. Sort of what happened over at the U.S. Attorney's Office the other day with that other case.

Anything else? Why are you looking at me that way, Mr. Peek?

MR. PEEK: Actually, Your Honor, I was going to ask you a question about another case, but I just -- because I have a hearing on the 15th for which we submitted a stipulation to vacate and to move.

THE COURT: Laura says it's moved.

MR. PEEK: Okay. Well, we didn't -- I thought it was moved. I just -- we hadn't had the Court sign off on it yet, so I just --

THE LAW CLERK: It's actually in the box.

MR. PEEK: It is in the box? Okay. Thanks.

(Off-record colloquy)

THE COURT: Okay. 'Bye.

MR. PEEK: And, Your Honor, with respect to this

motion that Mr. Bice is going to file, is that going to be heard next week?

THE COURT: That's my hope.

MR. PEEK: Because I won't be here during that Christmas week. I'd like to spend it with my children in Reno.

THE COURT: Well, I was going to try and hear Mr. Bice's motion next week. He said he's going to get it over here. It's not a very complicated motion.

MR. BICE: I hope to get it over here by tomorrow. Is there a date --

You don't want to hold it next week at all?

MR. PEEK: No, no. I'm fine next week. I just didn't want to do it Christmas week.

THE COURT: He wants to hear it next week.

MR. BICE: Oh. He wants to. Can we just set a hearing date now?

THE COURT: You want to hear it next Thursday at 8:00 o'clock?

MR. BICE: Next Thursday at 8:00 a.m. Will that work?

THE COURT: We all decided that we'll pick that day.

So when it comes in, Laura, remember that's the day we picked.

MR. PEEK: Thank you, Your Honor.

THE COURT: And just call it a hearing, Dulce, and then you'll have more than one entry for that day.

MR. BICE: Okay.

THE COURT: 'Bye.

MR. BICE: Thank you.

MR. PEEK: Thank you.

THE PROCEEDINGS CONCLUDED AT 8:11 A.M.

* * * * *

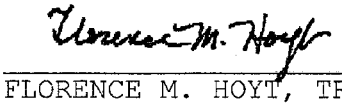
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

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CLERK OF THE COURT

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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 RE VICKERS REPORT AND PLAINTIFF'S MOTION FOR SETTING OF EVIDENTIARY HEARING

TUESDAY, JANUARY 6, 2015

APPEARANCES:

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

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

LAS VEGAS, NEVADA, TUESDAY, JANUARY 6, 2015, 8:34 A.M.

(Court was called to order)

THE COURT: 'Morning, counsel. Happy New Year. You can be seated.

Everybody had an opportunity to check in?

MR. PISANELLI: Yes, Your Honor.

MR. PEEK: Yes, Your Honor.

THE COURT: Remember them all?

THE CLERK: Yes, Your Honor.

THE COURT: All right. Since the issues related to the Vickers report are all interrelated and I've now received a request for an evidentiary hearing, I'd like to handle them all together. I'm going to have Mr. Jones go first.

Mr. Jones, if you could start by asking me why on earth I'd want to conduct an evidentiary hearing related to this.

MR. JONES: I would be happy to address that issue first, Your Honor. Your Honor, the reason we asked for that evidentiary hearing is, as we looked at this issue and the whole manner in which this came up it became very apparent to us that these documents should never have been -- well, they should have never been taken in the first place, and they should not be a part of this case. And so unless -- and we have an order from the Supreme Court and this Court has stayed merits discovery, so --

THE COURT: Of course, there's a blurring of the line as to what's merits and what's jurisdictional in some times.

MR. RANDALL JONES: Certainly there can be, Your Honor. In this case we don't believe that any such blurring exists. But, having said that, if these documents are not relevant to jurisdiction, then they should not be a part of this case certainly at this point in time. And we believe that the reports -- according to Mr. Jacobs, the reports were generated by Las Vegas Sands and demonstrate somehow that the evidence that Las Vegas Sands is doing business in Nevada. So that's the premise. That comes out of their brief. So we believe that you need to establish first who commissioned these reports and what the purpose of the reports were in order to make that call.

They claim that they're relevant to jurisdictional discovery. We believe they are absolutely not. And so in order for them to establish that those reports were ordered in fact by Mr. Adelson for the purpose of Sands China doing business in Nevada they need to put on some evidence. That burden is theirs to demonstrate that those documents are relevant to jurisdictional discovery.

And I went through and tried my best, and maybe they can point out some other place in their brief where they made some references to their relevance, but the only place I could

find is on page 2 of their reply brief to their motion to compel where they say that they, quote, "bear on jurisdiction because they were commissioned by, directed by, and paid for by Las Vegas Sands Corporation. The Vickers reports are yet another example of the systematic and continuous control experienced from --" excuse me, "exercised from Las Vegas which demonstrates that Sands China is operated from Nevada," end quote. That is a completely conclusory self-serving statement of which there's no evidence in the record to conclude that they are.

THE COURT: But don't you think they're allowed to do discovery related to that during the jurisdictional period?

MR. RANDALL JONES: Well, that's actually what we're suggesting happens. First of all, Judge, we believe these documents are the type of documents, as you know from our motion to --

THE COURT: I've already ruled on the waiver issue by Ms. Glaser on these documents.

MR. RANDALL JONES: Well, I'm talking about confidentiality.

THE COURT: That's a different issue.

MR. RANDALL JONES: That was the point I was going to raise.

THE COURT: Confidentiality is clearly a different issue.

MR. RANDALL JONES: But with respect to privilege I would like to address that issue at some point. But that's not the point I was going to make just now. I was going to make the point about confidentiality. So --

THE COURT: Okay.

MR. RANDALL JONES: -- these documents we believe absolutely fit the definition of highly confidential. And I understand there's some interesting nuances that relate to that issue and that definition that are addressed in their opposition to our motion because of the unique nature by which these documents were taken from my client. But putting that aside for the moment, if these documents are of a sensitive nature that we believe they are and they're not relevant to jurisdictional discovery, then why in the world should they be allowed to be used?

And I want to make a related point. We pulled their disclosure statements that they made, because in the past -- and I know there's been a long history of this case, but there were going to be --

THE COURT: About four years.

MR. RANDALL JONES: -- there were going to be evidentiary hearings set previously.

THE COURT: We may hit the five year rule before I do a jurisdictional hearing.

MR. RANDALL JONES: And it may be five years from

the time this case was filed before we get to a trial. That's a different issue. But with respect to these particular documents, Judge, we pulled their statement that they were required to file as to what documents they intended to use and what witnesses they intended to call at the evidentiary hearing. And this goes back to -- so this is a while back, but we've never seen a supplement. And it goes back to September 23rd of 2011. And in this document there's no reference to the Vickers reports. So they never intended to use that document in jurisdictional -- in the jurisdictional evidentiary hearing. And they have certainly not indicated since then that they intend to use them. In fact, Judge, I think it's critical for this Court to note the only reason these documents came up and the only time that they ever started asserting that there was any need for these documents in the jurisdictional evidentiary hearing is after you said they were not subject to privilege. Only then --

THE COURT: That's not what I said. I said there was a waiver.

MR. RANDALL JONES: Irrespective of that, my point was simply that that's the only time we've ever had them come up and say, oh, now we want to use these documents.

THE COURT: That's not true. I've had discussions about that letter with Ms. Glaser, and the documents related to that letter, for years.

MR. RANDALL JONES: I'm talking about with respect to jurisdictional discovery for this case, the evidentiary hearing. They've never indicated at any time prior to this Court bringing it up in your order that they wanted to use them for the evidentiary hearing. And so it's pretty blatantly obvious that the real reason, which is consistent with their agenda from the beginning, they're using these documents for leverage to try to do something they hope will embarrass the clients, to harass the clients, and to gain leverage over my clients and the other parties in this case that have nothing to do with the issues before this Court on jurisdiction. And they have the burden. They have the burden to bring a claim to show they have jurisdiction over my client. They have to show this Court that there's some relevance to these documents other than self-serving statements.

And the point is they've had these documents. They've had these documents, at least two of the three documents, from the inception. They have moved to compel the production of the Keong report until you --

THE COURT: Can I stop you. Weren't they returned?

MR. RANDALL JONES: That's the point. They had -- well, they've said they never had the Keong report.

THE COURT: Right. I understand. But the two they said they found, they were returned.

MR. RANDALL JONES: They gave the originals. They gave the originals back. They kept copies. Oh, they've had copies since the inception. That was the point and why they said there was a waiver of the privilege, because they kept two of them. And they claim we've never asked for them back in a timely way. So my point is that these documents are not relevant to jurisdictional discovery. We have an order saying that jurisdictional discovery is the only discovery that's going to be allowed until the jurisdictional hearing has been held.

THE COURT: That's what the Nevada Supreme Court said.

MR. RANDALL JONES: That's right. And so if these documents are not relevant to jurisdictional discovery, then they should not be compelled to be produced even though at this point they have two of the documents they're asking to be produced.

The bigger point is, Judge, confidentiality is really irrelevant to the initial determination. The first issue is should they even be a part of the evidentiary hearing and should they be something that is even brought up in the jurisdictional discovery.

THE COURT: Isn't that a determination that I will make at a time closer to the conducting of the evidentiary hearing after jurisdictional discovery has finally been

completed?

MR. RANDALL JONES: Well, the problem with that, Your Honor, is what happens in the meantime. It's sort of -- I guess from my perspective it would be putting the cart before the horse. I need to know what this Court's determination is in order to prepare for the jurisdictional discovery hearing as to whether or not they're going to be allowed to use them and under what circumstances. How do I prepare if this Court says, no, those are not relevant, you can't use those documents, at the evidentiary hearing on jurisdiction. Then that takes out a whole big part of the evidentiary hearing process for both sides. If the Court rules that they are, then these are kind of records that we feel are important enough that we need to protect my client's rights. And we need to consider every option, which is -- and I know the Court has seen too many writs in this case, but these are documents that we believe are sensitive enough that we would consider filing a writ if the Court ruled that they were something that would be relevant to jurisdictional discovery.

So these are important issues that we believe need to be decided now before we get down the track so everybody will have a road map of where to go.

THE COURT: So you're asking me to make a determination on a discovery issue that the Vickers report, to

which I've already determined the privilege has been waived, are not relevant to the jurisdictional hearing?

MR. RANDALL JONES: Correct. And --

THE COURT: Okay. Just trying to make sure we all understand what you're asking me today.

MR. RANDALL JONES: And as part of that process we believe that there was never any direct discussion about the Vickers reports in terms of the waiver of the privilege, because it was related to the Advanced Discovery documents.

THE COURT: That's not true. The specific items that were identified in Ms. Glaser's letter that we discussed during the hearing are the Vickers reports.

MR. RANDALL JONES: I understand.

THE COURT: They may not have used the words, I may not have used the words, but those are the specific items that she identified in the letter that she sent and then took no further action on.

MR. RANDALL JONES: I understand that, Judge. But they have to file a motion with respect to the Vickers reports in order to have that issue determined. They didn't file a motion with respect to the Vickers reports. They filed a motion with respect to Advanced Discovery. These documents have not and were never part of the Advanced Discovery documents, so we never directly addressed the privilege issue with respect to the Vickers reports. Your ruling may be the

same. It may not be, however, because there is evidence that we never got an opportunity to present to you and legal arguments we never had an opportunity to present to you that relates to that issue which we believe would potentially change this Court's mind.

So in fact that's why you gave us -- granted our motion for reconsideration, so that then the issue with respect to the Vickers reports could be directly addressed, as opposed to the manner in which it came up.

THE COURT: And that's what we're doing today.

MR. RANDALL JONES: That's right. And that's all I'm asking the Court to do --

THE COURT: I understand.

MR. RANDALL JONES: -- is to allow that process to proceed and to not preemptively rule on the issue of privilege with respect to the Vickers reports, since it was not directly addressed in the motion that was filed previously; it was, if you will, inadvertently referenced in some form or fashion, but we never were put directly on notice that they were claiming that those documents were subject to the Advanced Discovery production. There's been no evidence presented by the plaintiff to show that their motion included the Vickers reports. It was directly related to and limited to the Advanced Discovery documents. Yeah. Thank you. Advanced Discovery documents. Too many acronyms.

THE COURT: Those documents that are at Advanced Discovery.

MR. RANDALL JONES: Thank you. Yes.

So that's why we believe an evidentiary hearing -- and this could be a short hearing. We're not talking about a lengthy period of time. We're happy to do it as quickly as possible as a prelude to what we're going to do next in the evidentiary hearing so we'll all be on the same page as to what's going to happen, what evidence is going to come out, and we can all have all of our due process rights be adequately protected and presented to the Court.

THE COURT: Okay.

MR. RANDALL JONES: Now, I don't know if you want me to address the other issues related to these pending motions, the motion for confidentiality or --

THE COURT: I'd like to address all issues related to the Vickers reports at one time, and then I'll make a decision as to whether I'm denying, granting, or setting an evidentiary hearing.

MR. RANDALL JONES: All right. Well, then let me go to --

THE COURT: Because I've got all sorts of relief being requested related to these reports.

MR. RANDALL JONES: Understood and agreed.

So then let me move, if I can, then, to the motion

to compel filed by the plaintiff. They are compelling -- their motion is two things. Now, one specifically does talk about waiver of privilege of the Vickers reports. That's the first time that's been specifically at issue. And the other issue is the motion to compel. So with respect to the motion to compel you can't compel production of a document you already have. That seems to me the pretty logical conclusion. So they have --

THE COURT: Since when?

MR. RANDALL JONES: Well, they have it. So --

THE COURT: You have it, too.

MR. RANDALL JONES: But why would they need --

THE COURT: You have to produce documents in regular litigation. Let's assume it's not this case, any particular case. They send you a request for production that says, send me all of the reports you have related to A, B, and C. Aren't you required to provide it even though they already have it, or at least identify it as part of your response?

MR. RANDALL JONES: Well, then I would answer your question this way, Judge. They've never specifically asked in any of their discovery, and I defy them to show you where they have, for the Vickers reports. In Interrogatory I believe it's Request Number 22 they have asked for documents related to two of these reports, the Keong, the Cheung Chi Tai reports that they say any document related to those two reports,

presumably because they had at least one of them. We don't know if they have the other one or not, because they've never confirmed absolutely that they don't have it. They said, we've done a real thorough search, we can't seem to find it. So while we understand this Court doesn't trust our client with respect to discovery issues, we don't trust statements made by Mr. Jacobs with respect to documents he stole from our client. So we're not convinced he doesn't have it.

But, be that as it may, Your Honor, they have the document, and they've never asked for it. Now they file a motion to compel without ever having a meet and confer, which is mandatory under our rules of procedure, as to those documents. They've never cited to you anywhere in their pleadings that I could see -- and I read them again this morning just to be sure -- where they've said they've asked for them before. They've certainly never cited to -- in fact, the request to produce that I just referred you to, they didn't even refer to that in their briefs. We double checked ourselves, and we did, interestingly enough, give them all the documents we believe that were responsive to that request, the documents that related to those documents. So how do they move to compel without having satisfied their procedural obligations? I've never been in front of you where you've allowed a motion to compel to be granted without a meet and confer.

THE COURT: Well, didn't I tell them to file this motion, Mr. Jones?

MR. RANDALL JONES: Your Honor, you telling them to file a motion presumably didn't mean they could file a motion without following the rules of procedure. I would have to assume if you told me to do that then I would go back and I'd say, okay, you know what, I need to file a motion to compel but first I need to follow the rules. I would not presume that the Court told me that I could avoid following the rules simply because the Court told me to do it and that the Court would sanction such conduct.

So here we are -- by the way, this goes hand in glove with their continual accusations that our clients are trying to delay and obfuscate this case and do everything we can to try to put this off. They never want to accept responsibility for their own conduct.

So I would suggest, Your Honor, that the plaintiff step up to the plate and acknowledge -- if he wants to do something, he's always accusing our clients of doing something incorrect or wrong, they step up to the plate, follow the rules before they start castigating my client and criticizing my client for doing something wrong. We have done nothing wrong. We are certainly intending to follow the rules and not comply with something we are not required comply with under Nevada law until those rules are met. So that's my answer to

that.

With respect to compelling, they do have the documents, with the exception of Keong, they've never specifically asked for them, they've never had the meet and confer, and with respect to the other document, if they don't have the Keong report, how could they first of all be entitled to it if they've never asked for it, and, secondly, how could we have waived the privilege on that document if they don't have it? So clearly there's been no privilege waived as to that document, and I would presume the Court would agree with me on that. They cannot claim a waive of a privilege of a document that they don't have.

That brings me to next point. How did they get these documents? They stole the documents. I know Mr. Jacobs doesn't like the reference to that manner in which he got these documents, but that's what he did. Mr. Jacobs was the CEO of Sands China. He was also an employee of VML. As a CEO of the company he had fiduciary obligations to that company. And it defies belief to me that a CEO of the company can think that he can take documents that he clearly had a hand in. Whether he claims somebody else ordered him to do it or not, he is -- certainly was involved in the chain of this process, especially with the government official's report. And as a CEO of the company he knew, he knew, and I defy him, I'd love to get him on the witness stand and ask him, are you telling

me, Mr. Jacobs, you didn't know when you had a document that they admit is all over it stamped confidential, highly private information, that you could steal that document from the company you worked for when you left and try to use it with the press to gain advance against my client, leverage.

In some cases, Judge, they call that blackmail, where you take a document from a company and then you try to sell it back for them. And they don't like these allegations any more than my client likes the allegations that -- they are saying these terrible things about my client without we believe any substance whatsoever.

So here's the deal. You've got a CEO who steals these documents, tries to use them against my client to gain a financial advantage. In addition, he has a confidentiality agreement with VML that tells him, you've got to return or destroy any documents you take from the company when you leave. And he violated that contract. So that doesn't meet the test.

And they talk about these various different tests. There are various different federal legal tests that are referenced by them in these briefs. They don't really want to talk about the involuntary disclosure cases; they want to talk about the inadvertent disclosure cases. There's a big difference, Judge. Inadvertent is you give them accidentally to the opposing party and then you don't do anything about it.

Involuntary is a different analysis. involuntary is what happened here. Involuntary means -- one way you have an involuntary disclosure is you steal the documents. In that case courts have held you generally do not find waiver of privilege unless the party seeking to maintain privilege failed to take adequate steps to prevent disclosure of the information.

What steps did we take? He had a fiduciary duty which would lead any reasonable company to believe that he wouldn't steal documents of this nature when he left the company, he had a confidentiality agreement which would further indicate that the company took steps to try to protect the documents. The documents were stamped "Confidential" all over them. And the company sought the return of the documents as soon as they learned that he had them.

Now, did they go to the next step and actually file a motion immediately after those series of letters back in 2009 and 2010? No, they did not. But, you know, Your Honor, that goes to this issue, is what did they do that they could do and was reasonable under the circumstances. We all know that -- well, it's my belief based upon the history of this case that this plaintiff loves to play gotcha. And we've seen that happen over and over again. And one of the ways they play gotcha is if you file your motion, Sands China, to get the documents back, you have submitted yourself to the

jurisdiction of the Court.

THE COURT: You could have filed the motion in Macau.

MR. RANDALL JONES: Your Honor, under the circumstances they were suing here, and getting those documents back in Macau wouldn't have made a difference with Mr. Jacobs living in Florida. That's an issue. So -- but what did happen? The parent company, Las Vegas Sands, did file to try to recover the documents. So we believe that is an indication that they did pursue their remedies as best they could under the very difficult circumstances. You're faced with this Hobson's choice or catch-22 that they now are trying to use against us.

And I would go this one point further. As soon as this Court, which is November of last year, November of 2014 -- and I say this with due respect -- erroneously ruled that those documents were not privilege -- and I say that because, as you noted in our motion for reconsideration, you were under the misapprehension that those documents were a part of Advanced Discovery --

THE COURT: I was.

MR. RANDALL JONES: -- and it was pointed out to you they were not. You granted our motion for reconsideration. And as soon as that motion was granted we've taken steps now to make sure those documents are not released into the world.

THE COURT: Six years after Mr. Glaser's letter.

MR. RANDALL JONES: I'm sorry?

THE COURT: Five years after Ms. Glaser's letter.

MR. RANDALL JONES: Five years after Ms. Glaser's letter. I don't --

MR. PEEK: Four, Your Honor. 2010.

MR. RANDALL JONES: Yes. Four years.

THE COURT: Four years after Ms. Glaser's letter.

MR. RANDALL JONES: Thank you, Mr. Peek.

THE COURT: Good job, Mr. Peek.

MR. PEEK: I was here, Your Honor, one of the few.

THE COURT: I was here, too, unfortunately.

MR. RANDALL JONES: And so there was no intent to waive the privilege.

With respect to the designation of these documents as confidential the first issue I would like to address, and I would ask in fact if this is of issue or concern to the Court, they bring up this procedural issue that I think it was 14 days after my letter that we had the meet and confer, and that was past the 10-day deadline, but the motion was filed 19 days after my letter, and so we certainly complied with the confidentiality order with respect to filing the motion. And there's been no evidence of prejudice of any kind to them, because we didn't have the meet and confer until four days after that initial deadline. So I don't know if the Court has

a concern about that. If the Court think there's any prejudice that was occasioned upon the plaintiff, if so, I'd be happy to try to address that, if the Court thinks that's a serious concern that would have resulted in the waiver of the privilege.

THE COURT: Nineteen days isn't a big deal. Four years is a big deal; 19 days isn't.

MR. RANDALL JONES: Thank you, Your Honor.

With respect to the cases that they have cited, they cite this one Colorado case that says, oh, there's this presumption, you've got to disclose all this information and confidentiality is a bad thing. That was a federal case in Colorado Federal Court. It was a claim under federal law, and it was against a public institution with a special rule that provided that there should be a presumption of public access in consideration of a public entity. That clearly doesn't apply in this case.

And then with respect to the definition of these -- of confidentiality -- or confidential and highly confidential, Your Honor, I don't know if I need to go over those tests. I'm sure the Court is very familiar with them. These documents certainly come within the definition of either one, and obviously we would submit to the Court that they should be designated highly confidential. This Court has ruled previously that in the interim they will remain confidential

until determined to be otherwise. Your Honor, if there's any serious contention -- or let me rephrase that. If there's any serious concern in this Court's mind that they do not fall within either of those definitions, I'd be happy to address it, rather than just tell you why I think they are.

THE COURT: No. I understand the issue about the confidentiality.

MR. RANDALL JONES: Does the Court feel that I need to explain why they would fall within either of those categories?

THE COURT: Only if you really believe they're highly confidential.

MR. RANDALL JONES: I do really believe they're highly confidential even though the argument they make at least as to two of these reports is that Mr. Jacobs has already had them and seen them. That still doesn't mean they're not highly confidential and that other people would potentially have access to those documents even if Mr. Jacobs already has them. So we believe highly confidential would apply in this case, because it's important as it relates to other parties that work for counsel, such as experts or that kind of thing, potentially would have access to these documents if they're not highly confidential.

And I think it -- well, I think it goes without saying that the type of documents we're talking about and the

descriptions -- even though the Court has not seen these documents, the descriptions that both parties agree relate to these documents generally that the information that they include extremely sensitive, highly confidential, non-public information consists of either trade secrets or proprietary or highly confidential business, financial, regulatory, or strategic information is at this point not refuted -- I don't see any evidence that they're saying that they don't contain that kind of information -- and that the disclosure of the information would create a substantial risk of competitive or business injury to the producing party.

I've only seen in fact evidence from the plaintiff that would suggest that's exactly what would happen, because that's exactly what Mr. Jacobs seems to be wanting to use these documents for, is to gain a competitive advantage in this litigation through the publication of this information to further harass and try to cast my client in a bad light.

So I think it's clear even with this Court having not had the opportunity to read these documents that's what they are, highly confidential. And if they were not, I would suggest that Mr. Jacobs wouldn't be fighting so hard to make sure he can get them so he can disseminate them to the world.

And, Your Honor --

THE COURT: He can't disseminate them to the world if they're confidential, Mr. Jones.

MR. RANDALL JONES: I agree with that. I don't disagree with that.

THE COURT: Okay. Just so we're clear.

MR. RANDALL JONES: I do agree with that, Your Honor.

THE COURT: Okay.

MR. RANDALL JONES: So -- well, our fallback position is that they are at a minimum confidential. We believe that the highly confidential designation would be more appropriate under these circumstances because, as the definition reads, they are extremely sensitive, highly confidential, non-public information. That is a different definition than confidential. And we certainly think that applies in this particular case, and we think the evidence, limited as it is, still supports that proposition based upon the statements that have been made by Mr. Jacobs to his counsel himself.

And I don't believe there are any other issues that relate to the Vickers reports that I need to address. I think those are the motions.

THE COURT: Thank you. I appreciate that.

MR. RANDALL JONES: Unless the Court has any other issues --

THE COURT: No. I've asked you enough questions, I think.

MR. RANDALL JONES: Thank you.

THE COURT: Mr. Bice.

MR. BICE: Thank you, Your Honor.

Seems to be a hodgepodge of parties that are making a hodgepodge of different arguments. Let me try and sort of sort them out as best I can.

I'd like to begin by pointing out I think we lost track of a number of arguments that were made in contravention of the Court's order entered on September 14 of 2012 concerning claiming that these documents were stolen when the Court has already expressly precluded Sands China and Las Vegas Sands from making that very claim for purposes of these proceedings. So once again we just disregard orders when it serves the interests of Sands China.

Let me try and deal with the motions in some sort of a chronological order, Your Honor. Let's deal with the issue about the waiver question. First of all, Your Honor, Sands China seems to want to forget that they're the party who interjected this. As the Court will recall, when we were here on the waiver question the first time it was Mr. Jones who at the end of the hearing -- after the Court had made its intentions clear relative to the question about waiver, it was Mr. Jones who interjected and threw out these reports as the only thing to which that ruling could apply. That was their pitch to the Court to try and salvage the consequences of the

Court's ruling, number one. So they are the parties that have interjected this issue, as the Court will recall.

What I find fascinating, Your Honor, is there's absolutely no evidence before this Court, zero evidence, that these reports are privileged in the first place. Set aside the issue about waiver. Where's the declaration of counsel that these reports are attorney-client, that they were generated in the facilitating of legal services, that there's an attorney even involved in these matters. Your Honor, there's absolutely zero evidence before this Court to even substantiate any claim of privilege with respect to Mr. Vickers. Mr. Vickers -- my belief as to his background is, Your Honor, is that he's not an attorney, he is a former Hong Kong police detective that now runs an investigative agency in Hong Kong, is my belief as to his background. And there's certainly been no evidence that he was an attorney or that any attorneys were involved in the creation of these reports. In fact, Your Honor, remember one of these reports they claim they had no involvement in, period, that this is all Mr. Jacobs's doings on his own and in fact it was supposedly one of the bases for his termination. We maintain fabricated, but, nonetheless, that's their position. They put that in a pleading before the Court, nonetheless. But that's their representation.

So the story about, number one, being privileged is

there is zero evidence before the Court. And how is it, Your Honor, this -- and I submit they say, well, we criticize them as constantly trying to delay. They are right. The request last night, filed at 7:00 p.m. last night for an evidentiary hearing is a request for delay. Let's just call it what it is. How did they suddenly decide they wanted an evidentiary hearing? An evidentiary hearing on what, Your Honor? Evidentiary hearing on privilege? Why isn't that in their opposition to our motion? Evidentiary hearing on confidentiality? Again, why isn't that in their motion? Yes, that request last night at 7:00 p.m. is a request for delay. It just be styled that, defendants request that the Court not rule and that we just delay this proceeding even further. Because that's all it really is. They didn't figure out last night at 7:00 p.m. that they wanted an evidentiary hearing for something. They figured out that they needed some basis to continue to pump this kick the can down the hill, is what the basis of that request last night was.

So coming back to this issue about privilege, Your Honor, there's absolutely no evidence to sustain any claim of privilege with respect to Mr. Vickers and his reports in any event. That's the critical problem, number one.

Number two, as the Court has recognized, even if there ever was a claim of privilege, let's entertain it, let's just assume that one ever existed. As the Court recognized,

They have known that Mr. Jacobs possessed these reports since November of 2010. It's confirmed in a letter. And Mr. Campbell reviewed the reports and made it clear he's going to use the reports, and he made it clear in his response, we're not giving them back to you. He returned the originals but explicitly stated, we are keeping copies and we intend to use them.

Now, in response to that what happened by Ms. Glaser? Nothing. And that was the point of this Court's original ruling. She did absolutely nothing in the face of this clear back in November of 2010. So what we cite the caselaw for, Your Honor, is when that happens, when you know that your adversary is in possession of documents -- and what's fascinating is even Ms. Glaser never claimed that they were privileged. Mr. Campbell was reviewing them. It's all of a sudden now we have never heard the explanation for how these documents became privileged, we just want to somehow make the assumption so that we can use this to say that Mr. Jacobs's present legal team can't look at the documents and can't use them. That's what this is really about. It's to just try and create more and more obstacles for the use of evidence that they're embarrassed about. Let's just be honest. This is -- this motion about confidentiality and the motion about privilege, this is a motion about keeping under wraps evidence that is embarrassing to these defendants while

their chairman is out barking in the media about Mr. Jacobs and delusional and Mr. Jacobs fabricating all of this stuff and fabricating things about the Foreign Corrupt Practices Act when their own auditors turn around and say, we think that there is -- we think that there were likely violations of the Foreign Corrupt Practices Act.

Nonetheless, Your Honor, that's what this is really about. These documents substantiate what Mr. Jacobs says was going on in Macau, and that's why they don't want them to see the light of day. And that's why they were never privileged until now that we're drawing upon the evidentiary hearing we suddenly want them to become privileged or highly confidentiality, which the same objective is, notwithstanding the fact that they've been in Mr. Jacobs's possession as his own -- as their counsel acknowledges, since 2010.

Your Honor, and the other thing -- so shifting now to the confidentiality. So let me just conclude, Your Honor, on the privilege question. No evidence of privilege whatsoever. And even if there were, Your Honor, there's been a plain waiver, as this Court has previously recognized. Because they didn't do anything with respect to the documents once they knew Mr. Jacobs possessed them and once Mr. Campbell made clear he intended to use them. In fact, they noticeably didn't claim Mr. Campbell couldn't review them.

Now let's turn to this confidentiality question,

Your Honor. I would like the Court to note something, because I think it's a telling revelation in their late filing last night. The motion on confidentiality, Your Honor, is brought by Sands China, not Las Vegas Sands. But now we have a revelation in the last-minute pleading last night that Las Vegas Sands is the one that commissioned the reports that are the subject of Ms. Glaser's letter, it appears. So Las Vegas Sands has never held any sort of a meet and confer, has never complied with the terms of the confidentiality order, et cetera. So we've got this sort of double speak going on here between these two defendants, one claiming an argument when it suits them and then another one now suddenly claiming, well, they're the ones that commissioned these reports, or at least two of these reports. And, of course, the other one is, according to them, something that Mr. Jacobs did all on his own, had no -- the companies had no involvement, but it's somehow their confidential information even though he had no -- they had no involvement in it.

And that, of course, then begs the question, Your Honor, is how is this confidential information to begin with. These are reports generated by an investigator. They say it's non-public information. How do they know that? Where did Mr. Vickers acquire all of this information if it was supposedly non public? There's been absolutely no showing to back up any of this. We just use this conclusory story. Because it's

embarrassing information, they don't want -- they want to accuse Mr. Jacobs of all sorts of improprieties but not let this evidence see the light of day to contradict their chairman, who wants to make statements in the media, to contradict him and show that it's not Mr. Jacobs who is in fact delusional, it's not Mr. Jacobs who is making up things about what was going on in Macau. It's the defendants who want to go around making statements, but then when evidence comes to like or there's evidence out there that contradict these self-serving public statements, well, we've got to keep the wraps on that, Your Honor.

So let me deal, then, Your Honor, with just the timing of this. They now tell you this is such explosive evidence, so highly confidential, Your Honor, it's just -- it just has to be treated as highly confidential or at a minimum confidential. Your Honor, 2010 there was no protective order in place in this case. Mr. Jacobs had these documents. They didn't come to you and say, wait a minute, Your Honor, we've got to have -- he's got these two reports and he won't give them back, at a minimum he's got two, we think he has more, he won't give them back. No motion to designate these as confidential, no motion to make him maintain them as confidential. There wasn't even a protective order in place at that point in time. These documents were in no way subject to any such treatment under our -- under the terms of the

Court's order.

Then we go to the timing of this motion, Your Honor. Now, Mr. Jones kind of brushes this issue aside, but I don't believe it's appropriate to be brushing it aside. We have a stipulated protective order in this case that sets forth various timelines and deadlines for the parties if you're going to claim that something is confidential under the terms of the order and if you're going to contest that confidentiality. We did that. They designated these as confidential under the terms of the order, or attempted to. We objected to that designation. By agreement -- we have an agreement that the Court has approved that they have 10 days in which then to schedule the 2.34 conference, and then after that they have 10 days in which to file their motion. It's not a 20-day window, as they now try to rewrite their agreement to say, well, we can just fudge those dates a little bit as long as it sort of suits our end, if we shave off some days on this end of it we can add them to this date over here. That's not what the stipulated order says. That's not the agreement. The parties agreed to these deadlines. And now what they're saying is, well, they should just be ignored because we can't show prejudice. Well, I'm sorry. With all due respect to Mr. Jones, he's got the law exactly upside down. The question is what's the good cause for deviating from the order.

What's the good cause for deviating from the order, Your Honor? There is none. And there's been none offered to the Court. It's just, well, we didn't do it, we didn't comply with the order and we would now ask that the Court just again disregard an order and allow us to do something that we're not allowed to do. So once again that is a problem that they do not explain and do not overcome.

But even if we ignore that problem, Your Honor, one of the grounds of waiver of attorney-client privilege is a lack of confidentiality. You lose confidentiality over the document. That's the essence of waiver. So what they're trying to say to you is, well, even if there's a waiver you should still treat the documents as confidential even though that's inconsistent with the doctrine of waiver. And again the Court, with all due respect, must reject that contradiction. That's what they're attempting to get you to do, is enter a contradictory position, that the document is somehow confidential simultaneously and not confidential with respect to the waiver question.

So at the end of the day, Your Honor, I ask the Court simply this question. What is the good-faith basis for the claim of privilege over these documents? Have you seen any? We were assured -- remember, we've heard this before now by this evolving door of counsel that has appeared for Sands China -- it's always going to change, they're not going

to do this, they're not going to do that, they're going to comply with the orders. What is the good-faith basis for the claim of privilege? There's no evidence, there's nothing presented. What's the good-faith basis for claiming there was no waiver of the privilege, Your Honor, when you knew and your own counsel, prior counsel knew that the documents were in his possession and did nothing about it? There is none. What this is is this is yet another request to grind Mr. Jacobs down, make him file motions with the Court, make the Court consume time on these collateral issues because that benefits these defendants. And there's no basis for continuing on with that. The only reason that we're here yet again is because Mr. Jones threw out these reports as the basis for trying to limit the Court's prior waiver ruling, and then turns around after doing that and saying, well, they weren't even the subject of that original motion to begin with, even though he's the one that threw them out as trying to limit the Court's ruling.

So we followed the Court's instructions. We filed a motion on these, and that's the basis for our request.

THE COURT: So can I ask you a question.

MR. BICE: Yes, sir -- yes, ma'am.

THE COURT: Why do you believe that the Vickers reports, the two that were admittedly in your client's possession that were copied and returned, are relevant to the

jurisdictional hearing that I've been ordered by the Nevada Supreme Court to conduct before I let anything else happen in this case?

MR. BICE: Well, there's two things I want to -- let me answer the question first, but then I want to clarify why I think that question is not particularly germane to what we're asking for. Number one, with respect to jurisdictional discovery they are relevant, and I would submit this request for evidentiary hearing only confirms it; because they're now saying --

THE COURT: So tell me why you think they're relevant.

MR. BICE: Because this demonstrates who was really in charge, Your Honor, and who was calling the shots, and Sands China says it.

THE COURT: That's all I need you to say. Thank you, Mr. Bice. Anything else?

MR. BICE: But the point I was making, remember, Your Honor, there's nothing in the stay order that says we can't review Mr. Jacobs's documents. And that's what this is really about. Even if these weren't relevant to jurisdiction, which they are, but even if they weren't, this is an attempt to try and hamstring us to say we can't look at documents that are in Mr. Jacobs's possession because we make false claims of privilege, just like -- remember what they did. They claimed

a privilege log of how many pages, Your Honor? And then when forced by the Court to --

THE COURT: It was a really crappy privilege log.

MR. BICE: -- own up to it, over 50 percent weren't even privileged to begin with. By their own admission. That was all designed to do what, Your Honor? To preclude us from looking at our client's own evidence to move this case forward.

THE COURT: Okay. Anything else?

MR. BICE: Thank you.

THE COURT: Mr. Jones, I've got a couple questions, and you may want to decide to handle things differently as I ask these questions.

Last night you guys served a request for an evidentiary hearing related to this. If I decide to schedule an evidentiary hearing -- and I haven't made that decision -- when would you be ready to conduct that evidentiary hearing?

MR. RANDALL JONES: Within a week.

THE COURT: Well, no. If you're going to do, you're going to do it today. Because I'm not moving this hearing again. Today's the day of the hearing. So if you want to do an evidentiary hearing, I'll do it at either 10:30 or 1:00.

MR. RANDALL JONES: Well, Your Honor, I don't know if I can get witnesses here that quickly to do that.

THE COURT: So why'd you ask for an evidentiary

hearing at 7:00 o'clock last night, as opposed to some other time?

MR. RANDALL JONES: Because, Your Honor, I was certainly planning on addressing this, we got a motion to compel on December 15th, 2014, with respect to these documents. I have to tell the Court that I was out of town on vacation. I actually tried to take a vacation.

THE COURT: You got a vacation?

MR. RANDALL JONES: I actually tried to take a vacation. I was doing a lot of work while I was on vacation. Mark Jones was also out of town on vacation, and so were other people in our office. So in terms of trying to figure this out we've been doing our best, Judge. And we're also anticipating that we're going to have an evidentiary hearing on the jurisdictional issue in relative short order, which has now been requested specifically in a motion by the plaintiff, so --

THE COURT: That's on for today. We're going to talk about that next.

MR. RANDALL JONES: I assumed we were. So we were trying to prepare for that. And so -- and to answer the other question that Mr. Bice raised as to why we -- he assumes we didn't come up with this idea to file this request at 7:00 o'clock last night. No, we didn't.

THE COURT: I got it this morning.

MR. RANDALL JONES: We decided to -- we looked at this and decided to do this at 3:00 o'clock yesterday afternoon. I was in a mediation all day. I'm trying to prepare for this, as well, and looked at this, and, you know, I guess I'm just not quite as astute as plaintiff's counsel, because these are complex issues and there's a lot of things going on. And this came out -- from my perspective this came out of left field. This was never an issue on the table until, as I said, the Court raised it in a motion -- or in the order with respect to the Advanced Discovery documents.

So we get a motion to compel on December 15th, and we're still trying to figure out exactly how this all plays in together. So we want to do whatever we can to protect our clients' rights, as I know this Court would expect us to do. And I'm certainly not going to not file anything, even if I do it late and know I'm going to be criticized for doing it late. I figured it's better to have it on file with this Court than not do it at all. So I will just tell you, Your Honor, I'm doing the best I can to try to do my job. And I don't have a reputation and I certainly resent any suggestion otherwise that I try -- use delay tactics as a strategy for my client. I don't. And if we were going to play that tit for tat game, I believe I could go back and if I wanted to nitpick everything that the plaintiffs have done here, I could come up with a laundry list of them, too. But I don't think that's

helpful.

THE COURT: That's true in every case.

MR. RANDALL JONES: I don't think that moves the ball forward. So I have tried to avoid that gamesmanship and just address the issues. And so the answer to the question is, Judge, I cannot be ready by 10:30 or 1:00 o'clock today to do this. But I will tell the Court that I will become as ready as quickly as possible. I have to make -- I didn't know if you were going to grant this request, so --

THE COURT: Well, I didn't say I would. I'm just trying to find out if it's going to further delay issues. If I can do it in the next -- today, maybe tomorrow, I'm more likely to give it to you than if you say, I can't do it till next week.

MR. RANDALL JONES: The more time you give me the more ability I would have to try and put up some evidence on these issues of who commissioned it and what was the purpose of the report. I think we can do that without getting into the substance of the report, because right now it's interesting to me that Mr. Bice, who has told me personally that he's never read these reports, that he now can tell this Court what's in them and who commissioned them. Now, he may have been able to talk to his client about that. I don't know. But all I can tell you is that he's told me he hasn't read them. So if he hasn't read them, then I find it

interesting that they could give you details about what's in the reports.

And I would simply say this. The fundamental question is are they related to jurisdictional discovery or not. Because if they are not --

THE COURT: That's why I asked Mr. Bice the question.

MR. RANDALL JONES: And Mr. Bice gave you what is his opinion.

THE COURT: That's okay. That's what he's supposed to --

MR. RANDALL JONES: That is not evidence. My argument to this Court are not evidence.

THE COURT: But that's part of the discovery issue. There's two issues. There's a discovery issue, and there's an admissibility issue. Today we seem to be dealing with a discovery issue at which I'm supposed to give a broader analysis of whether it's potentially relevant.

MR. RANDALL JONES: Understood. But we have a unique circumstances here, Judge, where we have a Supreme Court order that says we will not get into merits discovery, assuming these even apply to the merits, which I suggest they do not.

THE COURT: Some people recognize that things may apply to both sometimes.

MR. RANDALL JONES: And you made that point early on. I'm just suggesting to you that we believe the evidence will show they do not relate to jurisdictional discovery. And if they do, then we have potentially an error with respect to that evidence coming into the --

THE COURT: I would like you to go caucus with other related defendants, make some phone calls, I'd like people on the other side of the room to check their calendars and come back in about 15 minutes and tell me what time, if any, this week you have available.

MR. PEEK: Your Honor, before you leave, just may I -- I'll let Mr. Jones say something.

THE COURT: He's not stopped. I'm going to let him talk some more.

MR. PEEK: I know that.

THE COURT: He can talk as much as he wants, but I've got all of these other people from Judge Scann's calendar who would love to leave the room.

MR. BICE: I also need to address the Court on this timing question, Your Honor, about this claim that this issue -- they didn't have to address this --

THE COURT: I'm not worried about it. I'm merely trying to get some information so I can make a determination on this. I'm not shutting you down. I understand you may want to say some more things --

MR. BICE: Understood.

THE COURT: -- but I need some reality check as to whether in a very limited time I might consider for an evidentiary hearing it's doable. If it's not doable, then I will just go ahead and rule after I listen to all of you for as many times as you want to talk --

MR. BICE: Thank you, Your Honor.

THE COURT: -- after I get rid of Judge Scann's calendar.

MR. RANDALL JONES: Understood, Your Honor. But one question I have is while we make these phone calls would the Court allow a video conference testimony?

THE COURT: Maybe.

MR. RANDALL JONES: And I want to say --

THE COURT: The answer's maybe. I -- as you may notice, my courtroom is not in the condition that it was maybe last summer. As a result of the condition my courtroom is currently in and the fact they've put out to bid putting my court back together -- courtroom back together, I can't necessarily do all the things I used to be able to do in my courtroom with respect to video conferencing. The answer is I always entertain videoconferencing. I have some technical issues right now, and I don't know if I can get those fixed.

MR. RANDALL JONES: All right. Well, that's -- because that may affect our ability to have witnesses

available on short notice. But thank you.

MR. BICE: Well, and we, Your Honor, are going to want to be able to call the witnesses that we believe have information on this.

THE COURT: Absolutely.

MR. BICE: And that comes from the defendants' side.

THE COURT: Go to the hallway.

MR. BICE: Thank you, Your Honor.

THE COURT: I'm going to deal with Judge Scann's calendar and talk to you guys in a few minutes.

(Court recessed at 9:28 a.m., until 10:05 a.m.)

THE COURT: I'm trying to get an answer on the videoconferencing issues. I don't have it yet. That was one of the things that I've been trying to do while you guys were doing your part in the hallway.

MR. BICE: I wanted to address this issue first, if I might, this issue about surprise that was claimed. And I just want to remind the Court about the timing of this motion. We filed this motion originally several months ago, and there was full briefing on it, we had a hearing. As you'll recall, at the end of that hearing Mr. Jones's position was, well, your ruling only applies to the Vickers reports. That was a proffer that they made. An order was entered. They then filed a motion for reconsideration. That motion gets fully briefed, we come back here in front of the Court because

they're now saying, well, those are not part of Advanced Discovery, even though these reports were -- we dispute that. But, nonetheless, we come along, and now we're -- the Court directs us to file a motion. And we were essentially told to do that on a day's notice, which we did. We filed it on December 12th. By agreement of the parties at the hearing the last time we were here they were supposed to file their -- we were supposed to have the hearing on December the 18th, and we were -- they were supposed to file their opposition the day before the hearing.

What happened is after we filed the motion I got a call from Mark Jones, who I don't believe was at that hearing, saying that the agreed schedule wasn't doable because he was planning on being out of town or Randall Jones was planning on being out of town, I don't recall the exact details, but could we work on some rescheduling to give them time. They wanted to file a more robust opposition than what they had filed in the first round of motions on this issue.

We agreed to -- we got in contact with your chambers regarding today's hearing date, and we ultimately agreed to it. There was some discussion about holding it on Thursday, the 8th, which I did not want to do because of other commitments. So we gave them a lengthy extension of time in order to oppose this motion. They ultimately did not have to file their opposition by agreement until December the 24th.

And then we got to file a reply, and this hearing has been set. There is no so-called surprise here that we now -- yesterday at 3:00 o'clock in the afternoon they suddenly decided that they wanted an evidentiary hearing, Your Honor, because this is somehow -- they're trying to portray this as this motion was somehow on an order shortening time and unexpected and there was no opportunity, fair opportunity to respond to it. This motion has really been before this Court now -- this is about the third time ultimately it's been in front of the Court.

And, Your Honor, I have the question what is this evidentiary hearing about supposedly. If you look at what they've requested of you, it's not about privilege, which is the motion that's before the Court; it's not about confidentiality, which is the other motion before the Court. Let's be honest about what this motion is. This is a disguised motion in limine saying, we want to hold an evidentiary hearing about whether or not these reports would be admissible at an evidentiary hearing on jurisdiction. Well, that's no basis, Your Honor, for saying whether or not the documents are -- we can review the documents in preparation for the evidentiary hearing, Your Honor. That's what the present motion before the Court is about. There's no basis to yet secure another delay, another extension of time by saying, well, we want to now hold an evidentiary hearing on

whether or not these documents will ultimately be admissible at the Court's evidentiary hearing on jurisdiction which is yet to be scheduled.

And that's the basis why, Your Honor, there is no motion for an evidentiary hearing before you. We got this notice yesterday at -- like I said, we got it at around 7:00 o'clock or so or sometime after that. And so I maintain that it's not on the Court's calendar and there's no basis to delay this matter yet again on the basis of this last-minute maneuver. And I maintain that it is a last-minute maneuver. If that's what they wanted, they've had many, many months to address this issue and tell the Court they needed or wanted an evidentiary hearing on this issue. We've had these documents -- Mr. Jacobs has possessed these documents for years, as you observed. It's a little too late to now at 7:00 o'clock at night before a hearing saying, well, now we want an evidentiary hearing. I thank the Court.

THE COURT: Okay. We had a homework assignment.

MR. RANDALL JONES: Yes, Your Honor. General counsel Ira [unintelligible] is out of town or out of the country, but I did get a hold of associate general counsel, Mr. Rubenstein. He was making phone calls and was doing his best to contact the witnesses and find out their availability. He said that he figured the best he could do is -- give him 24 hours, by noon tomorrow. And I explained the urgency to the

Court, and that's what we're doing to comply with your request, Your Honor. So --

THE COURT: Okay. Anything else you want to tell me on these motions, then?

MR. RANDALL JONES: Yes, Your Honor.

THE COURT: And I'm not on the motion to set the evidentiary hearing for the jurisdictional issue yet. I'm going to do that when I finish with the Vickers report issue.

MR. RANDALL JONES: The first thing I would like to say is, addressing Mr. Bice's comments about the lateness, there was an accommodation. We appreciate it. It was set on the 15th -- it was filed on the 15th of December on an order shortening time, and it was filed right before Christmas, and the parties have been -- in spite of the seriousness of the allegations going back and forth, the parties have tried to work together in spite of some of the assertions of revolving door of lawyers, which we don't appreciate. We still try to work at a professional basis and work together. So I appreciate Mr. Bice giving us that accommodation. Doesn't change the facts that they didn't file a motion at any time ever with respect to the Vickers documents until this Court brought it up.

So going back to his specific arguments, the first argument he made to you, Your Honor, was that these documents are not stolen, and he says -- I forget the order where this

Court said we couldn't say that --

THE COURT: It was the sanctions order.

MR. RANDALL JONES: That order is dated September 14th of 2012, and it does not by specific statement relate to the Vickers documents. At paragraph (b) of the order it talks about the 20 gigabytes of electronic data. So Mr. Bice is incorrect. It never related to the Vickers documents. So he is wrong about that point. We've never been precluded by order or otherwise of saying Mr. Jacobs stole those documents.

And, you know, the other point -- the next point he made was about a gratuitous comment that I made where I never said that we had waived privilege on the Vickers documents. I made reference to the fact that based upon their argument that they were making, the only argument that they could support with their statement, was related to a couple of reports. So, you know, shame on me for making a gratuitous statement. But I never suggested -- and I've read the transcripts many times, especially after they brought it to the Court's attention, to see if I had made some completely stupid comment. And I would agree it was not the most articulate I've ever been in court, but it was a gratuitous comment, and it never was a waiver of the privilege as to those documents. And it was -- and I don't know if the Court based its decision on that or something else, but it certainly was never my client's intent

and certainly was never my intent that I was somehow or other giving up the Vickers documents by that gratuitous statement at the end of the argument. I was simply acknowledging that that's the only argument they were making in their briefs and it didn't apply to the Advanced Discovery that was the subject of the motion.

As to why we need an evidentiary hearing, I'll say it again, Judge, if these documents are not related to jurisdictional discovery, they should not be a part of the process. And the Court we believe needs to make that determination before the evidentiary hearing.

Another comment that was made was that Mr. Campbell said way back in 2010 that he was reviewing those documents, the Vickers reports. I don't have those letters in front of me. I know they're in the record. But my recollection is that he said he was specifically not looking at those documents until there was some further resolution of the Court. So, again, that was part of the argument about the privilege, is that there was no waiver of privilege. Because when counsel said they weren't going to look at them, that leads you to believe you don't have a pressing issue you need to pursue immediately.

Mr. Bice says these documents substantiate what was going on in Macau. Mr. Bice and his client have presented no evidence to this Court that provides -- excuse me. Mr. Bice

and Mr. Jacobs have presented no evidence to this Court to demonstrate that these documents substantiate anything that was going on in Macau. They just don't. And, again, the burden's on them, not on my client.

He also says that -- makes a comment that in our brief we say that the Las Vegas Sands commissioned the reports -- two of these reports. So what? So what if Las Vegas Sands did commission two of the reports? How does that substantiate anything to do with jurisdiction over Sands China? Las Vegas Sands has its own interests to protect, and it certainly has a right to engage counsel or investigators to investigate issues that relate to its issues. So there is no circumstantial evidence that they have proffered that would suggest that just because Sands -- or, excuse me, Las Vegas Sands initiated investigation that somehow proves or even is likely to lead to discovery of admissible evidence that Sands China was doing business in Las Vegas, which is the fundamental rule this Court must follow under Bauman and Viega -- the Viega precedents.

Mr. Bice said Jacobs's documents have been in his -- these documents have been in Mr. Jacobs's possession since 2010 so why are they confidential now. They've always been confidential. Just because those documents were in his possession doesn't mean they were not confidential.

I don't think this is a big point, but he makes an

issue we've never explained why we deviated from the order with the 10 days. We did explain that, Your Honor. Mr. Spencer Gunnerson of our office, who was the one that had that meet and confer, provided the Court with an affidavit as to how that occurred and how it was inadvertence on his part.

The ultimate point is, Your Honor, is that until this Court has some evidence before it that these documents are relevant to jurisdictional discovery, which is their burden to prove, we believe it would be inappropriate for the Court to allow them to become evidence in this case, confidential or not, and that they have failed in that burden, and we are asking the Court for an evidentiary hearing, brief as it may be, to allow us to demonstrate that point to the Court so that we are not in violation of the Supreme Court's order that merits discovery not go forward until the evidentiary hearing on jurisdiction is concluded.

THE COURT: Okay.

MR. RANDALL JONES: Thank you.

THE COURT: The motion to designate the Vickers report as highly confidential is denied. The Vickers reports will be designated as confidential.

The motion that relates to the waiver, jurisdictional issues related to the production of the Vickers report has previously been addressed by the Court. The privilege, if any, is waived as to the two reports that were

Jacobs's possession at the time of Ms. Glaser's November 2010 letter. Those may be treated as confidential. They will not be treated as highly confidential. And plaintiff's counsel may review those documents that were in Jacobs's possession at the time of Ms. Glaser's letter for any purpose they think is appropriate.

The request for an evidentiary hearing specifically asks me to resolve the issues of privilege and confidentiality of the Vickers reports. It is unnecessary for me to conduct an evidentiary hearing for those two purposes. While it may be appropriate for me to conduct an evidentiary hearing as to whether those reports will be admitted for purposes of the jurisdictional hearing, for purposes of the discovery issue I am denying the request for evidentiary hearing filed at 7:04:59 last night.

Can we now go to the motion for the evidentiary hearing to be set.

MR. BICE: Yes, Your Honor. Thank you.

We are asking the Court to set an evidentiary hearing, as well as to give us a trial date for this action, Your Honor, and we are actually asking that the Court set the trial date prior to the five year date of this action, because it seems to us that the defendants are sort of being coy about that issue. We don't believe it applies. But to the extent that they are intending to argue that they cannot be allowed

to benefit from the status of this case, because the status of this case is largely the byproduct of their own actions, as I think evidenced by the privilege log issue that has consumed an extensive amount of the parties' time and the Court's time.

So we are asking the Court to set the trial date prior to October the 20th of this year, as well as set the evidentiary hearing as soon as possible under the Court's schedule, as well as once the Court sets the trial date we're going to ask the Court for a streamlined discovery process and after the evidentiary hearing a streamlined discovery process shortening the time frame in which to respond to written discovery and shortening the time frame for notice of depositions in light of the need to accelerate this case.

THE COURT: Let me ask you a question.

MR. BICE: Yes, Your Honor.

THE COURT: How long before you'll be ready to conduct the evidentiary hearing?

MR. BICE: If the Court can give us the timetable, I would ask the Court to set that within the next two weeks to three weeks. I qualify it only with this, Your Honor, is yesterday -- and we don't know what we received; we received what we think are, by at least appearances, although the database was corrupted and there'd been some discussion, we received a whole bunch of documents yesterday from Mr. Peek's office. I don't know what they are. I haven't had a chance

to look at them. Perhaps he can tell us what they are. But absent something extraordinary being in there, I'm not sure why we're getting them now. But we'll address that at a point in time. So I would ask the Court to schedule it, if it could, within the next two to three weeks and allow us to proceed.

THE COURT: Let me ask my next question.

MR. BICE: Yes, Your Honor.

THE COURT: How many days do you believe that hearing will take?

MR. BICE: Three. Three to five.

THE COURT: Okay. So you'll be ready for the hearing two weeks from today, it'll take a week basically.

MR. BICE: We can do it.

THE COURT: Okay.

MR. BICE: And we're obviously contemplating the sanctions issue being scheduled, as well, Your Honor. As you will recall, that's also going to be addressed by the Court.

MR. RANDALL JONES: I guess I would just like some clarification. If they're also addressing the sanctions issue, they think that will happen within these same three to five days? I don't know.

THE COURT: Well, let me ask you a question. How long before you're ready to do the evidentiary hearing on the jurisdictional issues that the Nevada Supreme Court ordered me

to do a long time ago?

MR. RANDALL JONES: Your Honor, based upon all the information and evidence -- and we don't have -- I've got a whole laundry list of things that I think we would like to have decided before we have that evidentiary hearing. So I'd like to have it set within the next 90 days.

THE COURT: Well, give me your laundry list.

MR. RANDALL JONES: My list are things -- I don't know what the procedure is going to be either for the sanctions hearing or for the evidentiary hearing. Who has the burden of proof? I'd like -- presumably the plaintiff does, but they keep making noise like --

THE COURT: Well, but remember, it's a lower burden of proof. It's a really low burden of proof on the jurisdictional issue.

MR. RANDALL JONES: Whatever the burden of proof is, it's my understanding of the law that they have it. And so --

THE COURT: That's true. They have it. But it's not very big.

MR. RANDALL JONES: Again, whatever it is, do they have it? Are we going to file briefs before that hearing?

THE COURT: Absolutely you're going to file briefs. And then I'll read them.

MR. RANDALL JONES: So here's my question, Judge. I would like to know from the Court what the procedure is,

because this obviously has great significance, the impact of this hearing has great significance to my client. So I'd like to know exactly what it is I'm facing. Then I can give you a better idea of what I need to do to prepare for that. And I've been through evidentiary hearings before, but under the circumstances I have been told I'm going to have a sanctions hearing sometime, potentially immediately before the evidentiary hearing, and I don't know exactly what the rules are going to be with respect to the sanctions hearing, if it's going to be an evidentiary hearing, are both sides going to call witnesses, what --

THE COURT: The answers to those are yes.

MR. RANDALL JONES: So --

THE COURT: We actually did a sanctions hearing before you got involved. Both sides called witnesses. I asked questions, and I even asked for some additional information that neither party wanted to provide.

MR. RANDALL JONES: And I am aware of that hearing previously, and I've read those transcripts. So, again, how does that play into the -- is it the same day, is it -- how long is that going to take? I haven't heard from Mr. Bice as to how long he thinks the sanctions hearing's going to take, so how do I plan for that? Are -- Mr. Bice's office has never filed a brief with respect to the sanctions hearing. We filed one months ago. He talks about delay and dilatory conduct.

We believe that when the Court asked us to get together we talked about this issue and we filed our brief. They've never filed one. My position would be, then, since they like to talk about waiver all the time, they've waived their right to file a brief. They put a footnote in their motion to set the trial, and we note that the defendants have filed their brief months ago and we'll file one when the Court sets the hearing. Well, that's not how it works, Judge. You don't get to do this. The Court tells you to do something, which they like to remind us of --

THE COURT: No, it's exactly how it works. They file briefs, I decide I'm going to issue sanctions, you take a writ, the Nevada Supreme Court says it's okay for me to issue sanctions but I have to consider the Macau Data Privacy Act as part of my balancing test that I'm going to do. So then I hear evidence about what the prejudice is, and then I make a determination. Just like under the Nevada Power-Fluor case, if you want an evidentiary hearing since you're the parties who may be sanctioned, I'm going to give you that evidentiary hearing. Somebody's going to convince me there's a little teeny bit of prejudice or there's a lot of prejudice. I'll then look on the balancing test under the Ribiero factors, and I'm going to decide whether I should sanction somebody a little bit of money, whether I should sanction them with an evidentiary sanction, whether I should sanction them with

something else, just like any other evidentiary hearing. It's not that complicated.

MR. RANDALL JONES: That was my point, Judge. I was talking about the briefs. It's not how it works where --

THE COURT: But we already did all the briefs.

MR. RANDALL JONES: They --

THE COURT: You guys went up on appeal. You've been to the Supreme Court. You've come back.

MR. RANDALL JONES: The only brief that's been filed with respect to the sanctions hearing since the Supreme Court order has been filed by Sands China. And they even acknowledge they were -- there was a discussion with this Court about a briefing schedule months ago, before CityCenter was resolved. We filed our brief in conformance with your direction. They have failed or refused, whatever it is they want to describe it as, to do that. Now -- and they put a footnote in their motion for -- asking for a trial setting, saying, oh, and we note that they filed their brief months ago, we'll file ours when you set the hearing. That's what I'm saying is not the way it works, Judge. That's not fair. That's -- they want to hold us to every procedural rule, but when they violate the rules we'd like to see some consequence to them. And the consequence we think would be appropriate is that they don't get to file a brief because they've missed their opportunity, as they like to try to remind this Court

about things they claim that my client have done. So that issue --

THE COURT: So I've got two issues. I've got the burden of proof issue, I've got the sanctions hearing. What else is on your laundry list?

MR. RANDALL JONES: I don't know what their theories are. I don't know what their theories are. How do I plan to protect my client? They claim they've reserved every theory, they've never waived a theory. Well, what does that mean? I would like it set out clearly and concisely so my client's due process rights are protected. Don't just tell me, every theory of jurisdiction out there we still have and we claim we can provide it. Tell us exactly what it is so that we can then prepare. Because we believe some of the theories that we think they're going to pursue are absolutely barred as a matter of law, and we would like to brief those issues if they still are trying to maintain some of these theories that we think do not apply. So we need to know what their theories are. Concrete, not some vague reference that, oh, yeah, you know what they all are and we're still maintaining we're going to pursue every one of them.

THE COURT: What else?

MR. RANDALL JONES: Experts. In this case we have an expert that we have designated. That expert is overseas, so we need sufficient lead time to schedule and/or determine,

as I indicated previously, if we can have video testimony, which may help accommodate scheduling of an expert witness. Otherwise to bring that expert here is extremely expensive, and it's also logistical and a nightmare to get him here.

THE COURT: What else?

MR. RANDALL JONES: We have an issue about the witness list. Are we going to get, as we had in the past, both sides exchanged witness lists and exchanged documents, which has been ordered in the past. So we'd like to -- we don't think it's practical by any stretch of the imagination to have that process completed so there could be an orderly exchange of witnesses and documents within the next two to three weeks.

With respect to discovery I believe they said in their brief that they don't need any more discovery. That's fine. I do want to address the point that Mr. Bice raised with respect to the documents that were produced. These are all the remaining redacted documents from Advanced Discovery, 7600 documents. And so those have all now been delivered. And if there are some technical issues with that, obviously -- I'm sorry, the Macau documents, not the Advanced Discovery documents.

THE COURT: What else? Trying to get your whole laundry list, Mr. Jones. Trying to get your whole laundry list.