

**AUTHORIZATION FOR THE RELEASE
OF PROTECTED HEALTH INFORMATION**

RE: NAME: STEVEN C. JACOBS
SSN:
DATE OF BIRTH:

This Authorization the release of Protected Health Information pursuant to 45 CFR Parts 160 and 164.

1. I authorize the use or disclosure of the above named individual's health information as described below:
2. The following individual or organization is authorized to make the disclosure:

Address _____

3. I authorize that the medical information related solely to my mental health, psychiatric and psychological counseling, and any neurological condition, sleep disorders or disruption or brain injury that may affect my mental health ("Mental Health") be provided upon receipt of a signed original or photocopy of this authorization include all records related to my treatment including intake and history forms, hospital records, progress notes, office charts, nurses' notes, discharge reports, emergency room records, surgical reports, lab results, radiographic films, radiographic film reports, test reports and results, narrative summaries, telephone logs, billing statements, and other documents and information related to the diagnosis, treatment, hospitalization or prognosis of my past, present and future Mental Health condition.

4. This Authorization is limited to Mental Health information, as described in Paragraph 3, created on or after November 5, 2005.

5. I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment of alcohol and drug abuse.

6. This information may be disclosed to and used by the following individual or organization:

Address: Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, 17th Floor, Las Vegas, Nevada 89169
for the purpose of: Litigation

7. I understand I have the right to revoke this authorization at any time. I understand if I revoke this authorization I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization. I understand the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire on the following date, event or condition: 5/19/16. If I fail to specify an expiration date, event or condition, this authorization will expire in six months.

8. I understand that the Facility disclosing information pursuant to this authorization cannot condition treatment, payment, enrollment or eligibility for benefits on my signing this authorization.

9. I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules.

Signature of Patient or Legal Representative

Date

This authorization expressly authorizes the bearer to receive copies, by photostat, xerox or otherwise, any records or reports referred to above. Any Xerox copy of this authorization should be treated as an original for purposes of releasing information authorized herein.

Janet Griffin

From: Janet Griffin
Sent: Tuesday, November 24, 2015 3:45 PM
To: 'tlb@pisanellibice.com'; 'jjp@pisanellibice.com'; Debra Spinelli
(dls@pisanellibice.com); 'jts@pisanellibice.com'
Cc: 'SM@morrislawgroup.com'; 'speck@hollandhart.com'; 'Rosa Solis-Rainey'; James
Ferguson (jferguson@mayerbrown.com); Mark Jones; Randall Jones
Subject: Las Vegas Sands Corp. adv. Jacobs
Attachments: 11-24-15 Letter to Todd Bice.pdf

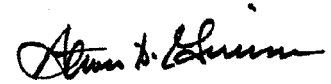
Counsel,

Please see the attached letter. Thank you.

Janet L. Griffin
Secretary to J. Randall Jones, Esq., Kathy Stettin & Jeri Gressman

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CLERK OF THE COURT

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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, an individual; VENETIAN
MACAU LTD., a Macau 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'
OPPOSITION TO DEFENDANT SANDS
CHINA'S MOTION FOR ORDER TO
SHOW CAUSE WHY PLAINTIFF
STEVEN C. JACOBS SHOULD NOT BE
HELD IN CONTEMPT OF COURT AND
TO COMPEL EXECUTION OF
MEDICAL RELEASE
AUTHORIZATION AND PRODUCTION
OF TAX RETURNS ON ORDER
SHORTENING TIME**

I. INTRODUCTION

Anyone but the Defendants would be embarrassed by the position of Sands China Ltd.'s ("Sands China") motion for contempt, including its serial request for sanctions whenever Plaintiff Steven C. Jacobs ("Jacobs") asserts his legal rights.¹ But Defendants have never let consistency,

¹ See, e.g., Hr'g Tr. at 5:13-15, Dec. 3, 2015, on file (requesting fees for a purported non-responses to interrogatories to which the Court responded "On yours? No. How many did I tell them to supplement? Two."); Hr'g Tr. at 35:15-17, Dec. 1, 2015, on file (declining to award fees); Hr'g Tr. at 9:9-15 (requesting fees because Sands China had to respond to a motion on shortened time which was necessitated because it failed to properly serve third party subpoenas).

1 facts or law bother them. Transparently, Defendants have apparently decided that one way to dig
2 themselves out of the hole of discovery concealment is not to actually comply and show this Court
3 that they have remedied their past practices. Instead, their chosen path is to serially accuse Jacobs
4 and his counsel of misconduct in the misguided belief that it will somehow camouflage their actions.
5 That team Sands wants this Court to accept such a practice speaks volumes in and of itself.

6 Contempt requires proof of a knowing violation of a written order. Awaiting the entry of a
7 written order so that Jacobs could raise his challenges to it – which he did within a day of it being
8 signed by the Court – is hardly contempt. If it were, then these Defendants would be in contempt
9 multiple times over during this proceeding, as they have challenged virtually every discovery order
10 this Court has entered. The law permits Jacobs to contest the basis for the order, which he has done.

11 But what Jacobs has now confirmed is that Sands China manufactured the basis for its
12 request, as recently admitted by the discovery answers from Sands China's Chairman, Sheldon
13 Adelson. After buying time and failing to respond to the interrogatories, Adelson's sole response
14 has been to suggest that some anonymous co-workers in Macau – who he conveniently cannot
15 identify – supposedly provided him with information that forms the basis for this kind of discovery.
16 If that is the standard to overcome a privilege then no one's rights are safe from abuse.

17 **II. DISCUSSION**

18 **A. Contempt Requires a Knowing Disregard of a Written Entered Order.**

19 The Nevada Supreme Court has held that oral orders cannot serve as a basis for contempt;
20 a written, signed, and filed order is required. *See Div. of Child & Family Servs., Dep't of Human*
21 *Res., State of Nevada v. Eighth Jud. Dist. Ct.*, 120 Nev. 445, 455, 92 P.3d 1239, 1246 (2004) ("We
22 further conclude that the district court's oral release order was ineffective, and consequently, it could
23 not serve as a basis for the subsequent contempt order.").

24 The reasons for this rule is obvious: "[a]n order on which a judgment of contempt is based
25 must be clear and unambiguous, and must spell out the details of compliance in clear, specific and
26 unambiguous terms so that the person will readily know exactly what duties or obligations are
27 imposed on him." *Id.* at 454-55, 92 P.3d at 1245 (quotations omitted). Written orders are essential
28

1 "because oral orders are almost always unclear and subject to varying interpretations[.]" especially
2 by people who were not present at the hearing. *Id.* at 454, 92 P.3d at 1245.

3 Moreover, a written order is necessary because a party is not permitted to challenge the
4 order – by way of reconsideration or writ petition – until after service of written notice of the order.
5 *Id.* at 453, 92 P.3d at 1244. For obvious reasons, claims of contempt are particularly inappropriate
6 where the party seeks reconsideration or a stay. *See id*; *Patel v. Barbo*, No. 08-3586 (JAP), 2011
7 WL 1882422, at *2 n.4 (D. N.J. May 17, 2011) ("Defendants are not in contempt of that discovery
8 Order [43], as this Court subsequently granted [48] Defendants' request for a stay of the discovery
9 order. . . .").

10 Here, the Court did not sign Sands China's version of the Order Granting in Part Motion to
11 Compel Plaintiff to Execute Medical Release Authorization and Request for Copy of Tax Return
12 Forms until December 1, 2015 (Order, Dec. 1, 2015, on file.) The Court made handwritten
13 interlineations to revise Sands China's proposed language. (*Id.*) Confirming its lack of substance
14 and improper purpose, Sands China announced its intent to file its Motion even before Notice of
15 Entry of the Written Order was provided. (Hr'g Tr. at 68:17-19, Dec. 3, 2015, on file; *see also* Not.
16 Entry Order, Dec. 3, 2015, 4:51:53p.m., on file.) According to Sands China now, a party is in
17 "contempt" even before notice of written entry of an order is served and their rights to challenge
18 the terms of the order even accrue. As this Court knows, if that were actually the law, Sands China
19 would be in contempt nearly every day.²

20 Once Notice of Entry of Order was provided, Jacobs timely moved for reconsideration or,
21 in the alternative, to stay the order pending his right to seek review from the Nevada Supreme Court.
22 After all, the Order in question compels Jacobs to waive privilege, which he is entitled to have
23 reviewed. There is no basis for contempt or sanctions while this motion is pending. *See Div. of*

24
25
26 ² For example, Sands China has twice needed *months* of extra time to provide privilege logs
27 that should have been done years ago. Likewise, Sands China has not produced documents that are
28 long overdue. (Hr'g Tr. on Pl.'s Mot. Compel Production & Running of Search Terms at 35:24-
36:2, Dec. 1, 2015, on file (The Court: "They're already due, Mr. Bice. . . I'm not setting a new
deadline. I know people will use their best efforts. . . .").) Sands China's discovery obstructionism
has engendered *years* of delay.

1 *Child & Family Servs., Dep't of Human Res., State of Nevada*, 120 Nev. at 453, 92 P.3d at 1244;
2 *see also Patel*, 2011 WL 1882422, at *2 n.4.

3 **B. Sands China's Proposed Medical Release is Overbroad and Improper.**

4 While Jacobs disputes that he should be required to authorize the release of his medical
5 records at all, the release submitted by Sands China goes far beyond what the Court authorized, and
6 only confirms Sands China's improper and malicious purposes. Sands China's assertion that "Jacobs
7 forfeited his opportunity to comment or change the revised release" is just another admission that
8 the release cannot withstand actual legal scrutiny. (Mot. at 7:24-25.)

9 To begin, Sands China obtained the Order based upon representations of counsel that he had
10 a good faith basis for contending that Jacobs had undergone treatment for some unidentified mental
11 issue. Of course, counsel failed to identify the purported "good faith" basis for such a
12 representation, which Jacobs knows to be fabricated. And, the recent discovery responses provided
13 by Sands China's Chairman only prove Jacobs' point. In his answer to Interrogatory No. 6, Adelson
14 claimed – for the first time – that this assertion is "based on descriptions by co-workers of Jacobs'
15 use of medications for mental issues." (Ex. 1 hereto.) Tellingly, these supposed co-workers are
16 never identified. Adelson has simply manufactured this issue out of whole cloth. And when his
17 counsel was asked to identify these supposed co-workers, there has tellingly been no response. If
18 such non-existing witnesses can serve as the basis for a discovery request into a party's privileged
19 medical records, then no Plaintiff is safe from abusive and underhanded tactics.

20 Moreover, Sands China's proffered release purports to cover "mental health, psychiatric and
21 psychological counseling, and any neurological condition, sleep disorders or disruption or brain
22 injury (Def.'s Ex. G.)"³ It generically requests "intake and history forms, *hospital records*,
23 *progress notes*, *office charts*, *nurses' notes*, *discharge reports*, *emergency room records*, *surgical*
24 *reports*, *lab results*, *radiographic films*, *radiographic film reports*, *test reports and results*,
25 *narrative summaries*, *telephone logs*, *billing statements*, *and other documents and information*
26 *related to the diagnosis, hospitalization or prognosis of my past, present and future Mental*
27

28 ³ The first sentence of the release is unintelligible. (*Id.* ("This Authorization the release of Protected Health Information pursuant to 45 CFR Parts 160 through 164.").)

1 *Health Condition.*" (*Id.*) (emphasis added). The specified items have nothing to do with the
2 purported reasons that Sands China claimed the records were discoverable.

3 Sands China shows its true stripes when it claims that the Court has also ordered
4 "information relating to sexually transmitted disease" or "information about behavioral . . . services,
5 and treatment of alcohol and drug abuse." (*Id.*) The release also falsely represents that Jacobs
6 "understand[s] that authorizing the disclosure of this health information is voluntary" and that he
7 "can refuse to sign this authorization." (*Id.*) Jacobs' execution of any form of release is being done
8 pursuant to court order and is not "voluntary." Jacobs is under no obligation to acknowledge that
9 "any disclosure of information carries with it the potential for an unauthorized re-disclosure and the
10 information may not be protected by federal confidentiality rules." (*Id.*) To the contrary, Jacobs
11 fully intends to pursue his rights against any unauthorized disclosure.

12 Furthermore, Sands China again fails to disclose the providers to whom it intends to send
13 any release this Court actually authorizes. The applicable line on the release is left blank. (*Id.*) Of
14 course, this Court specifically directed Sands China to "attach[] to your motion whatever consent
15 is that is being requested *and the draft letter to the providers* so that I have all information before
16 any of you ask me to do anything so when you go up to Carson City you not only have the framed
17 request, but you also have the actual consent *and communications* that were intended to go." (Hr'g
18 Tr. at 68:1-7, Dec. 3, 2015, 2015, on file) (emphasis added). Sands China's failure to disclose its
19 intentions confirms its improper plan to try and smear Jacobs by blindly blanketing the area with a
20 Court ordered release, using this Court's Order as supposed cover to suggest that the request has a
21 basis in reality. And, not coincidentally, that is precisely why Jacobs has challenged the Order and,
22 alternatively, request that any records be provided to his counsel so that they may be reviewed in
23 camera by this Court.

24 **C. Jacobs Was Not Ordered to Execute a Tax Authorization.**

25 That Sands China will openly misrepresent this Court's rulings is not subject to debate. It
26 falsely claims that this Court ordered Jacobs to "authorize the release" of his tax returns. (Order,
27 Dec. 3, 2015, on file.) This Court did no such thing. Instead, it directed Jacobs to produce his tax
28 returns for the last seven (7) years." (*Id.*) But Jacobs is permitted to redact information on the tax

1 returns that relates to non-wage income." (*Id.*) It would be illogical to require Jacobs to sign an
2 authorization for the release of his tax returns directly to Sands China if he is first allowed to redact
3 non-wage information. Jacobs' counsel is in the process of completing the redactions just as this
4 Court authorized.

5 **IV. CONCLUSION**

6 Sands China's overreaching is apparent. If sanctions are appropriate on this issue, they
7 should be entered against Sands China for bringing what it knows to be an improper and bad faith
8 Motion. Nevada law expressly provides that contempt is not available absent entry notice of a
9 written order. At the same time, because the Order involves privileged information, Jacobs is
10 permitted to seek to have it modified and/or stayed as his pending Motion provides. Contrary to
11 Sands China's hopes and wants, its serial request for sanctions will never distract from its
12 longstanding noncompliance with discovery orders, its admitted concealment of evidence and its
13 false claims of an inability to obtain consents in Macau. But one thing is clear: the Defendants will
14 never change tactics.

15 DATED this 14th day of December, 2015.

16 PISANELLI BICE PLLC

17
18 By: /s/ Todd L. Bice
19 James J. Pisanelli, Esq., Bar No. 4027
20 Todd L. Bice, Esq., Bar No. 4534
21 Debra L. Spinelli, Esq., Bar No. 9695
22 Jordan T. Smith, Esq., Bar No. 12097
23 400 South 7th Street, Suite 300
24 Las Vegas, Nevada 89101

25 Attorneys for Plaintiff Steven C. Jacobs
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 14th day of December, 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' OPPOSITION TO DEFENDANT SANDS CHINA'S MOTION FOR ORDER TO SHOW CAUSE WHY PLAINTIFF STEVEN C. JACOBS SHOULD NOT BE HELD IN CONTEMPT OF COURT AND TO COMPEL EXECUTION OF MEDICAL RELEASE AUTHORIZATION AND PRODUCTION OF TAX RETURNS ON ORDER SHORTENING TIME** to the following:

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EXHIBIT 1

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ELECTRONICALLY SERVED
11/17/2015 04:23:25 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,)	CASE NO. A627691-B
)	
Plaintiff,)	DEPT NO: XI
)	
v.)	
)	DEFENDANT SHELDON G.
LAS VEGAS SANDS CORP., a Nevada)	ADELSON'S ANSWERS TO
corporation; SANDS CHINA LTD., a)	PLAINTIFF'S FIRST SET OF
Cayman Islands corporation, et al.,)	INTERROGATORIES
)	
)	
Defendants.)	
)	
AND ALL RELATED MATTERS.)	

Defendant Sheldon G. Adelson responds to plaintiff Steven
Jacobs's ("Jacobs") First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Mr. Adelson objects to these interrogatories to the extent
they seek information protected from disclosure by the attorney-client
privilege, work product doctrine, the consulting expert doctrine, or any
other applicable privilege. Inadvertent production of privileged information

1 INTERROGATORY NO. 5:

2 Describe in detail and with particularity the facts upon which
3 You testified in the jurisdictional hearing that David Turnbull would not
4 have been appointed to the Sands China Board had certain facts been
5 known.

6 ANSWER TO INTERROGATORY NO. 5:

7 Mr. Adelson objects to this interrogatory because it seeks
8 information that is not relevant and/or reasonably calculated to lead to the
9 discovery of admissible evidence.

10 INTERROGATORY NO. 6:

11 Describe in detail and with particularity the facts upon which
12 You claim Your statement to the Wall Street Journal about Plaintiff was
13 truthful.

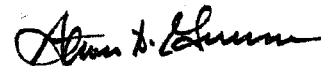
14 ANSWER TO INTERROGATORY NO. 6:

15 Mr. Adelson's statement to the Wall Street Journal about Jacobs
16 was truthful because, in his opinion, there were a numerous reasons why he
17 was fired for cause. See response to interrogatory number no. 3, which is
18 incorporated herein. Mr. Adelson's statement to the Wall Street Journal
19 about Jacobs was also truthful because, in his opinion, Jacobs was not
20 truthful about the reasons for his termination. Mr. Adelson believed
21 Jacobs's untruthful allegations about Mr. Adelson personally were the
22 product of delusion, based on descriptions by co-workers of Jacobs's use of
23 medications for mental issues.

24 INTERROGATORY NO. 7:

25 Describe in detail and with particularity the facts for any
26 contention that you do not intend to harm Plaintiff's reputation and good
27 name in trade, business, profession, and customary corporate office.

28



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON PLAINTIFF'S MOTION TO RECONSIDER OR AMEND ORDER,
AND DEFENDANTS' MOTIONS TO MAINTAIN CONFIDENTIALITY
AND FOR ORDER TO SHOW CAUSE**

TUESDAY, DECEMBER 15, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 15, 2015, 9:04 A.M.

2 (Court was called to order)

3 THE COURT: If I could go to Jacobs versus Sands.

4 THE LAW CLERK: Are we using the 10 minutes?

5 THE COURT: We are using the 10 minutes.

6 (Pause in the proceedings)

7 THE COURT: All right. Let me tell you a couple
8 things before we start. First, because there was an issue
9 related to notice of all parties involved in the case, I had
10 Mr. Kutinac reach out to Mr. Merrill this morning to confirm
11 that Mr. Merrill was at least aware that this issue was
12 pending and had made a decision not to participate. Based
13 upon the fact he was aware, I am making the assumption that
14 the opposition was served on enough people that if somebody
15 had cared they would have asked to be involved. We have not
16 received any requests to be involved from anyone else, and Mr.
17 Merrill has specifically said he is not going to participate
18 today.

19 Item number two. And Mr. Cassity's not here, so I
20 won't -- I don't know who it is that I need to talk to. But
21 whoever's in charge of filing the motions to seal where a
22 redaction is sought, it would truly be helpful if all of you
23 would attach the proposed redaction to the motion to seal,
24 because it doesn't look like the redacted briefs are always
25 being filed when the original is filed under seal, which means

1 that I can't look at the proposed redaction to make the
2 determination as to whether the redactions you are proposing
3 in the brief is appropriate.

4 MR. PEEK: Your Honor, I received an email from Bob
5 this morning -- oh. Excuse me. Stephen Peek on behalf of Las
6 Vegas Sands and Sands China.

7 THE COURT: We knew who you were.

8 MR. PEEK: What he says to me in the emails is, "If
9 this minute order comes up today (which says we did not file a
10 redacted opposition to the motion to compel on Topics 25 and
11 59), WE DID file a redacted opposition on 11/5." The Court
12 apparently may not have seen that.

13 THE COURT: I couldn't find it.

14 MR. PEEK: I know. But that's what I'm -- that's
15 why I'm -- that's why he made that point to me, to tell me
16 that we did file --

17 THE COURT: It would be really helpful if the
18 proposed redaction was attached to the motion to file under
19 seal. That way I can find it, I can look at it, and it's easy
20 for me to compare it to --

21 MR. PEEK: I understand, Your Honor. I just -- Bob
22 I guess felt that he wanted to defend himself.

23 THE COURT: I wasn't criticizing him.

24 MR. PEEK: No, I --

25 THE COURT: There's no much paper in this case --

1 MR. PEEK: I know.

2 THE COURT: -- we can't even access it on the case
3 management system without having to wait for five minutes it's
4 gotten so big.

5 MR. PEEK: I know, Your Honor.

6 THE COURT: It's as bad as CityCenter now.

7 MR. PEEK: And the other question that I have of
8 you, Your Honor, is --

9 THE COURT: On what case?

10 MR. PEEK: This is back to your first point. The
11 motions that we have filed were not motions to seal.

12 THE COURT: No. They're motions to maintain
13 confidentiality designations of documents that were used in
14 the jurisdictional hearing that those particular parties were
15 interested in.

16 MR. PEEK: Okay. Well, that --

17 THE COURT: That included 887A, not just the depo
18 transcripts.

19 MR. PEEK: Okay. That's perhaps where my confusion
20 lies, because we didn't see this as a motion that was to
21 redact or seal. It was a motion --

22 THE COURT: Because it involved Exhibit 887A --

23 MR. PEEK: Okay.

24 THE COURT: -- I am reading it that way, which is
25 why I had Dan reach out to Mr. Merrill this morning.

1 MR. PEEK: I understand. I just want to make sure
2 that -- we weren't trying to violate the Court's order. We --

3 THE COURT: It wasn't an order. It was a courtesy.

4 MR. PEEK: Okay.

5 MR. RANDALL JONES: And, Your Honor, I would just
6 chime in because I was probably more involved -- or my firm
7 was more involved in 887A issues than Mr. Peek, and I actually
8 asked Ian McGinn yesterday essentially the question you just
9 brought up, and he said, well, it's 80-some-odd pages or
10 something. I said, well, okay --

11 THE COURT: Eighty-some-odd pages that the only
12 thing it says is commercially sensitive the whole time.

13 MR. RANDALL JONES: And so I sort of anticipated
14 your point, and he convinced me that I didn't know what I was
15 talking about. So I'll go back and convince him that it would
16 be helpful to the Court to actually have it so then you can
17 see what you're talking about.

18 THE COURT: Yeah. But I have the notice of
19 compliance. I asked Dulce to pull 887A out of the vault so we
20 could randomly pick one or two of the items as part of this
21 discussion. And when we go to the random pick Laura will stop
22 the timer.

23 All right. I want to start with the motion to
24 reconsider this morning, unless there's more housekeeping
25 issues.

1 MR. RANDALL JONES: That would be Mr. Bice's motion?

2 THE COURT: Mr. Bice, that's your motion.

3 MR. BICE: Thank you, Your Honor.

4 Your Honor, there's essentially our motion -- we're
5 asking you to do really one of three things. We've asked you
6 to, one, reconsider the order outright. The supposed basis
7 for this discovery request was that they supposedly had a
8 good-faith basis for making the request. We now know from
9 Sheldon Adelson that apparently the basis is some anonymous,
10 attributable-to-no-one alleged statement that he can't tell us
11 who this supposed -- any of these supposed personnel are.
12 And, of course, he does that at the same time in which he --
13 as the Court will recall and you'll see this in his answers to
14 interrogatories that we submitted, he smeared Mr. Turnbull
15 from the witness stand, and then we asked him to identify the
16 factual basis for that, and, of course, he claims, well,
17 that's just not relevant now. And, of course, then when he
18 has to explain the factual basis for his smear upon Mr. Jacobs
19 he, of course, can't do that for us, either. So that's point
20 number one.

21 Point number two, Your Honor, in the alternative
22 we're asking you to modify the order so that we would be the
23 recipients of the documents, and then you would direct us to
24 certify that we are providing everything to you on an in-
25 camera basis. Because -- and the basis for this, Your Honor,

1 is very simple. If we don't do it this, then I have to really
2 ask you for alternative number three, which is a stay.
3 Because we just cannot waive privilege on this issue and then
4 have it be deemed used against us in the future that somehow
5 this was waived because we did not seek all of our available
6 remedies.

7 So I don't want to really want to seek a stay. I'm
8 actually hoping that you will accept proposition one or two,
9 which is, again, to reconsider it outright in light of Mr.
10 Adelson's own sworn testimony; or, two, to modify it so that
11 the documents come to us, we will then issue a certification
12 to you that whatever we receive we are submitted to the Court
13 in camera so that the Court can see that there is in fact
14 nothing there and that this is in fact a manufactured issue by
15 Mr. Adelson.

16 And our point on that, Your Honor, comes back to,
17 again, once -- because these medical providers -- and my
18 experience on this I will acknowledge is limited, but what my
19 experience has been with them is they're not the most reliable
20 in terms of who is making the decision as to what gets
21 produced and what doesn't get produced, and so therefore a lot
22 of materials that I don't believe sometimes are covered by
23 these requests end up getting produced. And that's what we
24 are trying to sort of safeguard against, Your Honor, and
25 that's the basis for our request.

1 Additional point we would make, Your Honor, is to
2 whom are they intending to send this? They're claiming that
3 he should have to sign a blank release, that they're going to
4 -- and I think I know what the plan here is, is they're just
5 going to blanket the world. They're going to send this out
6 with the insinuation -- under the cover of the Court giving
7 them a blessing they're going to blanket the world with this
8 to insinuate that, see, this guy's got some sort of a medical
9 -- or a mental defect. That's exactly what they would do.
10 Because they're not telling us to whom, and they haven't
11 proposed to you anyone to whom they intend to send this. And
12 that's the basis for our request, Your Honor.

13 THE COURT: Thank you, Mr. Bice.

14 Mr. Jones.

15 MR. RANDALL JONES: Yes, Your Honor. Good morning.
16 Randall Jones on behalf of Sands China Ltd.

17 There's a saying that I recall somebody telling me
18 about when you assume. But I don't remember the particulars,
19 but it had something to do with making yourself look silly or
20 something to that effect. But, in any event, that's precisely
21 what I think -- the cliché that's appropriate with respect to
22 Mr. Bice's comment. He is assuming completely incorrectly.

23 I do person injury litigation. That's a standard
24 form request that I'm sure this Court has dealt with on many,
25 many occasions.

1 THE COURT: But I didn't grant authority for a
2 standard form request.

3 MR. RANDALL JONES: And that's why we took -- but it
4 has to be a HIPAA-compliant request, Judge. So if you look at
5 the request --

6 THE COURT: Let's look at Exhibit G, the next-to-
7 the-last page.

8 MR. RANDALL JONES: That's right. So if we look at
9 it, if you look at paragraph 3 -- and so --

10 THE COURT: And I'm on the other motion, which is
11 the motion for the order to show cause, because that's where
12 the consent is attached.

13 MR. RANDALL JONES: Right. And I modified that
14 request to comply with what I believe to be the Court's
15 requirement.

16 THE COURT: No, you didn't.

17 MR. RANDALL JONES: Yes, I did, Your Honor.

18 THE COURT: I didn't order all that stuff.

19 MR. RANDALL JONES: Well, but here's the -- here's
20 the rub, and here's the thing that the Court is not focused on
21 because Mr. Bice doesn't want to talk about it. Pursuant to
22 your order -- you told me to prepare the request and send it
23 to him. And if you'll see, paragraph 4 limits the request to
24 the items referenced in paragraph 3.

25 And then he talks about paragraph 5. That's a

1 requirement under HIPAA. I have to say that, about that your
2 records may include these other issues.

3 THE COURT: I know that. My concern isn't
4 paragraph 5.

5 MR. RANDALL JONES: Okay. So here's the problem,
6 Judge. I sent it to him. I believe that you covered all
7 those areas, but you said, send it to Mr. Bice for his
8 comment. I sent it to him. He just ignored me. I called him
9 up, he ignored me. I sent another email, he ignored me. I
10 sent him another email and told him I was going to file an
11 order to show cause, and he ignored me.

12 And, by the way, this isn't unprecedented. There
13 are many orders -- he says we took this action on the order to
14 show cause before we ever had an order. They filed the fifth
15 amended complaint without ever submitting an order to you.
16 And that's just one example of many occasions in this case
17 where things have been done without the order having been
18 submitted and action has been taken.

19 So here's my problem. Mr. Bice comes in here and
20 whines and whines and whines to the point where I think my
21 ears are going to bleed about all the transgressions would
22 have occurred and we slow-play him. We have a deadline now
23 for experts. I need this information so that I can proceed
24 with this case.

25 With respect to this issue about we have a blank

1 release, of course we do. We don't know who his treating
2 physicians are, because he refuses to answer that question
3 which we've asked him in discovery so that we can then tailor
4 the requests to those people. That's how it's done. And,
5 again, perhaps because he doesn't do this kind of work he
6 doesn't understand. That's why I communicated with him to
7 tell me to give me the information so we can proceed in a
8 professional way. Instead he comes back with this -- again,
9 incorrect assumptions and these accusations that are
10 completely incorrect.

11 I followed your order. I sent him the release. You
12 think it's too broad? Okay.

13 THE COURT: No, it's not too broad. It's not what I
14 ordered.

15 MR. RANDALL JONES: Well, what did you order, then?

16 THE COURT: I didn't order sleep disorders, I didn't
17 order neurological testing.

18 MR. RANDALL JONES: Well, Your Honor, again, I think
19 those are all issues that have -- that could demonstrate a
20 person that is suffering from delusion. And, Your Honor, if
21 need be, I would be happy to research -- the medical treatises
22 are replete with information about sleep disorders can cause
23 issues, mental health issues, and neurological issues are
24 mental health issues. I don't know how --

25 THE COURT: They can be.

1 MR. RANDALL JONES: They can be.

2 THE COURT: Not all neurological issues are mental
3 health issues, Mr. Jones.

4 MR. RANDALL JONES: They can be. But --

5 THE COURT: That's the issue. You're overbroad for
6 what I ordered. I was very specific and limited in what I
7 ordered, and this release is overbroad.

8 MR. RANDALL JONES: And here's the problem, Judge.
9 To the extent that you now tell me that Mr. Bice could have
10 come back and told me that, too, and we would have avoided
11 this whole process. There is nothing here under any Nevada
12 caselaw or precedent that suggests this is ripe for
13 reconsideration. There's nothing. So his motion should be
14 denied.

15 And there's a simple resolution to this. It's 2.34.
16 Even though we already had an order that said he had to do
17 this and the procedure that you prescribed for us to follow,
18 for him to come back to do what he is apparently trying to do
19 now and say, hey, I think it's overly broad -- but he didn't
20 follow it. So we had to file a motion. In fact, he had to
21 file a motion that we had to respond to that was inappropriate
22 and unnecessary. We should get fees for this, and he should
23 be ordered to sign the release. And if you want to modify it
24 right now, that's fine with us. But he has delayed this over
25 two months with a deadline on expert witnesses coming up. And

1 that's inappropriate and that's -- that is exactly what he
2 continually accuses the defendants of doing. We just want
3 some fair play here.

4 And, by the way, there's an easy way to resolve
5 this. We don't need any of this information if he withdraws
6 his defamation claim. But he is the one that provided the
7 scope of the defamatory statement. And the caselaw we've
8 argued and that he lost was you cannot parse the delusional --
9 or the defamatory statement to say, well, I don't care about
10 this part of it, I only want to focus on this part of it. He
11 can't do that. If he doesn't like what he has to produce in
12 evidence, he can withdraw the claim, or he can provide us with
13 the documentation we need. So if he'll tell us who the
14 doctors are -- I have no intention and I would never do that,
15 Your Honor, shotgun blast this out to the world. I wouldn't
16 even know who to send it to. I need him to give me that
17 information. And that's how it works.

18 And the NRS -- his privilege argument is frivolous,
19 and he knows it. There's a specific exception in the NRS for
20 that doctor-patient privilege or psychiatrist-patient
21 privilege when you put your mental state at issue in a case.
22 Which he -- which is an issue in our defense. And the statute
23 specifically talks about a claim or defense. So we have a
24 constitutional right to this information. He's had no
25 legitimate reason that he hasn't provided it to us. All he

1 had to do was tell me, Mr. Jones, I think your release is too
2 broad and here's why, and we could have hashed that out and
3 either come to an agreement, or we could have come back to
4 you. Instead he circumvented the very process he always
5 accuses us of not following and always asks you for attorneys'
6 fees. And we're simply saying turnabout is fair play, we
7 should be entitled to attorneys' fees, and we should be
8 entitled to our release.

9 THE COURT: I'm not on your order to show cause yet.
10 I'm going to go to that, because that also deals with tax
11 issues, which are slightly different than health --

12 MR. RANDALL JONES: All right. Well, with respect
13 to his motion it certainly should be denied, because -- for
14 all of the reasons that I've articulated. There's no legal
15 basis under Nevada law.

16 THE COURT: Mr. Bice.

17 MR. BICE: Yes, Your Honor.

18 THE COURT: Anything else? You're running out of
19 time. And remember we have lots of other motions today.

20 MR. BICE: I know we do. But, boy, the noise is
21 really amusing, actually, Your Honor. If seeking
22 reconsideration on an order was either contempt or improper,
23 Your Honor, Mr. Jones's client would be in handcuffs pretty
24 much on a daily basis in this case, because that's what he has
25 done throughout the case if he just bothers to comply at all.

1 But we won't get into that.

2 Mr. Jones misrepresents to you that they've asked us
3 for a list of treating physicians. That's not true. I'd ask
4 him to tell you which interrogatory he has manufactured out of
5 whole cloth today to make that representation, because it's
6 just not true.

7 Mr. Jones is representing to you that, well, you
8 know, he would have agreed with us as to the scope of this.
9 We, of course, had made it clear, Your Honor, that we were
10 going to seek some alternative relief on the scope of the
11 order. We don't agree. We understand that, but you --

12 THE COURT: It's okay.

13 MR. BICE: Right. Exactly. Just like they -- you
14 know, they don't agree with some of your privilege rulings,
15 and so apparently that should be contempt if you don't agree.
16 But, nonetheless, Your Honor, our point is this. We have
17 filed our motion for reconsideration to modify or to stay. I
18 believe we filed it within a day of the order being entered,
19 so I'm not quite sure how we were -- are the delay on this. I
20 think it was entered, and I think we filed it within a day, if
21 not the same day that it was entered or when we found out
22 about it.

23 So, in any event, Your Honor, our point I come back
24 to is very simple. One, you know, you'll notice now we don't
25 want to talk about Mr. Adelson's statement under oath about

1 the basis for this request, this convenient anonymous, no one
2 knows who these supposed people are, and now his similar smear
3 against Mr. Turnbull, oh, that's no longer relevant. I think
4 that speaks volumes about the lack of a good-faith basis for
5 this discovery request. But, depending on what the Court
6 wants to do with that, a lot of the issue, Your Honor -- and
7 Mr. Jones highlights it, I think, when he argues about the
8 scope of the release, oh, how it has to be this overbroad, has
9 to be, has to be. And that, of course, highlights our concern
10 why the documents -- the Court should modify that the
11 documents have to come to us, we would then provide them in
12 camera to the Court, and I'll provide the Court with a
13 certification so that the Court can see just where this is
14 made up, and then Mr. Jacobs will be the party, once it is
15 demonstrated that there are no such records and this has been
16 made up by Mr. Adelson, just like his makeup smear against Mr.
17 Turnbull, we will be then asking you for some relief against
18 all participants who participated in that. And I thank the
19 Court.

20 THE COURT: Okay. The motion is granted in part.
21 Because of the issues related to the breadth of the release
22 that was provided, I am going to do an in-camera review after
23 being provided with records that Mr. Jacobs will obtain that
24 comply with the breadth that was sought by Mr. Jones, because
25 I am not qualified to make that determination. However, I am

1 willing to undergo the in-camera review process.

2 That will require two things from your client, Mr.
3 Bice.

4 MR. BICE: Yes, Your Honor.

5 THE COURT: He will have to identify all of his
6 treating physicians from the period --

7 What period did I go to?

8 MR. PEEK: November 5th, 2005, Your Honor.

9 MR. RANDALL JONES: Right.

10 THE COURT: From that period to a year after his
11 termination.

12 MR. BICE: Okay.

13 THE COURT: And you will then obtain the records
14 using the form of release supplied by Mr. Jones. You will
15 then give me the records that are responsive to those. I will
16 then review them as they come in.

17 MR. BICE: Okay.

18 THE COURT: And if I have questions related to a
19 medical diagnosis issue that appears to me to not relate to
20 the delusion -- but Mr. Jones claims he's going to show me why
21 a sleep order might relate to -- a sleep disorder like sleep
22 apnea might relate to that. I will probably have a hearing so
23 he can explain to me why that is if I decided that that
24 document should not be produced.

25 MR. BICE: Understood, Your Honor.

1 THE COURT: Okay.

2 MR. RANDALL JONES: Your Honor, will we be provided
3 a privilege log? I presume we would. He's even offered to
4 provide us one in his opposition.

5 THE COURT: Well, I don't know that it's a privilege
6 log, because it's a scope issue, a medical scope issue. So
7 what he's going to do is he's going to give me the records
8 from each doctor -- and I do this all the time -- and I'm
9 going to look from the records that I receive to make a
10 determination as to whether it falls within the scope of your
11 defense, which is whether there is truth to the fact that Mr.
12 Adelson said he was delusional.

13 MR. RANDALL JONES: So, in other words, Your Honor,
14 we will also receive those records and we can then debate --

15 THE COURT: No, you will not receive those records
16 until I have made a review and a determination as to whether
17 those records should be provided. If I make a review and
18 determination those records should be provided to you, you
19 will then have to sign a consent that my office will prepare
20 restricting the use of those documents.

21 MR. RANDALL JONES: Your Honor, well, just two
22 things. One is we already have a confidentiality order, and
23 they've been provided highly confidential information with an
24 order. And, by the way, we have certainly not been happy that
25 we've had to provide highly confidential information, but

1 we've done it because we have a protective order. And I guess
2 my question would be how in the world would I know if I'm
3 going to have a basis to contest whether or not an issue --
4 medical issue --

5 THE COURT: Because I'm going to tell you. I'm
6 going to say, I reviewed in camera documents number blah,
7 blah, blah, for this doctor to this doctor, whatever they are,
8 I've made a determination after a review that the following
9 documents need to be provided to you with or without
10 redactions after my review. If there are pages that I decide
11 should not be produced, you and I are then going to have a
12 hearing, and I'm going to say to you, Mr. Jones, in my in-
13 camera review on this page there is a reference to a sleep
14 disorder, you told me you think a sleep disorder is related to
15 your defense, give me more information.

16 MR. RANDALL JONES: So, in other words, if there's
17 some other issue that I might believe is related to an issue
18 of potential mental health issues, not -- other than a sleep
19 order [sic] something else, then I don't even have the
20 opportunity to debate that issue with you because you would
21 make a decision before --

22 Here's my point, Judge. You and I may reasonably
23 disagree --

24 THE COURT: Absolutely.

25 MR. RANDALL JONES: -- about whether or not a

1 particular --

2 THE COURT: Which is why I'm using the form of
3 consent that you requested.

4 MR. RANDALL JONES: But here's my problem. If you
5 acknowledge that you and I may reasonably disagree about what
6 constitutes an issue of potential delusion and then I'm never
7 allowed to even see that and you make that call before I get a
8 chance to see it, I'll never be able to even have that debate
9 with you.

10 THE COURT: Yeah, you will. And here's how.
11 Because when I do the in-camera review my process is that I
12 identify for you the documents that have been subject to the
13 in-camera review, I identify which of them I have ordered
14 released and what the restrictions, if any, are related to the
15 release of that information, and which pages are not being
16 released. If you have concerns about what those pages are
17 that are not being released, that is the time for you to say,
18 Judge, you and I need to have a further discussion about what
19 the information contained in there is since you've told me
20 that that information is not -- and I will tell you, whether
21 it's in a conference call with those documents in front of me,
22 this is why I made the determination they were not relevant.

23 MR. RANDALL JONES: Okay. Here are a couple of
24 continuing concerns.

25 THE COURT: Okay.

1 MR. RANDALL JONES: Using your example, there'll be
2 certain things you'll say and -- I'm not releasing these
3 documents.

4 THE COURT: Correct.

5 MR. RANDALL JONES: But I presume you won't tell me
6 why you're not releasing them other than my assumption is that
7 you don't believe that they're relevant to --

8 THE COURT: They're not relevant.

9 MR. RANDALL JONES: Okay. So -- but I don't know
10 what's in there, and I --

11 THE COURT: I understand that. That's why I'm doing
12 the in-camera review.

13 MR. RANDALL JONES: My point is, though, if I don't
14 know what's in there, how could I possibly even raise an issue
15 where we might have a reasonable dispute let alone -- that's
16 one example. There may be other documents that you receive
17 from a medical healthcare treated -- or a healthcare treater
18 that two reasonable people, including, by the way, two mental
19 health professionals, may disagree. One may say, this is
20 delusional; the other one may say it's not. But what you're
21 doing is you're basically saying, I'm going to make that call
22 and never give the defense the opportunity to even weigh in on
23 that and have that debate with you.

24 THE COURT: That's not true. We're going to have
25 the opportunity for you to weigh in on that after I do my in-

1 camera review and make the determination as to which records
2 there are that have to be released. And if at that time you
3 believe other action or other information needs to be taken, I
4 will address it at that time. I'm not telling you I won't
5 entertain supplemental argument, supplemental briefing,
6 additional medical support that would give me information that
7 would change my mind as to why sleep apnea may be relevant to
8 your client's defense that Mr. Jacobs was in fact delusional
9 and therefore truth is a defense to the defamation claim.

10 MR. RANDALL JONES: And I understand you're using
11 sleep apnea because that's probably the least likely.

12 THE COURT: It's the easiest one out of the group.

13 MR. RANDALL JONES: But there again, my concern
14 is --

15 THE COURT: There's a continuum.

16 MR. RANDALL JONES: It is a continuum. And here's
17 my handicap, Judge, that I am concerned about. We had an
18 order. He could have weighed in on this release and said, I
19 disagree on this scope and this area, whatever. He didn't do
20 that. Now he's come back and essentially what's happened he
21 has got the Court to say, you know what, now he can say, I'm
22 going to tell say these physicians who have never -- who have
23 nothing --

24 THE COURT: Then you know what you should have done?
25 You should have defined "mental health" better than you did in

1 that release. Because that's what swayed me to Mr. Bice's
2 position, was the way you defined "mental health issue" in
3 that consent. Your paragraph 3 was not what I ordered, Mr.
4 Jones. And I certainly understand that you believe there may
5 be a medical basis for some of that information to be related,
6 and I'm willing to give you that opportunity to convince me of
7 that if there are records related to those other categories
8 that are in there. But for some reason assume that Mr. Jacobs
9 is having -- I'm trying to think of a very insignificant kind
10 of treatment. How about he's having treatment for rabies,
11 that he got bit by a fox when he was out hunting and he's
12 having treatment for rabies? You know, that doesn't seem to
13 me to be relevant, although you might tell me later that that
14 could be a basis. And I'll say, look, it was treatment for an
15 unrelated condition; and you go, Judge, I've got to know what
16 that condition is. And then we may have a conference where we
17 lock everything down and I say, it was for rabies, and you go,
18 oh, Judge, Judge, Judge, rabies can be a mental health issue.
19 And I go, you've got to give me something more, Mr. Jones.
20 And then you give me something more.

21 MR. RANDALL JONES: I understand. My --

22 THE COURT: You understand what I'm saying?

23 MR. RANDALL JONES: I do. I do.

24 THE COURT: Okay.

25 MR. RANDALL JONES: My concern is the method -- or

1 the procedure that you prescribed is -- it allows in a case
2 like this where I believe he's put his -- or his mental health
3 is at issue in our defense, it essentially allows him to --

4 THE COURT: The truth of the statement is at issue.

5 MR. RANDALL JONES: That's right. And it allows him
6 to tailor who the release goes to --

7 THE COURT: It does.

8 MR. RANDALL JONES: -- and it also allows him to
9 essentially -- the defendant to -- or, excuse me, the
10 plaintiff to screen the process before we ever have a chance
11 to weigh in, which I think is inappropriate under the
12 circumstances, especially when we have a protective order that
13 we have had to abide by that has extremely sensitive
14 information that is, by the way -- well, we have had to
15 provide extremely sensitive information. So I don't think
16 that any information that he can provide from our perspective
17 would be any more burdensome in terms of its confidentiality
18 and providing it to us under the protective order that's in
19 place. And that would allow me the opportunity to fully vet
20 it and have a real conversation with you about whether or not
21 it's relevant to the litigation.

22 THE COURT: Given the overbreadth that was submitted
23 of the consent, I am convinced that Mr. Bice's proposal of an
24 in-camera review is a better process.

25 MR. RANDALL JONES: There's a less harsh remedy than

1 that, Your Honor.

2 THE COURT: What's that, Mr. Jones?

3 MR. RANDALL JONES: That is to go back through the
4 consent, as I offered to do and as you ordered to happen --
5 look, Your Honor --

6 THE COURT: Sometimes when you overreach it causes
7 things to go the other way.

8 MR. BICE: Your Honor, I want to also be heard on --

9 MR. RANDALL JONES: Judge, wait. Can I -- but I'm
10 not finished yet. Please.

11 THE COURT: Wait, Mr. Bice.

12 MR. RANDALL JONES: Judge, let me -- we're
13 advocates.

14 THE COURT: Absolutely.

15 MR. RANDALL JONES: And when I send out my release I
16 want to cast as broad a net about these issues as possible,
17 understanding there was a procedure built into this process
18 that you had ordered that would allow a give and take on that
19 issue. So of course I'm -- you would I believe not
20 realistically not expect me to do anything less, to put as
21 broadly stated as I could, and then we're supposed to have a
22 discussion about it. And if I would have ended up -- there
23 was never a discussion about this release as you ordered.
24 Instead, he just said, I'm not doing it, period, and thumbed
25 his nose at us. He just thumbed his nose. He didn't even

1 respond to us. He absolutely ignored us when we asked him to
2 talk about it.

3 So of course I would phrase it as broadly as
4 possible. It was the starting point. So don't hold that
5 against me and my client that I did my job and wrote it as
6 broadly as possible so that we could then have the debate that
7 you ordered so we could then come -- to see if we could come
8 to a agreement as to the breadth that it should be.

9 THE COURT: You're not changing my mind about the
10 process at this time, Mr. Jones. However, I want you to be
11 clear that I am not limiting you from having further
12 discussions from me following my in-camera review when I do --
13 if I do not order each of the documents that is provided for
14 my review to be provided to you. That is when I believe the
15 time for that discussion about the process is more
16 appropriate, because it may never come up. It may be that
17 when I get these records it's clear they're all within what I
18 intended to provide you so your client can do what needs to be
19 done related to whether the delusional comment was true or
20 not.

21 So I'm not precluding you from being able to raise
22 that issue later. I want to be clear on that. I'm not
23 intending to preclude you. You and I may have a discussion
24 about what that process is later, and we may still disagree
25 after we get to that point, and then we'll have issues. But I

1 don't think we're going to have issues yet. I don't think
2 we're at that point.

3 Mr. Bice, can I leave this issue now and go to the
4 tax return issue, please.

5 MR. BICE: Yes. But I don't like this narrative
6 that gets put into the record and then it's somehow I didn't
7 respond to it because I didn't have an opportunity.

8 THE COURT: Okay. Please feel free to respond.

9 MR. BICE: No. This is --

10 THE COURT: No. It's okay. I --

11 MR. BICE: This is the same process that we had to
12 live with for their claims of privilege, as the Court will
13 recall. I didn't get to look at the documents so that I could
14 then quarrel with you as to whether I thought that those were
15 privileged or not. And I believe there's been a lot of
16 privilege put at issue here by the defendants, and I'll bet,
17 guess what, when that happens, when we bring that motion
18 they're going to claim you need to look at all these documents
19 in camera. The double speak is really appalling, Your Honor.
20 But I'll move on.

21 THE COURT: Okay. If we could talk about the tax
22 returns. I am very concerned. I ordered you to provide
23 redacted versions of the tax returns. What is the status of
24 that?

25 MR. BICE: The status of that, Your Honor, is we

1 have received I think all of the tax returns. We just have
2 not gotten the redactions done on them. We've gotten the
3 order now, and I would think I can have that done here in a
4 few days.

5 THE COURT: Okay.

6 MR. BICE: But that's the -- that is the status of
7 it. We got the tax returns. I'm looking at Mr. Smith,
8 because when I say we got the tax returns I, of course --

9 THE COURT: Well, Mr. Smith was here in a settlement
10 conference yesterday, so I been keeping a lot of different
11 people busy.

12 MR. BICE: Yeah.

13 THE COURT: And I'm not trying to criticize anybody.
14 I'm just trying to get a date, because I want to make sure
15 that you've produced that information and if there is an issue
16 I can then address whether it is appropriate for consents to
17 be provided to defendants, as opposed to the redactions that
18 you're providing.

19 MR. BICE: And I understand what the Court's telling
20 me, too.

21 THE COURT: Okay.

22 MR. BICE: Thank you.

23 MR. RANDALL JONES: Can we get them by Friday, Your
24 Honor? I would think that redacting tax returns based on the
25 Court's order would be a pretty simple matter in this case. I

1 can't imagine --

2 THE COURT: It shouldn't be that complicated.

3 MR. BICE: Your Honor, I actually -- I love this
4 argument about, well, can't they do this by Friday, can't they
5 do this by then. They can't produce documents in the passage
6 of months.

7 THE COURT: I don't want to talk about other
8 document requests.

9 MR. BICE: Well --

10 THE COURT: I want to talk about the tax returns.

11 MR. BICE: Okay. I have to go through them. Mr.
12 Smith or somebody has to go through all of them and do the
13 redactions out of them. I, like Mr. Jones, I presume, have a
14 few other things to do the rest of today, which is -- what is
15 today, Tuesday?

16 THE COURT: I don't know what day it is.

17 MR. BICE: Oh. Well, if today's -- you know what --

18 THE COURT: I'm in trial. I've got no idea what day
19 it is.

20 MR. BICE: I'll be honest. I actually was thinking
21 it was later in the week. We'll have it done by -- well,
22 we'll get it done by Friday. But I want --

23 THE COURT: Lovely.

24 MR. BICE: I want the record to reflect the next
25 time I'm here and Mr. Jones hasn't produced documents, four

1 days will be adequate for him. Thank you.

2 THE COURT: All right. So, Mr. Jones, I am going to
3 continue your motion for an order to show cause related to the
4 tax returns until next Tuesday. If you get the redacted
5 documents on Friday and you see that those are what I ordered,
6 then you probably don't need consents. If you have a
7 disagreement with Mr. Bice about whether they are what I
8 ordered or not, which is wage earnings reflected on those,
9 redactions of other types of income and deductions, so that
10 way you'll either be able to see the information is there or
11 not. And if you still think there's an issue, we'll talk
12 about it Tuesday at 8:30.

13 MR. RANDALL JONES: Your Honor, appreciate that.
14 Let me -- let me ask I guess with respect -- since you brought
15 this up in terms of the timing issues, with the -- because we
16 do have deadlines on the discovery and expert witnesses.

17 THE COURT: I'm not there yet, because I've got to
18 deal with these other two issues. Well --

19 MR. RANDALL JONES: Actually I was going to kind of
20 backwards. I want to talk about the medical release issue,
21 just the timing issues. I understand you're going to prepare
22 the release.

23 THE COURT: What's your expert deadline? Because I
24 don't remember.

25 MR. RANDALL JONES: Expert deadline I think is the

1 12th of April, and rebuttal is 30 days or approximately 30
2 days thereafter. I think --

3 MR. BICE: It's February.

4 MR. PEEK: I think we moved it from January to
5 February, didn't we?

6 THE COURT: Expert designations in February?

7 MR. BICE: February 18th.

8 MR. RANDALL JONES: Oh. I'm sorry.

9 MR. PEEK: We did.

10 MR. RANDALL JONES: I don't know how I got April.

11 THE COURT: You're not going to make medical experts
12 by then.

13 MR. RANDALL JONES: Pardon me?

14 THE COURT: You're not going to make medical experts
15 by then.

16 MR. RANDALL JONES: That's my concern. And we did
17 ask for this months and months ago. I understand he has a
18 right to bring his motions and he has a right -- he believes
19 he has the right to reconsider. We didn't think that was
20 appropriate. But the bottom line is we're running out of time
21 however you want to slice it, and we would like to -- and
22 especially if there's going to be some debate about -- after
23 the fact about whether or not more information should be
24 produced.

25 THE COURT: Okay. I'm not going to move the

1 deadline right now. I want you to get the documents as
2 quickly as possible --

3 MR. BICE: I will.

4 THE COURT: -- from the healthcare providers. As
5 soon as I get to the first in-camera review I think that is
6 the time for us to then discuss whether medical experts only
7 should be extended.

8 MR. BICE: Understood, Your Honor.

9 MR. RANDALL JONES: That's fine, Your Honor. And I
10 understand that we're now in the holiday period, but could we
11 have a -- some kind of a deadline to get the medical records
12 to the Court? I don't think that's unreasonable.

13 THE COURT: I'm going to have a status on the
14 submission of medical records for in-camera review on
15 January 8th. It's on my chambers calendar at 3:00 a.m.

16 MR. BICE: That's fine, Your Honor.

17 MR. RANDALL JONES: And, Your Honor, just one
18 question about this whole process when we get to it just so
19 I'll understand how we can go about this. Let's just use an
20 example there's ten pages that are submitted to you from one
21 provider, you decide that you think two are relevant, but you
22 think eight are not and shouldn't be produced. How -- is
23 there a mechanism about how I can go about challenging whether
24 or not the other eight are relevant? In other words, it's --
25 again, it's kind of creates --

1 THE COURT: Yes, there is.

2 MR. RANDALL JONES: Okay.

3 THE COURT: And I do this frequently in the criminal
4 arena, which is why I have a process, and sometimes it
5 involves me talking to attorneys in chambers about
6 confidential medical information which I believe needs to be
7 treated much more sensitively than commercially sensitive
8 information. And in those cases, which typically involve sex
9 assault issues and sometimes child abuse issues, I typically
10 have a discussion with counsel about the subject matter of the
11 records if there is a concern about the in-camera review
12 process that has occurred. But I don't know that we're going
13 to get there, Mr. Jones.

14 MR. RANDALL JONES: I understand that, too. I just
15 wanted to know if there was a process or --

16 THE COURT: I'm going to give you a process, and I'm
17 going to make sure you have that opportunity. My only concern
18 is I do not typically provide those records as any part if I
19 think that there are true -- it's something that truly needs
20 to be protected and it's not relevant to this proceeding.

21 MR. RANDALL JONES: And I understand that. I just
22 want to have some way to at least have a discussion with you
23 about that if that eventuality occurs.

24 THE COURT: And here's the other way you have that
25 certainty, is my practice is always that those records that I

1 review in camera, the entire packet, is placed into -- as
2 Court's exhibits. Dulce typically seals those that I have
3 determined not to be provided so that I have a record, and we
4 maintain a copy of those that I did the in-camera review and I
5 order protected. And if they've already been deemed
6 confidential, we seal those, as well. But we put them in two
7 different places. Laura then prepares a special consent that
8 limits the release to in your case the medical experts only
9 and counsel, and then you go on about your business after you
10 pick them up. But I have those pages separately numbered, I
11 have a documentation process, we have a consent process, and
12 we do that because I want it crystal clear what the documents
13 are that I reviewed in camera. Because the first time I ever
14 did an in-camera review, I think it was a case between you and
15 Mr. Morris about some music rights, and I had to do a bunch of
16 in-camera review, and I sent you guys back the documents I
17 reviewed in camera. And I realized about a month later that I
18 should have kept a copy of those documents so that they could
19 be the basis of what I had reviewed. So I've gone through a
20 process over the years to get to where I preserve what that
21 in-camera review process was. I try and preserve the
22 confidentiality related to those documents. And if there is a
23 highly confidential issue, as in most of the records that I do
24 order released after an in-camera review, we try and provide a
25 specialized consent that restricts the access.

1 MR. RANDALL JONES: I appreciate the clarification.

2 THE COURT: So that's my process. And it's just --
3 and I'm not trying to limit you from being involved in that
4 process, it's just I've got to make sure I keep my record
5 straight so if you guys want to take a writ the Supreme Court
6 can say, gosh, look, she didn't do the privilege review, or,
7 there's nothing in the record of what she reviewed. And I
8 need to make sure the record's there.

9 MR. RANDALL JONES: I appreciate the additional
10 information, Your Honor. Thank you.

11 MR. BICE: Is that process any different than what
12 the Court is doing with respect to their claims of privilege?

13 THE COURT: It is. I do not provide a consent when
14 I order documents released. I do that with health --

15 MR. BICE: But is the Court -- but is the Court
16 retaining a copy?

17 THE COURT: Absolutely.

18 MR. BICE: Okay. Very good. Thank you, Your Honor.

19 THE COURT: Dulce has so many Court's exhibits that
20 she just can't tell you. Luckily. the vault likes us in
21 CityCenter because of the electronic discovery in that -- or
22 the electronic exhibits in that case.

23 MR. BICE: Thank you, Your Honor.

24 THE COURT: Did anyone else have questions about
25 that process before I go to what is my concern on the motions

1 to maintain confidentiality?

2 Dulce, where's Exhibit 887A? Where is it? I need
3 part of 887A. Give me any part. I don't -- randomly hand me
4 part of 887A. It's a USB drive?

5 THE CLERK: Yes.

6 THE COURT: Of course it is. I remember when we
7 reviewed it. I just didn't remember it being in a USB drive.

8 I have in my hand the working version of Exhibit
9 887A.

10 Laura, I have no idea where to plug that in. Is it
11 going to pop up?

12 (Pause in the proceedings)

13 THE COURT: Okay. Mr. Bice, randomly pick for me --
14 or, no. It doesn't even have to be random. Select for me a
15 document from 887A you would like me to look at so I can do a
16 spot check of whether the document is commercially sensitive.
17 Because I'm not looking at all 8,000 today.

18 MR. BICE: I didn't bring the electronic version
19 with me, Your Honor.

20 THE COURT: All right. Then I'm going to randomly
21 flip through a page and put my finger on it, okay?

22 MR. BICE: Okay.

23 THE COURT: All right. I'm going to pull up
24 SCL175146.

25 MR. RANDALL JONES: 175146?

1 THE COURT: That is correct.

2 MR. RANDALL JONES: Thank you.

3 MR. PEEK: Is it just the one page, Your Honor, or
4 does it have a series of Bate numbers?

5 THE COURT: I don't know, Mr. Peek. I'm still
6 looking for the file. I'll be happy to let you all come look
7 at my computer as soon as I find the document. 176146.

8 It is a three-page document.

9 MR. RANDALL JONES: Could we quick put it on the
10 screen, Your Honor, if we put a blindfold on Mr. Eppling?

11 THE COURT: No. Come here. I want you guys to come
12 look at it.

13 (Pause in the proceedings)

14 THE COURT: All right. This appears to be a memo
15 telling people they have certain deadlines to submit certain
16 information about a budget for 2010. Can somebody tell me why
17 that process of using the deadlines is commercially sensitive?
18 You want me to go down, Mr. Jones, so you can see further down
19 the document?

20 MR. RANDALL JONES: If you wouldn't mind, Your
21 Honor.

22 THE COURT: Here. Why don't you use the mouse,
23 because that way you can do that.

24 MR. RANDALL JONES: Thank you.

25 (Pause in the proceedings)

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

2 THE COURT: Uh-huh. Mr. Bice, did you get a chance
3 to look at it?

4 MR. BICE: I did. And it reminded me, Your Honor,
5 let's remember exactly what Exhibit 887 is. 887 are all of
6 the heavily redacted documents where you don't even know the
7 senders or the recipients of information. So all of that,
8 knowing who, when, where, essentially were already redacted.
9 And the point here is we -- you know, our point isn't just
10 that it's just indiscriminate designation of virtually
11 everything as confidential, which is their standard operating
12 procedure; it's that they tell you how, ah, this great
13 protective order that they're complying with. And they just
14 don't comply with it. They --

15 THE COURT: Okay. Well, I want to talk about this
16 one particular document --

17 MR. BICE: Okay. But the point is --

18 THE COURT: -- because I pulled up a random document
19 because I did not look again through all of 887A like I did
20 following the evidentiary hearing. I went through it with a
21 fairly fine-tooth comb looking for certain types of
22 information, and Laura spent way more time than I did with it,
23 but -- you know. So I'm not going to look through every one
24 for purposes of today.

25 MR. BICE: Understood.

1 THE COURT: Mr. Jones, do you want to tell me --

2 MR. RANDALL JONES: Sure.

3 THE COURT: -- why you believe this memo requesting
4 budgets for the year 2010 and providing dates for the budget
5 submissions is commercially sensitive.

6 MR. RANDALL JONES: Yes, Your Honor. As you noted,
7 I'm sure you read it, it talks about the strategic plan for
8 the year, the coming year, the capital plan. I believe there
9 was a discussion about EBITDA and how they dealt with EBITDA.
10 And so here is why certainly I believe it's confidential.
11 Even though it goes back to 2010, these are -- this is how the
12 company does business for strategic planning, capital
13 planning, how it deals with EBITDA, and there's nothing in the
14 record that would indicate that they don't follow a similar
15 process now. This is an issue that we certainly think is very
16 important for us to keep confidential of how the company goes
17 about making these plans for the future, financial plans. And
18 I can't tell you as I stand here today that they follow the
19 same exact procedure, a modified procedure, but all of that
20 could give a competitor --

21 THE COURT: There's absolutely nothing confidential
22 in this. This is --

23 MR. RANDALL JONES: Your Honor --

24 THE COURT: -- the strategic plan -- what a general
25 strategic plan is, who's going to look at it, when they're

1 going to look at it, why we're going to stagger, and how we're
2 going to manage our time well before we complete the forms.
3 And I agree the forms, if they were attached to this document,
4 would clearly be commercially sensitive, because that's how
5 the company prepares for the strategic plan, the capital plan,
6 and the operating plan.

7 MR. RANDALL JONES: Your Honor, I --

8 THE COURT: But this is a memo telling people when
9 to fill out the forms and submit them.

10 MR. RANDALL JONES: I respectfully disagree. Timing
11 is a critical aspect of -- when you're talking about a
12 publicly traded company the timing of when they do things with
13 respect to how they decide to make their capital plans, who's
14 involved in that process, the -- what departments are
15 involved, what kind of input they need to get. It listed the
16 type of input that they want to get for these various
17 different plans. That is, you used the words yourself,
18 commercially sensitive information. That's what this is.
19 It's commercially sensitive. Now, it may not be as sensitive
20 as some other information, but it is commercially sensitive.
21 And for the Court to make the call that this doesn't matter,
22 this is not a big deal I think is completely inappropriate to
23 say without knowing of the inner working --

24 THE COURT: Isn't that how we came up with the
25 protective order? You guys wanted me to make the call; right?

1 MR. RANDALL JONES: Well, Your Honor, but in a
2 vacuum to just say, look, I don't think that's commercially
3 sensitive, there's no input from the financial people of the
4 company that -- and here comes the problem, Judge.

5 THE COURT: There's absolutely no numbers in here.
6 There's no strategy in here.

7 MR. RANDALL JONES: Your Honor, let me give you an
8 example. If that said one of our strategic plans this year is
9 to buy the Wynn property, one of the Wynn --

10 THE COURT: Absolutely that would be commercially
11 sensitive.

12 MR. RANDALL JONES: Well, that doesn't talk about
13 numbers. There would be no numbers.

14 THE COURT: No. But there's no strategic goal in
15 here. It says, provide these completed forms. And the
16 completed forms are not attached to this document.

17 MR. RANDALL JONES: And it talks about the strategic
18 planning. Here's my problem, Judge.

19 THE COURT: It talks about the process of strategic
20 planning.

21 MR. RANDALL JONES: That's right. And the process
22 is confidential. There are patents that are based strictly on
23 process. That -- a process is a confidential process of the
24 company, how they run their business. I would suspect that
25 Mr. Bice's other client, the Wynn, protects its strategic

1 process every much as it protects -- every bit as much as it
2 protects its strategic dollar numbers.

3 THE COURT: So tell me how this particular strategic
4 process is different than any other well-managed business,
5 whether it's publicly traded or not. The strategic --

6 MR. PEEK: Your Honor, can we have this on the
7 screen so that we could all read it along --

8 THE COURT: No.

9 MR. RANDALL JONES: Well, the problem is --

10 THE COURT: "The strategic plan is intended to
11 accumulate input from all levels of the organization regarding
12 market expectations, strategic objectives, initiatives, and
13 anticipated risks to the company such that senior manage can
14 distill and communicate a unified strategic perspective." You
15 know what, that line related to what a strategic plan is is in
16 every well-managed business, because it's good sense.

17 MR. RANDALL JONES: It might be.

18 THE COURT: But it's not commercially sensitive.

19 MR. RANDALL JONES: I disagree, Your Honor. But
20 that's just one aspect of the memo. But that begs the
21 question -- here's the problem we have, and this is one of the
22 problems we had that is now essentially being completely
23 disregarded and circumvented by the process the Court's
24 talking about. Mr. Bice has the obligation to come to us and
25 say, I disagree with this one or that one or whatever. He did

1 a wholesale -- we didn't mark every single page confidential.
2 We did a lot, because we are very concerned about keeping
3 confidence. But that's not an unreasonable burden to put on
4 him. He could have come and --

5 THE COURT: Okay. So here's the deal. If you want
6 me to protect portions of 887A, the log that you provide has
7 to be more complete. The confidentiality reason "commercially
8 sensitive," while it is one that I recognize for purposes of
9 sealing and redaction of court records, does not appear to be
10 of assistance to anyone in making a determination as to why
11 any particular document in 887A, which has been redacted,
12 should be protected.

13 MR. RANDALL JONES: Your Honor, if I -- if I may.
14 And I just want to -- so at least I can make my record. I
15 think what's happening here is that it is turning the process
16 on its head. And here's why. If you'll give me a moment.

17 THE COURT: I'm listening.

18 MR. RANDALL JONES: Thank you. 887A was put into
19 evidence for a limited purpose; right?

20 THE COURT: It was.

21 MR. RANDALL JONES: The purpose was jurisdiction,
22 and the purpose was to try to demonstrate that all these
23 documents would somehow help the Court in assessing
24 jurisdiction.

25 THE COURT: If they had not been redacted.

1 MR. RANDALL JONES: If they had not been redacted.
2 The substance of the documents themselves was never at issue
3 on any of these documents, because Mr. Bice didn't pull any of
4 these documents out and say, these documents show the Court
5 why if we had known who the names were would have helped the
6 Court in making a jurisdictional decision. That was not done.
7 So what Mr. Bice is able to do is he was able to wholesale put
8 in 6,000 documents of tens of thousands of pages wholesale on
9 the pretext that this somehow aided jurisdiction. Now, as
10 you --

11 THE COURT: It did aid my determination of
12 jurisdiction.

13 MR. RANDALL JONES: Well, you picked out I think 70
14 or 80 different documents --

15 THE COURT: I was looking for certain key words when
16 we searched for this.

17 MR. RANDALL JONES: That's right. So you took out
18 those. So, in other words, what you did you relieved Mr. Bice
19 of his burden of doing that and you took it upon yourself to
20 do that.

21 THE COURT: And it wasn't easy.

22 MR. RANDALL JONES: I'm not suggesting that it was.
23 Here's the problem. Under the protective order we have,
24 unless this Court is going to sua sponte rewrite the
25 protective order --

1 THE COURT: Not going to do that.

2 MR. RANDALL JONES: -- the protective order says Mr.
3 Bice has the burden of coming to the Court -- and in fact you
4 started the conversation that way. You said, Mr. Bice, can
5 you point me to one document that you would like to show me
6 demonstrates why it should not be designated confidential or
7 highly confidential. And what'd he tell you?

8 THE COURT: Don't you -- wait. Let's stop. Don't
9 you remember how we got to you filing the notice of compliance
10 on September 25th, 2015? You did this because we were faced
11 with a motion to not permit those documents to be protected.
12 Remember?

13 MR. RANDALL JONES: Okay.

14 THE COURT: And so I said, I need you to go through
15 each document, Mr. Jones, if you are claiming that each one of
16 those documents that was introduced in evidence and I relied
17 upon in part of my review for the evidentiary hearing on
18 jurisdiction, why those documents should not be produced and
19 released to the public. The log that I have that was filed
20 with the Court on September 25th, 2015, is not helpful to me.
21 I cannot do anything else. Even in conjunction with looking
22 at a random document that I pulled up because nobody had one
23 they wanted to use as an example, it is not helpful.

24 MR. RANDALL JONES: I didn't have an obligation to
25 provide you with a document. Mr. Bice did. He didn't -- so

1 here's our problem, Judge. Before he brings this motion and
2 you rule against us --

3 THE COURT: I'm not ruling against you. This is
4 your motion to protect.

5 MR. RANDALL JONES: I'm not saying that you are
6 ruling against us. I'm just saying before you did rule
7 against it, if you were inclined to do that, here's all I'm
8 asking. If Mr. Bice has particular documents that he believes
9 that should not be designated confidential -- you found one
10 that you have an argument with, but, see, that --

11 THE COURT: I only pulled one.

12 MR. RANDALL JONES: But -- I know. That's right.

13 THE COURT: One of out of one is not a good record.

14 MR. RANDALL JONES: And here's the problem with
15 that. Pulling it in open court -- instead of having a 2.34
16 over it, you pulled it in open court and challenged me to show
17 you why it was confidential. And that's fine, Judge. That's
18 okay. But what you're doing is you're doing Mr. Bice's job.
19 He should have done that with me or Mr. Peek, and he should
20 have said, hey, let's look at SCL175146, you tell me how in
21 the world that's confidential. And I would have had the
22 opportunity to sit down and discuss it with him and either
23 convince him that it was --

24 And, by the way, as part of that process I can talk
25 to my client, as opposed to being buttonholed here by the

1 Court on a document I never -- I don't recall off the top of
2 my head seeing this random document before, and trying to
3 explain to you why it might be something that is confidential.
4 That was something that was done as we were required to
5 produce this log.

6 So give me the opportunity that I believe that the
7 law and your protective order allows me, him tell me what a
8 document -- what the problem is with a document, me to look at
9 it and talk to my client and say, hey, wait a minute, why
10 would this be considered confidential. And they would either
11 tell me, you know what, this process really isn't that
12 confidential and maybe we shouldn't designate it that way, or
13 they would tell me -- what I believe they would say is what I
14 reported to this Court, look, this is very critical
15 information we keep very close to the vest, we don't want our
16 competitors to know about that and here's why. That process
17 never happened, because Mr. Bice did not comply with your
18 protective order as required to say what documents he thinks
19 should not have been so designated. And I understand it's a
20 lot of documents, but let's get straight here what happened.
21 He's the one that wholesale put into the record 6,000
22 documents.

23 THE COURT: Well, that's because I made him go
24 through 887, which I wasn't taking, and reduce the number.

25 MR. RANDALL JONES: But, again, that was his choice.

1 So here's what he does. He puts in 6,000 documents of tens of
2 thousands of pages, and then he flips the burden on us and
3 says, you have to prove why every single one of them is
4 confidential and I can't just say none of them are without
5 giving you the opportunity to defend the position on a
6 particular document-by-document basis as required by the
7 protective order and you now have the burden, defendant, of
8 justifying why they should be held that way without having the
9 opportunity to have a 2.34.

10 THE COURT: Here's my problem. And I'm not going to
11 hear from Mr. Bice on this issue, because I'm not going to
12 decide anything today. My problem is you have used a category
13 designation for a significant group of the documents.

14 MR. RANDALL JONES: Agreed.

15 THE COURT: The category designation you have used
16 does not provide me, and I don't I think it provides Mr. Bice,
17 the information needed to go through and make that challenge
18 on a document-by-document basis.

19 MR. RANDALL JONES: Well, let me -- okay, Your
20 Honor. I hear what you're saying. Let me ask you some
21 questions about that, then, because I understand what you're
22 -- I think what you're telegraphing to me is you're going to
23 want me to go back and give a more detailed explanation.

24 THE COURT: Yes.

25 MR. RANDALL JONES: Here's the problem.

1 Commercially sensitive is a legitimate category; right? Would
2 you agree with me there, it is a legitimate category?

3 THE COURT: I'm not saying it's not a legitimate
4 category. It is one I rely upon in making a determination to
5 seal documents frequently in Business Court.

6 MR. RANDALL JONES: All the time. All the time. So
7 if -- let's just hypothetically -- forget this case.
8 Hypothetically you have 100,000 documents, 100,000 pages, and
9 every one of those pages is commercially sensitive -- because
10 they actually fall into that category --

11 THE COURT: I know. And that's the --

12 MR. RANDALL JONES: That's the problem.

13 THE COURT: -- philosophical discussion as to
14 whether I'm going to allow you to do category designations or
15 if I'm going to make you do individual designations. My
16 personal belief is it is not helpful to do category
17 designations unless you're telling me it's an attorney-client
18 privileged communication with your attorneys related to X.

19 MR. RANDALL JONES: Well, let me ask you a question,
20 then, Judge. If we've got these 6,000 documents that we think
21 were unnecessary to be put into the record the way they were
22 -- because the Court didn't rely on the content of any of
23 these, you only relied on --

24 THE COURT: That's not true. I did rely on the
25 content related to some of those documents on a specific issue

1 that I was identifying related to the shared services
2 agreement.

3 MR. RANDALL JONES: But here's my point, Judge.

4 THE COURT: Which nobody mentioned in any of the --

5 MR. RANDALL JONES: You picked -- you picked about
6 90, I think, somewhere around 90 or so of those documents out
7 of 887A; right?

8 THE COURT: I don't remember, Mr. Jones.

9 MR. RANDALL JONES: It was a number. We went
10 through that whole process. So whatever it is, you picked
11 that number. And you didn't look at -- as I understood the
12 Court's ruling, you didn't look specifically at any of the
13 other 887.

14 THE COURT: No, I looked -- 887?

15 MR. RANDALL JONES: Yeah.

16 THE COURT: I didn't look at 887. 887A I looked at.

17 MR. RANDALL JONES: I'm sorry. 887A, all the
18 hundreds and thousands of pages --

19 THE COURT: Between Laura and I we looked at every
20 page of 887A.

21 MR. RANDALL JONES: All right. And did you make --

22 THE COURT: I didn't look at every page --

23 MR. RANDALL JONES: Did you make a specific call as
24 to whether or not they were relevant to the jurisdictional
25 discovery decision?

1 THE COURT: For some of them I did.

2 MR. RANDALL JONES: Some of them you did. That's my
3 point. Not all of them.

4 THE COURT: Right.

5 MR. RANDALL JONES: And so here's the problem.

6 THE COURT: Because I was only concerned about a
7 specific agency issue at that time.

8 MR. RANDALL JONES: The protective order provides
9 that if he -- he really thinks these are relevant -- see,
10 here's the problem. If they're not relevant to this case and
11 they're highly sensitive or just regularly confidential, then
12 why should we just have to have them produced to the world?

13 THE COURT: Okay. Here's the issue. This is a
14 public proceeding. This is a public courtroom.

15 MR. RANDALL JONES: Right.

16 THE COURT: So I have a duty and public proceedings,
17 and Mr. Ogilvie and I had this discussion on another document
18 that he was thinking he might want introduced into evidence
19 last night, that I can't keep documents that are exhibits
20 private unless there is something really unusual about it.
21 And I haven't figured out a really good way to be able to do
22 it. And since 887A, not 887, was admitted, I am trying to get
23 you to focus on limiting those that you really care about so
24 if I'm going to pick a procedure to protect some documents
25 that are admitted into evidence for purpose of a

1 jurisdictional hearing, which is not a trial, but it's still a
2 public proceeding, I can come up with a rational procedure
3 that if someone in Carson City decides to examine the process
4 that we followed that I have one. This isn't going to
5 convince me to do it.

6 MR. RANDALL JONES: I appreciate that, Judge. Al
7 I'm asking, I guess, is why in this particular case is the
8 burden being shifted from what the clear language of the
9 protective order provides, which is he needs to tell --

10 THE COURT: Protective order is out the window when
11 I'm in a trial or evidentiary hearing proceeding.

12 MR. RANDALL JONES: Actually --

13 THE COURT: The protective order -- just so we're
14 all clear, the protective order is a discovery tool between
15 you all and an agreement between you all as to how you are
16 going to try and attach documents to pleadings. It does not
17 apply once you file a motion with the Court. Once you file a
18 motion or a document with the Court, we have to go to the
19 Nevada Supreme Court's rules on redaction of court records.
20 So while for discovery purposes you're protective order is all
21 fine and good and the designations you make are helpful in the
22 determination that I will eventually make in accordance with
23 the Nevada Supreme Court's rules on sealing and redaction of
24 court records, the protective order doesn't govern me once you
25 get it in evidence.

1 MR. RANDALL JONES: All right. So I understand what
2 you're telling me at this point is because they were admitted
3 into evidence, 887 was admitted into evidence --

4 THE COURT: 887A.

5 MR. RANDALL JONES: -- I'm sorry, 887A --

6 THE COURT: Which I have given back to Dulce because
7 I don't want to run the risk of hurting it.

8 MR. RANDALL JONES: -- the burden -- essentially
9 what you're saying is once it came into evidence in the
10 jurisdictional hearing, even if it came in over objection, the
11 burden has shifted and the protective order no longer applied
12 -- I'm just trying to get clear. I think I'm understanding
13 what you're saying.the

14 THE COURT: Yeah, that's what I'm saying.

15 MR. RANDALL JONES: And then the burden shifts to
16 us, then, to tell the Court specifically why on a document-by-
17 document basis the confidentiality should be maintained and
18 that the general category of commercially sensitive
19 information is inadequate in your mind to justify that as
20 provided in the log we gave you.

21 THE COURT: Yes.

22 MR. RANDALL JONES: And so you want us to go back
23 and give a more detailed --

24 THE COURT: Fulsome.

25 MR. RANDALL JONES: -- and specific -- or a more

1 detailed explanation as to why we should -- it should maintain
2 its confidentiality?

3 THE COURT: Because, remember, at that hearing that
4 we had last summer Mr. Merrill was very clear, as are a number
5 of other folks that have raised this issue in other cases,
6 that commercially sensitive does not strictly fall within the
7 Supreme Court's definition for sealing and redaction of court
8 records, and in Business Court we have utilized it because of
9 our obligation statutorily to try and preserve trade secrets
10 and confidential information. So we've tried really hard to
11 not throw companies out there when they're in litigation in
12 Business Court, because we have an obligation to try and
13 protect confidential information and trade secrets, but it
14 does not appear as part of what is in the Supreme Court's
15 accepted designations.

16 MR. RANDALL JONES: How much time can we have, Your
17 Honor? And, by the way, Mr. --

18 THE COURT: Would you like four days?

19 MR. RANDALL JONES: -- Mr. Bice --

20 MR. BICE: See, that would be --

21 MR. PEEK: I knew that was coming.

22 THE COURT: That was a joke. That was a joke. I'm
23 glad everybody laughed.

24 MR. BICE: That would be reasonable, Your Honor.
25 And I want to be --

1 THE COURT: No, Mr. Bice. No.

2 MR. BICE: I want to be heard on this, because he's
3 misrepresenting to you what the protective order actually
4 says.

5 MR. RANDALL JONES: Well --

6 MR. BICE: The burden is exactly opposite of --

7 THE COURT: The protective -- Mr. Bice, the
8 protective order has nothing to do with this.

9 MR. BICE: I understand that. But, you know, he got
10 you to agree with the premise that he said, and it was a nice
11 sleight of hand, but that's what it was. Because the
12 protective order actually puts the burden on him. And he's
13 saying, so because it doesn't apply you're shifting the
14 burden.

15 THE COURT: I don't care.

16 MR. BICE: That is a misstatement of what the order
17 says.

18 THE COURT: I don't care what the protective order
19 -- to the extent I am talking about Exhibit 887A I don't care
20 what the protective order says.

21 MR. BICE: All right.

22 MR. RANDALL JONES: Understood.

23 THE COURT: Okay.

24 MR. RANDALL JONES: With respect to the time, Your
25 Honor, again, Mr. Bice --

1 THE COURT: Mr. Bice, can you sit down for a second.
2 Because you're going to make me laugh because you're moving
3 your head and doing --
4 MR. BICE: Well, I want to make sure I hear him
5 correctly --
6 THE COURT: I know.
7 MR. BICE: -- when I hear him tell us how long this
8 is going to take him.
9 THE COURT: I know.
10 MR. RANDALL JONES: Hopefully, Mr. Bice --
11 I've never had a hard time being heard in the
12 courtroom, so I hope Mr. Bice can hear me.
13 With that said, Your Honor, just so it's clear, and
14 I think the Court knows this, there's no prejudice to Mr. Bice
15 about any so-called delay only because Mr. Bice has had access
16 to this information. He can look at it anytime he wants.
17 It's not like this is something that's being kept from him,
18 so --
19 THE COURT: This has nothing to do with Mr. Bice.
20 MR. RANDALL JONES: I -- no. My only point is --
21 THE COURT: This has to do with the hearing I had
22 last summer when I ordered you to do this as part of the
23 motion to unseal that was filed by interested parties.
24 MR. RANDALL JONES: I understand Mr. Bice wants to
25 comment about taking four days to redact the non-wage

1 information from a couple of years of tax returns versus going
2 through tens of thousands of pages to do what the Court is
3 asking is a monumental task. And I remember Mr. Bice again
4 commenting about when he had to produce the S. Jacobs
5 documents --

6 THE COURT: Absolutely.

7 MR. RANDALL JONES: -- and the time that he had to
8 do it he thought was very compressed. So we all have --
9 there's different --

10 THE COURT: He thought I was being total
11 unreasonable that day.

12 MR. RANDALL JONES: He did. And there are different
13 time frames for doing different tasks, depending on the amount
14 of documents that you have to deal with. So we would ask for
15 a reasonable period of time to be able to do that.

16 THE COURT: How long do you think that is, though?
17 I'm trying -- you remember Mr. Peek and I constantly try and
18 negotiate how long something is?

19 MR. RANDALL JONES: I do. And, Your Honor, I don't
20 know if Mr. Peek has any comment about that, because that
21 takes other resources to do. So I'm trying to come up with a
22 number that --

23 THE COURT: Just give me your best guess.

24 MR. RANDALL JONES: -- that's going to be fair to
25 all concerned. And I know Mr. Bice will not believe that, but

1 I've tried to do this as quickly as possible, because I know
2 the Court's impatient with all of us about getting things
3 done. We do have the Christmas holiday --

4 THE COURT: Well, only on this particular issue.

5 MR. RANDALL JONES: We do have the Christmas
6 holiday, so could we have till the -- with the holidays
7 involved -- it's what, 15th today -- could we have till
8 January 15th to do it because of the holidays?

9 THE COURT: I was going to give you till
10 January 19th.

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

12 THE COURT: So that only dealt with part of the
13 issues in your motion. The other part of the issues in your
14 motion has to do with the designations related to depositions.
15 For the record, my reading is that it's the final review date,
16 not the pre-review date that triggers. What else do you want
17 to talk about?

18 MR. PEEK: Your Honor, the other one was the Advance
19 Discovery documents that I think Mr. Bice produced. I think
20 that was the --

21 THE COURT: That's the oops one.

22 MR. PEEK: Yes.

23 THE COURT: The oops one.

24 MR. PEEK: And I'll let Mr. Jones address that,
25 because you've addressed my issue really, which was the

1 deposition.

2 MR. RANDALL JONES: Your Honor, with respect to that
3 issue, since all I can do is mea culpa. That was my mistake,
4 candidly. I thought -- I got it on July 20th, and it fell
5 through the cracks. And when Mr. Bice brought it to my
6 attention on the 15th of September, within two days I got it
7 to him. And I would -- I certainly apologize to Mr. Bice. He
8 didn't file any motion about it for over a month after that,
9 so I don't know why there would be any prejudice to them. But
10 that's -- there's no other way to describe it. That's my
11 fault. I just missed it. It came to me from our co-counsel,
12 well, actually from -- Mr. Ferguson's firm was handling that
13 process. He got it to me on the 20th of July, and when I got
14 Mr. Bice's email on the 15th I had thought -- I was looking
15 for when I'd produced it until I came across the fact and we
16 all confirmed in my office I missed it. So not a whole lot I
17 can say to that, other than, Your Honor, it fell through the
18 cracks, and I apologize. Apologize to Mr. Bice. And I don't
19 believe he's been prejudiced by it, and --

20 THE COURT: And you've provided an escape clause or
21 a clawback or a protect me clause as part of the negotiated
22 stipulated protective order for discovery purposes.

23 MR. RANDALL JONES: We did, Your Honor. And it's in
24 there. And so -- and honestly, I understand Mr. Bice is an
25 excellent oral advocate and he fights very hard, but I don't

1 -- and I don't begrudge him that, that's his job. But I don't
2 see how he's been prejudiced by this, since they've had the
3 documents. All the issue was is whether or not we've got
4 lengthy designations.

5 THE COURT: Okay.

6 MR. RANDALL JONES: Thank you.

7 THE COURT: Mr. Bice, anything else you want to say
8 related to the Advance Discovery documents or any other issues
9 on the request for an order maintaining confidential
10 designations related to discovery documents only. I'm not
11 talking about 887A, since that we're going to talk about
12 sometime in January.

13 MR. BICE: Yes, Your Honor. On the -- the documents
14 that we're talking about on the discovery -- so-called
15 discovery documents are Mr. Jacobs's documents that you
16 ordered us to produce. And I can confirm to the Court that
17 your order was unreasonable. But, nonetheless, I complied
18 with your order to produce all those documents in two weeks.
19 The consequence of that was -- and, of course, you heard no
20 protests from the defendants in making us do that, but we did
21 it. And we had to divert resources and hire additional
22 personnel to get it done, but we did it.

23 The consequence of that, however, was that the
24 defendants then had 30 days to make any confidentiality
25 designations, which they of course did not do. They decreed

1 themselves immune, as they have on multiple provisions of this
2 confidentially order, just simply decreed that they do not
3 have to comply with it. And I can give the Court some other
4 examples if the Court needs them. But this is a prime example
5 of where they just ignored it and then sent another extension
6 granting themselves an additional extension and ignored it.
7 When we held the 2.34 conference they then indicated they
8 would get us an updated log, and then didn't do that, either.
9 So that -- after months of time passing, they essentially --
10 we had to produce all of it in two weeks. They gave
11 themselves at least 45 to 60 days to review the documents and
12 make their confidentiality designations, which is not allowed
13 under the order, but, nonetheless, that's what they have
14 chosen to do. Then they produce a log to us. And again that
15 log is effectively useless, Your Honor. And this is where I
16 submit that the sleight of hand is occurring with the
17 defendants on the protective order.

18 This protective order is not a standard protective
19 order. We would not enter into a protective order with the
20 defendants where the burden is on us to do anything, because
21 we knew that they would abuse it. And that's exactly what
22 they've done. That's why the protective order has a clause in
23 it specifically, Your Honor, that says that, designations must
24 be minimal, they cannot be indiscriminate, they cannot be
25 mass, et cetera, et cetera. And, of course, that is exactly

1 what they have been doing. They have just blown right through
2 that provision in the protective order in designating anything
3 -- and you just saw one example today. It's confidential.
4 There's nothing confidential, but, of course, they stamp
5 everything confidential. They -- as you will recall, Your
6 Honor, they've stamped confidential as their letters with the
7 United States Government that are subject to FOIA. But they,
8 of course, stamp those as confidential. They claim that their
9 privilege log of these meetings -- they claim that a privilege
10 log is now confidential, as well, because it just shows the
11 date that they would have had meetings. That is the abuse
12 that is going on in this case.

13 So we have a protective order that says all we have
14 to do is object. We do not have any burden, contrary to Mr.
15 Jones's representations that somehow the burden is on us to
16 come to the Court on a document-by-document basis and
17 challenge their designations, we have no such burden. And
18 they are abusing this order, and it is their burden under the
19 express terms of the confidentiality order to sustain every
20 one of their burdens of confidentiality under that protective
21 order. And the fact that they are trying to shift the burden
22 onto us tells the lack of -- tells you exactly what's going
23 on. They're just massly [sic] making confidentially
24 designations and then trying to put the onus on us and
25 preparing a log that doesn't tell us anything.

1 THE COURT: Okay. Anything else?

2 Unlike a privilege log, here the confidentiality log
3 that is being provided is not one that precludes the reviewing
4 party from actually looking at the document. Since the
5 documents are accessed by all parties in this case, I am not
6 nearly as concerned about the discovery documents, because you
7 all had access to them. To the extent they become exhibits in
8 court I have a very different viewpoint of what we need to do.
9 And I understand your frustration, Mr. Bice, but, given Mr.
10 Jones's mea culpa and his indication that it was an oversight
11 that it wasn't provided, I am not going to remove the
12 confidentiality designation merely based upon the delay in his
13 production.

14 If there are particular documents after your review
15 of them that you want to seek to have removed, please bring
16 those to his attention, and I will address it on a document-
17 by-document basis, which is the only way I can do it.

18 MR. BICE: Your Honor, but this is my objection. We
19 specifically -- your protective order says the exact opposite.
20 And now you are shifting --

21 THE COURT: But you've got to tell him which ones.
22 You can't just --

23 MR. BICE: You're shifting the burden onto us.

24 THE COURT: No, Mr. Bice. What you're saying is
25 every one of the documents they've designated as confidential

1 is inappropriate. That's what you're saying.

2 MR. BICE: That is what I'm saying --

3 THE COURT: I know it is.

4 MR. BICE: -- because they are designating
5 wholesale.

6 THE COURT: And I have declined to adopt your
7 position and instead said, Mr. Bice, if there's a particular
8 document for discovery purposes that you have concerns about,
9 please identify it. It's not like it's not being provided for
10 you and your client --

11 MR. BICE: I understand that.

12 THE COURT: -- as part of your process of the
13 litigation, so it is not impeding your client's rights to
14 litigate his case.

15 MR. BICE: It's impeding my client's rights,
16 however, to effectively use these documents, because they
17 designate everything confidential and then abuse this
18 protective order. And my objection, Your Honor, is that we
19 enter into a protective order and it's not binding on them.
20 That's my objection, it's not binding on them.

21 THE COURT: So, Mr. Bice, if there is a document
22 that is highly confidential, designated as highly confidential
23 that you believe is impeding your client's rights to defend
24 his case -- or prosecute his case, I need you to tell me which
25 documents those are so I can try to determine if it should be

1 converted from highly confidential to confidential. To the
2 extent it is confidential I believe the negotiated terms of
3 your stipulated protective order allow the parties to use them
4 in a method that is effective for their litigation of the
5 case. But if you believe there's a consulting expert or
6 someone that you would not be able to provide the document to
7 under the protective order, I'd be happy to consider a
8 confidentiality issue on a case-by-case basis. So --

9 MR. BICE: Thank you, Your Honor.

10 MR. PEEK: Thank you, Your Honor.

11 THE COURT: -- I need to continue the motion to the
12 extent it relates to Exhibit 887A to another day. So we've
13 given you till January 19th. Mr. Bice, I assume you're going
14 to get that the 19th or the 20th, get a chance to look at it
15 the following week. Would you like me to set a status check
16 on that issue on February 4th?

17 MR. BICE: When is our -- does the Court know off
18 the top of its --

19 THE COURT: You're February 11th. You want me to
20 set it for February 11th, which is --

21 MR. BICE: That's our other status check, yes.

22 THE COURT: Okay. Dulce, if you would set a status
23 check on 887A and continue this motion to that day.

24 THE CLERK: Yes, Your Honor.

25 THE COURT: I gave you 887A. Put it back away and

1 seal it. It's still sealed, because I'm not done with this
2 issue yet. It's remaining sealed until I finish the motion
3 practice.

4 MR. BICE: Thank you, Your Honor.

5 THE COURT: Okay. Anything else?

6 MR. RANDALL JONES: No, Your Honor. Thank you.

7 THE COURT: Mr. Peek, I received a complaint from a
8 partner in another law firm that they were going to have to
9 increase the soundproofing in their conference room because
10 you were visiting them.

11 MR. PEEK: Because I was what?

12 THE COURT: Visiting them. I have no idea what that
13 means, but it was on the record in another case, and so I felt
14 compelled to tell you about it.

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

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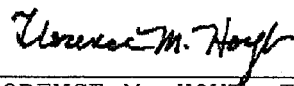
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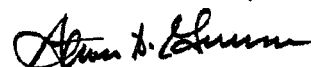
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FLORENCE HOYT
Las Vegas, Nevada 89146


FLORENCE M. HOYT, TRANSCRIBER

12/16/15

DATE



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 PROTECTIVE ORDER
AND SCHEDULING CONFERENCE**

THURSDAY, DECEMBER 24, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

PATRICIA SLATTERY
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 24, 2015, 8:32 A.M.

2 (Court was called to order)

3 THE COURT: Please be seated. Have you all had a
4 chance to get some refreshments?

5 After reading your briefs yesterday I thought it
6 might be better to start this from a slightly different tack
7 than we usually do. Please sit down, and let's visit for a
8 few minutes about the discovery issues and how this motion
9 impacts some of those issues and what we're going to do to
10 stay on track.

11 MR. PEEK: I would love to talk about it, Your
12 Honor.

13 THE COURT: I'm glad I'm thought of it, then.

14 We have a trial setting order that was issued
15 last July which we modified the expert disclosure date to
16 February 18th, 2016, as a result of some stays the Nevada
17 Supreme Court issued. Our trial is scheduled to start in late
18 June. Our goal has been to try and move forward to make that
19 date. There's one issue that I know that I commented we're
20 going to probably have to adjust that expert disclosure date,
21 and that has to do with some of the mental health records
22 we're currently dealing with. And I'm going to leave those
23 out of this for purposes of this discussion.

24 Understanding we have an expert disclosure date of
25 February 18th and a lot of discovery that appears to need to

1 be done, how do you plan to get done? And I don't want to
2 talk about document discovery at this point in time, because
3 it's either going to be a compliance with an order or the
4 Supreme Court's going to tell me I was wrong or something else
5 is going to happen. So how are we going to be ready for our
6 expert disclosures on or about February 18th, 2016, for those
7 issues you bear the burden of proof on? Somebody just needs
8 to spit it out.

9 MR. BICE: Your Honor, that's the -- we want to
10 proceed with the depositions. We've noticed three or four
11 depositions, and we're going to notice more towards the end of
12 this month so that we can --

13 THE COURT: To be taken in January.

14 MR. BICE: To be taken at the end of this month.

15 THE COURT: This month is still December.

16 MR. BICE: Yes, Your Honor. I'm jumping ahead.

17 THE COURT: Okay, Mr. Bice, that's why we're having
18 -- sit down, please, Mr. Bice. Just sit.

19 MR. BICE: Not the end of this month.

20 THE COURT: I know you feel like you always have to
21 stand up, but I'd rather do this in a less formal discovery
22 conference kind of way for us to try and figure out how, if at
23 all, I can get you guys back on schedule.

24 MR. BICE: So that is our intention. As the Court
25 knows, I will address the document issues separately, although

1 that in my position -- our position is that that has been
2 delaying our ability to proceed with depositions. On
3 December 1 the Court told us we could proceed with the
4 depositions and if documents were not produced there would be
5 some consequences to that. So we did not notice up
6 depositions immediately on December 1 for the end of this
7 month, but we would like to proceed and our intention is to
8 proceed with the depositions. And we're going to be noticing
9 up other board members and some former board members of LVSC
10 towards the end of next month.

11 THE COURT: So best estimate in addition to the
12 depositions that are subject of the motion we're here about
13 today -- don't count those, count other depositions -- how
14 many more do you anticipate you're going to need to take
15 non-expert, percipient-type witnesses?

16 MR. BICE: Before the deadline, or just in total,
17 Your Honor?

18 THE COURT: In total. Trying to get a number.

19 MR. BICE: In total, Your Honor, it would be at
20 least a dozen.

21 THE COURT: So somewhere around 20 in all.

22 MR. BICE: Yeah.

23 THE COURT: And of those you feel it is necessary to
24 take prior to the designation of your experts --

25 MR. BICE: Yes.

1 THE COURT: -- how many besides the ones that are
2 noticed for the first week of January?

3 MR. BICE: I think three.

4 THE COURT: Do you think that any of these
5 depositions will finish in one day?

6 MR. BICE: Yes. I think that Mr. Weidner's will
7 finish in one day. I think it's possible that Mr. Dumont's
8 could finish in a day. Mr. Solomon's would finish in a day.
9 I doubt that Mr. Leven's deposition will finish in a day. We
10 haven't noticed that one yet, but we will be.

11 THE COURT: Okay. So sounds like you're telling me
12 you have about 14 to 15 days' worth of deposition testimony
13 for the depositions you feel you need to take prior to the
14 disclosures.

15 MR. BICE: No. I don't think we're going to take --
16 my apologies, Your Honor. I did not intend to -- I misspoke.
17 I misunderstood. We don't intend to take, you know, a dozen
18 depositions prior to --

19 THE COURT: No, no. I'm talking about number of
20 days.

21 MR. BICE: Oh. Number of days. Okay.

22 THE COURT: About 15 days is what I just guessed
23 from what you were talking about.

24 MR. BICE: Yeah, probably. Something like that.
25 Ten or so, yes, would be my guess.

1 MR. PEEK: Ten or so for 20 depositions?
2 THE COURT: No.
3 MR. BICE: No.
4 THE COURT: He doesn't want to take all 20 before
5 the expert disclosure.
6 MR. PEEK: Okay. I'm sorry.
7 THE COURT: I'm trying to drill down on what I need
8 done before the expert disclosure date.
9 So 10 to 15 days, depending on how it goes --
10 MR. BICE: Yeah.
11 THE COURT: -- before the expert disclosure date.
12 MR. BICE: I think that's right.
13 THE COURT: Okay. Other than those depositions and
14 assuming you get documents, just making that assumption,
15 anything else that would impede your ability to make those
16 expert disclosures on February 18th?
17 MR. BICE: No.
18 THE COURT: Okay. So to the three of you, you have
19 certain obligations of disclosure on that February 18th date,
20 as well. What do you need to do to be in a position to be
21 able to timely make those designations, with the exception of
22 the mental health record issue? And any of you can speak up.
23 MR. RANDALL JONES: Well, Your Honor, one thing
24 that, as Mr. Bice noted in his opposition, that we have a
25 deposition is set for the 5th that we had actually set over

1 30 days ago. We got on either -- I think it was on Monday,
2 maybe it was on Friday we got an objection from Starwood to
3 that deposition.

4 THE COURT: Okay.

5 MR. RANDALL JONES: So we're going to have to deal
6 with that.

7 THE COURT: And that'll be handled in Massachusetts,
8 I assume. Right?

9 MR. RANDALL JONES: Well, interestingly enough, the
10 objection was filed here, not in Massachusetts. So I'm not
11 sure how that's going to work. Because I would not disagree
12 with your assumption, either; but they filed it here. So
13 that's one issue.

14 We have -- we are having some other disputes with
15 some other third parties about depositions and getting them
16 set. So in those depositions, depending on what happens with
17 those, one's in San Jose, and we're going through the process
18 in California in that situation. So that may delay our
19 ability to -- it would mostly -- potentially be related to
20 damages -- our ability to get our experts done on time.

21 And then, of course, we want to take Mr. Jacobs's
22 deposition. And you said other than it relates to the medical
23 release information, but we had hoped to take Mr. Jacobs's
24 deposition in January. But, depending on what happens with
25 the medical release issue, I don't -- the reason I've delayed

1 allowed to look into. And certainly, as you know, the rules
2 of discovery are very broad, and it's ironic here that Mr.
3 Bice gets up and wants the broadest scope of discovery of just
4 about any case I've ever been in, but doesn't seem to want to
5 answer any of our questions when the tides have finally turned
6 and we're allowed to do some discovery on him.

7 As you know, NRS 48.015 says, "Relevant evidence
8 includes any evidence which tends to make the existence of any
9 fact of any consequence to the determination of the action
10 more or less probable than it would have been without that
11 evidence." Therefore, we believe we are entitled to a medical
12 release. And, as I said, I'd be happy to try to limit its
13 scope so that we're not getting into unrelated medical issues
14 that have nothing to do with this case.

15 With respect to the tax returns we cited
16 paragraphs 76 and 79 of the fifth amended complaint where
17 the plaintiff himself put his reputation, good name in his
18 trade, business, profession, and customary corporate office as
19 having been harmed and has allegedly resulted in damages in
20 excess of \$10,000. As we know, in the Schlatter versus Eighth
21 Judicial District Court case the tax returns are discoverable
22 when the plaintiff puts the amount of income at issue, and the
23 tax returns -- discovery returns are appropriate. We're
24 asking for at least seven years of those returns. I think
25 actually ten is the scope -- the temporal scope that this

1 Court has found to be relevant in connection with this case.
2 I don't see any reason in the world why Mr. Jacobs would not
3 be required to produce his tax returns.

4 THE COURT: Thank you.

5 Mr. Bice.

6 MR. BICE: Your Honor, I think the defendants have
7 made and Mr. Adelson made crystal clear, as he said in his
8 deposition and has said to the media his intention is to
9 attempt to ruin Mr. Jacobs and he intends to do that. And the
10 conduct of the defendants in discovery has been pretty
11 consistent with that. We're now subpoenaing Harvard
12 University from 30 years ago, or actually closer to 40 years
13 ago when Mr. Jacobs was a student at Harvard. We're now
14 issuing demands for medical releases and all tax returns.

15 Let me deal with the medical records issue first,
16 Your Honor. There is no claim for medical injury. Nevada law
17 is very clear on this point, as cited in our opposition, that
18 the statute provides a protection against any medical issue
19 unless the plaintiff puts it at issue. The defendants cannot
20 put it at issue with their own self-serving characterizations.
21 That's exactly what the point of the Ohio Court of Appeals
22 decision that we cited to the Court where the exact same
23 argument was made and it was rejected, with the court pointing
24 out that you, as the defendant, cannot put the medical
25 situation of a litigant at issue by your own assertions.

1 So let me then turn to the tax issue. The Schlatter
2 decision says the exact opposite of what Mr. Jones just
3 claimed. In fact, that was a -- a writ of mandamus was issued
4 because the court had ordered the production of tax returns
5 without any showing of relevancy. Tax returns contain a whole
6 host of information that is unrelated to ordinary income. And
7 what the Nevada Supreme Court said is, you can get tax returns
8 or some information from tax returns if it's not available in
9 some other format. We're not saying that they can't have
10 discovery about his income, but they can't have it from tax
11 returns without any showing and certainly can't have the
12 entirety of the tax returns, which is what this request for
13 release is.

14 THE COURT: So are you voluntarily going to produce
15 redacted copies of the tax returns?

16 MR. BICE: Well, Your Honor, we don't think we
17 should have to produce even redacted copies of the tax
18 returns. If you're telling us that's what we have to do, then
19 that's your order.

20 THE COURT: Well, no. I was going to grant their
21 motion if you're not going to voluntarily produce them.

22 MR. BICE: Well, Your Honor, that's -- obviously the
23 Court has to tell us what it believes we have to do, but we
24 don't have to produce the entirety of the tax returns, number
25 one, that's not the law. Number two, as the Nevada Supreme

1 Court says, unless the information is unavailable in some
2 other form. They are, of course, free to get interrogatories
3 as to his income or something like that. But to say that you
4 should have to produce the tax returns we think is
5 inappropriate.

6 THE COURT: Thank you.

7 MR. BICE: I thank the Court.

8 THE COURT: Anything else, Mr. Jones?

9 MR. RANDALL JONES: Yes, Your Honor. Briefly. Mr.
10 Bice is absolutely incorrect about who put the issue of Mr.
11 Jacobs's mental health at issue. Mr. Jacobs is the plaintiff.
12 Mr. Jacobs sued in this case my client, including my client,
13 sued actually all the defendants in this case for defamation.
14 The defamatory statement he identified says the allegations
15 that he's making in this case were based on delusion. We have
16 a right to look to see whether or not in fact there is any
17 issue of delusion in his background, in mental health issues.
18 And, by the way, I believe that there are. And I think we
19 need to be able to test that. So to preclude us from doing
20 that when they put the issue before the Court would be
21 completely inappropriate.

22 With respect to the tax returns you heard Mr. Bice's
23 comments, and we did have a 2.34. I don't understand his
24 position. I just completely disagree that the tax returns are
25 not discoverable. And with respect to redactions, as you

1 said, he's not going to give them to us, he put the issue on
2 his client's behalf before this Court, and we should be able
3 to recover those documents to test what he tells us. And
4 certainly if he puts it in an interrogatory answer, even if he
5 testifies to it, I can't -- I don't know if that's true or
6 not. I should be allowed to test it with a document he
7 submitted to the federal government to see if what he tells me
8 is in fact the truth.

9 And one final point. Mr. Jacobs -- this continued
10 refrain of people trying to ruin Mr. Jacobs, this whole
11 lawsuit is based on extortion and Mr. Jacobs attempting to
12 extort the defendants and ruin their reputations. So that's
13 exactly what we're dealing with and not the other way around.
14 So we should be allowed to get evidence to determine whether
15 or not these allegations are true. Thank you.

16 THE COURT: Thank you.

17 I'm going to grant the motion in part. I am going
18 to require that the plaintiff execute a limited medical
19 release directed to health care providers who treated him for
20 mental capacity, limited to issues related to mental health
21 treatment for the last 10 years.

22 And the plaintiff will produce redacted versions of
23 the tax returns for the last seven years. You may redact
24 information that does not relate to income.

25 Anything else? All right. If we could go to the

1 next motion, which is the motion to deem certain requests for
2 admissions admitted because you don't like the answers.

3 MR. RANDALL JONES: Yes, Your Honor. This is --
4 this is a situation where Mr. Jacobs is again trying to parse
5 the requests. So he answers questions -- admissions the way
6 he wants to answer them, but he doesn't answer the admissions.
7 And you can't do that. And all we're asking you to do is to
8 deem the answers admitted. So I can give you a number of
9 examples. "Admit that you were an employee of the Venetian
10 Macau Ltd." Answer, "Jacobs denies the request as phrased,
11 including for reasons set forth in response to Interrogatory
12 Number 6." Interrogatory Number 6 says, "I likely was an
13 employee of Las Vegas Sands, VML, and SCL." That's not the
14 question. The question is "Admit you were an employee."

15 And, Judge, there's specific reasons we wrote these
16 requests the way we did. Under employment law -- and I know
17 you understand these issues -- we need to know who was paying
18 his salary, because these are all indicia of who is real
19 employer was. And that goes to the essence of claim. And by
20 playing this little word game of answering --

21 THE COURT: But didn't you guys issue W-2s or
22 whatever the appropriate document is for the taxing
23 authorities?

24 MR. RANDALL JONES: Your Honor, that's all a part of
25 what we're trying to ask.

1 THE COURT: I don't know who, because there's three
2 initials I can use today, but somebody issued a W-2 or similar
3 tax document.

4 MR. RANDALL JONES: And I don't disagree with you.

5 THE COURT: Okay.

6 MR. RANDALL JONES: But I'm still entitled to his
7 admissions. Your Honor, we all do things differently. I, as
8 you know, have been doing this a long time, longer than I
9 sometimes can even believe I've been doing it.

10 THE COURT: Longer than me.

11 MR. RANDALL JONES: Even longer than you. And I
12 like admissions, because admissions can be very effective in
13 front of a jury. When somebody plays games with admissions
14 then it could have a great impact on the case.

15 We're asking you not to let him play games with
16 these admissions. He comes to you -- Mr. Jacobs, through his
17 counsel, comes to you time and time again and accuses the
18 defendants of not being honest and forthright with respect to
19 their responses. Well, we disagree. It is interesting that
20 as soon as we start doing discovery Mr. Jacobs does everything
21 he can to avoid a real answer. And I can give you example
22 after example of -- "Admit that at some point in time you were
23 an employee of VML." Denies the request again. But he denies
24 it on the basis of his Interrogatory Number 6 that says he was
25 likely and employee of Las Vegas Sands, VML, and SCL. That is

1 not an answer to the question. That is answering what he
2 wants to answer, not my request for admissions.

3 Number 7, "Admit that you never received a salary
4 from Sands China Ltd." "Jacobs admits that his salary was
5 paid pursuant to his employment agreement with LVSC." That is
6 not an answer to the question. The question was "Admit you
7 never received a salary from Sands China Ltd." Either he
8 admits it or he denies it. He can't then say, look over here
9 at Las Vegas Sands. That's not the question, that's not a
10 legitimate answer under --

11 THE COURT: Okay. Anything else?

12 MR. RANDALL JONES: Was that 10?

13 THE COURT: Yep. Well, but you've got -- how many
14 times have you been up today?

15 MR. RANDALL JONES: Oh. I thought I got a new 10.

16 THE COURT: No. I said three when you stood up.

17 MR. RANDALL JONES: Oh. That is outrageous, Your
18 Honor.

19 THE COURT: You should have seen how Mr. Krakoff
20 felt on Tuesday --

21 MR. RANDALL JONES: Probably worse than me.

22 THE COURT: -- because Mr. Peek wasn't here to help
23 him.

24 MR. RANDALL JONES: I'm assuming that he felt worse
25 than I did based on your comment.

1 THE COURT: Yes, he did.

2 MR. RANDALL JONES: I would simply suggest that all
3 you have to do is look at what we've written in there and look
4 at his answers and you can see he never answers the question.
5 That's all we're asking.

6 THE COURT: Well, they're not consistent, that's the
7 problem. Even from reading these admissions they're not
8 consistent.

9 MR. RANDALL JONES: Well, that's a separate problem.
10 He doesn't answer them, and they certainly aren't consistent.

11 THE COURT: Mr. Bice.

12 MR. BICE: Your Honor, this motion is really a
13 motion to avoid admissions made by their own executives, Mr.
14 Leven, Mr. Adelson, and Mr. Goldstein, because then they say,
15 well, we want to issue you some requests for admissions that
16 we want to limit to the initials that we're not supposed to
17 talk about or you said that we shouldn't talk about --

18 THE COURT: There's a stay order. I'm not talking
19 about them.

20 MR. BICE: It's a stay as to the claims against VML,
21 Your Honor, not a stay as to the name VML or anything of that
22 sort.

23 But this is our point, Your Honor. As Mr. Leven
24 admitted right on the witness stand, and you saw it, the
25 corporate structure the way that they have set it up is not

1 this separate -- they're all stand-alone entities that are
2 treated distinctly. The term sheet was with LVSC originally,
3 as Mr. Leven admitted, and VML wasn't even treated as a real
4 corporation, its own board was just merely a rubber stamp as
5 directed by Las Vegas Sands Corporation, and everybody heard
6 him make those admissions that they now want to pretend didn't
7 happen. So then they issued these requests for admissions
8 that say, well, admit that you were an employee of VML, as
9 though that's the end of the discussion. That's the way they
10 phrased it. It's denied, because he wasn't just an employee
11 of VML. His agreement was with LVSC, as he's entitled to
12 explain. And the law is very clear on this. The Court cannot
13 -- the Court's role isn't to make a determination of whether
14 the Court agrees with Mr. Jacobs's characterization of the
15 admissions or characterizations of the facts. The only
16 question for the Court is did Mr. Jacobs admit or deny or
17 object to these. And he did on every one of them. They just
18 don't like the answers, because they don't like Mr. Leven's
19 admissions about how this corporation is really set up, how it
20 was really run, and how the money was really flowed through
21 these entities. They gave him multiple W-2s from differing
22 entities, Your Honor, and they know that fact. And in fact we
23 have produced them. They have them. Interestingly, they
24 didn't. But that's our point.

25 I can go through every one of these, Your Honor, if

1 the Court would like me to, and I'll explain --

2 THE COURT: Well, no. If you want to have

3 inconsistent response, that goes to a credibility issue on

4 cross-examination.

5 MR. BICE: That's right.

6 THE COURT: My issue today is do I deem them

7 admitted. That's a narrow issue, but --

8 MR. BICE: I don't believe that they are

9 inconsistent, and I think that Mr. Jacobs will be able to

10 explain exactly what each one of these means.

11 THE COURT: They appear facially to be inconsistent.

12 How's that?

13 MR. BICE: If that's the Court's view, we will --

14 THE COURT: But it doesn't matter, I --

15 MR. BICE: When Mr. Jacobs gets cross-examined by

16 Mr. Jones, which he says he's been itching to do for forever,

17 then Mr. Jacobs will be I'm sure happy to explain why these

18 requests as phrased are wrong. And that's what --

19 THE COURT: Anything else, Mr. Bice?

20 MR. BICE: What's that?

21 THE COURT: Anything else?

22 MR. BICE: No, Your Honor. Thank you.

23 THE COURT: Anything else, Mr. Jones? You can have

24 30 seconds to wrap up.

25 MR. RANDALL JONES: Thank you. Two comments, Your

1 Honor. One is I'm itching so bad I think I have a case of
2 hives. With that said, Mr. Bice's --

3 THE COURT: Can you send that to the Supreme Court?
4 Because they never -- they won't believe what actually happens
5 in this department.

6 MR. RANDALL JONES: We'll try to make sure we make a
7 note in the record, Your Honor.

8 Mr. Bice's response is the definition of sophistry
9 on its face. So that's all I have to say about that. You can
10 see from the document and the answers themselves what he's
11 trying to do, and we think it shouldn't be allowed.

12 THE COURT: Okay. The mere fact the responses are
13 inconsistent does not support the deeming of them admitted, so
14 the motion is denied.

15 That takes me to my last issue, which is the motion
16 to compel responses to the two further areas. And I'd
17 originally thought we were going to do a motion related to
18 these privilege issues, rather than a motion to compel. But
19 let me ask a couple of questions before we start.

20 MR. BICE: Yes, Your Honor.

21 THE COURT: So I had a chance to read the
22 opposition, and these questions go to this side of the room.
23 I had never been seen the documents that are filed under seal
24 and attached as Exhibits B and C. Has anybody ever produced
25 those to me before?

1 MR. PEEK: Not to you, Your Honor, but to the --

2 THE COURT: These would have been helpful in my
3 discussions we've been having for the last six months.

4 MR. PEEK: Certainly they are, Your Honor. We have
5 produced them in the case. We have not put them to the Court.

6 THE COURT: Okay. Let me ask another question. Is
7 there one from the FBI? FBI, Federal Bureau --

8 MR. PEEK: What about it? I missed the question.

9 THE COURT: Do you have one from the FBI like
10 Exhibits B and C?

11 MR. PEEK: We do not, Your Honor. They are part of
12 the investigation of the DOJ and the SEC.

13 THE COURT: Why do you think that? Because the DOJ
14 specifically refers to their Fraud Section. And the FBI is
15 not part of the DOJ's Fraud Section, unless I'm mistaken?

16 MR. PEEK: I think you're mistaken in that, Your
17 Honor. The investigation was conducted by the FBI at the
18 direction of the DOJ.

19 THE COURT: Okay.

20 MR. PEEK: And I -- I'll deal with that in the
21 practice, Your Honor. But --

22 THE COURT: That was my question. Because I went
23 through the document you want sealed and looked at all the
24 people and where they worked for, and I was trying to connect
25 them up with the two nonwaiver letters that you provided to

1 me. And the only one that appeared to be different other than
2 Nevada Gaming Control and other gaming control entities was
3 FBI. So thank you for giving me those.

4 Mr. Bice, since Exhibit C has been marked "highly
5 confidential" and there has not yet been a resolution as to
6 whether I am going to sustain your challenge to Exhibit -- I'm
7 sorry, Exhibit 6 --

8 MR. BICE: Oh. Exhibit 6.

9 THE COURT: -- which was 78 in the Nagle deposition,
10 I'm going to order that sealed because of the designation as
11 "highly confidential." That's the process we still have to
12 follow under the protective order.

13 MR. BICE: Well, Your Honor, this is why this is
14 completely inappropriate and unfair. We held the meet and
15 confer on this more than 10 days ago, a long time ago. On the
16 record in the deposition we held the meet and confer. Under
17 the terms of the stipulated protective order they have 10 days
18 in order to file a motion with this Court, because we disputed
19 it, under the express terms of that they had 10 days to file
20 it, and they didn't do that. So when Mr. Cassity and I
21 discussed that, that's what my point is, they have been
22 violating that requirement nonstop. And we had a 2.34 on it
23 just last week on a whole host of others where they don't do
24 -- they don't follow the protective order, they wait until way
25 after the fact, and then they try and claw back and say, well,

1 now we want to designate these things as confidential months
2 after the deadlines have run on them. And this is another
3 example of that, Your Honor. And we already held the meet and
4 confer, they know it, and they just disregarded the protective
5 order yet again.

6 THE COURT: Okay. I understand your position. I'm
7 granting that portion of their motion.

8 Can we now talk about the substantive issue and
9 whether it is appropriate for me to hear this rather
10 complicated privilege issue on the briefing I currently have
11 before me or whether you want additional information.

12 MR. BICE: I dispute -- first -- my apologies, Your
13 Honor. Your Honor, I dispute that this is complicated. Let
14 me --

15 THE COURT: I've been asking for briefing on this
16 issue since we heard the testimony from Mr. Raphaelson in
17 February, maybe April.

18 MR. BICE: Your Honor, remember --

19 MR. PEEK: January or February, Your Honor. You're
20 correct.

21 MR. BICE: -- this is fundamentally different. And
22 let me address a couple of points, number one. Because that
23 was in front of the Gaming Control Board, as you'll recall.

24 THE COURT: Where somebody extra was present.

25 MR. BICE: Where somebody extra was present, right.

1 But let's deal with this. Because you were just told how they
2 produced these letters to us. They produced these letters to
3 us I think maybe two weeks ago --

4 MR. SMITH: October 26th.

5 MR. BICE: -- after --

6 THE COURT: I would have thought they would have
7 produced them earlier.

8 MR. BICE: Well, let me address with you what we
9 have been finding out in this 30(b)(6) deposition. Just --
10 I'll give you a little preview. So those letters which are
11 supposedly foundational facts for this claim of privilege,
12 right, weren't produced at the time of Mr. Nagle's deposition.
13 Mr. Nagle, as the designee for the corporation, said there was
14 no such agreement. He was their corporate designee. He
15 claimed that he had been presented with zero evidence of any
16 agreement on confidentiality. That was his sworn testimony as
17 the corporate designee. They were --

18 Your Honor, we noticed this deposition on July the
19 9th of this year. These two points have been the points of
20 contention ever since, and you know it.

21 THE COURT: No, I do.

22 MR. BICE: Their first motion for --

23 THE COURT: But I've given direction. And I was
24 hoping we would follow the process I had talked about.

25 MR. BICE: Their first motion for protective order,

1 Your Honor, on this didn't even make this claim of privilege.
2 It was an irrelevancy issue. The Court rejected that. They
3 then showed up, as you know, and said, oh, no, she granted our
4 motion for protective order on these topics so we don't have
5 to answer them. Which, of course, was never true. They then
6 said, well, we need all this time to get him prepared to
7 testify on this and we'll cover foundational facts, right, in
8 order to explore whether there was ever any actual or
9 forthright claim of privilege. That was the whole point. So
10 we then get to resume on October the 13th, and, of course,
11 what does he admit, oh, he had done nothing to prepare for
12 this, he was handed this document at 8:30 in the morning and
13 knows nothing else other than what's on this piece of paper.
14 That was the prep that they did for this witness.

15 This is a buying of time, because the facts that
16 they have been telling the government are different than what
17 they have been telling this Court. And we believe that that
18 is true, and we intend to prove it to be true.

19 So let's cut to the chase here. They claim that
20 this is governed by Nevada law. They are right. What did
21 they specifically ignore? Nevada NRS 49.385 says what, Your
22 Honor? It says, if you disclose what you claim is privileged
23 information to third parties it is a waiver, short of two
24 exceptions, one, that communication -- the disclosure itself
25 is a privileged circumstance, or, two, you gave it to an

1 interpreter. That's it. There is no exception for giving
2 documents to federal law enforcement officials and then
3 claiming -- any more than there is giving it to the media.
4 Your Honor, their argument is, well, if we give the documents
5 to the media but we tell the media, listen, we're not waiving
6 privilege and you -- these are confidential, we're giving them
7 to you so that you'll write positive news stories about it but
8 we're not waiving privilege, that somehow is sufficient.
9 That's ridiculous. And, by the way, Your Honor, court after
10 court -- they cite to you one case, one case, a 2006
11 magistrate decision from the Northern District of Illinois
12 that has been thoroughly discredited by court after court ever
13 since, including the Ninth Circuit, which has specifically
14 discussed this, including the Gruss decision from 2013 where
15 the federal judge reversed a magistrate for this exact
16 assertion, saying, oh, well, we entered into a confidentiality
17 agreement with the federal government and thus the federal
18 government should -- somehow agreed that it wasn't a waiver of
19 privilege.

20 First of all, I don't care what the federal
21 government agreed to. If you give it to your adversary -- and
22 this is exactly what the Ninth Circuit pointed out and this is
23 exactly what the Gruss decision pointed out. If you give it
24 to your adversary for your own strategic advantage, it is a
25 waiver as to everyone. You cannot claim that, well, the

1 government said it wouldn't be a waiver. Who cares? That was
2 your choice because you're trying to play a game, you're
3 trying to wave documents for your own strategic advantage to
4 try and get this issue and use that information for your own
5 advantage.

6 But let's deal with this more fundamental point,
7 Your Honor. What evidence is there in front of you that any
8 of these -- what they told the government in and of itself was
9 privileged? Is there an affidavit from anyone that's been
10 presented to you? No. Mr. Nagle, who testified, had no
11 evidence to provide to the Court on the foundational questions
12 that any such communications were privileged or that there was
13 any attorney-client information at all involved in these
14 communications with the United States Government.

15 There are so many flaws in this contention. And the
16 reason that they're slow-playing this, only providing
17 documents after the deposition, making claims that you granted
18 a protective order then not preparing him is for one reason
19 and one reason only. They know that the law is the contrary
20 of what they are claiming --

21 THE COURT: But isn't the law that I have to make a
22 factual determination on a case-by-case basis after having the
23 foundational information?

24 MR. BICE: Your Honor, that was why he was ordered
25 to appear on the 13th. And they --

1 THE COURT: And answer the questions on a
2 foundational information so you could provide further briefing
3 to me.

4 MR. BICE: That's right. And then what did they do
5 with him? They did nothing. That right there, Your Honor,
6 that proves our point. They -- if they had foundational facts
7 to offer, they were required to have him prepared to testify
8 to those facts to substantiate any claim of privilege. They
9 didn't do it, and they didn't do it on purpose. Instead, they
10 didn't even have these letters. They wait and produce these
11 letters after -- in a dump of documents after his deposition
12 is completed.

13 And let me tell you other things that happened
14 during this deposition. You know what else we got at this
15 deposition only after we found out from him that they existed?
16 Irwin Segal's handwritten notes, Your Honor, from his meeting
17 the day that Mr. Jacobs was fired. Mr. Segal's handwritten
18 notes Bates stamped, but not produced. Bates stamped.
19 They've had them the whole time. Never produced in this
20 action. We only found out about it because we pressed him on
21 whether or not he had searched for any such documents, and he
22 was told that they existed, but no one had ever showed them to
23 him. That is what is going on, and that's what's going on on
24 this issue, as well.

25 My point, Your Honor, is there is -- under the law,

1 not only under the facts, but under the law there is no claim
2 of privilege by giving privilege -- assuming that there was a
3 privilege to begin with, of which they have presented no
4 evidence to you at all. But assuming that there was, under
5 the law it is a waiver to give those documents to the United
6 States Government.

7 And, Your Honor, this is where these letters -- and
8 I submit to you it wasn't an accident when they were produced,
9 the timing of them. Look at what they actually say, Your
10 Honor. The United States says --

11 MR. PEEK: Your Honor, these are --

12 THE COURT: Which letter are you going to?

13 MR. BICE: Huh?

14 THE COURT: Which letter are you going to?

15 MR. BICE: We are going to Exhibit B -- I'm sorry,
16 B.

17 MR. PEEK: And, Your Honor, these are --

18 THE COURT: Hold on a second. I want to know what
19 exhibit first.

20 Exhibit B there's two letters. Which one, the
21 O'Melveny & Myers, or the Mayer Brown?

22 MR. BICE: Oh, they're both. They have the exact
23 same language involved.

24 THE COURT: Okay.

25 MR. PEEK: Yeah.

1 THE COURT: Don't read them --
2 MR. PEEK: Thank you, Your Honor.
3 THE COURT: -- because they are -- there's a request
4 to seal them. But point me to the area you want me to read.
5 MR. BICE: I would point out to the area -- can I
6 use a word?
7 THE COURT: You may.
8 MR. BICE: "Trial." At the end of a paragraph the
9 word "trial" exists.
10 THE COURT: All right.
11 MR. BICE: Do you know why? Because the government
12 has said, we can introduce all this evidence into the public
13 record.
14 MR. PEEK: Your Honor, he's now quoting from the
15 letter.
16 THE COURT: No, he's not. He's summarizing.
17 Anything else?
18 MR. BICE: The government can introduce everything
19 in the public record.
20 MR. PEEK: Your Honor --
21 MR. BICE: It specifically says that. That's not --
22 that is not an agreement on confidentiality. And even the
23 courts say even if you agree, it is waiver. You and the
24 government can't agree to use certain evidence for your
25 advantage and then claim that it's off limits for everybody

1 else.

2 THE COURT: So you would take the position this is a
3 purported nonwaiver agreement with the government, whether it
4 is effective or not is something I need to make a decision
5 about.

6 MR. BICE: It is a purported nonwaiver agreement --

7 THE COURT: Okay.

8 MR. BICE: -- with the government that can -- as the
9 Ninth Circuit says, can have no legal effect, because -- and
10 that one, by the way, Your Honor, the one that the Ninth
11 Circuit addressed in 2012 didn't even have the language or the
12 paragraph I've just pointed out to you. Doesn't even contain
13 that power on the government's part. So by definition it
14 cannot be an actual nonwaiver provision, because you can't
15 give your documents to your adversary and claim that it wasn't
16 waiver any more than, as I said, they can just give documents
17 to the media and say, well, the media says that it won't be a
18 waiver so therefore I can give my documents to the media and
19 they can use them however they want to.

20 THE COURT: All right.

21 MR. BICE: But our point here, Your Honor, is,
22 again, foundational facts. They didn't present them. It was
23 their burden to do so. The witness admitted he was unaware of
24 any evidence of any confidentiality agreement. He was the
25 designee.

1 THE COURT: So can I ask you a question.

2 MR. BICE: Yes.

3 THE COURT: You are taking the position that because
4 the 30(b)(6) designee showed up and had no foundational
5 information other than this chart and the letters to which he
6 didn't have any information other than, that the burden which
7 is on the defendants to show the privilege can't be
8 established because their 30(b)(6) came and didn't provide the
9 responses?

10 MR. BICE: That is true.

11 THE COURT: How come that's not in your brief?

12 MR. BICE: What's that?

13 THE COURT: How come that's not in your brief?

14 MR. BICE: It is in our --

15 THE COURT: Isn't that an important issue, the
16 impact of the 30(b)(6) designee on those factual issues not
17 providing -- I know that you have the facts related to what
18 happened at the deposition, but the legal issue.

19 MR. BICE: Your Honor, it's in our brief. We
20 specifically pointed out -- and, Your Honor, I need to clarify
21 something. Those letters, he did not have them. They were
22 not produced at the time of his deposition. These letters
23 that they have with the government magically found their way
24 of production only after the deposition with Mr. Nagle on
25 these two topics had been taken and the supposed foundational

1 facts were supposed to have been presented to us. In fact,
2 Your Honor, Mr. Nagle testified on behalf of the company that
3 as far as he was aware there were no agreements of the United
4 States that there was confidentiality, there was no agreement
5 with the United States that the evidence couldn't be admitted
6 at the time of trial and used against them and used against
7 their executives. So right then and there, Your Honor, they
8 have a failure of proof. And they're the ones who -- and they
9 cannot tell the Court with a straight face, Mayer Brown in
10 particular, they didn't know those letters existed and they
11 were only discovered after the deposition and after the Court
12 had specifically addressed this foundational fact; because
13 Mayer Brown is a party to at least one of the agreements.

14 THE COURT: Author.

15 MR. BICE: What's that?

16 THE COURT: Author. Mayer Brown is an author.

17 MR. BICE: Was an author, correct. And they signed
18 on behalf of LVSC. So to claim that, well, we didn't need to
19 produce these for the foundational deposition that the Court
20 had said I was entitled to take so that we could determine
21 whether or not there was any honest claim of privilege, that
22 was a decision that they made, and that issue has been
23 resolved. And if the Court gives them a do over, that is
24 exactly all they are looking for. It is a stalling maneuver.
25 And giving them a do over on that now would reward that exact

1 conduct.

2 THE COURT: Thank you, Mr. Bice.

3 Who on this side is coming up? Mr. Peek. You can
4 have four minutes. Here's one of the things I want you to
5 address in that four minutes, is if you had more time, what
6 additional issues would you have briefed in this document?

7 MR. PEEK: Your Honor, I think that the more time
8 certainly would be develop fully for the Court in briefing the
9 nature of the actual presentations themselves.

10 THE COURT: But wasn't that what Mr. Nagle was
11 supposed to provide at the deposition, which is why I let the
12 foundational issues go forward? Because I agree with you. I
13 let the deposition go forward so the foundational facts would
14 be present so I could have the briefing to make an intelligent
15 decision so you guys could all go to the Nevada Supreme Court
16 again.

17 MR. PEEK: And, yes, Your Honor, I understand that.
18 The risk that we took is if we're going to show him each and
19 every one of those presentations during the course of
20 preparation for his 30(b)(6) we in effect are waiving that
21 privilege.

22 THE COURT: So shouldn't your 30(b)(6) person be
23 somebody who actually knows as to somebody you try to prepare
24 and then render all of that information discoverable?

25 MR. PEEK: That may be the case, Your Honor. But

1 it's my choice as to who that 30(b)(6) person should be .

2 THE COURT: Absolutely. And you've got to live with
3 that choice.

4 MR. PEEK: That is correct. It's certainly not
5 going to be anybody from O'Melveny. I'm not going to present
6 general counsel. So I have to present somebody within the
7 company to make that investigation. But you asked me, well,
8 should I have shown him those documents that were actually
9 shown to the DOJ and to the SEC and the NGCB itself. No, Your
10 Honor. Because to do so would risk a waiver of the privilege
11 by having that witness actually look at the documents and then
12 have Mr. Bice examine him about what documents did you review
13 in preparation for your deposition. And then we would be
14 stuck with, of course, that rule that says if you show a
15 witness a document, it's now discoverable during the course of
16 the examination. So we can't risk putting forward those
17 documents to that witness to be able to show -- to be able to
18 prepare him for that deposition without the risk of the
19 waiver.

20 Your Honor, we objected to this, of course, being
21 heard on shortened time. The Court has that objection. We
22 certainly -- since we filed that objection the Court ruled and
23 said, come here on Thursday and talk about it to me.

24 THE COURT: No. I said come here and we would talk
25 about it.

1 MR. PEEK: Come here and we'll discuss it. So we
2 still maintain that same objection, Your Honor, to having this
3 heard on shortened time on what we consider to be full
4 briefing. There are a lot of issues, Your Honor, that are
5 raised by this motion. These are motions of first impression
6 in this court, as well as in Nevada, as well. Those issues of
7 first impression is whether or not these waivers themselves,
8 these nonwaiver letters are in fact ones upon which we can
9 rely when we have these nonwaiver letters and present them to
10 the DOJ without risking that waiver.

11 We also have the issue, as the Court has noted, in
12 January and February in the sanctions hearing, whether or not
13 the presence of the NGCB in all of these meetings themselves
14 protect it under Chapters 463. We have all of those issues,
15 Your Honor. And this is certainly one as a matter, as I said,
16 of first impression. We obtained these nonassurance letters
17 -- these no waiver assurance letters, excuse me, from the
18 federal agency, we cited to you substantial judicial authority
19 that protects those, we cited to you the Jaffey case and the
20 other cases that were in our brief, Your Honor, and we
21 certainly have the express language of the Nevada gaming
22 statutes clearly say that the communications to gaming
23 officials -- and there was a gaming official present in many
24 of these meetings, not all. I concede that to you. I
25 understand that. They were shared with the NGCB as part of

1 its investigation, and it didn't waive information when it's
2 presented to the DOJ and to the NGCB and to the SEC. This is
3 certainly work product, Your Honor, as well as attorney-client
4 communications and ought not to be permitted to be disclosed
5 to Mr. Bice.

6 This is not a wholesale waiver. This is not a
7 waiver at all, Your Honor. We thought we did what was right
8 when we prepared for the witness, but I -- what we consider to
9 be a privilege log by showing when the meeting occurred, where
10 the meeting occurred, who was present, and what the subject
11 matter was that was discussed. That's what we did. That's
12 what Exhibit 6 is.

13 THE COURT: Okay. Thanks.

14 I need further briefing. Here's what I need. And,
15 Mr. Peek, you can have seven days to provide this further
16 briefing, and then I'm going to continue the hearing for two
17 weeks.

18 Here's where I am going to ask you to -- you can
19 include whatever you want, but I need two specific things from
20 you, the impact of the 30(b)(6) lack of foundational knowledge
21 when I had specifically given direction that foundational
22 knowledge was to be examined of the 30(b)(6) witness, and the
23 lack of any nonwaiver agreement from the FBI and your belief
24 that the Fraud Section of the DOJ applied to -- nonwaiver
25 applied to the FBI.

1 MR. PEEK: Okay. But I guess I'm struggling a
2 little bit when you say impact of lack of foundational
3 knowledge and then --
4 THE COURT: Well, you know that --
5 MR. PEEK: -- you wrap it into the nonwaiver or --
6 THE COURT: Wait. Here's the problem. You, as the
7 company, are bound by what your 30(b)(6) testifies to.
8 MR. PEEK: I am.
9 THE COURT: Okay.
10 MR. PEEK: I understand that.
11 THE COURT: So I need to have a further discussion
12 about the impact of that.
13 MR. PEEK: Your Honor, again, I'm not trying to be
14 obtuse, I'm not trying to be disrespectful of the Court. I'm
15 just trying to understand so that I can -- so that I can brief
16 it -- so that I can brief that.
17 THE COURT: Mr. Peek, I never think you're trying to
18 be disrespectful. I know you're always trying to get more
19 information so you guys can do what you need to do.
20 MR. PEEK: That is correct.
21 THE COURT: It doesn't bother me when you ask
22 questions.
23 MR. PEEK: So I'm trying to understand on the
24 briefing. I understand about the fact that we did not have
25 the letters available to Mr. Nagle when he testified. That

1 part I understand. But then you go forward and you say -- or
2 you say more, impact of lack of foundational knowledge
3 generally.

4 THE COURT: Correct.

5 MR. PEEK: So I'm trying to understand what the
6 Court -- when I give to you --

7 THE COURT: Mr. Nagle was the chosen 30(b)(6)
8 witness to appear for the deposition of the 30(b)(6) on Topics
9 25 and 59.

10 MR. PEEK: And 59. That is correct. I'm not going
11 to show him, Your Honor, any of the information that we gave
12 to the DOJ, SEC, and the NGCB. If that's what the Court is
13 saying to me I was required to do, that constitutes a waiver,
14 Your Honor.

15 THE COURT: I'm not saying that's what you were
16 required to do. You recognize that the choice of the 30(b)(6)
17 designee may have certain problems. I need that to be
18 addressed by you in your briefing.

19 Mr. Bice will then have an opportunity to respond to
20 whatever you put in your brief, including those two issues
21 that are of concern to me, and then I believe I will have a
22 full enough record to make a decision so you can go to Carson
23 City or upstairs to the seventeenth floor.

24 MR. PEEK: Well, I went to Carson City on Tuesday,
25 Your Honor. Sorry I missed the show on Tuesday.

1 What day is the hearing? Two weeks from today would
2 be --

3 THE COURT: If Mr. Peek has seven days, a week, to
4 get me another brief, Mr. Bice, how long do you want?

5 MR. PEEK: That's seven calendar, or seven business
6 days?

7 THE COURT: Seven calendar.

8 MR. PEEK: Thank you, Your Honor. So it's Thursday,
9 the 13th -- no. Thursday, the 12th.

10 THE COURT: Okay. That's a week from today.

11 So, Mr. Bice, when do you want? The 16th is the
12 Monday after that, 17th's a Tuesday, 18th's a Wednesday. Then
13 you get to the following week, which is the week before
14 Thanksgiving, the short week.

15 MR. BICE: We will have it to -- when will the Court
16 -- how much in advance do you want it of a hearing?

17 THE COURT: I would really like it before the noon
18 the day before.

19 MR. BICE: Oh. Well, if you hold the hearing on the
20 19th, we will have it to you on the 17th, end of business on
21 the 17th.

22 THE COURT: Okay. That works.

23 MR. BICE: Thank you, Your Honor.

24 THE COURT: So 19th at 8:30.

25 MR. PEEK: So end of business on the 17th, and I

1 would have it at the same time?

2 MR. BICE: Yes.

3 THE COURT: Hopefully.

4 MR. PEEK: I don't want to go -- well, Your Honor,

5 what concerns me is going through eserve. It takes a little

6 bit of time for us to get it through eserve.

7 THE COURT: Can somebody just email it to him?

8 MR. BICE: I think we have.

9 THE CLERK: November 19 at 8:30.

10 MR. PEEK: November 19th at 8:30.

11 THE COURT: Okay. Anything else today? 'Bye.

12 MR. MORRIS: Not today. Thank you, Your Honor.

13 MR. PEEK: Thank you, Your Honor.

14 THE COURT: Now, are you guys coming tomorrow?

15 MR. BICE: I'm sorry?

16 MR. RANDALL JONES: Well, we have a hearing

17 tomorrow.

18 MR. BICE: Yes, we have a hearing tomorrow.

19 THE COURT: Okay. All right. So I'll see you

20 tomorrow.

21 THE PROCEEDINGS CONCLUDED AT 9:27 A.M.

22 * * * * *

23

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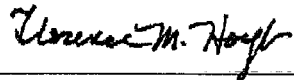
CERTIFICATION

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

AFFIRMATION

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

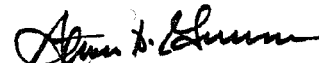
FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

11/5/15

DATE



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12 *and Sands China, Ltd.*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 STEVEN C. JACOBS,
16 Plaintiff,
17 v.

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

21 Defendants.

22 AND ALL RELATED MATTERS.
23

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

**ORDER GRANTING IN PART
MOTION TO COMPEL PLAINTIFF
TO EXECUTE MEDICAL RELEASE
AUTHORIZATION AND REQUEST
FOR COPY OF TAX RETURN
FORMS**

Hearing Date: November 5, 2015

Hearing Time: 8:30 a.m.

24 Before the Court is Sands China, Ltd.'s Motion to Compel Plaintiff to Execute Medical
25 Release Authorization and Request for Copy of Tax Return Forms (the "Motion"). J. Randall
26 Jones, Esq. appeared on behalf of Defendant Sands China, Ltd. ("SCL"), J. Stephen Peek, Esq.
27 of the law firm Holland & Hart LLP appeared on behalf of Defendants Las Vegas Sands Corp.
28 and SCL. Steve L. Morris, Esq. and Ryan M. Lower, Esq. of the law firm Morris Law Group

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1 appeared on behalf of Defendant Sheldon G. Adelson and James J. Pisanelli, Esq., Todd L.
2 Bice, Esq., and Jordan T. Smith, Esq. of the law firm Pisanelli Bice PLLC appeared on behalf
3 of Plaintiff Steven C. Jacobs ("Jacobs").

4 The Court having considered the papers filed on behalf of the parties, oral argument of
5 counsel, and being fully informed with good cause appearing hereby GRANTS IN PART the
6 Motion as follows:

7 1. Jacobs is required to authorize the release of his medical records related to his
8 treatment for any and all mental capacity or mental health issues for the previous ten (10)
9 years, going back to November 5, 2005.

10 2. Jacobs is required to produce his tax returns for the last seven (7) years. Jacobs
11 is permitted to only redact information on the tax returns that does not relate to income. *non wage* *PLP*

12 IT IS SO ORDERED.

13 DATED this 1st day of ~~November~~ *December*, 2015.

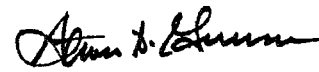
Elizabeth Gonzalez
THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

17 Respectfully submitted by:

18 KEMP, JONES & COULTHARD, LLP

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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, an individual; VENETIAN
MACAU LTD., a Macau corporation;
DOES I through X; and ROE
CORPORATIONS I through X,

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'
MOTION TO RECONSIDER AND
AMEND OR, ALTERNATIVELY, TO
STAY ORDER GRANTING IN PART
MOTION TO COMPEL PLAINTIFF TO
EXECUTE MEDICAL RELEASE
AUTHORIZATION ON ORDER
SHORTENING TIME**

Hearing Date:

12/15/15

Hearing Time:

8:30am

AND RELATED CLAIMS

I. INTRODUCTION

Respectfully, this Court's Order Granting in Part Defendant Sands China Ltd.'s ("Sands China") Motion to Compel Plaintiff to Execute Medical Authorizations ("the Order") improperly requires Plaintiff Steven C. Jacobs ("Jacobs") to waive medical privilege even though Jacobs has not placed his mental condition at issue. Jacobs is not suing based upon Defendant Sheldon G. Adelson's ("Adelson") hyperbolic insult that Jacobs is somehow "delusional." While false, this snipe is not the basis for Jacobs' defamation claim. The law does not allow the defamer to

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1 unilaterally place a Plaintiff's medical privilege "at issue" by later engaging in a *post-hac* fishing
2 expedition to justify a false statement.

3 Jacobs asks the Court to reconsider its Order to, at minimum, allow Jacobs to review any
4 production of medical records before release to the Defendants and to create a privilege or relevancy
5 log. That way the Court could review any withheld documents *in camera* so that the Court can see
6 for itself that there are no mental health records relevant to the claims or defenses in this case. If
7 this Court will not impose that reasonable restriction to preserve Jacobs' privileges, then he must
8 ask this Court to stay its Order pending a writ petition to the Nevada Supreme Court.

9 This Motion is made and based Nevada Rule of Appellate Procedure 8(a), EDCR 2.24(a),
10 EDCR 2.26, the attached Memorandum of Points and Authorities, the pleadings and papers on file
11 herein, and any argument the Court allows at any hearing of this matter.

12 DATED this 4th day of December, 2015.

13 PISANELLI BICE PLLC

14 By: /s/ Todd L. Bice
15 James J. Pisanelli, Esq., Bar No. 4027
16 Todd L. Bice, Esq., Bar No. 4534
17 Debra L. Spinelli, Esq., Bar No. 9695
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ORDER SHORTENING TIME

Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 13th day of Dec, 2015, at 8:30 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF STEVEN C. JACOBS' MOTION TO RECONSIDER AND AMEND OR, ALTERNATIVELY, TO STAY ORDER GRANTING IN PART MOTION TO COMPEL PLAINTIFF TO EXECUTE MEDICAL RELEASE AUTHORIZATION ON ORDER SHORTENING TIME** on for hearing.

DATED: 12/4/15

E. J. Jacobs
DISTRICT COURT JUDGE

Respectfully submitted by:

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
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Todd L. Bice, Esq., Bar No. 4534
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Attorneys for Plaintiff Steven C. Jacobs

DECLARATION OF TODD L. BICE, ESQ.
IN SUPPORT OF PLAINTIFF STEVEN C. JACOBS' MOTION TO RECONSIDER AND
AMEND OR, ALTERNATIVELY, TO STAY ORDER GRANTING IN PART MOTION
TO COMPEL PLAINTIFF TO EXECUTE MEDICAL RELEASE AUTHORIZATION ON
ORDER SHORTENING TIME

1. I am one of the attorneys representing Plaintiff Steven C. Jacobs ("Jacobs") in the action styled *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A627691-B, pending before this Court. I make this declaration in support of Jacobs' Motion to Reconsider and Amend or, Alternatively, to Stay Order Granting in Party Motion to Compel Plaintiff to Execute Medical Release Authorization on Order Shortening Time. I have personal knowledge of the facts stated herein and am competent to testify as to those facts.

3. Over Jacobs' objections, the Court granted Sands China's Motion to Compel on November 5, 2015. The Court entered its Order granting the Motion on December 1, 2015. Notice of Entry of the Order was filed on December 3, 2015.

5. Absent reconsideration or a stay, Jacobs will be forced to provide a medical release to Sands China before the Nevada Supreme Court has an opportunity to entertain Jacobs' writ petition. Therefore, good cause exists to hear Jacobs' Motion on an order shortening time.

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

/s/ Todd L. Bice
TODD L. BICE, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

II. DISCUSSION

A. The Court Should Reconsider and Amend Its Order

Courts have inherent authority to reconsider earlier rulings prior to the entry of final judgment. *See Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987) ("Prior to the entry of a final judgment the district court remains free to reconsider and issue a written judgment different from its oral pronouncement."); *see generally Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 733 (1994) (explaining that an interlocutory order may be reconsidered or modified until a final judgment is entered); Eighth Judicial District Court Rule 2.24(a) confirms that a party may seek reconsideration of an earlier ruling of the Court. A court will grant reconsideration when an earlier decision is clearly erroneous. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

As explained more fully below, a defamation Plaintiff does not waive medical privilege by filing suit for economic harm.¹ But, if the Court is unwillingly to reconsider the Order, Jacobs requests that all records be produced to him first so that he can review, produce any relevant records, and create a privilege or relevancy log for all other non-discoverable documents. In that way, this Court can review *in camera* all documents produced in response so that it can verify discoverability, relevance, and privilege. The Court has condoned this procedure with other third party subpoenas in this case, including Deloitte & Touche, LLP, Holiday Inn Worldwide, Starwood Hotels & Resorts, U.S. Franchise Systems, and Facebook, Inc. The higher sensitivity and greater privacy concerns involved with medical records at least warrants that level of protection.

B. In the Alternative, The Court Should Stay Its Ruling Pending a Writ to the Nevada Supreme Court

Nevada Rule of Appellate Procedure 8(a) generally requires a party seeking a stay to first move in the district court before requesting relief from the Nevada Supreme Court. This rule applies to writ petitions. *Hansen v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6

¹ Conspicuously, Sands China has never disclosed which medical providers it intends to contact. Jacobs suspects that Sands China intends to further smear him by indiscriminately sending the release.

1 P.3d 982, 986 (2000). When considering a stay, courts weigh a number of factors: (1) whether the
2 object of the writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer
3 irreparable injury if the stay is denied; (3) whether the real party in interest will suffer irreparable
4 harm if a stay is granted; and (4) whether petitioner is likely to prevail on the merits of the writ
5 petition. NRAP 8(c). No single factor is dispositive and, if one or two factors are especially strong,
6 they may counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248,
7 251, 89 P.3d 36, 38 (2004).

8 ***1. Jacobs is Likely to Prevail on the Merits of His Writ Petition.***

9 Although the Nevada Supreme Court generally declines to review discovery disputes, it will
10 consider extraordinary writ relief in two circumstances: (1) a discovery order that requires
11 disclosure of privileged information, or (2) a discovery order that allows blanket discovery without
12 regard for relevance. *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 69, 331 P.3d 905,
13 909 (2014). A district court cannot condone discovery into privileged information or issues that are
14 neither relevant nor lead to the discovery of admissible evidence. NRCP 26(b)(1) ("Parties may
15 obtain discovery regarding any matter, *not privileged*, which is relevant . . .") (emphasis added);
16 *see also Schlatter v. Eighth Jud. Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1343-44 (1977).²

17 Here, the Court's Order involves both classes of cases where the Nevada Supreme Court
18 routinely issues writ relief. The Order requires Jacobs to execute a medical authorization to release
19 information covered by the psychologist-patient privilege and doctor-patient privilege NRS 49.209
20 provides "[a] patient has a privilege to refuse to disclose and to prevent any other person from
21 disclosing confidential communications between the patient and the patient's psychologist or any
22 other person who is participating in the diagnosis or treatment under the direction of the
23 psychologist, including a member of the patient's family." Similarly, NRS 49.225 states "[a] patient
24 has a privilege to refuse to disclose and to prevent any other person from disclosing confidential
25 communications among the patient, the patient's doctor or persons who are participating in the
26 diagnosis or treatment under the direction of the doctor, including members of the patient's family."

27

28 ² *disagreed with on other grounds by Wardleigh v. Second Judicial Dist. Court In & For*
Cnty. of Washoe, 111 Nev. 345, 350, 891 P.2d 1180, 1183 (1995).

1 While both statutes contain exceptions for cases where a mental or medical condition is at issue,
2 NRS 49.213(2); NRS 49.245(3), Jacobs has not put such a condition at issue.

3 Jacobs' Complaint makes clear that the alleged defamatory statement consists of Adelson's
4 statement that "(1) Jacobs was justifiably fired 'for cause' and (2) Jacobs had resorted to 'outright
5 lies and fabrications . . .'" (Pl.'s Fifth Am. Compl. ¶ 75, on file.) Jacobs does not assert any claim
6 regarding Adelson's quip that Jacobs' allegations "have their origins in delusion." (*Id.* ¶ 74.)
7 Moreover, Jacobs has not requested any damages for mental or emotional distress. And, as Jacobs
8 explained, Sands China cannot rely upon its own Chairman's statements to put the statement at
9 issue. *See v. Groth*, 659 So. 2d 713, 715 (Fla. Dist. Ct. App. 1995); *see also McCoy v. Maxwell*,
10 743 N.E.2d 974, 976 (Ohio App. 2000). Consequently, Jacobs' medical records are not at issue and
11 remain privileged.

12 Furthermore, Jacobs' medical records are not relevant to any supposed "truth" defense.
13 Again, Jacobs has not sued based upon Adelson's "delusional" remark. Thus, Jacobs' medical
14 records are not relevant to any claim or defense in this action, and the records are not reasonably
15 calculated to lead to the discovery of admissible evidence. NRCP 26(b)(1)-(2). Neither Sands China
16 nor the Court articulated any possible relevancy of Jacobs' medical records where Jacobs has not
17 sued based upon the "delusional" comment. As a result, the Order constitutes an inappropriate
18 blanket discovery order without regard for relevance. *See Clark v. Second Judicial Dist. Court*, 101
19 Nev. 58, 64, 692 P.2d 512, 516 (1985)³ ("The district court exceeded its jurisdiction under our
20 ruling in *Schlatter* in ordering the production of the decedent's entire tax returns *without specifying*
21 *the items requested and the relevancy thereof.*") (emphasis added).

22 Because the Court's Order compels the disclosure of privileged information and constitutes
23 a blanket discovery order, Jacobs has presented a substantial case on the merits of his writ petition
24 warranting a stay. *See Hansen*, 116 Nev. at 659, 6 P.3d at 987 (quoting *Ruiz v. Estelle*, 650 F.2d
25 555, 565 (5th Cir. 1981)) ("[A] movant does not always have to show a probability of success on
26

27
28 ³ *disagreed with on other grounds by Wardleigh v. Second Judicial Dist. Court In & For*
Cnty. of Washoe, 111 Nev. 345, 350, 891 P.2d 1180, 1183 (1995).

1 the merits, the movant must 'present a substantial case on the merits when a serious legal question
2 is involved and show that the balance of equities weighs heavily in favor of granting the stay.'").

3 ***2. Jacobs Will Suffer Irreparable Harm and the Object of the Writ Petition Will be***
4 ***Defeated if a Stay is Denied.***

5 The next two factors can be considered together. "Although irreparable or serious harm
6 remains part of the stay analysis, this factor will not generally play a significant role in the decision
7 whether to issue a stay." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39. Nonetheless, the
8 forced disclosure of privileged and irrelevant documents constitutes irreparable harm because the
9 disclosure is irretrievable once made. *See Schlatter*, 93 Nev. at 193, 561 P.2d at 1344; *see also*
10 *Hickey v. Eighth Jud. Dist. Ct.*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989) (recognizing
11 disclosure of privilege or irrelevant material can cause irreparable harm.) Following production, a
12 party is effectively deprived of any remedy from the Court's ruling. *Schlatter*, 93 Nev. at 193, 561
13 P.2d at 1344.

14 In this case, Jacobs seeks a writ of prohibition or mandamus precluding Sands China from
15 obtaining a medical authorization for Jacobs' privileged mental health records that are not at issue
16 or otherwise relevant to any claim or defense. Jacobs will suffer irreparable harm if he is required
17 to produce privileged and irrelevant information. Likewise, the object of Jacobs' writ petition will
18 be defeated if he is required to provide the medical authorization before the Nevada Supreme Court
19 has had the opportunity to review the writ. Jacobs cannot remediate the irreparable harm caused by
20 compelled production of irrelevant, privileged medical records after the fact. Hence, Jacobs is
21 entitled to a stay pending his writ petition. *Las Vegas Sands*, 130 Nev. Adv. Op. 69, 331 P.3d 905,
22 908 n.7 ("This court previously granted Sands's emergency motion to stay the district court order
23 under NRAP 8(c) pending resolution of this petition.").

24 ***3. Sands China Will Not Suffer Any Harm if a Stay is Granted.***

25 In contrast, Sands China will not suffer any irreparable harm if a stay is entered pending
26 Jacobs' writ petition. If Jacobs is correct, Sands China is not permitted to obtain the information
27 and it cannot claim harm. On the other hand, if Sands China is correct, then its only possible
28 prejudice is a slight delay in obtaining the information. Discovery delays are generally insufficient

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1 to defeat a stay request. *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39. Indeed, given its
2 repeated attempts to stall this case, Sands China likely benefits from Jacobs' pursuit of this writ. In
3 the meantime, all other discovery can continue while the Nevada Supreme Court reviews the scope
4 and propriety of the Court's Order.

5 **III. CONCLUSION**

6 The Court should reconsider its prior Order. At minimum, the Court should order that all
7 documents produced in response to the medical release be provided to Jacobs first in a sealed or
8 unreviewed condition. Jacobs will then review the documents, produce any discoverable documents,
9 and create a privilege or relevancy log for any other documents. If requested, Jacobs will make all
10 documents available to the Court for *in camera* review. Alternatively, Jacobs asks the Court to stay
11 its Order to allow Jacobs to file a writ with the Nevada Supreme Court.

12 DATED this 4th day of December, 2015.

13 PISANELLI BICE PLLC

14 By: /s/ Todd L. Bice
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 4th day of December, 2015, I caused to be served via the Court's E-Filing system true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' MOTION TO RECONSIDER OR AMEND OR, ALTERNATIVELY, TO STAY ORDER GRANTING IN PART MOTION TO COMPEL PLAINTIFF TO EXECUTE MEDICAL RELEASE AUTHORIZATION ON ORDER SHORTENING TIME** to the following:

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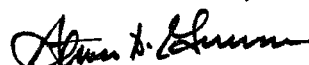
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and Sands China, Ltd.*

DISTRICT COURT
CLARK COUNTY, NEVADA

15 STEVEN C. JACOBS,

16 Plaintiff,

17 v.

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

22 Defendants.

23
24 AND ALL RELATED MATTERS

Case No. A627691-B
Dept. No. XI

**DEFENDANT SANDS CHINA, LTD.'S
MOTION FOR ORDER TO SHOW
CAUSE WHY PLAINTIFF STEVEN C.
JACOBS SHOULD NOT BE HELD IN
CONTEMPT OF COURT AND TO
COMPEL EXECUTION OF MEDICAL
RECORDS RELEASE
AUTHORIZATION AND PRODUCTION
OF TAX RETURNS ON ORDER
SHORTENING TIME**


25 Defendant Sands China, Ltd. ("SCL") respectfully moves this Court for an Order to
26 Show Cause why Plaintiff Steven C. Jacobs ("Jacobs") should not be held in contempt of court
27 for his willful failure to comply with this Court's ruling on SCL's Motion to Compel Plaintiff to
28

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1 Execute Medical Release Authorization and Request for Copy of Tax Return Forms and
2 subsequent Order memorializing the same. SCL also moves this Court to again compel Jacobs to
3 execute the medical records release and produce his tax returns as ordered and for sanctions
4 related to his unilateral and willful failure to comply with the Court's order.

5 This motion is made and based upon the pleadings and papers on file herein, the
6 ~~memorandum of points and authorities and the exhibits attached hereto, the Affidavit of J.~~
7 Randall Jones, Esq. in support hereof, as well as any oral argument this Court may entertain at a
8 hearing on this motion.

9 DATED this 3rd day of December, 2015.


11 J. Randall Jones, Esq.
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22 Attorneys for Las Vegas Sands Corp.
23 and Sands China, Ltd.

24 **DECLARATION OF J. RANDALL JONES, ESQ. IN SUPPORT OF**
25 **MOTION AND APPLICATION FOR ORDER SHORTENING TIME**

26 1. I am a partner with Kemp, Jones & Coulthard, LLP and represent Sands China,
27 Ltd. I have personal knowledge of the facts stated in this declaration, and I am competent to
28 testify to them.

2 On August 12, 2015, I served a letter on Jacobs' counsel requesting that Jacobs
execute and return a medical records release authorization and IRS forms 4506 and 4506-T. A
true and correct copy of this letter is attached hereto as Exhibit A.

1 3. Jacobs refused to execute and return the medical records release authorization
2 and the IRS forms as requested. A meet and confer was unsuccessful, so SCL was forced to
3 bring a Motion to Compel. *See* Motion to Compel Plaintiff to Execute Medical Release
4 Authorization and Request for Copy of Tax Return Forms dated October 5, 2015, on file herein.

5 4. On November 5, 2015, this Court heard SCL's Motion to Compel and granted
6 the motion in part. The Court's ruling was clear that Jacobs was required to execute a limited
7 medical release directed to health care providers who treated him for issues related to his mental
8 health for the last 10 years, and that Jacobs was required to produce his tax returns for the last
9 seven (7) years with redactions made to any information not related to income. A true and
10 correct copy of the pertinent portion of the November 5, 2015 Hearing Transcript is attached
11 hereto as Exhibit B.

12 5. On November 6, 2015, the Court asked me to provide Jacobs' counsel with the
13 medical records release authorization with revisions to comply with the Court's ruling limiting
14 the scope of the records to be released and told counsel for Jacobs to review the revised release
15 and to notify me if he had any issues with the language in the revised release. A true and correct
16 copy of the pertinent portion of the November 6, 2015 Hearing Transcript is attached hereto as
17 Exhibit C.

18 6. On November 10, 2015, I sent a letter to Jacobs' counsel with a copy of the
19 revised medical records release authorization attached. A true and correct copy of this letter is
20 attached hereto as Exhibit D. My letter requested that Jacobs sign and return the authorization no
21 later than November 13, 2015, and also that he provide his tax returns for the last seven (7) years
22 as ordered by the Court by the same date. Jacobs' counsel ignored the letter and never responded
23 in any manner.

24 7. On November 12, 2015, Mark Jones, Esq. sent an email to Jacobs' counsel with
25 a draft proposed order memorializing the Court's ruling on SCL's Motion to Compel Plaintiff to
26 Execute Medical Release Authorization and Request for Copy of Tax Return Forms attached and
27 asking Jacobs' counsel to review the proposed order and either approve it as to form and content
28

1 or otherwise suggest changes. A true and correct copy of this email is attached hereto as Exhibit
2 E. Jacobs' counsel ignored this email and never responded in any manner.

3 8. After giving Jacobs' counsel adequate time to respond to Mr. Jones' email
4 regarding the order, SCL submitted a letter and its proposed order to this Court's chambers for
5 signature on November 17, 2015. A true and correct copy of this letter is attached hereto as
6 Exhibit F.

7 9. On November 23, 2015, I called Jacobs' counsel to discuss the medical records
8 release and tax returns since my previous letter and the proposed order regarding the same were
9 completely ignored. Mr. Bice was unavailable at the time, so I left a message with his secretary
10 asking that he give me a call back to discuss these issues. Mr. Bice never returned my call.

11 10. Since Mr. Bice failed to return my call and ignored my previous letter, *I sent*
12 *him another letter* on November 24, 2015, again demanding that he review the medical records
13 release revised according to this Court's ruling and provide the executed release no later than
14 November 25, 2015, prior to the Thanksgiving holiday. A true and correct copy of this letter is
15 attached hereto as Exhibit G. My letter also asked that he also provide the tax returns as ordered.
16 *Again, Jacobs' counsel has ignored the letter and never responded in any manner.*

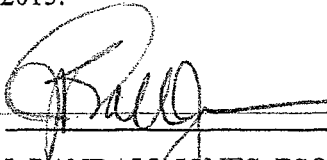
17 11. On December 1, 2015, this Court returned a signed order granting in part SCL's
18 Motion to Compel Plaintiff to Execute Medical Release Authorization and Request for Copy of
19 Tax Return Forms. *See* Order Granting In Part Motion to Compel Plaintiff to Execute Medical
20 Release Authorization and Request for Copy of Tax Return Forms dated December 1, 2015, on
21 file herein.

22 12. Because receipt of the executed medical records release authorization and the tax
23 returns is a prerequisite to obtaining additional discovery necessary to prepare for taking Jacobs'
24 deposition and the information and records are also necessary to provide to our experts for
25 review and analysis, SCL is requesting that the Court consider this motion on an order shortening
26 time. Hearing this Motion in the ordinary course will delay receipt of the medical records, expert
27 witness preparations and preparations to take Jacobs' deposition.

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1 13. I certify that the foregoing motion is brought for a proper purpose.
2 I declare under penalties of perjury of the laws of the State of Nevada that the foregoing is true
3 and correct.

4 DATED this 3rd day of December, 2015.

5
6 
7 J. RANDALL JONES, ESQ.

8
9 **ORDER SHORTENING TIME**

10 Before this Court is the Request for an Order Shortening Time accompanied by the
11 Declaration of Counsel. Good cause appearing:

12 IT IS HEREBY ORDERED that **DEFENDANT SANDS CHINA, LTD.'S MOTION**
13 **FOR ORDER TO SHOW CAUSE WHY PLAINTIFF STEVEN C. JACOBS SHOULD**
14 **NOT BE HELD IN CONTEMPT OF COURT AND TO COMPEL EXECUTION OF**
15 **MEDICAL RECORDS RELEASE AUTHORIZATION AND PRODUCTION OF TAX**
16 **RETURNS ON ORDER SHORTENING TIME** shall be heard on shortened time on the day
17 of December, 2015, at the hour of 8:30 ^{15th} a.m./p.m. in Department XI of the Eighth Judicial
18 District Court.

19 Dated this 3rd day of December, 2015.

20
21 
22 DISTRICT COURT JUDGE
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

SCL brings the instant motion for an order to show cause due to Jacobs' willful failure to comply with this Court's ruling and subsequently filed order granting in part SCL's Motion to Compel Plaintiff to Execute Medical Release Authorization and Request for Copy of Tax Return Forms ("SCL's Motion to Compel"). The Declaration of J. Randall Jones, Esq. above sets forth all of the facts related to Jacobs failure to communicate let alone comply with the Court's ruling. Jacobs' decision to completely ignore this Court's ruling and subsequent order appears to be a strategic effort to evade and obstruct SCL's reasonable and necessary discovery efforts in this case. This strategic decision is consistent with Jacobs' hypocritical stance on all discovery in this case—his desire to obtain overly-broad discovery and cry foul when the Defendants object, but refuse to provide even the most narrowly-tailored discovery to the Defendants, even after ordered to do so by this Court. This pattern of discovery obstruction, refusal to obey this Court's rulings, and refusal to respond to SCL's correspondence must be stopped, and SCL should be awarded attorney's fees and costs for having to file this motion.

II.

ARGUMENT

- A. **Jacobs should be ordered to show cause why he should not be held in contempt as a result of his willful refusal to comply with the Court's ruling and order on SCL's Motion to Compel.**

Failure to obey an order of the Court shall be deemed contempt. NRS 22.010(3). The Court made its ruling on SCL's Motion to Compel nearly a month ago. SCL has diligently sought Jacobs' compliance with the Court's ruling since that time and has been completely ignored. The Order memorializing the Court's November 5, 2015 ruling has recently been signed by the Court and filed, yet Jacobs still has failed to comply or even respond to any of SCL's letters requesting compliance. Therefore, this Court should hold Jacobs in contempt for his willful failure to obey this Court's Order Granting In Part SCL's Motion to Compel, and

1 further compel him to timely provide SCL with the executed medical records release and his tax
2 returns as ordered.

3 **B. Sanctions should also be assessed against Jacobs.**

4 Sanctions are appropriate where a party fails to comply with a court order. *DMV v.*
5 *Moss*, 802 P.2d 627, 628 n. 3 (Nev. 1990). Further, if a person is found guilty of contempt
6 pursuant to subsections of NRS 22.010, the court may require that person to pay the party
7 seeking to enforce the order the reasonable expenses, including, without limitation, attorney's
8 fees, incurred by the party as a result of the contempt. NRS 22.100(3). Jacobs' flagrant and
9 unjustifiable disregard for this Court's ruling and his complete lack of communication has
10 forced SCL to waste time and resources to further compel his compliance with this Court's
11 ruling and order by drafting multiple letters and filing the instant motion. There is simply no
12 excuse for this behavior. Plaintiff asks this Court to order Jacobs to pay monetary sanctions in
13 an amount to compensate SCL for the fees and costs occasioned by the need to bring this
14 motion.

15 **III.**

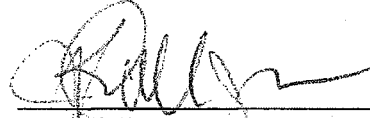
16 **CONCLUSION**

17 SCL respectfully asks this Court to issue an order to show cause why Jacobs should not
18 be held in contempt of court for his willful failure to comply with this Court's ruling on SCL's
19 Motion to Compel Plaintiff to Execute Medical Release Authorization and Request for Copy of
20 Tax Return Forms and subsequent Order. In addition to an order to show cause, SCL further
21 asks this Court to order Jacobs to execute the revised medical records release as attached to
22 SCL's November 24, 2015 letter and to produce his tax returns by Friday, December 4, 2015,
23 and to pay a sanction for every additional day's delay in providing the documents in an amount
24 to be determined at the hearing of this matter. Jacobs forfeited his opportunity to comment or
25 change the revised release when he refused to respond to SCL's correspondence. SCL also asks
26 that the Court order Jacobs to pay monetary sanctions in an amount to compensate SCL for the

27 ///

1 fees and costs incurred by having to bring this matter before the Court.

2 DATED this 3rd day of December, 2015.

3
4 

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17 *and Sands China, Ltd.*

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of December, 2015, the foregoing **DEFENDANT SANDS CHINA, LTD.'S MOTION FOR ORDER TO SHOW CAUSE WHY PLAINTIFF STEVEN C. JACOBS SHOULD NOT BE HELD IN COMTEMPT OF COURT AND TO COMPEL EXECUTION OF MEDICAL RECORDS RELEASE AUTHORIZATION AND PRODUCTION OF TAX RETURNS ON ORDER SHORTENING TIME** was served

on the following parties through the Court's electronic filing system:

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71 S. Wacker Drive
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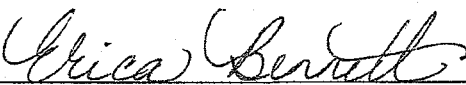

An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT A

EXHIBIT A

KEMP, JONES & COULTHARD
ATTORNEYS AT LAW

WILL KEMP
J. RANDALL JONES
MARK M. JONES
WILLIAM L. COULTHARD*
SPENCER H. GUNNERSON
MATTHEW S. CARTER†
CAROL L. HARRIS
MICHAEL J. GAYAN
ERIC M. PEPPERMAN
NATHANAEL R. RULIS
MONA KAVEH†
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DAVID T. BLAKE

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LAS VEGAS, NEVADA 89169
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August 12, 2015

KIRK R. HARRISON - Of Counsel

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(702) 385-6000

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*Also licensed in Idaho
†Also licensed in California

Todd Bice
Pisanelli Bice PLLC
400 South Seventh Street
Suite 300
Las Vegas, Nevada 89101

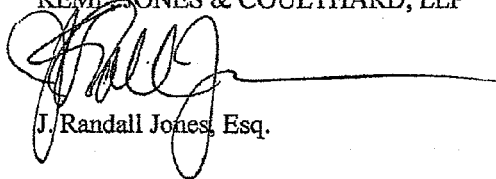
Re: Jacobs v Las Vegas Sands, et. al.

Dear Todd:

Enclosed herewith is a medical release authorization and IRS forms 4506 & 4506-T for execution by Mr. Jacobs. Please have him execute these documents as soon as possible so we can start collecting his medical records, and get copies of tax returns.

Very truly yours,

KEMP, JONES & COULTHARD, LLP



J. Randall Jones, Esq.

Enclosures

cc: Steve Peek, Esq.
Jim Ferguson, Esq.
Steve Morris, Esq.
Rosa Solis-Rainey, Esq.

**AUTHORIZATION FOR THE RELEASE
OF PROTECTED HEALTH INFORMATION**

RE: NAME: Steven C. Jacobs
SSN:
DATE OF BIRTH:

This Authorization authorizes the release of Protected Health Information pursuant to 45 CFR Parts 160 and 164.

1. I authorize the use or disclosure of the above named individual's health information as described below:
2. The following individual or organization is authorized to make the disclosure:

Address: _____

3. I authorize that the medical information to be provided upon receipt of a signed original or photocopy of this authorization include all records related to my treatment, including intake and history forms, hospital records, progress notes, office charts, nurses' notes, discharge reports, emergency room records, surgical reports, lab results, radiographic films, radiographic film reports, test reports and results, narrative summaries, telephone logs, billing statements, mental health information and records, psychiatric and psychological counseling records and other documents and information related to the diagnosis, treatment, hospitalization or prognosis of my past, present or future medical condition.

4. I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment of alcohol and drug abuse.

5. This information may be disclosed to and used by the following individual or organization:

Address: Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Pkwy, 17, Las Vegas, NV 89169

for the purpose of: Litigation

6. I understand I have the right to revoke this authorization at any time. I understand if I revoke this authorization I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization. I understand the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire on the following date, event or condition: 1/17/16. If I fail to specify an expiration date, event or condition, this authorization will expire in six months.

7. I understand that the Facility disclosing information pursuant to this authorization cannot condition treatment, payment, enrollment or eligibility for benefits on my signing this authorization.

8. I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules.

Signature of Patient or Legal Representative

Date

This authorization expressly authorizes the bearer to receive copies, by photostat, xerox or otherwise, any records or reports referred to above. Any xerox copy of this authorization should be treated as an original for purposes of releasing information authorized herein.

Form **4506**

(Rev. September 2013)

Department of the Treasury
Internal Revenue Service**Request for Copy of Tax Return**

► Request may be rejected if the form is incomplete or illegible.

OMB No. 1545-0428

Tip. You may be able to get your tax return or return information from other sources. If you had your tax return completed by a paid preparer, they should be able to provide you a copy of the return. The IRS can provide a **Tax Return Transcript** for many returns free of charge. The transcript provides most of the line entries from the original tax return and usually contains the information that a third party (such as a mortgage company) requires. See **Form 4506-T, Request for Transcript of Tax Return**, or you can quickly request transcripts by using our automated self-help service tools. Please visit us at IRS.gov and click on "Order a Return or Account Transcript" or call 1-800-908-9946.

1a Name shown on tax return. If a joint return, enter the name shown first. Steven C. Jacobs	1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)
2a If a joint return, enter spouse's name shown on tax return.	2b Second social security number or individual taxpayer identification number if joint tax return
3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code (see instructions)	
4 Previous address shown on the last return filed if different from line 3 (see instructions)	
5 If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.	

Randall Jones, Esq., Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Pkwy, 17th, Las Vegas, NV 89169

Caution. If the tax return is being mailed to a third party, ensure that you have filled in lines 6 and 7 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy. Once the IRS discloses your tax return to the third party listed on line 5, the IRS has no control over what the third party does with the information. If you would like to limit the third party's authority to disclose your return information, you can specify this limitation in your written agreement with the third party.

6 Tax return requested. Form 1040, 1120, 941, etc. and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. ► 1040, 1040A, 1040EZ			
Note. If the copies must be certified for court or administrative proceedings, check here <input checked="" type="checkbox"/>			
7 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than eight years or periods, you must attach another Form 4506.			
2008	2009	2010	2011
2012	2013	2014	
8 Fee. There is a \$50 fee for each return requested. Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN, ITIN, or EIN and "Form 4506 request" on your check or money order.			
a Cost for each return			\$ 50.00
b Number of returns requested on line 7			7
c Total cost. Multiply line 8a by line 8b			\$ 350.00
9 If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 5, check here <input checked="" type="checkbox"/>			

Caution. Do not sign this form unless all applicable lines have been completed.

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer. Note. For tax returns being sent to a third party, this form must be received within 120 days of the signature date.

Sign Here	Signature (see instructions)	Date	Phone number of taxpayer on line 1a or 2a
	Title (if line 1a above is a corporation, partnership, estate, or trust)		
	Spouse's signature		
	Date		

For Privacy Act and Paperwork Reduction Act Notice, see page 2.

Cat. No. 41721E

Form **4506** (Rev. 9-2013)

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about Form 4506 and its instructions, go to www.irs.gov/form4506. Information about any recent developments affecting Form 4506, Form 4506T and Form 4506T-EZ will be posted on that page.

General Instructions

Caution. Do not sign this form unless all applicable lines have been completed.

Purpose of form. Use Form 4506 to request a copy of your tax return. You can also designate (on line 5) a third party to receive the tax return.

How long will it take? It may take up to 75 calendar days for us to process your request.

Tip. Use Form 4506-T, Request for Transcript of Tax Return, to request tax return transcripts, tax account information, W-2 information, 1099 information, verification of non-filing, and records of account.

Automated transcript request. You can quickly request transcripts by using our automated self-help service tools. Please visit us at IRS.gov and click on "Order a Return or Account Transcript" or call 1-800-908-9946.

Where to file. Attach payment and mail Form 4506 to the address below for the state you lived in, or the state your business was in, when that return was filed. There are two address charts: one for individual returns (Form 1040 series) and one for all other returns.

If you are requesting a return for more than one year and the chart below shows two different addresses, send your request to the address based on the address of your most recent return.

Chart for individual returns (Form 1040 series)

If you filed an individual return and lived in:

Alabama, Kentucky, Louisiana, Mississippi, Tennessee, Texas, a foreign country, American Samoa, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or A.P.O. or F.P.O. address

Internal Revenue Service
RAIVS Team
Stop 6718 AJSC
Austin, TX 73301

Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming

Internal Revenue Service
RAIVS Team
Stop 37106
Fresno, CA 93888

Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia

Internal Revenue Service
RAIVS Team
Stop 6705 P-6
Kansas City, MO 64999

Chart for all other returns

If you lived in or your business was in:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, a foreign country, or A.P.O. or F.P.O. address

Mail to:

Internal Revenue Service
RAIVS Team
P.O. Box 9941
Mail Stop 6734
Ogden, UT 84409

Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin

Internal Revenue Service
RAIVS Team
P.O. Box 145500
Stop 2830 F
Cincinnati, OH 45250

Specific Instructions

Line 1b. Enter your employer identification number (EIN) if you are requesting a copy of a business return. Otherwise, enter the first social security number (SSN) or your individual taxpayer identification number (TIN) shown on the return. For example, if you are requesting Form 1040 that includes Schedule C (Form 1040), enter your SSN.

Line 3. Enter your current address. If you use a P.O. box, please include it on this line 3.

Line 4. Enter the address shown on the last return filed if different from the address entered on line 3.

Note. If the address on Lines 3 and 4 are different and you have not changed your address with the IRS, file Form 8822, Change of Address. For a business address, file Form 8822-B, Change of Address or Responsible Party — Business.

Signature and date. Form 4506 must be signed and dated by the taxpayer listed on line 1a or 2a. If you completed line 5 requesting this return be sent to a third party, the IRS must receive Form 4506 within 120 days of the date signed by the taxpayer or it will be rejected. Ensure that all applicable lines are completed before signing.

Individuals. Copies of jointly filed tax returns may be furnished to either spouse. Only one signature is required. Sign Form 4506 exactly as your name appeared on the original return. If you changed your name, also sign your current name.

Corporations. Generally, Form 4506 can be signed by: (1) an officer having legal authority to bind the corporation, (2) any person designated by the board of directors or other governing body, or (3) any officer or employee on written request by any principal officer and attested to by the secretary or other officer.

Partnerships. Generally, Form 4506 can be signed by any person who was a member of the partnership during any part of the tax period requested on line 7.

All others. See section 6103(e) if the taxpayer has died, is insolvent, is a dissolved corporation, or if a trustee, guardian, executor, receiver, or administrator is acting for the taxpayer.

Documentation. For entities other than individuals, you must attach the authorization document. For example, this could be the letter from the principal officer authorizing an employee of the corporation or the letters testamentary authorizing an individual to act for an estate.

Signature by a representative. A representative can sign Form 4506 for a taxpayer only if this authority has been specifically delegated to the representative on Form 2848, line 5. Form 2848 showing the delegation must be attached to Form 4506.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to establish your right to gain access to the requested return(s) under the Internal Revenue Code. We need this information to properly identify the return(s) and respond to your request. If you request a copy of a tax return, sections 6103 and 6109 require you to provide this information, including your SSN or EIN, to process your request. If you do not provide this information, we may not be able to process your request. Providing false or fraudulent information may subject you to penalties.

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file Form 4506 will vary depending on individual circumstances. The estimated average time is: **Learning about the law or the form, 10 min.; Preparing the form, 16 min.; and Copying, assembling, and sending the form to the IRS, 20 min.**

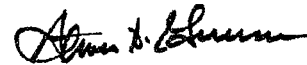
If you have comments concerning the accuracy of these time estimates or suggestions for making Form 4506 simpler, we would be happy to hear from you. You can write to:

Internal Revenue Service
Tax Forms and Publications Division
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224.

Do not send the form to this address. Instead, see **Where to file** on this page.

EXHIBIT B

EXHIBIT B



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, NOVEMBER 5, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
RYAN M. LOWER, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 said, he's not going to give them to us, he put the issue on
2 his client's behalf before this Court, and we should be able
3 to recover those documents to test what he tells us. And
4 certainly if he puts it in an interrogatory answer, even if he
5 testifies to it, I can't -- I don't know if that's true or
6 not. I should be allowed to test it with a document he
7 submitted to the federal government to see if what he tells me
8 is in fact the truth.

9 And one final point. Mr. Jacobs -- this continued
10 refrain of people trying to ruin Mr. Jacobs, this whole
11 lawsuit is based on extortion and Mr. Jacobs attempting to
12 extort the defendants and ruin their reputations. So that's
13 exactly what we're dealing with and not the other way around.
14 So we should be allowed to get evidence to determine whether
15 or not these allegations are true. Thank you.

16 THE COURT: Thank you.

17 I'm going to grant the motion in part. I am going
18 to require that the plaintiff execute a limited medical
19 release directed to health care providers who treated him for
20 mental capacity, limited to issues related to mental health
21 treatment for the last 10 years.

22 And the plaintiff will produce redacted versions of
23 the tax returns for the last seven years. You may redact
24 information that does not relate to income.

25 Anything else? All right. If we could go to the

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

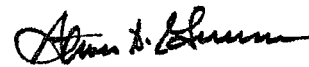
FLORENCE M. HOYT, TRANSCRIBER

11/5/15

DATE

EXHIBIT C

EXHIBIT C



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

FRIDAY, NOVEMBER 6, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 compel. We have given the --
2 THE COURT: The tax returns and medical record
3 issue?
4 MR. RANDALL JONES: -- yeah, the releases to Mr.
5 Bice. I just want to know when we might be able to get those.
6 MR. BICE: I haven't seen those.
7 THE COURT: Okay.
8 MR. RANDALL JONES: I believe we sent them over to
9 you. If not, I'll send them over to you again today.
10 THE COURT: Here's my only concern. I want to make
11 sure that the scope of the medical releases is as narrow as I
12 tried to structure it.
13 MR. RANDALL JONES: I understand that. And
14 obviously Mr. Bice -- he'll look at those, and if he has --
15 takes issue with the way we've worded it, we'll work that out.
16 I just want to make sure -- again, because there are issues
17 related to expert witnesses you've raised today, we want to
18 make sure we try to go forward as quickly as we can.
19 THE COURT: Absolutely. If you could resend those
20 to you when you get back to the office.
21 And, Mr. Bice, if you could look at them and by
22 Tuesday, if there's an issue, notify Mr. Jones.
23 MR. BICE: Yes.
24 THE COURT: And if I have to discuss the scope of
25 the medical consent for release of information under HIPAA, I

1 would be happy to do so next week.

2 MR. RANDALL JONES: Understood. So hopefully by
3 Tuesday we'll get a -- well --

4 THE COURT: Remember Wednesday is a court holiday.
5 I don't know if you guys are working or not, but it's a court
6 holiday.

7 MR. RANDALL JONES: We work all the time, Your
8 Honor.

9 MR. PEEK: For you?

10 THE COURT: Yeah. It's something called Veterans
11 Day. It's a very important day.

12 MR. PEEK: Armistice day. Armistice Day.

13 MR. RANDALL JONES: That's because he's so old,
14 that's what he refers to it as.

15 THE COURT: Well, they call it Veterans Day now, and
16 we show our appreciation to all of the veterans who have
17 served and take a day off. And so I always remember to call
18 Mitch Cobeaga and thank him for his service.

19 MR. BICE: Thank you, Your Honor.

20 THE COURT: Anything else?

21 MR. RANDALL JONES: Your Honor, may I approach? It
22 has nothing to do with this case.

23 THE COURT: Yes. Come on up.

24 MR. PEEK: Your Honor, just one thing, because it
25 may impact followup proceedings by LVSC, is that this order is

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

11/6/15

DATE

EXHIBIT D

EXHIBIT D

KEMP, JONES & COULTHARD
ATTORNEYS AT LAW

WILL KEMP
J. RANDALL JONES
MARK M. JONES
WILLIAM L. COULTHARD*
SPENCER H. GUNNERSON
MATTHEW S. CARTER†
MICHAEL J. GAYAN
ERIC M. PEPPERMAN
NATHANAEL R. RULIS
MONA KAVEH†
IAN P. MCGINN
DAVID T. BLAKE
MADISON P. ZORNES-VELA
JOSHUA D. CARLSON

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SEVENTEENTH FLOOR
LAS VEGAS, NEVADA 89169
kjc@kempjones.com

November 10, 2015

KIRK R. HARRISON - Of Counsel

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(702) 385-6001
(702) 385-1234

*Also licensed in Idaho
†Also licensed in California

Via Email

Todd Bice
Pisanelli Bice PLLC
400 South Seventh Street
Suite 300
Las Vegas, Nevada 89101
tlb@pisanellibice.com

Re: Jacobs v Las Vegas Sands, et. al.

Dear Todd:

Based upon the Court's ruling on Sands China, Ltd.'s ("SCL") Motion to Compel Plaintiff to Execute Medical Release Authorization and Request for Copy of Tax Return Forms, I have attached hereto a revised Authorization for the Release of Protected Health Information. Please return the signed authorization no later than this Friday, November 13, 2015.

Additionally, the Court ruled that Mr. Jacobs must provide us with his tax returns dating back to 2008 with redactions limited only to information not related to income. We expect to receive these returns no later than this Friday, November 13, 2015.

Also as a result of the Court's rulings related to Mr. Jacobs' mental health records and tax returns, SCL, Las Vegas Sands Corp., and Mr. Adelson ("Defendants") demand that Mr. Jacobs respond to the following discovery requests to which he has previously objected:

- Mr. Adelson's Interrogatory No. 23;
- Mr. Adelson's Request for Admission No. 2;
- Las Vegas Sands Corp.'s Requests for Production Nos. 53, 92, and 93; and
- Sands China, Ltd.'s Request for Production No. 67.

November 10, 2015

Page 2

If Defendants do not received adequate responses to these requests by November 18, 2015, the Court will be asked to compel these responses based upon its prior ruling related to the topics involved and Defendants will seek attorneys' fees.

Very truly yours,

KEMP JONES & COULTHARD, LLP



J. Randall Jones, Esq.

JRJ/jlg

Enclosures

**AUTHORIZATION FOR THE RELEASE
OF PROTECTED HEALTH INFORMATION**

RE: NAME: STEVEN C. JACOBS
SSN:
DATE OF BIRTH:

This Authorization the release of Protected Health Information pursuant to 45 CFR Parts 160 and 164.

1. I authorize the use or disclosure of the above named individual's health information as described below:
2. The following individual or organization is authorized to make the disclosure:

Address _____

3. I authorize that the medical information related solely to my mental health, psychiatric and psychological counseling, and any neurological condition, sleep disorders or disruption or brain injury that may affect my mental health ("Mental Health") be provided upon receipt of a signed original or photocopy of this authorization include all records related to my treatment including intake and history forms, hospital records, progress notes, office charts, nurses' notes, discharge reports, emergency room records, surgical reports, lab results, radiographic films, radiographic film reports, test reports and results, narrative summaries, telephone logs, billing statements, and other documents and information related to the diagnosis, treatment, hospitalization or prognosis of my past, present and future Mental Health condition.

4. This Authorization is limited to Mental Health information, as described in Paragraph 3, created on or after November 5, 2005.

5. I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment of alcohol and drug abuse.

6. This information may be disclosed to and used by the following individual or organization:

Address: Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, 17th Floor, Las Vegas, Nevada 89169
for the purpose of: Litigation

7. I understand I have the right to revoke this authorization at any time. I understand if I revoke this authorization I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization. I understand the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire on the following date, event or condition: 5/19/16. If I fail to specify an expiration date, event or condition, this authorization will expire in six months.

8. I understand that the Facility disclosing information pursuant to this authorization cannot condition treatment, payment, enrollment or eligibility for benefits on my signing this authorization.

9. I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules.

Signature of Patient or Legal Representative

Date

This authorization expressly authorizes the bearer to receive copies, by photostat, xerox or otherwise, any records or reports referred to above. Any Xerox copy of this authorization should be treated as an original for purposes of releasing information authorized herein.

Erica Bennett

From: Erica Bennett
Sent: Tuesday, November 10, 2015 4:10 PM
To: 'tlb@pisanellibice.com'; 'jjp@pisanellibice.com'; 'dls@pisanellibice.com'; 'Jordan T. Smith'
Cc: Steve Morris (SM@morrislawgroup.com); 'Steve Peek Esq.'; Rosa Solis-Rainey (rsr@morrislawgroup.com); 'jferguson@mayerbrown.com'; Mark Jones; Randall Jones
Subject: Las Vegas Sands Corp. adv. Jacobs
Attachments: 11-10-15 Letter to Todd Bice.pdf

Counsel,

Please see the attached letter. Thank you.

~ Erica Bennett
Assistant to Mark M. Jones, Esq.,
David T. Blake, Esq. and Josh D. Carlson, Esq.

This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender, or by telephone at (702) 385-6000, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

EXHIBIT E

EXHIBIT E

Mark Jones

From: Mark Jones
Sent: Thursday, November 12, 2015 2:16 PM
To: 'tlb@pisanellibice.com'
Cc: 'dls@pisanellibice.com'; 'jts@pisanellibice.com'; 'speek@hollandhart.com'; 'sm@morrislawgroup.com'; 'jrj@kempjones.com'; Rosa Solis-Rainey; Bob Cassity (BCassity@hollandhart.com); Ferguson, James (JFerguson@mayerbrown.com)
Subject: Jacobs matter - draft order reg SCL's Motion to Compel Med. Release Auth. and Tax Returns
Attachments: Proposed Order re SCL's Motion to Compel Medical Release and Tax Returns....pdf

Todd:

I have attached SCL's proposed order regarding SCL's Motion to Compel Plaintiff to Execute Medical Release Authorizations and Request for Copy of Tax Return Forms. Please provide us with the approved order, or your suggested changes to the same by 4:00 p.m. tomorrow, November 13, 2015. If we do not hear from you by 4:00 p.m. we will thereafter submit our proposed order to the Court.

Thank you,

Mark

Mark M. Jones, Esq.

KEMP, JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Phone (702) 385-6000
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m.jones@kempjones.com

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and Sands China, Ltd.
 12

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

13
 14
 15 STEVEN C. JACOBS,

Plaintiff,

16 v.

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

21 Defendants.
 22
 23

AND ALL RELATED MATTERS.

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

**ORDER GRANTING IN PART
 MOTION TO COMPEL PLAINTIFF
 TO EXECUTE MEDICAL RELEASE
 AUTHORIZATION AND REQUEST
 FOR COPY OF TAX RETURN
 FORMS**

Hearing Date: November 5, 2015

Hearing Time: 8:30 a.m.

24 Before the Court is Sands China, Ltd.'s Motion to Compel Plaintiff to Execute Medical
 25 Release Authorization and Request for Copy of Tax Return Forms (the "Motion"). J. Randall
 26 Jones, Esq. appeared on behalf of Defendant Sands China, Ltd. ("SCL"), J. Stephen Peek, Esq.
 27 of the law firm Holland & Hart LLP appeared on behalf of Defendants Las Vegas Sands Corp.
 28 and SCL. Steve L. Morris, Esq. and Ryan M. Lower, Esq. of the law firm Morris Law Group

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1 appeared on behalf of Defendant Sheldon G. Adelson and James J. Pisanelli, Esq., Todd L.
2 Bice, Esq., and Jordan T. Smith, Esq. of the law firm Pisanelli Bice PLLC appeared on behalf
3 of Plaintiff Steven C. Jacobs ("Jacobs").

4 The Court having considered the papers filed on behalf of the parties, oral argument of
5 counsel, and being fully informed with good cause appearing hereby GRANTS IN PART the
6 Motion as follows:

7 1. Jacobs is required to authorize the release of his medical records related to his
8 treatment for any and all mental capacity or mental health issues for the previous ten (10)
9 years, going back to November 5, 2005.

10 2. Jacobs is required to produce his tax returns for the last seven (7) years. Jacobs
11 is permitted to only redact information on the tax returns that does not relate to income.

12 IT IS SO ORDERED.

13 DATED this ____ day of November, 2015.

14
15 THE HONORABLE ELIZABETH GONZALEZ
16 EIGHTH JUDICIAL DISTRICT COURT

17 Respectfully submitted by:

18 KEMP, JONES & COULTHARD, LLP

Approved as to form and content by:

PISANELLI BICE PLLC

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Attorneys for Plaintiff Steven C. Jacobs

EXHIBIT F

EXHIBIT F

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November 17, 2015

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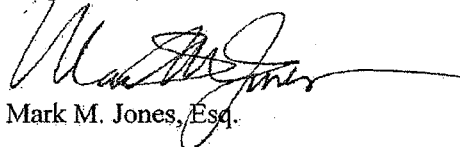
Honorable Elizabeth Gonzalez
Regional Justice Center, Department 11
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: - Jacobs v. Las Vegas Sands Corp., et al.
Case No. A-10-627691

Dear Judge Gonzalez:

Please find enclosed herewith Defendant Sands China Ltd.'s proposed Order on the Court's rulings on Sands China, Ltd.'s ("SCL") Motion to Compel Plaintiff to Execute Medical Release Authorizations and Request for Copy of Tax Return Forms (the "Motion"). This proposed order was provided to Mr. Jacobs' counsel last Thursday, November 12, 2015, for their review and approval. Mr. Jacobs' counsel has failed to respond or provide any feedback on the proposed order. Therefore, we submit this Order to the Court for its review and signature.

Respectfully,



Mark M. Jones, Esq.

cc: Todd L. Bice, Esq., Debra L. Spinelli, Esq. and Jordan T. Smith, Esq. *(via email only)*
J. Stephen Peek, Esq. and Robert J. Cassity, Esq. *(via email only)*
Steve Morris, Esq. and Rosa Solis-Rainey, Esq. *(via email only)*

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and Sands China, Ltd.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

13
14
15 STEVEN C. JACOBS,

16 Plaintiff,

17 v.

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

21 Defendants.

22 AND ALL RELATED MATTERS.
23

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

**ORDER GRANTING IN PART
MOTION TO COMPEL PLAINTIFF
TO EXECUTE MEDICAL RELEASE
AUTHORIZATION AND REQUEST
FOR COPY OF TAX RETURN
FORMS**

Hearing Date: November 5, 2015

Hearing Time: 8:30 a.m.

24 Before the Court is Sands China, Ltd.'s Motion to Compel Plaintiff to Execute Medical
25 Release Authorization and Request for Copy of Tax Return Forms (the "Motion"). J. Randall
26 Jones, Esq. appeared on behalf of Defendant Sands China, Ltd. ("SCL"), J. Stephen Peek, Esq.
27 of the law firm Holland & Hart LLP appeared on behalf of Defendants Las Vegas Sands Corp.
28 and SCL. Steve L. Morris, Esq. and Ryan M. Lower, Esq. of the law firm Morris Law Group

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1 appeared on behalf of Defendant Sheldon G. Adelson and James J. Pisanelli, Esq., Todd L.
2 Bice, Esq., and Jordan T. Smith, Esq. of the law firm Pisanelli Bice PLLC appeared on behalf
3 of Plaintiff Steven C. Jacobs ("Jacobs").

4 The Court having considered the papers filed on behalf of the parties, oral argument of
5 counsel, and being fully informed with good cause appearing hereby GRANTS IN PART the
6 Motion as follows:

7 1. Jacobs is required to authorize the release of his medical records related to his
8 treatment for any and all mental capacity or mental health issues for the previous ten (10)
9 years, going back to November 5, 2005.

10 2. Jacobs is required to produce his tax returns for the last seven (7) years. Jacobs
11 is permitted to only redact information on the tax returns that does not relate to income.

12 IT IS SO ORDERED.

13 DATED this ____ day of November, 2015.

14
15 THE HONORABLE ELIZABETH GONZALEZ
16 EIGHTH JUDICIAL DISTRICT COURT

17 Respectfully submitted by:

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EXHIBIT G

EXHIBIT G

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November 24, 2015

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Via Email

Todd Bice
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400 South Seventh Street
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Re: Jacobs v Las Vegas Sands, et. al.

Dear Todd:

Based upon the Court's November 5, 2015 ruling on Sands China, Ltd.'s ("SCL") Motion to Compel Plaintiff to Execute Medical Release Authorization and Request for Copy of Tax Return Forms, I sent you a letter with a revised medical records release attached on November 10, 2015. In the letter, I requested that you return the signed medical release authorization and provide us with the redacted tax returns as ordered by Friday, November 13, 2015.

Two weeks have passed since I sent my letter, and you have failed to not only provide the documents as requested, but to respond in any way. I have tried to follow up with a phone call and left a message with your secretary, but it seems you have decided to disregard that as well. In one last ditch effort, I have again attached the revised medical records release authorization for your client's signature as ordered by the Court. Please return the signed authorization no later than tomorrow, November 25, 2015.

My November 10, 2015 letter also requested your client's tax returns as ordered by the Court. You have failed to provide them or otherwise respond in any way. Therefore, in a good faith effort to resolve this issue without further intervention of the Court, you can provide the tax returns to my office tomorrow as well.

///

///

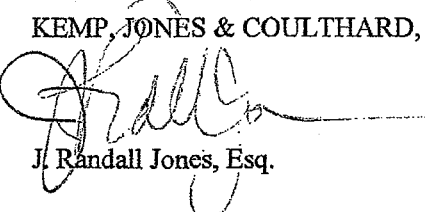
November 24, 2015

Page 2

If the signed medical records release authorization and tax returns are not delivered to my office before 3:00 pm tomorrow, we will be forced seek further intervention from the Court due to your lack of cooperation and compliance with the Court's ruling. Reasonable attorneys' fees will be sought if we are forced to bring this issue to the Court's attention for your failure to comply with the Court's ruling.

Very truly yours,

KEMP, JONES & COULTHARD, LLP

A handwritten signature in dark ink, appearing to read "J. Randall Jones", is written over the printed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

J. Randall Jones, Esq.

JRJ/jlg
Enclosures

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
Feb 23 2016 09:27 a.m.

Case Number: Tracie K. Lindeman
Clerk of Supreme Court

District Court Case Number
A627691-B

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

**VOLUME VII of XIII
(PA1474-1715)**

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Attorneys for Petitioner

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 VII OF XIII (PA1474-1715)** 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

James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
400 S. 7th Street, Suite 300
Las Vegas, NV 89101

Attorneys for Steven C. Jacobs, Real Party in Interest

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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**APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR
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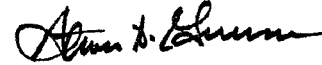
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12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 STEVEN C. JACOBS,

16 Plaintiff,

17 v.

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

21 Defendants.
22

23 AND ALL RELATED MATTERS.
24

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

**MOTION TO COMPEL PLAINTIFF
TO EXECUTE MEDICAL RELEASE
AUTHORIZATION AND REQUEST
FOR COPY OF TAX RETURN FORMS**

Date:
Time:

25 Defendant Sands China, Ltd. ("SCL") moves under NRCP 37(a) and EDCR 2.34 for an
26 order compelling Plaintiff Steven Jacobs ("Jacobs") to execute a medical release authorization
27 in order to permit SCL to obtain Jacobs' medical records and IRS forms 4506 and 4506-T in
28 order to permit SCL to obtain Jacobs' tax returns for 2008-2014. As required under EDCR 2.34

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1 and detailed in the declaration below, the parties have met and conferred on the subject and
2 could not resolve the issue by mutual agreement.

3 DATED this 5th day of October, 2015.

4 /s/ J. Randall Jones

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5 Mark M. Jones, Esq.

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11 Attorneys for Las Vegas Sands Corp.

and Sands China, Ltd.

12 **NOTICE OF MOTION**

13
14 PLEASE TAKE NOTICE that DEFENDANT SANDS CHINA, LTD. will bring its
15 **MOTION TO COMPEL PLAINTIFF TO EXECUTE MEDICAL RELEASE**

16 **AUTHORIZATION AND REQUEST FOR COPY OF TAX RETURNS FORMS** on for

17 hearing before the above-entitled Court on the 05 day of NOVEMBER, 2015, at the hour of
18 8:30A

a.m./p.m. in Department XI of the Eighth Judicial District Court.

19 DATED this 5th day of October, 2015.

20 /s/ J. Randall Jones

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21 Mark M. Jones, Esq.

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28 and Sands China, Ltd.

**DECLARATION OF J. RANDALL JONES, ESQ. IN SUPPORT OF
MOTION TO COMPEL**

1
2
3 1. I am a partner with Kemp, Jones & Coulthard, LLP and represent Sands China,
4 Ltd. I have personal knowledge of the facts stated in this declaration, and I am competent to
5 testify to them.

6 2. On August 12, 2015, I served a letter on Jacobs' counsel requesting that Jacobs
7 execute and return a medical release authorization and IRS forms 4506 and 4506-T. A true and
8 correct copy of this letter is attached hereto as Exhibit A.

9 3. On August 21, 2015, Todd Bice, Esq. responded that Jacobs would not execute
10 either a medical records or tax release authorization form without further explanation by SCL
11 on how the requested information would lead to the discovery of admissible evidence. A true
12 and correct copy of this letter is attached hereto as Exhibit B.

13 4. On September 8, 2015, I sent a letter to Mr. Bice explaining the legal and factual
14 basis for SCL's request that Jacobs execute and return a medical release authorization and IRS
15 forms 4506 and 4506-T. A true and correct copy of this letter is attached hereto as Exhibit C.

16 5. On September 17, 2015, I spoke with Mr. Bice, Mr. Pisanelli, and Mr. Smith
17 from Pisanelli Bice, PLLC. During the conference, Mr. Bice would not agree to SCL's request
18 that Jacobs execute a medical records release authorization form.

19 6. Mr. Bice did agree to reconsider his position on the execution of IRS forms 4506
20 and 4506-T, and promised to get back to me regarding that issue by the following Monday,
21 September 21, 2015. Mr. Bice responded by a letter on September 21, 2015, in which he
22 confirmed that he would not have his client execute the IRS forms as requested. A true and
23 correct copy of this letter is attached hereto as Exhibit D.

24 7. This motion is brought for the purpose of resolving a discovery dispute regarding
25 SCL's request that Jacobs execute a medical records release authorization.

26 ///

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

3 Dated this 5th day of October, 2015.

4
5 /s/ J. Randall Jones

6 J. RANDALL JONES, ESQ.

7 I.

8 INTRODUCTION

9 With respect to the medical release issue, Jacobs placed his mental condition squarely at
10 issue in this litigation by asserting a claim for defamation per se arising from Mr. Adelson's
11 purported statement that was published in a Wall Street Journal article. The statement includes
12 the phrase that Jacobs "has attempted to explain his termination by using outright lies and
13 fabrications which seem to have their origins in delusion." See, Plaintiff's Fifth Amended
14 Complaint on file herein, dated September 18, 2015 (emphasis added). It is well settled that the
15 truth of the allegedly defamatory statement is an affirmative defense to a claim for defamation.
16 See *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82, 88 (2002) (A statement is not
17 defamatory if it is absolutely or substantially true.)

18 In order to affirmatively defend itself, SCL has a right to obtain Jacobs' medical records
19 to determine whether he, in fact, suffers from delusions or other mental impairments that would
20 make Mr. Adelson's purported statement absolutely or substantially true. Jacobs refuses to
21 execute a medical release authorization in the face of these well settled legal principles and
22 instead tries to divide the statement into segments and treat them separately in order to avoid the
23 discovery he made an issue by bringing this defamation claim. However, Jacobs attempt to
24 divide the statement up in order to avoid discovery of his medical records flies in the face of
25 legal precedent. A publication or defamatory statement must be considered in its entirety and
26 may not be divided into segments and each portion treated as a separate unit. See *Wynn v.*
27 *Chanos*, 75 F.Supp.3d 1228, 1234 (N.D. Cal. 2014); see also *Piping Rock Partners, Inc. v.*
28 *David Lerner Associates, Inc.*, 946 F.Supp.2d 957, 970 (N.D. Cal. 2013) (A defamatory

1 meaning must be found, if at all, in a reading of the publication as a whole.). Accordingly, SCL
2 hereby moves the Court to enter an order compelling Jacobs to execute the medical release
3 authorization to allow it to gather the records and information necessary to affirmatively defend
4 itself.

5 Similarly, by claiming damages of lost income as part of his defamation and tortious
6 discharge claims, Jacobs' tax returns are discoverable and relevant to SCL's defenses.
7 Accordingly, SCL also requests the Court to enter an order compelling Jacobs to execute IRS
8 forms 4506 and 4506-T so that SCL can receive copies of his tax returns for the last seven
9 years.

10 II.

11 FACTUAL BACKGROUND

12 Jacobs' Fifth Amended Complaint asserts a claim for relief for defamation per se against
13 Mr. Adelson, LVSC, and SCL. *See*, Plaintiff's Fifth Amended Complaint on file herein.
14 Specifically, Jacobs' defamation per se claim alleges the following:

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

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

28 *See, Id.*

On August 12, 2015, SCL served a letter on Jacobs' counsel requesting Jacobs execute
and return a medical release authorization and IRS forms 4506 and 4506-T. (*See*, August 12,
2015 letter from J. Randall Jones to Todd Bice, attached hereto as Exhibit "A".) On August 21,

1 2015, Todd Bice, counsel for Jacobs, responded that Jacobs would not execute either a medical
2 records and tax release authorization form unless SCL would explain how the requested
3 information was discoverable. (*See*, August 21, 2015 letter from Todd Bice to J. Randall Jones,
4 attached hereto as Exhibit “B”.) On September 8, 2015, SCL sent a letter to Mr. Bice providing
5 him with the legal and factual basis for SCL’s request that Jacobs execute and return a medical
6 release authorization and IRS forms 4506 and 4506-T. (*See*, September 8, 2015 letter from J.
7 Randall Jones to Todd Bice, attached hereto as Exhibit “C”).

8 At the subject EDCR 2.34 conference on September 17, 2015, Jacobs’ counsel again
9 refused to permit Jacobs to sign a medical release authorization. (*See*, September 21, 2015 letter
10 from Todd Bice to J. Randall Jones, attached hereto as Exhibit “D”). Further, Jacobs’ attempts
11 to improperly parse the quote into separate sections in order to avoid the consequential and
12 warranted inquiry into Jacobs mental health and related medical history. As a result, SCL now
13 requests that the Court compel Jacobs to execute the medical records release authorization and
14 IRS forms 4506 and 4506-T that were attached to SCL’s letter dated August 12, 2015. *See* Ex.
15 A.

16 III.

17 ARGUMENT

18 NRCP 37(a)(2)(A) authorizes a party to request an order to compel discovery that is
19 discoverable pursuant to NRCP 16.1(a). In fact, all relevant documents must be disclosed even
20 before the opposing party formally requests them. *See*, NRCP 16.1(a)(1)(B). Relevant evidence
21 includes any evidence which tends to make the existence of any fact of consequence to the
22 determination of the action more or less probable than it would be without the evidence. *See*,
23 NRS 48.015. Nonetheless, Jacobs refuses to execute a medical records release authorization
24 despite putting his mental condition at issue by way of his defamation per se claim and also
25 refuses to execute IRS forms 4506 and 4506-T authorizing SCL to obtain Jacobs’ tax returns
26 relevant to any claimed damages for loss of wages and income related to his defamation claim.

1 **A. Medical Records Release Authorization**

2 While it has been commonly presumed in a defamation case that the plaintiff's
3 reputation or character is good, it has more recently been held that a person who files a
4 defamation action puts his or her character in issue. *See Longmire v. Alabama State University*,
5 151 F.R.D. 414, 419 (M.D. Ala. 1992). A plaintiff places their emotional condition "at issue" in
6 the case by making a defamation claim. *See Sherman v. State*, 128 Wn.2d 164, 203, 905 P.2d
7 355 (1995) ("by filing action for damages in which [plaintiff] included claims of defamation,
8 Dr. Sherman has waived the physician-patient privilege"). Where a civil litigant's physical or
9 mental condition is in issue, a court may order discovery of medical records containing
10 information relevant to the physical or mental condition. *See* NRCp 26(b)(1); *Schlatter v.*
11 *Eighth Judicial Dist. Court In and For Clark County*, 1977, 561 P.2d 1342, 93 Nev. 189.
12 Defendants are entitled to discover doctors' diagnosis to prove an affirmative defense that
13 defendants truthfully stated a plaintiff's emotional condition. *See Doe v. City of Chula Vista*,
14 196 F.R.D. 562, 571 (S.D. Cal. 1999); *see also Pegasus v. Reno Newspapers, Inc.*, 118 Nev.
15 706, 57 P.3d 82, 88 (2002) (A statement is not defamatory if it is absolutely or substantially
16 true.)

17 Moreover, defendants are entitled to obtain that information directly from the care
18 provider, not simply copies of such records after being filtered by plaintiff's counsel. The law
19 allows the defense to independently verify any of the plaintiff's records and medical history and
20 does not force the defendant to rely solely on plaintiff's word regarding medical treatment or
21 their limited disclosure of physicians. *See Prue v. Univ. of Washington, et al.*, 2008 WL
22 3046994 (W.D. Wash.). A plaintiff may be compelled to sign a medical release because "a party
23 may be required to produce a document that is in the possession of a nonparty if the party has a
24 legal right to obtain the document." *See Larson v. Bailiff*, No. 13CV2790 BAS JLB, 2015 WL
25 4425660, at *2 (S.D. Cal. July 17, 2015). The only practical way for a plaintiff to provide these
26 third-party documents is to sign a release. *See id.*

27 The relevance of Jacob's medical records to support SCL's affirmative defenses is
28 unquestionable. Jacobs has put his mental condition at issue by way of his defamation claim

1 purportedly based on statements allegedly made by Mr. Adelson that Jacobs' "outright lies and
2 fabrications...seem to have their origins in delusion." See Plaintiff's Fifth Amended Complaint
3 at ¶ 74. Although SCL contends that the statement is not defamatory at all, Jacobs has placed
4 his mental condition at issue by bringing his claim. As a defendant to Jacobs' defamation
5 claim, SCL is entitled to discover whether Jacobs has been treated for any mental, physical, or
6 neurological condition that could demonstrate that his judgment or mental has been, or could be,
7 considered impaired or questionable. Consequently, SCL is entitled to acquire Jacobs' medical
8 records to prove an affirmative defense that Mr. Adelson's allegedly defamatory statement that
9 Jacobs' lies and fabrication are as a result of Jacobs' delusions was absolutely or substantially
10 true. See, *Doe v. City of Chula Vista*, 196 F.R.D. 562, 571 (S.D. Cal. 1999); see also, *Pegasus v.*
11 *Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82, 88 (2002).

12 Further, any attempt by Jacobs to divide the allegedly defamatory statement in segments
13 and have each portion treated as a separate unit in order to avoid complying with relevant
14 discovery obligations he has brought upon himself must fail according to well-settled law. See
15 *Wynn v. Chanos*, 75 F.Supp.3d 1228, 1234 (N.D. Cal. 2014) (The publication in question must
16 be considered in its entirety; it may not be divided into segments and each portion treated as a
17 separate unit.); see also *Piping Rock Partners, Inc. v. David Lerner Associates, Inc.*, 946
18 F.Supp.2d 957, 970 (N.D. Cal. 2013) (A defamatory meaning must be found, if at all, in a
19 reading of the publication as a whole.). As such, the Court should compel Jacobs to execute a
20 medical records release authorization instead of merely producing medical records his counsel
21 see as relevant. See, *Larson v. Bailiff*, No. 13CV2790 BAS JLB, 2015 WL 4425660, at *2 (S.D.
22 Cal. July 17, 2015) citing *Bryant v. Armstrong*, 285 F.R.D. 596, 603 (S.D.Cal.2012) (citations
23 omitted).)

24 B. Tax Return Request Forms

25 With respect to IRS forms 4506 and 4506-T related to Jacobs tax returns, Jacobs has
26 alleged that his reputation, good name in his trade, business, profession and customary
27 corporate office have been harmed, and has as a result suffered damages in excess of \$10,000.
28 See, Plaintiff's Fifth Amended Complaint on file herein at ¶¶ 76-79. Jacobs has maintained that

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1 he is seeking damages for lost income related to, or arising from his defamation claim and his
2 tortious discharge claim. The Nevada Supreme Court has stated that “[w]hen a litigant puts the
3 amount of her income in issue by alleging impairment of ability to earn a living, a court may
4 require disclosure of matter contained in tax records which is relevant to this issue. *See,*
5 *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 561 P.2d 1342 (Nev. 1977)
6 citing *Matchen v. McGahey*, 455 P.2d 52 (Okl. 1969). As a result, SCL is entitled to acquire
7 copies of Jacobs’ tax returns to test his damages claims related to any alleged loss of income
8 related to or arising from his defamation claim.

9 IV.

10 CONCLUSION

11 For the foregoing reasons, SCL respectfully requests that the Court enter an order
12 compelling Jacobs to execute and return a medical release authorization and IRS forms 4506
13 and 4506-T within ten days of entry of this Court’s order.

14 DATED this 5th day of October, 2015.

15 /s/ J. Randall Jones

16 J. Randall Jones, Esq.

17 Mark M. Jones, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2015, the foregoing **MOTION TO COMPEL PLAINTIFF TO EXECUTE MEDICAL RELEASE AUTHORIZATION AND REQUEST FOR COPY OF TAX RETURN FORMS** was served on the following parties through the Court's electronic filing system:

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
Jordan T. Smith, Esq.
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Las Vegas, NV 89134

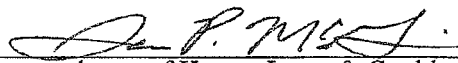

An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT A

KEMP, JONES & COULTHARD
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August 12, 2015

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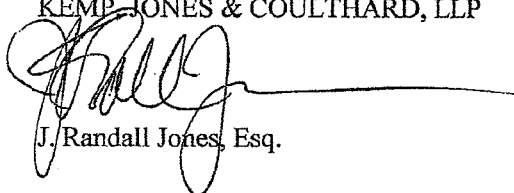
Re: Jacobs v Las Vegas Sands, et. al.

Dear Todd:

Enclosed herewith is a medical release authorization and IRS forms 4506 & 4506-T for execution by Mr. Jacobs. Please have him execute these documents as soon as possible so we can start collecting his medical records, and get copies of tax returns.

Very truly yours,

KEMP, JONES & COULTHARD, LLP



J. Randall Jones, Esq.

Enclosures

cc: Steve Peek, Esq.

Jim Ferguson, Esq.

Steve Morris, Esq.

Rosa Solis-Rainey, Esq.

**AUTHORIZATION FOR THE RELEASE
OF PROTECTED HEALTH INFORMATION**

RE: NAME: Steven C. Jacobs
SSN:
DATE OF BIRTH:

This Authorization authorizes the release of Protected Health Information pursuant to 45 CFR Parts 160 and 164.

1. I authorize the use or disclosure of the above named individual's health information as described below:
2. The following individual or organization is authorized to make the disclosure:

Address _____

3. I authorize that the medical information to be provided upon receipt of a signed original or photocopy of this authorization include all records related to my treatment, including intake and history forms, hospital records, progress notes, office charts, nurses' notes, discharge reports, emergency room records, surgical reports, lab results, radiographic films, radiographic film reports, test reports and results, narrative summaries, telephone logs, billing statements, mental health information and records, psychiatric and psychological counseling records and other documents and information related to the diagnosis, treatment, hospitalization or prognosis of my past, present or future medical condition.

4. I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment of alcohol and drug abuse.

5. This information may be disclosed to and used by the following individual or organization:

Address: Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Pkwy, 17, Las Vegas, NV 89169

for the purpose of: Litigation

6. I understand I have the right to revoke this authorization at any time. I understand if I revoke this authorization I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization. I understand the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire on the following date, event or condition: 1/17/16. If I fail to specify an expiration date, event or condition, this authorization will expire in six months.

7. I understand that the Facility disclosing information pursuant to this authorization cannot condition treatment, payment, enrollment or eligibility for benefits on my signing this authorization.

8. I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules.

Signature of Patient or Legal Representative

Date

This authorization expressly authorizes the bearer to receive copies, by photostat, xerox or otherwise, any records or reports referred to above. Any xerox copy of this authorization should be treated as an original for purposes of releasing information authorized herein.

Request for Copy of Tax Return

OMB No. 1545-0429

► Request may be rejected if the form is incomplete or illegible.

Tip. You may be able to get your tax return or return information from other sources. If you had your tax return completed by a paid preparer, they should be able to provide you a copy of the return. The IRS can provide a **Tax Return Transcript** for many returns free of charge. The transcript provides most of the line entries from the original tax return and usually contains the information that a third party (such as a mortgage company) requires. See Form 4506-T, **Request for Transcript of Tax Return**, or you can quickly request transcripts by using our automated self-help service tools. Please visit us at IRS.gov and click on "Order a Return or Account Transcript" or call 1-800-908-9946.

1a Name shown on tax return. If a joint return, enter the name shown first. Steven C. Jacobs	1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)
2a If a joint return, enter spouse's name shown on tax return.	2b Second social security number or individual taxpayer identification number if joint tax return
3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code (see instructions)	
4 Previous address shown on the last return filed if different from line 3 (see instructions)	
5 If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.	

Randall Jones, Esq., Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Pkwy, 17th, Las Vegas, NV 89169

Caution. If the tax return is being mailed to a third party, ensure that you have filled in lines 6 and 7 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy. Once the IRS discloses your tax return to the third party listed on line 5, the IRS has no control over what the third party does with the information. If you would like to limit the third party's authority to disclose your return information, you can specify this limitation in your written agreement with the third party.

6 Tax return requested. Form 1040, 1120, 941, etc. and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. ► 1040, 1040A, 1040EZ			
Note. If the copies must be certified for court or administrative proceedings, check here <input checked="" type="checkbox"/>			
7 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than eight years or periods, you must attach another Form 4506.			
2008	2009	2010	2011
2012	2013	2014	
8 Fee. There is a \$50 fee for each return requested. Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN, ITIN, or EIN and "Form 4506 request" on your check or money order.			
a Cost for each return			\$ 50.00
b Number of returns requested on line 7			7
c Total cost. Multiply line 8a by line 8b			\$ 350.00
9 If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 5, check here <input checked="" type="checkbox"/>			

Caution. Do not sign this form unless all applicable lines have been completed.

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer. **Note.** For tax returns being sent to a third party, this form must be received within 120 days of the signature date.

Sign Here	Signature (see instructions)	Date	Phone number of taxpayer on line 1a or 2a
	Title (if line 1a above is a corporation, partnership, estate, or trust)		
	Spouse's signature		
	Date		

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about Form 4506 and its instructions, go to www.irs.gov/form4506. Information about any recent developments affecting Form 4506, Form 4506T and Form 4506T-EZ will be posted on that page.

General Instructions

Caution. Do not sign this form unless all applicable lines have been completed.

Purpose of form. Use Form 4506 to request a copy of your tax return. You can also designate (on line 5) a third party to receive the tax return.

How long will it take? It may take up to 75 calendar days for us to process your request.

Tip. Use Form 4506-T, Request for Transcript of Tax Return, to request tax return transcripts, tax account information, W-2 information, 1099 information, verification of non-filing, and records of account.

Automated transcript request. You can quickly request transcripts by using our automated self-help service tools. Please visit us at IRS.gov and click on "Order a Return or Account Transcript" or call 1-800-908-9946.

Where to file. Attach payment and mail Form 4506 to the address below for the state you lived in, or the state your business was in, when that return was filed. There are two address charts: one for individual returns (Form 1040 series) and one for all other returns.

If you are requesting a return for more than one year and the chart below shows two different addresses, send your request to the address based on the address of your most recent return.

Chart for Individual returns (Form 1040 series)

If you filed an individual return and lived in:	Mail to:
Alabama, Kentucky, Louisiana, Mississippi, Tennessee, Texas, a foreign country, American Samoa, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or A.P.O. or F.P.O. address	Internal Revenue Service RAIVS Team Stop 6716 AUSC Austin, TX 73301
Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming	Internal Revenue Service RAIVS Team Stop 37106 Fresno, CA 93888
Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia	Internal Revenue Service RAIVS Team Stop 6705 P-6 Kansas City, MO 64999

Chart for all other returns

If you lived in or your business was in:	Mail to:
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, a foreign country, or A.P.O. or F.P.O. address	Internal Revenue Service RAIVS Team P.O. Box 9941 Mail Stop 6734 Ogden, UT 84409
Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin	Internal Revenue Service RAIVS Team P.O. Box 145500 Stop 2800 F Cincinnati, OH 45250

Specific Instructions

Line 1b. Enter your employer identification number (EIN) if you are requesting a copy of a business return. Otherwise, enter the first social security number (SSN) or your individual taxpayer identification number (ITIN) shown on the return. For example, if you are requesting Form 1040 that includes Schedule C (Form 1040), enter your SSN.

Line 3. Enter your current address. If you use a P.O. box, please include it on this line 3.

Line 4. Enter the address shown on the last return filed if different from the address entered on line 3.

Note. If the address on Lines 3 and 4 are different and you have not changed your address with the IRS, file Form 8822, Change of Address. For a business address, file Form 8822-B, Change of Address or Responsible Party — Business.

Signature and date. Form 4506 must be signed and dated by the taxpayer listed on line 1a or 2a. If you completed line 5 requesting the return be sent to a third party, the IRS must receive Form 4506 within 120 days of the date signed by the taxpayer or it will be rejected. Ensure that all applicable lines are completed before signing.

Individuals. Copies of jointly filed tax returns may be furnished to either spouse. Only one signature is required. Sign Form 4506 exactly as your name appeared on the original return. If you changed your name, also sign your current name.

Corporations. Generally, Form 4506 can be signed by: (1) an officer having legal authority to bind the corporation, (2) any person designated by the board of directors or other governing body, or (3) any officer or employee on written request by any principal officer and attested to by the secretary or other officer.

Partnerships. Generally, Form 4506 can be signed by any person who was a member of the partnership during any part of the tax period requested on line 7.

All others. See section 6103(e) if the taxpayer has died, is insolvent, is a dissolved corporation, or if a trustee, guardian, executor, receiver, or administrator is acting for the taxpayer.

Documentation. For entities other than individuals, you must attach the authorization document. For example, this could be the letter from the principal officer authorizing an employee of the corporation or the letters testamentary authorizing an individual to act for an estate.

Signature by a representative. A representative can sign Form 4506 for a taxpayer only if this authority has been specifically delegated to the representative on Form 2848, line 5. Form 2848 showing the delegation must be attached to Form 4506.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to establish your right to gain access to the requested return(s) under the Internal Revenue Code. We need this information to properly identify the return(s) and respond to your request. If you request a copy of a tax return, sections 6103 and 6109 require you to provide this information, including your SSN or EIN, to process your request. If you do not provide this information, we may not be able to process your request. Providing false or fraudulent information may subject you to penalties.

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file Form 4506 will vary depending on individual circumstances. The estimated average time is: **Learning about the law or the form, 10 min.; Preparing the form, 16 min.; and Copying, assembling, and sending the form to the IRS, 20 min.**

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 4506 simpler, we would be happy to hear from you. You can write to:

Internal Revenue Service
Tax Forms and Publications Division
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224.

Do not send the form to this address. Instead, see **Where to file** on this page.

EXHIBIT B



PISANELLI BICE

TODD L. BICE
ATTORNEY AT LAW
TLB@PISANELLIBICE.COM

August 21, 2015

VIA E-MAIL AND UNITED STATES MAIL

J. Randall Jones, Esq
KEMP, JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
rjones@kempjones.com

RE: *Jacobs v. Sands* – Medical and Tax Releases

Dear Randall:

I am in receipt of the letter mailed by your office on August 12, 2015 requesting a medical release and tax authorization from Plaintiff Steven C. Jacobs. I recall that Defendants sought the same information by way of a request for production of documents for which Mr. Jacobs has noted his objections. Your letter does not explain how you contend that the requested releases are reasonably tailored to lead to the discovery of admissible evidence. Accordingly, please provide an explanation for the basis of the request for our consideration. If you believe that such matters are discoverable here, then let's put the matter before the District Court promptly so that both sides may undertake their discovery in that regard.

Sincerely,

Todd L. Bice

TLB/kap

cc: All counsel

EXHIBIT C

KEMP, JONES & COULTHARD

ATTORNEYS AT LAW

KIRK R. HARRISON - Of Counsel

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J. RANDALL JONES
MARK M. JONES
WILLIAM L. COULTHARD*
SPENCER H. GUNNERSON

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(702) 385-1234

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MONA KAVEH
IAN P. MCGINN
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JOSHUA D. CARLSON

September 8, 2015

*Also licensed in Idaho
†Also licensed in California

Via Email

tlb@pisanellibice.com

Todd L. Bice, Esq.
Pisanelli Bice, PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Re: Jacobs v. Las Vegas Sands Corp., et al.
Case No. A-10-627691

Dear Todd:

This letter is in reply to yours dated August 21, 2015. Your letter requested an explanation regarding how the medical release and tax authorization I requested your client sign are reasonably calculated to lead to the discovery of admissible evidence.

Addressing the medical release authorization first, because your client has sued my client, Sands China Ltd. ("SCL") for defamation, including allegations of damages to his character¹ all issues related to his character, including his mental health and stability are clearly at issue in this case, and thus relevant for discovery purposes. *See, Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 1977, 561 P.2d 1342, 93 Nev. 189; *Doe v. City of Chula Vista*, 196 F.R.D. 562, 571 (S.D. Cal. 1999); *Sherman v. State*, 128 Wn.2d 164, 203, 905 P.2d 355 (1995).

More specifically, your client has alleged that statements made by Sheldon Adelson to the Wall Street Journal, wherein Mr. Adelson stated, among other things, that your client was delusional, was false and defamatory. *See* Fifth Cause of Action, 4th Amended Complaint. Under the circumstances, your client's mental health, and his mental health history are directly relevant to the specific claims he made in this case.

With respect to the tax authorization, your client has alleged that his reputation, good name in his trade, business, profession and customary corporate office have been harmed, and as a result has suffered damages in excess of \$10,000. *See* paragraphs 75-78, 4th Amended Complaint. Unless you can confirm to me in writing that your client is not seeking damages for any lost income related to, or

¹See, paragraphs 73, 74 & 75, 4th Amended Complaint.

which arise from his defamation claims, my client is absolutely entitled to acquire copies of Mr. Jacobs' tax returns to test his damages claims. As you know, discovery of a plaintiff's tax returns is a routine subject to discovery in cases seeking wage and income loss, and plaintiff has no basis whatsoever to refuse to sign the authorization.

As you know, I am currently on vacation, but Mark is available to meet and discuss this with you. If you would like to discuss this any further, please contact him with a few dates and times which would be most convenient for you late this week or early next week and he will coordinate a conference call.

Respectfully,

/s/ J. Randall Jones

J. Randall Jones, Esq.

JRJ/ade

EXHIBIT D



PISANELLI BICE

TODD L. BICE
ATTORNEY AT LAW
TLB@PISANELLIBICE.COM

September 21, 2015

VIA E-MAIL AND UNITED STATES MAIL

J. Randall Jones, Esq
KEMP, JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
r.jones@kempjones.com

RE: *Jacobs v. Sands*

Dear Randall:

Following on our conference from last week, I write to reiterate that Steven Jacobs will not be signing any consent for release of medical records or tax returns. You attempted to justify the medical release request by reference to the word "delusional" in the press release issued by Adelson. However, as we pointed out to you, that does not provide the basis of Jacobs' defamation claim. And even if it did, your request is not defensible. I note, despite the passage of time on this issue, no authority for it has been provided.

The same is true on the tax return release. However, based upon our conversation, we will be supplementing in the next ten days with "income" information consistent with the terms of our discussion last week.

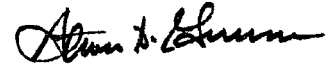
Sincerely,

/s/ Todd L. Bice

Todd L. Bice

TLB/smt

cc: All counsel



CLERK OF THE COURT

OPPS

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Las Vegas, Nevada 89101

Telephone: (702) 214-2100

Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XIII

PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO DEFENDANT SANDS CHINA, LTD.'S MOTION TO COMPEL PLAINTIFF TO EXECUTE MEDICAL RELEASE AUTHORIZATIONS AND REQUEST FOR COPY OF TAX RETURN FORMS

Hearing Date: November 5, 2015

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

I. INTRODUCTION

Unable to defend its actual conduct in the termination of Steven C. Jacobs ("Jacobs") and the actual claims at issue, Defendant Sands China Ltd. ("Sands China") seeks to distract with nonsensical assertions that it is entitled to discovery on matters not at issue. Its latest attempt is to claim that because its Chairman, Sheldon G. Adelson ("Adelson"), in his defamatory statement also said that Jacobs' claims "have their origins in delusion" that somehow Jacobs' entire personal medical history is at issue. While it is obvious that these Defendants are desperate for a distraction, courts, including the Nevada Supreme Court, have rejected such tactics. Jacobs' defamation claim

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LAS VEGAS, NEVADA 89101

1 centers on the two aspects of Adelson's statement that are demonstratively false *factual* assertions:
2 (1) that there is "a substantial list of reasons why Steve Jacobs was fired for cause" and (2) that
3 Jacobs "has attempted to explain his termination by using outright lies and fabrications." Contrary
4 to Sands China's need for diversion and harassment of anyone who dares challenge Adelson and
5 his empire, specious smear attacks under the guise of discovery do not entitle a Defendant to a
6 medical release.

7 The same is true for tax returns. Tax returns of litigants cover a wide range of matters that
8 go far beyond their employment income. Sands China has no entitlement to such information, and
9 articulates none whatsoever. Instead, consistent with its tactics of trying to burden and punish
10 anyone who dares to challenge and expose Adelson, Sands China brings its present motion.

11 **II. STATEMENT OF FACTS**

12 Sands China correctly quotes Paragraph 74 from Jacobs' Complaint which sets forth
13 Adelson's statement to the Wall Street Journal. But, Sands China then notably omits the next
14 paragraph which actually details Jacobs' defamation claim:

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

18 While Adelson is most certainly lying about Jacobs' allegations having "their origins in
19 delusion" – as this Court has already seen from evidence presented at the jurisdictional hearing –
20 Jacobs' actual claim is for Adelson's malicious falsehoods of claiming that (1) Jacobs was fired for
21 cause (which Adelson knew to be false and he fabricated) and (2) Jacobs has supposedly explained
22 his termination using outright lies and fabrications (which again Adelson knew were another
23 falsehood).

24 Sands China and Adelson have proven their true stripes by claiming that Jacobs must
25 execute a medical release even though he has made no claims which seeks recovery for any medical
26 injury. (Def.'s Ex. A.) Consistent with his own bad faith tactics, Adelson has made similar specious
27 discovery requests despite his lack of good faith basis for doing so (Ex. 1 at Req. 2.)
28

At the same time, Sands China asked for Jacobs' foreign tax return information in its 67th Request for Production of Documents.

REQUEST NO. 67:

Identify and produce any and all tax returns specifically related any types of income or work-related tax You paid to the Macanese or Chinse government.

RESPONSE TO REQUEST NO. 67:

Objection. This request is vague, ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, this Request improperly seeks to invade the accountant-client privilege.

(Ex 2.)¹

Jacobs properly objected to Sands China's Request for Production of Documents because Jacobs' tax returns includes information well beyond employment income and is not reasonably calculated to lead to the discovery of admissible evidence. However, this Request did not encompass Jacobs' United States tax returns, which Sands China now seeks to obtain through the release request.

III. DISCUSSION

A. Medical Records Are Not Discoverable For This Defamation Claim.

Nevada law precludes inquiry into a party's medical history, unless that party places it at issue in the case. NRS 49.207 & 49.245. Unremarkably, filing a claim for defamation *per se* – seeking compensation for harm to the Plaintiff's business reputation – does not place the Plaintiff's medical history at issue.² See *Weinstock v. Groth*, 659 So. 2d 713, 715 (Fla. Dist. Ct. App. 1995) ("Because Weinstock has not placed her mental condition at issue in her defamation lawsuit," discovery is not proper.) Indeed, even for claims where a party's medical history is at issue, the only discovery allowed is limited to those medical records which contain information relevant to

¹ Jacobs has only included the relevant portions of Jacobs' Responses to Sands China's First Request for Production of Documents.

² If anyone would be well acquainted with such a position, it would be Adelson, one of the most recurring defamation Plaintiff's in Nevada's history.

1 that particular claim. *Schlatter v. Eighth Judicial Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1343
2 (1977).³

3 Jacobs has made no claim for medical injury. And, Sands China cannot unilaterally place
4 Jacobs' medical records at issue through Adelson's own specious arguments. *See Weinstock*, 659
5 So. 2d at 715 ("Groth cannot overcome the privilege by claiming Weinstock's mental stability is at
6 issue **based on her own allegation** that Weinstock had sexual intercourse with Robert Groth.")
7 (emphasis added). Nor does a plaintiff's medical or psychological records become discoverable
8 based upon the content of the defamatory statement or a purported "truth" defense. *McCoy v.*
9 *Maxwell*, 743 N.E.2d 974 (Ohio App. 2000).

10 For example, in *McCoy v. Maxwell*, the plaintiff filed a complaint for malicious prosecution,
11 libel, and slander based upon an allegedly false police report filed by the defendant. *Id.* at 974-75.
12 The defendant purportedly told the police that the plaintiff "was an unstable individual" and an
13 alcoholic that had been sexually harassing and stalking her. *Id.* at 975. The plaintiff claimed damage
14 "to her personal and professional reputation." *Id.* During discovery, the defendant filed a motion to
15 compel the name and address of plaintiff's doctors and medical records. *Id.*

16 Like Sands China, the defendant "argued that because [plaintiff's] complaint alleged that
17 [defendant] stated that [plaintiff] was an unstable person, [plaintiff's] psychological and psychiatric
18 records may provide information relevant to [defendant's] defense." *Id.* The trial court agreed, but
19 was reversed by the Ohio Court of Appeals. *Id.* It held that, notwithstanding the defendant's alleged
20 defamatory statement, the plaintiff's medical records were not discoverable: The court stated, "[w]e
21 recognize that information contained in [plaintiff's] psychological or psychiatric records may be
22 extremely relevant to [defendant's] defense of the defamation suit; however, relevancy alone does
23 not waive the physician-patient or psychologist-client privilege. Because [plaintiff] has not made a
24 claim for emotional distress or mental anguish and has merely alleged that statements made by

25
26
27
28 ³ *disagreed with on other grounds by Wardleigh v. Second Judicial Dist. Court In & For*
Cnty. of Washoe, 111 Nev. 345, 350, 891 P.2d 1180, 1183 (1995).

1 [defendant] damaged her personal and professional reputation," the discovery could not be had. *Id.*
2 at 976.⁴

3 The impropriety of Sands China and Adelson is apparent. Defamation plaintiffs do not put
4 their medical records at issue by suing for defamation per se over false factual statements that harm
5 them in their business and profession. If medical records came discoverable after a wrongdoer
6 publishes his defamatory remarks, then the defamation victim is victimized yet again: once for the
7 false statement itself and then a second time by the discovery harassment that these Defendants
8 have undertaken.⁵

9 **B. Tax Returns Are Not Discoverable.**

10 Sands China tellingly ignores the Nevada Supreme Court's holding that it is improper to
11 issue a blanket discovery order into everything contained within a tax return without regard for the
12 relevancy. *See Schlatter*, 93 Nev. at 191-93, 561 P.2d at 1343-44; *see also McNair v. Eighth Judicial*
13 *Dist. Ct.*, 110 Nev. 1285, 1290, 885 P.2d 576, 579 (1994) ("Accordingly, *Clark* and *Schlatter* . . .
14 conclude that tax returns must be relevant to be discoverable, and may not be discoverable in the
15 absence of a showing that the information is otherwise unobtainable.").

16 For example, in *Schlatter*, the district court ordered the plaintiff to execute a medical
17 authorization and "an authorization permitting [the defendant] to obtain copies of her *entire income*
18 *tax returns for 1972-1974.*" 93 Nev. at 191-92, 561 P.2d at 1343 (emphasis added). The Supreme
19 Court analyzed whether the district court exceeded its jurisdiction "by ordering the disclosure of
20 [plaintiffs'] *entire tax returns*, and all of [her] medical records" *Id.* at 192, 561 P.2d at 1343
21 (emphasis added). The Nevada Supreme Court issued a writ of mandamus to arrest the district
22 court's order because the order permitted carte blanche discovery of all information contained with
23 the tax returns (and medical records) without regard for relevancy. *Id.* at 192, 561 P.2d at 1343-44.

24 _____
25 ⁴ Indeed, other courts recognize that even in instances where medical records are at issue, the
26 party seeking discovery bears the burden to demonstrate to the court the existence of good faith
27 factual basis for requesting such records. *Fagen v. Grandview University*, 861 N.W. 2d 825 (Iowa
28 2015.) Tellingly, Sands China offers zero factual basis for its request, cognizant that it could not
satisfy such a requirement under NRCP 11. Even if Jacobs made a claim for medical injury, the
medical records would be limited to the actual injury and the time frame of the claim.

⁵ In another of their harassment moves, Defendants have subpoena'd the college records of
Jacobs, his days at Harvard as a college student over 30 years ago. (Ex. 3.)

1 Sands China asks this Court issue the same improper order condemned in *Schlatter*. As this
2 Court knows, tax returns contain a whole host of information far beyond what someone earns as
3 employment "income." In this case, the Defendants are intimately aware of Jacobs' employment
4 income, since they paid it to him. Jacobs' tax returns contain information that is not remotely
5 relevant or reasonably calculated to lead to the discovery of admissible evidence. Sands China
6 provided no basis for ordering the wholesale production of tax returns. Its flagrant overreaching is
7 apparent.

8 **IV. CONCLUSION**

9 Sands China's Motion lacks factual or legal basis. Even a personal injury plaintiff does not
10 open all medical records to discovery. And a defamation claimant like Jacobs certainly does not.
11 Nor are "tax returns" relevant simply because a plaintiff sues for damages. Sands China's attempt
12 at distracting from its indefensible conduct on the actual claims at issue is apparent. But the lack
13 of factual defense is not grounds for harassment and improper discovery requests.

14 DATED this 22nd day of October, 2015.

15 PISANELLI BICE PLLC

16
17 By: /s/ Todd L. Bice
18 James J. Pisanelli, Esq., Bar No. 4027
19 Todd L. Bice, Esq., Bar No. 4534
20 Debra L. Spinelli, Esq., Bar No. 9695
21 Jordan T. Smith, Esq., Bar No. 12097
22 400 South 7th Street, Suite 300
23 Las Vegas, Nevada 89101

24 Attorneys for Plaintiff Steven C. Jacobs
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 22nd day of October, 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' OPPOSITION TO DEFENDANT SANDS CHINA, LTD.'S MOTION TO COMPEL PLAINTIFF TO EXECUTE MEDICAL RELEASE AUTHORIZATIONS AND REQUEST FOR COPY OF TAX RETURN FORMS** to the following:

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/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

EXHIBIT 1

MORRIS LAW GROUP

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702/474-9400 · FAX 702/474-9422

1 **REQT**

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4 **sm@morrislawgroup.com**

5 **Ryan M. Lower, Bar No. 9108**

6 **rml@morrislawgroup.com**

7 **900 Bank of America Plaza**

8 **300 South Fourth Street**

9 **Las Vegas, Nevada 89101**

10 **Telephone No.: (702) 474-9400**

11 **Facsimile: (702) 474-9422**

12 **Attorneys for Defendant**

13 **Sheldon Adelson**

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 **STEVEN C. JACOBS,**

17 **Plaintiff,**

18 **v.**

19 **LAS VEGAS SANDS CORP., a**
20 **Nevada corporation; SANDS CHINA**
21 **LTD., a Cayman Islands corporation,**
22 **et al.,**

23 **Defendants.**

24 **AND ALL RELATED MATTERS.**

) **CASE NO. A627691-B**

) **DEPT NO. XI**

) **DEFENDANT SHELDON**
) **ADELSON'S FIRST**
) **REQUESTS FOR**
) **ADMISSIONS TO PLAINTIFF**

25 Defendant Sheldon Adelson requests that plaintiff Steven C.
26 Jacobs respond to the following requests for admissions within thirty (30)
27 days in accord with Nev. R. Civ. P. 36.

28 **DEFINITIONS**

(A) The following definitions apply to these discovery
requests:

1 (1) Communication. The term "communication" means the
2 transmittal of information (in the form of facts, ideas, inquiries or
3 otherwise).

4 (2) Document. The term "document" is defined to be
5 synonymous in meaning and equal in scope to the usage of this term in
6 Nevada Rule of Civil Procedure 34(a), including, without limitation,
7 electronic or computerized data compilations, all writings, electronic data,
8 books, pamphlets, periodicals, letters, reports, memoranda, contracts,
9 agreements, records, studies, working papers, diagrams, drawings, graphs,
10 charts, correspondence, notes, letters, photographs, journals, logs, discs,
11 videotapes, and any other writing or data compilation, however produced
12 or reproduced, in the actual or constructive possession, custody, care or
13 control of defendant, from which information can be obtained. A draft or
14 non-identical copy is a separate document within the meaning of this term.

15 (3) Identify (With Respect to Persons). When referring to a
16 person, "to identify" means to give, to the extent known, the person's full
17 name, present or last known address, and when referring to a natural
18 person, additionally, the present or last known place of employment. Once
19 a person has been identified in accordance with this subparagraph, only the
20 name of that person need be listed in response to subsequent discovery
21 requesting the identification of that person.

22 (4) Identify (With Respect to Documents). When referring to
23 documents, "to identify" means to give, to the extent known, the (i) type of
24 document; (ii) general subject matter; (iii) date of the document; and (iv)
25 author(s), addressee(s) and recipient(s).

26 (5) Parties. The terms "plaintiff" and "defendant" as well as a
27 party's full or abbreviated name or a pronoun referring to a party mean the
28 party and, where applicable, its officers, directors, employees, partners,

1 corporate parent, subsidiaries or affiliates. This definition is not intended to
2 impose a discovery obligation on any person who is not a party to the
3 litigation.

4 (6) Person. The term "person" is defined as any natural person
5 or business, legal or governmental entity or association.

6 (7) Concerning. The term "concerning" means relating to,
7 referring to, describing, evidencing, or constituting.

8 (8) You/Your. The terms "you" and "your" shall mean and
9 refer to Steven C. Jacobs, or any agent, attorney, representative, or any other
10 person acting or purporting to act on behalf of Steven C. Jacobs.

11 (B) The following rules of construction apply to these
12 discovery requests:

13 (1) All/Each. The terms "all" and "each" shall be construed as
14 all and each.

15 (2) And/Or. The connectives "and" and "or" shall be
16 construed either disjunctively or conjunctively as necessary to bring within
17 the scope of the discovery request all responses that might otherwise be
18 construed to be outside of its scope.

19 (3) Number. The use of the singular form of any word
20 includes the plural and vice versa.

21 (C) The following rules apply to these discovery requests
22 pursuant to Nev. R. Civ. P. 36(a):

23 (1) If a matter is not admitted, the answer must specifically
24 deny it or state in detail why the answering party cannot truthfully admit or
25 deny it.

26 (2) When good faith requires that a party qualify an answer or
27 deny only a part of a matter, the answer must specify the part admitted and
28 qualify or deny the rest.

1 (3) The answering party may assert lack of knowledge or
2 information as a reason for failing to admit or deny only if the party states
3 that it has made reasonable inquiry and that the information it knows or can
4 readily obtain is insufficient to enable it to admit or deny.

5 **REQUESTS**

6 **REQUEST NO. 1:**

7 In Paragraph 73 of your Fourth Amended Complaint you set
8 out two statements you allege Mr. Adelson to have made that constitute
9 "defamation per se": (1) that Jacobs was "fired for cause" and (2) that he
10 (Jacobs) has "resorted to outright lies and fabrications . . ." to explain his
11 firing. Please admit that you do not contest the veracity of the remainder of
12 Mr. Adelson's statement, that Mr. Jacobs's alleged outright lies and
13 fabrications "seem to have their origins in delusion."

14 **REQUEST NO. 2:**

15 If your answer to Request No. 1 above is anything other than an
16 unqualified admission, admit that between August 6, 2005 and the present
17 you have been treated by mental health professionals.

18 MORRIS LAW GROUP

19
20 By: /s/ STEVE MORRIS

21 Steve Morris, Bar No. 1543
22 Ryan M. Lower, Bar No. 9108
23 900 Bank of America Plaza
24 300 South Fourth Street
25 Las Vegas, Nevada 89101

26 Attorneys for Defendant
27 Sheldon Adelson
28

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P.5(b), I certify that I am an employee of MORRIS LAW GROUP; that I am familiar with the firm's practice of collection and processing documents for mailing and service; that, in accordance therewith, I caused the following document to be hand-delivered, on the date and to the addressee(s) shown below: **DEFENDANT SHELDON ADELSON'S FIRST REQUESTS FOR ADMISSIONS TO PLAINTIFF**

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Debra L. Spinelli
Jordan Smith
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Steven C. Jacobs

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Attorneys for Las Vegas Sands Corp. and Sands China Ltd.

DATED this 21st day of September, 2015.

By: PATRICIA FERRUGIA

EXHIBIT 2

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8 Attorneys for Plaintiff Steven C. Jacobs

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 STEVEN C. JACOBS,

13 Plaintiff,

14 v.

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

17 Defendants.

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

18 PLAINTIFF STEVEN C. JACOBS'
19 RESPONSES TO SANDS CHINA LTD.'S
FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS

20 AND RELATED CLAIMS

21 TO: DEFENDANT SANDS CHINA LTD.; and

22 TO: KEMP, JONES & COULTHARD, LLP and HOLLAND & HART, LLP; its attorneys of
23 record.

24 Plaintiff Steven C. Jacobs ("Jacobs"), by and through his undersigned counsel and
25 pursuant to Nevada Rule of Civil Procedure 34, hereby responds to Defendant Sands China Ltd.'s
26 ("SCL") First Request for Production of Documents as follows:
27
28

DEFINITIONS AND GENERAL OBJECTIONS

A. "Nondiscoverable/Irrelevant" - The request in question concerns a matter that is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

B. "Unduly burdensome" - The request in question seeks discovery that is unduly burdensome or expensive, taking into account the needs of the case, limitation on the party's resources, and the importance of the issues at stake in the litigation.

C. "Vague" - The request in question contains a word or phrase that is not adequately defined, or the overall request is confusing or ambiguous, and Jacobs is unable to reasonably ascertain what documents SCL seeks in the request.

D. "Overly broad" - The request in question seeks documents beyond the scope of, or beyond the time period relevant to, the subject matter of this litigation and, accordingly, seeks documents that are nondiscoverable/irrelevant and is unduly burdensome.

E. Jacobs objects to SCL's requests to the extent they seek any information protected by any absolute or qualified privilege or exemption, including, but not limited to, the attorney-client privilege, a marital privilege, a common interest privilege, the attorney work-product exemption, accountant-client privilege, and/or the consulting expert exemption.

F. Jacobs objects to SCL's requests on the grounds that they are unduly burdensome and that much of the documents requested may be obtained by SCL from other sources more conveniently, less expensively, and with less burden.

G. Documents will be provided on the basis of documents available to and located by Jacobs at this time. There may be other and further documents of which Jacobs, despite his reasonable investigation and inquiry, is presently unaware. Jacobs, therefore, reserves the right to modify or enlarge any response with such pertinent additional documents as it may subsequently discover.

H. No incidental or implied admissions will be made by the responses. The fact that Jacobs may respond or object to any request, or part thereof, shall not be deemed an admission that Jacobs accepts or admits the existence of any fact set forth or assumed by such request, or

1 **REQUEST NO. 67:**

2 Identify and produce any and all tax returns specifically related any types of income or
3 work-related tax You paid to the Macanese or Chinse government.

4 **RESPONSE TO REQUEST NO. 67:**

5 Objection. This request is vague, ambiguous, overly broad, unduly burdensome, and not
6 reasonably calculated to lead to the discovery of admissible evidence. Additionally, this Request
7 improperly seeks to invade the accountant-client privilege.

8 DATED this 14th day of September, 2015.

9 PISANELLI BICE PLLC

10 By: /s/ Todd L. Bice

11 James J. Pisanelli, Esq., Bar No. 4027
12 Todd L. Bice, Esq., Bar No. 4534
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17 *Attorneys for Plaintiff Steven C. Jacobs*
18
19
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28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 14th day of September, 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' RESPONSES TO SANDS CHINA LTD.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** properly addressed to the following:

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rcassity@hollandhart.com

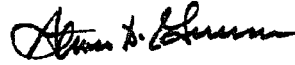
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/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

EXHIBIT 3



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20 *Attorneys for Las Vegas Sands Corp.*
21 *and Sands China Ltd.*

DISTRICT COURT
CLARK COUNTY, NEVADA

22 STEVEN C. JACOBS,
23
24 Plaintiff,
25 v.

26 LAS VEGAS SANDS CORP., a Nevada
27 corporation; SANDS CHINA LTD., a Cayman
28 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

**NOTICE OF TAKING DEPOSITION OF
PRESIDENT AND FELLOWS OF
HARVARD COLLEGE d.b.a.
HARVARD UNIVERSITY**

November 23, 2015 at 10:30 a.m.

PLEASE TAKE NOTICE that Defendant Sands China Ltd., by and through its attorneys of record, will take the deposition of the Custodian of Records of President and Fellows of Harvard College d.b.a. Harvard University by stenographic means, on November 23, 2015 at 10:30 a.m., at the offices of Esquire Solutions Court Reporters, 99 Summer Street, Suite 804,

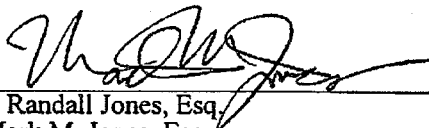
KEMP, JONES & COULTHARD, LLP
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1 Boston, Massachusetts 02110, upon oral examination, before a Notary Public or some other
2 officer authorized by law to administer oaths and will be recorded. Your deposition will
3 continue in the aforementioned manner thereafter from day to day until completed. You are
4 invited to attend and cross examine.

5 A true and correct copy of the Subpoena to be served upon the deponent requiring
6 his/her appearance and the matters on which he/she will testify is attached hereto.

7 DATED this 15th day of October, 2015.

8 
9 J. Randall Jones, Esq.
10 Mark M. Jones, Esq.
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12 3800 Howard Hughes Pkwy., 17th Floor
13 Las Vegas, Nevada 89169
14 Attorneys for Sands China, Ltd.

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16 Robert J. Cassity, Esq.
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20 Attorneys for Las Vegas Sands Corp. and
21 Sands China, Ltd.
22
23
24
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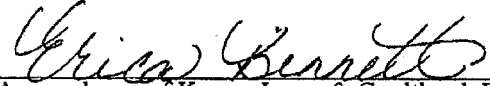
CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2015, the foregoing **NOTICE OF TAKING DEPOSITION OF PRESIDENT AND FELLOWS OF HARVARD COLLEGE D.B.A. HARVARD UNIVERSITY** was served on the following parties through the Court's electronic filing system:

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11 *Attorneys for Las Vegas Sands Corp.*
and Sands China, Ltd.

12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 STEVEN C. JACOBS,

16 Plaintiff,

17 v.

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

21 Defendants.

22
23 AND ALL RELATED MATTERS.

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

SUBPOENA DUCES TECUM

**President and Fellows of Harvard
College d.b.a. Harvard University**

Date of Deposition: November 23, 2015
Time of Deposition: 10:30 a.m.

24 **THE STATE OF NEVADA SENDS GREETINGS TO:**

25 Custodian of Records of President and Fellows of Harvard College d.b.a. Harvard University
c/o Harvard University Office of the General Counsel
26 Smith Campus Center, Suite 980
1350 Massachusetts Avenue
27 Cambridge, Massachusetts 02138-3834
28

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

1 **YOU ARE HEREBY COMMANDED** that all and singular, business and excuses set
2 aside, you appear and attend on November 23, 2015 at the hour of 10:30 a.m. at the offices of
3 Esquire Solutions Court Reporters, 99 Summer Street, Suite 804, Boston, Massachusetts 02110.
4 Your attendance is required to give testimony and/or to produce and permit inspection and
5 copying of designated business records, documents, books, videos, manuals, guidelines,
6 specifications, or tangible things in your possession, custody, or control. You are required to
7 bring with you at the time of your appearance any items set forth in Exhibit A to this subpoena.
8 If you fail to attend and produce and permit inspection and copying of the requested documents,
9 you may be deemed guilty of contempt of Court and liable to pay all losses and damages caused
10 by your failure to appear. Please see Exhibit B attached hereto for information regarding the
11 rights of the persons subject to this subpoena.

12 **IN LIEU OF APPEARING FOR TESTIMONY AT THE AFOREMENTIONED**
13 **PLACE AND TIME, THE SUBPOENAED DOCUMENTS CAN BE COPIED AND**
14 **MAILED TO THE FOLLOWING ADDRESS IN ADVANCE OF THE DATE OF**
15 **APPEARANCE:**

16 Kemp, Jones & Coulthard, LLP
17 Attn: Jeri Gressman, Paralegal
18 3800 Howard Hughes Parkway, 17th Floor
19 Las Vegas, Nevada 89169

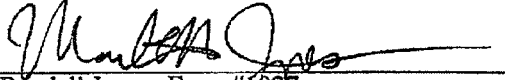
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1 SHOULD THE SUBPOENAED DOCUMENTS BE PROVIDED TO THIS
2 ADDRESS PRIOR TO THE DATE OF APPEARANCE, AN APPEARANCE NEED NOT
3 BE MADE.

4 DATED this 15th day of October 2015.

5 KEMP, JONES & COULTHARD, LLP

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8 Mark M. Jones, Esq., #267
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EXHIBIT A

ITEMS TO BE PRODUCED

1. Any and all academic records or files related to or concerning Steven Craig Jacobs, during the period between 1980 and 1990, specifically including, without limitation, any diplomas, degrees, or other documents or certificates reflecting and indicating completion of undergraduate or postgraduate educational programs.

EXHIBIT B

NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

1 (ii) requires a person who is not a party or an officer of a party to
2 travel to a place more than 100 miles from the place where that person resides, is employed or
3 regularly transacts business in person, except that such a person may in order to attend trial be
4 commanded to travel from any such place within the state in which the trial is held, or

5 (iii) requires disclosure of privileged or other protected matter and no
6 exception or waive applies, or

7 (iv) subjects a person to undue burden.

8 (B) If a subpoena

9 (i) requires disclosure of a trade secret or other confidential research,
10 development, or commercial information, or

11 (ii) requires disclosure of an unretained expert's opinion or
12 information not describing specific events or occurrences in dispute and resulting from the
13 expert's study made not at the request of any party,
14 the court may, to protect a person subject to or affected by the subpoena, quash or modify the
15 subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the
16 testimony or material that cannot be otherwise met without undue hardship and assures that the
17 person to whom the subpoena is addressed will be reasonably compensated, the court may order
18 appearance or production only upon specified conditions.

19 (d) *Duties in responding to subpoena.*

20 (1) A person responding to a subpoena to produce documents shall produce them as
21 they are kept in the usual course of business or shall organize and label them to correspond with
22 the categories in the demand.

23 (2) When information subject to a subpoena is withheld on a claim that it is
24 privileged or subject to protection as trial preparation materials, the claim shall be made
25 expressly and shall be supported by a description of the nature of the documents,
26 communications, or things not produced that is sufficient to enable the demanding party to
27 contest the claim.
28

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and Sands China, Ltd.*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 STEVEN C. JACOBS,

16 Plaintiff,

17 v.

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

22 Defendants.

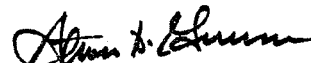
23 AND ALL RELATED MATTERS.

24 I.

25 **INTRODUCTION**

26 Sands China, Ltd. ("SCL") seeks an order compelling under NRCP 37(a) Plaintiff
27 Steven Jacobs ("Jacobs") to execute a medical release authorization and IRS forms 4506 and
28 4506-T in order to affirmatively defend itself from Jacobs' claims. Jacobs' mental health and
related medical history records are directly relevant to SCL's defense of Jacobs' defamation per

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CLERK OF THE COURT

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

**SANDS CHINA, LTD.'S REPLY IN
SUPPORT OF ITS MOTION TO
COMPEL PLAINTIFF TO EXECUTE
MEDICAL RELEASE
AUTHORIZATION AND REQUEST
FOR COPY OF TAX RETURN FORMS**

Date: November 5, 2015
Time: 8:30 a.m.

1 se claim wherein Jacobs has undoubtedly placed his mental and emotional condition at issue.
2 SCL has the right to confirm the truth of the alleged defamatory statements in defense of
3 Jacobs' claims. Similarly, Jacobs has placed his income at issue by seeking damages for lost
4 income as part of his defamation per se and tortious discharge claims. Therefore, Jacobs'
5 income tax returns are also discoverable and relevant to SCL's defenses.

6 II.

7 ARGUMENT

8 A. Jacobs' Mental Health Medical Records are Relevant and Reasonably Calculated 9 to Lead to the Discovery of Admissible Evidence Related to SCL's Affirmative 10 Defenses.

11 As expected, and contrary to the controlling law, Jacobs seeks to divide the allegedly
12 defamatory statement into segments and treat each portion as a separate unit in an attempt to
13 preclude SCL from arguing that Jacobs has put his mental condition at issue by way of his
14 defamation claim. *See Wynn v. Chanos*, 75 F.Supp.3d 1228, 1234 (N.D. Cal. 2014) (The
15 publication in question must be considered in its entirety; it may not be divided into segments
16 and each portion treated as a separate unit.); *Piping Rock Partners, Inc. v. David Lerner*
17 *Associates, Inc.*, 946 F.Supp.2d 957, 970 (N.D. Cal. 2013) (A defamatory meaning must be
18 found, if at all, in a reading of the publication as a whole.) SCL is entitled to consideration of
19 Mr. Adelson's allegedly defamatory statement as a whole. *See id.* When the entirety of the
20 allegedly defamatory statement is considered, it is clear that Jacobs has placed his mental health
21 at issue. The statement that Jacobs claims to be defamatory states that Jacobs' "outright lies and
22 fabrications...*seem to have their origins in delusion.*" *See* Plaintiff's Fifth Amended
23 Complaint at ¶ 74 (emphasis added).

24 Furthermore, the cases cited by Jacobs, *Weinstock* and *McCoy*, are not dispositive of the
25 instant Motion. In *Weinstock v. Groth*, the defamation claim did not put Weinstock's mental
26 condition at issue because it was based on statements that Weinstock engaged in illicit sexual
27 affairs with various people including patients and acted grossly negligent in her psychiatry
28 practice. *See* 659 So.2d 713, 714 (Fla. Dist. Ct. App. 1995). Unlike in the statement in
Weinstock, the statement in this case, about Jacobs' mental faculty and condition, is the stated

1 basis for the defamation claim. *See* Plaintiff's Fifth Amended Complaint at ¶ 74. The statement
2 directly addresses Jacobs' mental condition and, thus, Jacobs' reliance on *Weinstock* is
3 misplaced.

4 Additionally, the Ohio Court of Appeals in *McCoy* appears to agree that information
5 contained in Jacobs' mental health and related medical history records SCL seeks is relevant to
6 SCL's affirmative defense of Jacobs' defamation per se claim. *See McCoy v. Maxwell*, 743
7 N.E.2d 974, 976 (Ohio App. 2000). In *McCoy*, the court ruled that the medical records were
8 extremely relevant to the defenses, but that the privilege in those records outweighed the
9 probative value of obtaining them. Here, unlike the party in *McCoy*, Jacobs has failed to assert
10 the existence of a privilege that would preclude the production of his medical records requested
11 by SCL. *See generally* Jacob's Opposition, on file herein. Thus, Jacobs has waived any potential
12 privilege by both failing to assert the existence of a privilege and by putting his mental
13 condition at issue in this litigation. *See Sherman v. State*, 128 Wn. 2d 164, 203, 905 P.2d 355
14 (1995); *Rose v. Vermont Mutual Ins. Co.*, 2007 WL 3333394,*1 (D. Vt. 2007).

15 Consequently, SCL is entitled to acquire Jacobs' medical records to prove an affirmative
16 defense that Mr. Adelson's allegedly defamatory statement that Jacobs' lies and fabrication
17 originate in Jacobs' delusions was absolutely or substantially true. *See, Doe v. City of Chula*
18 *Vista*, 196 F.R.D. 562, 571 (S.D. Cal. 1999); *see also, Pegasus v. Reno Newspapers, Inc.*, 118
19 Nev. 706, 57 P.3d 82, 88 (2002).

20 **B. Jacobs' Income Tax Returns are Relevant and Reasonably Calculated to Lead to**
21 **the Discovery of Admissible Evidence Related to Jacobs' Alleged Damages for Lost**
22 **Income as part of His Defamation Claim.**

23 Contrary to Jacobs' unfounded position, Nevada courts and numerous cases from the
24 federal courts and other states hold that tax returns are discoverable. *See, Schlatter v. Eighth*
25 *Judicial Dist. Court In and For Clark County*, 561 P.2d 1342 (Nev. 1977) citing *Matchen v.*
26 *McGahey*, 455 P.2d 52 (Okl. 1969); M. L. Cross, Annotation, *Discovery and Inspection of*
27 *Income Tax Returns in Actions Between Private Individuals*, 70 A.L.R. 2d 240 (1960).
28 Specifically, the Nevada Supreme Court held that "[w]hen a litigant puts the amount of her
income in issue by alleging impairment of ability to earn a living, a court may require disclosure

1 of matter contained in tax records which is relevant to this issue.” *See, Schlatter v. Eighth*
2 *Judicial Dist. Court In and For Clark County*, 561 P.2d 1342 (Nev. 1977). Jacobs does not
3 disagree that he put the amount of his income in issue by seeking damages for lost income
4 related to, or arising from his defamation claim. *See generally*, Plaintiff’s Opposition on file
5 herein; Plaintiff’s Fifth Amended Complaint on file herein at ¶¶ 76-79.

6 SCL cannot obtain Jacobs’ income tax returns without Jacobs executing IRS forms 4506
7 and 4506-T. As Jacobs is aware, SCL does not know the source of all of Jacobs’ income—
8 especially Jacobs’ income earned after his departure in 2010. SCL is entitled to review seven (7)
9 years of income tax records in order to test the veracity of Jacobs’ claim that his reputation,
10 good name in his trade, business, profession and customary corporate office have been harmed
11 by a statement purportedly made in March 2011.

12 Additionally, Jacobs’ argument that certain unspecified information contained in his tax
13 returns should be protected from production should not prevent SCL from obtaining and
14 reviewing the tax returns. The Stipulated Confidentiality Agreement and Protective Order that
15 was entered on March 22, 2012, is in place for the specific purpose of protecting all parties in
16 matters where they believe information is irrelevant and/or confidential. Jacobs can redact
17 agreed upon sensitive information and mark any documents confidential or highly confidential
18 under that order. None of the defendants in this case have been permitted to withhold
19 production of confidential documents in this case solely on the basis of confidentiality and
20 Jacobs’ tax returns are no exception.

21 Accordingly, SCL is entitled to acquire copies of Jacobs’ entire income tax returns for
22 the past seven (7) years in order to fully evaluate the merit and scope of Jacobs’ loss-of-income
23 damages related to or arising from his defamation claim.

24 III.

25 CONCLUSION


26 For the foregoing reasons, SCL respectfully requests that the Court enter an order
27 compelling Jacobs to execute and return a medical release authorization and IRS forms 4506

28 ///

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1 and 4506-T within ten (10) days of entry of this Court's order.

2 DATED this 29th day of October, 2015.

3
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CERTIFICATE OF SERVICE

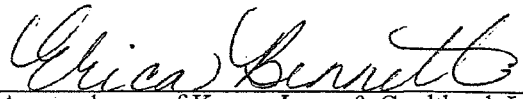
I hereby certify that on the 29th day of October, 2015, the foregoing SANDS CHINA, LTD.'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PLAINTIFF TO EXECUTE MEDICAL RELEASE AUTHORIZATION AND REQUEST FOR COPY OF TAX RETURN FORMS was served on the following parties through the Court's electronic filing system:

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An employee of Kemp, Jones & Coulthard, LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,
and

STEVEN C. JACOBS,
Real Party in Interest.

No. 68265

FILED

NOV 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

SANDS CHINA LTD., A CAYMAN
ISLANDS CORPORATION,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,
and

STEVEN C. JACOBS,
Real Party in Interest.

No. 68275

LAS VEGAS SANDS CORP., A NEVADA
CORPORATION; SANDS CHINA LTD.,
A CAYMAN ISLANDS CORPORATION;
AND SHELDON G. ADELSON, AN
INDIVIDUAL,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE

No. 68309

ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,
Respondents,
and
STEVEN C. JACOBS,
Real Party in Interest.

*ORDER GRANTING IN PART AND DENYING IN PART PETITION
FOR WRIT RELIEF (DOCKET NO. 68265), GRANTING PETITION FOR
WRIT RELIEF (DOCKET NO. 68275), AND DENYING PETITION FOR
WRIT RELIEF (DOCKET NO. 68309)*

These consolidated writ petitions challenge the following four orders: a May 28, 2015, order determining that petitioner Sands China is preliminarily subject to personal jurisdiction in Nevada and a March 6, 2015, order imposing discovery sanctions on Sands China (Docket No. 68265); a June 19, 2015, order denying Sands China's motion for a protective order (Docket No. 68275); and a June 12, 2015, order declining to vacate a trial date (Docket No. 68309). The petitions also request that the underlying matter be reassigned to a different district court judge.¹

Docket No. 68265

Personal jurisdiction order

"A writ of prohibition is available to arrest or remedy district court actions taken without or in excess of jurisdiction." *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev., Adv. Op. 40, 328 P.3d 1152, 1156 (2014). "As no adequate and speedy legal remedy typically exists to

¹The Honorable James E. Wilson, Jr., District Judge in the First Judicial District Court, and the Honorable Steve L. Dobrescu, District Judge in the Seventh Judicial District Court, were designated by the Governor to sit in place of the Honorable Ron Parraguirre, Justice, and the Honorable Kristina Pickering, Justice, who voluntarily recused themselves from participation in the decision of this matter. Nev. Const. art. 6, § 4(2).

correct an invalid exercise of personal jurisdiction, a writ of prohibition is an appropriate method for challenging district court orders when it is alleged that the district court has exceeded its jurisdiction.” *Id.* “When reviewing a district court’s exercise of jurisdiction, we review legal issues de novo but defer to the district court’s findings of fact if they are supported by substantial evidence.” *Catholic Diocese, Green Bay v. John Doe 119*, 131 Nev., Adv. Op. 29, 349 P.3d 518, 520 (2015).

The district court determined that, under *Trump v. Eighth Judicial District Court*, 109 Nev. 687, 857 P.2d 740 (1993), real party in interest Steven Jacobs had made a preliminary showing of personal jurisdiction over Sands China based on general, transient, and specific jurisdiction theories.² Having considered the parties’ arguments and the record, we agree with the district court’s determination that Jacobs made a preliminary showing of specific jurisdiction,³ as the record supports the district court’s preliminary conclusion that Sands China purposefully availed itself of the privilege of acting in Nevada and that Jacobs’ claims arose from those actions. *Catholic Diocese*, 131 Nev., Adv. Op. 29, 349 P.3d at 520. We also agree with the district court’s rationale as to why it would be reasonable to require Sands China to appear in Nevada state court. *Id.*

²We reject Sands China’s suggestion that the district court’s May 2015 order precludes it from contesting personal jurisdiction at trial.

³We reject Sands China’s argument regarding the mandate rule, as this court’s August 26, 2011, order did not explicitly or impliedly preclude Jacobs from amending his complaint. *Nguyen v. United States*, 792 F.2d 1500, 1503 (9th Cir. 1986).

We conclude, however, that the district court's determinations regarding general and transient jurisdiction were based on an unsupported legal premise. In particular, the district court determined that Sands China was subject to general jurisdiction in Nevada because Sands China utilized the employees of its Nevada-based parent company, Las Vegas Sands Corporation, to conduct Sands China's business.⁴ We agree with Sands China's argument that Sands China, as Las Vegas Sands' subsidiary, lacked the legal authority to control the employees of its parent company. *Cf. Viega*, 130 Nev., Adv. Op. 40, 328 P.3d at 1158 (recognizing that "an agency relationship is formed when one person has the right to control the performance of another" and observing that, in the parent/subsidiary corporate relationship, it is the parent corporation that has varying degrees of control over the subsidiary). Consequently, we agree that the conduct of Las Vegas Sands' employees could not be attributed to Sands China for general jurisdiction purposes.⁵

⁴We need not separately address the district court's transient jurisdiction analysis because that analysis largely tracked the district court's general jurisdiction analysis.

⁵In light of this conclusion, we need not address the subsequent issue of whether the Nevada contacts of Las Vegas Sands' employees, if attributed to Sands China, would have rendered Sands China "essentially at home" in Nevada. *See Daimler AG v. Bauman*, 571 U.S. ___, ___, ___ n.20, 134 S. Ct. 746, 761, 762 n.20 (2014) (observing that a general jurisdiction inquiry "calls for an appraisal of a [defendant's] activities in their entirety, nationwide and worldwide").

We therefore grant Sands China's writ petition in Docket No. 68265 insofar as it seeks to vacate the district court's determination that Sands China is subject to personal jurisdiction under general and transient jurisdiction theories. Accordingly, we direct the clerk of this court to issue a writ of prohibition instructing the district court to vacate from its May 28, 2015, order the determinations that Sands China is subject to personal jurisdiction under general and transient jurisdiction theories, and further instructing the district court to prohibit Steven Jacobs from introducing evidence at trial that pertains solely to those theories.⁶

Discovery sanctions order

As acknowledged by Jacobs at oral argument, the district court's May 28, 2015, order did not intend to prohibit Sands China from introducing evidence at trial regarding personal jurisdiction. Thus, Sands China's challenge to the portion of the district court's March 16, 2015, discovery sanctions order prohibiting Sands China from introducing evidence to that effect at the preliminary evidentiary hearing is denied as moot. As for the \$250,000 monetary sanction, we conclude that the district court exceeded its authority in awarding sanctions to the Sedona Conference. *See* RPC 6.1(e) (setting forth the permissible entities to which a monetary sanction may be made payable). Accordingly, we direct the clerk of this court to issue a writ of prohibition instructing the district court to vacate from its March 16, 2015, order the sanction that was made

⁶We vacate the stay imposed by our June 23, 2015, order.

payable to the Sedona Conference and to reallocate the total \$250,000 sanction in compliance with RPC 6.1(e).⁷

Docket No. 68275

Sands China challenges the district court's June 19, 2015, order in which it declined to vacate the deposition of Sands China's Independent Director and directed the deposition to be held in Hawaii. We conclude that our intervention is warranted because the district court lacked the authority to order the Independent Director, who is neither a party nor a corporate representative under NRCP 30(b)(6), to appear for a deposition in Hawaii. See NRCP 30(a)(1) (providing that the attendance of a nonparty deponent may be compelled by subpoena under NRCP 45); see also NRCP 45(c) (affording certain protections to nonparty deponents). Accordingly, we direct the clerk of this court to issue a writ of prohibition instructing the district court to vacate its June 19, 2015, order in which it directed Sands China's Independent Director to appear for a deposition in Hawaii.⁸

Docket No. 68309

Sands China, Las Vegas Sands Corporation, and Sheldon Adelson challenge the district court's June 12, 2015, order in which it declined to vacate an October 2015 trial date. The parties agree that this challenge is moot in light of this court's July 1, 2015, order in which it vacated the trial date pending resolution of this writ petition.

⁷We vacate the stay imposed by our April 2, 2015, order in Docket No. 67576.

⁸We vacate the stay imposed by our June 23 and July 1, 2015, orders.

Accordingly, we decline to further entertain this writ petition, other than to note that the stay imposed by this court's August 26, 2011, order served to toll NRCP 41(e)'s five-year time frame because that stay prevented the parties from bringing the action to trial while the stay was in place.⁹ *Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 404-05 (1982). Thus, the writ petition in Docket No. 68309 is denied.

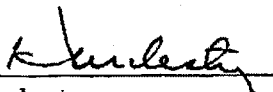
Request for reassignment

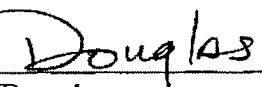
Sands China requests that this matter be reassigned to a different district court judge on the ground that the presiding district court judge harbors a bias against Sands China, Las Vegas Sands Corporation, and Sheldon Adelson. Because the district court's rulings and the district court's comment that Sands China has identified do not suggest bias, we deny the request. *See Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254-55, 148 P.3d 694, 701 (2006) ("[D]isqualification for personal bias requires an extreme showing of bias that would permit manipulation of the court and significantly impede the judicial process and the administration of justice." (quotation and alteration omitted)). In any event, Sands China's request is procedurally improper because it did not submit in district court an affidavit and a certificate of counsel under NRS 1.235 or file a motion pursuant to NCJC Canon 2, Rule 2.11. *See Towbin Dodge, LLC v. Eighth Judicial Dist. Court*, 121 Nev. 251, 259-60, 112 P.3d 1063, 1068-69 (2005) (noting that "if


⁹It is unclear whether the district court entered its own stay order, as directed by this court in our August 2011 order, or if the district court and the parties simply treated our August 2011 order as the stay order. Regardless, we clarify that any tolling of NRCP 41(e)'s five-year time frame ended on May 28, 2015, the date when the district court entered its personal jurisdiction decision.

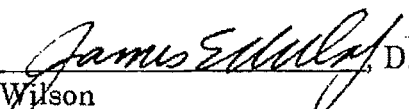
new grounds for a judge's disqualification are discovered after the time limits in NRS 1.235(1) have passed, then a party may file a motion to disqualify based on [current Rule 2.11] as soon as possible after becoming aware of the new information"); cf. *A Minor v. State*, 86 Nev. 691, 694, 476 P.2d 11, 13 (1970) (explaining in the context of an appeal that when a litigant fails to avail itself of the relief set forth under what is now NRS 1.235, the litigant has waived any right to seek disqualification).

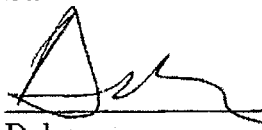
It is so ORDERED.

, C.J.
Hardesty

, J.
Douglas

, J.
Saitta

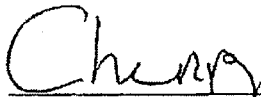
, D.J.
Wilson


, D.J.
Dobrescu

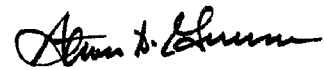
cc: Hon. Elizabeth Goff Gonzalez, District Judge
Alan M. Dershowitz
Kemp, Jones & Coulthard, LLP
Holland & Hart LLP/Las Vegas
Morris Law Group
Pisanelli Bice, PLLC
Eighth District Court Clerk

CHERRY, J., and GIBBONS, J., concurring in part and dissenting in part:

We concur with the majority on all issues except for monetary sanctions. While we agree with the majority that the discovery sanctions the district court ordered payable to the Sedona Conference exceeded its jurisdiction, we would strike these sanctions and not order them to be reallocated. Further, we would defer the imposition of monetary sanctions until the conclusion of trial. In our view the better procedure would be to award monetary sanctions, if any, to the opposing party to offset costs and attorney fees.


Cherry J.


Gibbons J.



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, NOVEMBER 5, 2015

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
RYAN M. LOWER, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 5, 2015, 8:41 A.M.

2 (Court was called to order)

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

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

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

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

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

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

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

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

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

1 Which makes sense, because he was not. Notwithstanding,
2 they've added this in the fifth amended complaint again even
3 though you ordered that it was dismissed without leave to
4 amend. Therefore, we ask you to strike these allegations and
5 this pleading fiasco that we've been dealing with. Thank you,
6 Your Honor.

7 THE COURT: Thank you.

8 Mr. Bice.

9 MR. BICE: Your Honor, we've made our position known
10 on this. We do not want to be accused of a waiver.

11 THE COURT: So can we like footnote it or something,
12 we recognize the Court has dismissed these claims repeatedly
13 but I'm leaving it here just to protect it, nobody needs to
14 answer it?

15 MR. BICE: Well, if that's what they would like.
16 But they know why we are continuing it. We've made that
17 clear. If that's what the Court would like, I have no problem
18 with that. But we aren't going to be accused of a waiver by
19 failing to reallege them.

20 THE COURT: I understand the difficulty that you
21 were in given some of the arguments that historically have
22 been made in this case. So what I'm going to ask you to do is
23 where you put "Sixth Cause of Action" can you put a footnote,
24 we recognize Judge Gonzalez has dismissed this claim over and
25 over again but it's still here, please don't answer.

1 MR. BICE: I have no problem doing that, Your Honor.

2 THE COURT: Is that okay?

3 MR. LOWER: Yeah, that's fine, Your Honor.

4 THE COURT: All right. Great.

5 MR. LOWER: Thank you.

6 THE COURT: 'Bye on that one. Mr. Lower, thank you
7 so much for making life easy.

8 Now which motion would you like to deal with, the
9 medical records and tax records issues, the requests for
10 admissions, or the motion to compel and the very interesting
11 letters from the SEC and the DOJ?

12 MR. RANDALL JONES: Medical records and tax returns.

13 THE COURT: Medical records. Another fairly easy
14 issue.

15 MR. RANDALL JONES: I'm hoping easy translates into
16 I win, Your Honor.

17 THE COURT: Good morning, Mr. Jones. How are you
18 today?

19 MR. RANDALL JONES: I'm well, thank you.

20 I guess starting with the medical records, Your
21 Honor, I know you read this material, so I don't want to
22 belabor it. On the other hand, I do want to point out the
23 interesting response was the plaintiff saying, well, that's
24 not what we meant, when we talked about the defamation we
25 didn't talk about or mean that the reference to Mr. Jacobs as

1 being delusional was part of the defamation. Well, certainly
2 as counsel should know, since they represent Mr. Wynn, the
3 Wynn case tells us you cannot parse out the part of the
4 defamation statement that you want to focus on so you can
5 avoid the other parts that you don't like. And in this case
6 that is clearly a part of the issue that is before this Court
7 in the alleged defamation, that Mr. Adelson said, "Instead he,
8 Mr. Jacobs, has attempted to explain his termination by using
9 outright lies and fabrications which seem to have their
10 origins in delusion." As you know, in a defamation case the
11 truth of the alleged defamatory statement is an affirmative
12 defense to the claim.

13 We have a right to -- and, as you know, I do more
14 plaintiff work than I do defense work. When I have a client
15 who has an issue in the plaintiff's side of the case that
16 relates to medical records or medical condition I have to
17 produce that information. And I have always had to, when
18 requested, provide a medical release. So we are simply asking
19 that Mr. Jacobs provide us a medical release, and we can limit
20 it to issues related to his mental health and any mental
21 health treatment or mental conditions, brain-injury-type
22 issues. I'm okay with doing that. We're not trying to get
23 into other unrelated medical issues that Mr. Jacobs may be
24 suffering from, but anything that has to do with his mental
25 capacity, his mental health, his mental state we should be