

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 69802

Electronically Filed
Mar 04 2016 08:56 a.m.

LAS VEGAS SANDS CORP., A NEVADA CORPORATION, AND
CHINA LTD., A CAYMAN ISLANDS CORPORATION, SHIELD ON

G. ADELSON, IN HIS INDIVIDUAL AND REPRESENTATIVE
CAPACITY; AND VENETIAN MACAU LTD., A MACAU
COPORATION

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE
HONORABLE DAVID B. BARKER, DISTRICT JUDGE

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

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

James J. Pisanelli, Esq., Bar No. 4027

JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534

TLB@pisanellibice.com

Debra L. Spinelli, Esq., Bar No. 9695

DLS@pisanellibice.com

Jordan T. Smith, Esq., Bar No. 12097

JTS@pisanellibice.com

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: 702.214.2100

Facsimile: 702.214.2101

Attorneys for Real Party in Interest
Steven C. Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 3rd day of March 2016, I electronically filed and served a true and correct copy of the above and foregoing **APPENDIX TO ANSWER TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING VOLUME II OF IV** properly addressed to the following:

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
300 South Fourth Street, Suite 900
Las Vegas, NV 89101

The Honorable David Barker
Eighth Judicial District court, Dept. XVIII
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

CHRONOLOGICAL INDEX

DOCUMENT	VOLUME	PAGES
Decision and Order, dated September 14, 2012	I	SA000001-SA000009
Evidentiary Hearing Transcript re: Motion for Sanctions – Day 1, dated February 9, 2015	I	SA000010-SA000195
Evidentiary Hearing Transcript re: Motion for Sanctions – Day 3, dated February 11, 2015	I and II	SA000196-SA000388
Evidentiary Hearing Transcript re: Motion for Sanctions – Day 4, dated February 12, 2015	II and III	SA000389-SA000531
Decision and Order, dated March 6, 2015	III	SA000532-SA000572
Petition for Writ of Prohibition or Mandamus re: March 6, 2015 Sanctions Order	III	SA000573-SA000633
Order Denying Petition in Part and Granting Stay, dated April 2, 2015	III	SA000634-SA000636
Amended Decision and Order, dated May 28, 2015	III	SA000637-SA000675
Petition for Writ of Prohibition or Mandamus re: May 28, 2015 Order, dated June 22, 2015	III	SA000676-SA000738
Petition for Writ of Prohibition or Mandamus re: Trial-Setting Order, dated June 26, 2015	IV	SA000739-SA000765
Hearing Transcript on Defendant Adelson's Motion to Compel, dated September 3, 2015	IV	SA000766-SA000784
Order Granting In Part and Denying In Part Petition for Writ Relief (Docket No. 68265), Granting Petition for Writ Relief (Docket No. 68275), and	IV	SA000785-SA000793

Denying Petition for Writ Relief (Docket No. 68309), dated November 4, 2015		
Plaintiff Steven C. Jacobs' Opposition to Defendant Sands China Ltd.'s Motion to Compel Steven Jacobs' Responses to Sands China Ltd.'s Interrogatories, dated November 13, 2015	IV	SA000794-SA000829
Hearing Transcript on Motions to Compel, dated December 3, 2015	IV	SA000830-SA000901
Plaintiff Steven C. Jacobs' Opposition to Defendants' Motion to Exceed One-Day Limit for Deposition of Plaintiff Steven Jacobs, dated February 8, 2016	IV	SA000902-SA000915
Hearing Transcript on Defendants' Motion to Exceed One-Day Limit re: Jacobs Deposition, dated February 9, 2016	IV	SA000916-SA000939

ALPHEBITICAL INDEX

DOCUMENT	VOLUME	PAGES
Amended Decision and Order, dated May 28, 2015	III	SA000637-SA000675
Decision and Order, dated March 6, 2015	III	SA000532-SA000572
Decision and Order, dated September 14, 2012	I	SA000001-SA000009
Evidentiary Hearing Transcript re: Motion for Sanctions – Day 1, dated February 9, 2015	I	SA000010-SA000195
Evidentiary Hearing Transcript re: Motion for Sanctions – Day 3, dated February 11, 2015	I and II	SA000196-SA000388

1	Evidentiary Hearing Transcript re: Motion for Sanctions – Day 4, dated February 12, 2015	II and III	SA000389-SA000531
2			
3	Hearing Transcript on Defendant Adelson's Motion to Compel, dated September 3, 2015	IV	SA000766-SA000784
4			
5	Hearing Transcript on Defendants' Motion to Exceed One-Day Limit re: Jacobs Deposition, dated February 9, 2016	IV	SA000916-SA000939
6			
7	Hearing Transcript on Motions to Compel, dated December 3, 2015	IV	SA000830-SA000901
8			
9	Order Denying Petition in Part and Granting Stay, dated April 2, 2015	III	SA000634-SA000636
10			
11	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), dated November 4, 2015	IV	SA000785-SA000793
12			
13	Petition for Writ of Prohibition or Mandamus re: March 6, 2015 Sanctions Order	III	SA000573-SA000633
14			
15	Petition for Writ of Prohibition or Mandamus re: May 28, 2015 Order, dated June 22, 2015	III	SA000676-SA000738
16			
17	Petition for Writ of Prohibition or Mandamus re: Trial-Setting Order, dated June 26, 2015	IV	SA000739-SA000765
18			
19	Plaintiff Steven C. Jacobs' Opposition to Defendant Sands China Ltd.'s Motion to Compel Steven Jacobs' Responses to Sands China Ltd.'s Interrogatories, dated November 13, 2015	IV	SA000794-SA000829
20			
21	Plaintiff Steven C. Jacobs' Opposition to Defendants' Motion to Exceed One-Day Limit for Deposition of Plaintiff Steven Jacobs, dated February 8, 2016	IV	SA000902-SA000915
22			
23			
24			
25			
26			
27			
28			

1 MR. MARK JONES: Thank you.

2 (Court recessed at 2:25 p.m., until 2:27 p.m.)

3 THE COURT: I asked you and Mr. Peek to talk about
4 how long and when you thought you would need Mr. Raphaelson.

5 MR. PEEK: I just wonder whether I should tell Mr.
6 Raphaelson even to come here this afternoon.

7 MR. BICE: It is my intention to call him.

8 THE COURT: Do you think you're going to get to him
9 this afternoon?

10 MR. PEEK: I know that.

11 MR. BICE: I would think so. We've got Mr. Toh for
12 an hour and a half or so.

13 THE COURT: Okay.

14 MR. BICE: Right? I mean, all in, probably.

15 MR. PEEK: Right. So that's 4:00 o'clock and you
16 still have clips to play.

17 MR. BICE: Oh, that's 4:00 -- I didn't realize it
18 would be 4:00 o'clock. I had no idea we were going to spend
19 this much time on clips, Your Honor.

20 THE COURT: You didn't spend them on clips. You
21 spent them on arguing amongst yourselves and with me, which
22 might help us in the long run, but it sure didn't help us get
23 done today.

24 MR. BICE: No. Well --

25 MR. PEEK: I'm just -- I don't want to inconvenience

1 him and I know we have tomorrow set aside.

2 THE COURT: I don't think we're going to get to it
3 today.

4 MR. PEEK: I don't either, Your Honor. But I don't
5 want to end up at 4:30 and --

6 THE COURT: And I'd rather not get home at 6:30 at
7 night again and then try and start dinner for the second night
8 in a row, third night in a row.

9 MR. BICE: Okay. Well, we have twenty minutes left
10 of video, is what I'm told.

11 THE COURT: Sweet.

12 MR. PEEK: I'm going to tell him, Your Honor --

13 THE COURT: We'll see him tomorrow at 9:00.

14 MR. PEEK: Thank you.

15 THE COURT: Is that okay, Mr. --

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

17 THE COURT: And that way if there are -- we will
18 have finished -- Mr. Peek, are you going to call any
19 additional witnesses other than the finishing up Leven,
20 Goldstein and Toh? Are you going to call any additional
21 witnesses?

22 MR. PEEK: At this time, Your Honor --

23 THE COURT: You or Mr. Jones?

24 MR. PEEK: No. But we have some documents we'd like
25 to talk to the Court about admitting into evidence as part of

1 our case.

2 THE COURT: Well, I'm happy to listen to you, but if
3 you don't have a witness and there's an objection and I don't
4 admit them, do you have a back-up plan?

5 MR. RANDALL JONES: We do. We do, Judge. I'm going
6 to make a couple of --

7 THE COURT: Okay. So you have a potential witness?

8 MR. RANDALL JONES: Pardon me?

9 THE COURT: You have a potential witness?

10 MR. RANDALL JONES: We do.

11 THE COURT: Okay. So that could affect Mr.
12 Raphaelson.

13 MR. RANDALL JONES: But it's just foundation. All
14 it is is foundation.

15 THE COURT: Understand.

16 MR. BICE: But I --

17 MR. RANDALL JONES: But it will be very, very brief.

18 MR. BICE: There are no other witnesses on their
19 witness list, so I need to know the identity.

20 MR. RANDALL JONES: Well, the type -- it would be
21 Mark Jones and if we had to -- it's basically -- he's already
22 given an affidavit about foundational information.

23 THE COURT: Who?

24 MR. MARK JONES: I think we've stipulated to the
25 admission of the documents.

1 MR. RANDALL JONES: Oh, it sounds like they're
2 actually done.

3 MR. BICE: Oh, okay, that's all that.

4 THE COURT: So you're not going to have to do what
5 and I made Ms. Spinelli do?

6 MR. RANDALL JONES: Well, actually --

7 THE COURT: It also means you don't get M&Ms.

8 MR. RANDALL JONES: I'm sorry. There is one thing I
9 should bring up. It's the Okada discovery. I could put Mr.
10 Peek on the witness stand or I could put Ms. Spinelli. I'd
11 prefer not to do that. It's a document that's in a case
12 before you.

13 MR. PEEK: I'd prefer you not do it, too.

14 THE COURT: Well, you're not going to get a
15 stipulation on those.

16 MR. BICE: No, he's not.

17 THE COURT: But I did overrule the objection and I
18 did tell you had to lay a foundation.

19 MR. RANDALL JONES: Well, anyway.

20 THE COURT: So they're not documents that's in the
21 court file --

22 MR. RANDALL JONES: Understood. Right.

23 THE COURT: -- because they are a discovery
24 document.

25 MR. RANDALL JONES: Right.

1 MR. BICE: Your Honor, can I run to the restroom
2 real quick?

3 THE COURT: You may.

4 Has Macau called?

5 (Pause in the proceedings)

6 MR. MARK JONES: Here we go.

7 THE COURT: Good afternoon, or good morning, Mr.
8 Toh. How are you today?

9 MR. TOH: Good afternoon. I'm good. How are you?

10 THE COURT: I am well, thank you. I am still
11 waiting for all of the attorneys to get back in. They took a
12 break for restrooms. Hopefully they will be back soon. Can
13 you see us and hear us okay?

14 MR. TOH: Yes, I can see you, I can hear okay.

15 THE COURT: All right. Do you have the exhibits
16 that were sent over for you?

17 MR. TOH: I believe it's in the computer in front of
18 me, yeah.

19 THE COURT: Okay, good. So as soon as I have
20 everybody back in the room, then I will have the clerk swear
21 you in and then we'll get started, sir. Thank you very much
22 for your patience with us.

23 MR. TOH: You're welcome.

24 MR. RANDALL JONES: And, Your Honor, if I may.

25 Mr. Toh, this is Randall Jones speaking. As you may

1 know, I'm one of Sands China's lawyers here in Las Vegas. I
2 want to just let you know that if there is a delay in the time
3 that there is a question asked of you, I may ask you to please
4 just wait a minute, wait a few seconds before you start to
5 answer to allow me to have a chance to interpose an objection
6 if I need to. I may not object to a question, but if I do
7 object I'll need a second to make an objection and then Judge
8 Gonzalez will need to rule on that objection to determine
9 whether you should answer the question or not answer the
10 question. And I wanted to make sure you were aware of that
11 and understood that.

12 MR. TOH: Okay, got it.

13 MR. RANDALL JONES: Thank you.

14 THE COURT: All right. So if you could stand up,
15 sir, so we can swear you in.

16 TOH HUP HOCK, PLAINTIFF'S WITNESS, SWORN

17 THE CLERK: Can you please state and spell your name
18 for the record.

19 THE WITNESS: My name is Toh Hup Hock. T-O-H
20 H-U-P H-O-C-K.

21 THE COURT: Thank you, sir.

22 Mr. Bice.

23 MR. BICE: Thank you, Your Honor.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MR. BICE:

3 Q Good morning, Mr. Toh. Can you hear me?

4 A [Unintelligible]. Yes, I can hear you.

5 Q All right, thank you. It's a pleasure to finally
6 put a face with the name. We've heard about you from our
7 client. I represent Mr. Jacobs, so it's a pleasure to see
8 you.

9 A Good to see you, too.

10 Q Okay. Mr. Toh, can you just for the record, can you
11 tell us where -- who is your current employer?

12 A My current employer is Venetian Macau Limited.

13 Q Do you serve any role with respect to a company
14 known as Sands China Limited?

15 A Yes. I also serve as the executive director, CFO
16 and the EVP of Sands China Limited.

17 Q And is it true that you have been a member of the
18 Board of Directors of Sands China Limited since its inception?

19 A No. Since June, I believe June 2000 -- 2010. Not
20 since inception. After we -- yeah.

21 Q After the company went public?

22 A Yes.

23 Q All right. Mr. Toh, did you review any documents to
24 prepare for today?

25 A No. I didn't have a chance to look at.

1 Q All right. Did you meet with anyone to prepare for
2 your testimony today?

3 A Uh, I talked to my lawyer briefly, yeah.

4 Q Okay. And who is the lawyer that is with you, sir?

5 A Wyn Hughes, our internal counsel.

6 Q Understood. Did you speak to anyone other than Mr.
7 Hughes?

8 A Uh -- you mean internally?

9 Q Internally, yes, but in addition anyone outside of
10 the company as well.

11 A Yeah. I think I also speak to our lawyer, yeah.

12 Q And who was that, sir?

13 A The company lawyer who represents us I think over
14 there, a couple -- maybe a week ago, yeah.

15 Q Okay. And that was just over the phone or via
16 video?

17 A Over the phone and also through the video, yeah.

18 Q All right. And during that discussion did they show
19 you any documents?

20 A Yeah. They showed me the -- a couple exhibits.

21 Q They showed you what, sir? I apologize.

22 A Yeah, a few exhibits. I can't [unintelligible].

23 Q And do you remember which documents you looked at?

24 A I remember it's Exhibit, I think 341, 342 or
25 something like -- yeah, 344, 345. It's related to the

1 complications between us and the Macau Data Privacy Authority,
2 OPDP. Yeah.

3 Q Okay. Did you -- Were you shown any other documents
4 other than exhibits?

5 A That's all I -- that's all I've seen, yeah. Only
6 that document, yeah.

7 Q Did you provide them with any documents?

8 A No.

9 Q Mr. Toh, can you tell me, to whom do you report? In
10 other words, who is your boss?

11 MR. RANDALL JONES: Counsel, just which company?

12 THE WITNESS: I report to -- yeah, I report to the
13 CEO, the present CEO of Sands China.

14 BY MR. BICE:

15 Q Okay. And that would be Edward Tracy?

16 A That's correct.

17 Q And you are also a member -- I think you already
18 testified you are a member of the Sands China Board of
19 Directors, correct?

20 A That's correct.

21 Q And your offices are in Macau or Hong Kong, sir?

22 A My office in Macau.

23 Q Do you reside in Macau?

24 A Yes.

25 Q Do you travel much as part of your job?

1 A To Hong Kong or -- to Hong Kong?

2 Q Anywhere, sir.

3 A Not often. Only once in awhile, yeah.

4 Q Do you have any involvement in any of the other

5 Sands entities such as Marina Bay Sands?

6 A No.

7 Q Do you -- Are you a resident -- I'm sorry. Are you

8 a citizen of Macau?

9 A I'm only the temporary resident in Macau.

10 Q All right. Where are you a citizen of?

11 A Singapore.

12 Q Do you have any role in any government body in

13 Singapore?

14 A No.

15 Q Have you ever been a member of the Singapore

16 military?

17 A I'm a reservist for the Singapore military, yeah;

18 SF. I usually serve as the [unintelligible] Services. I have

19 to perform in Singapore.

20 Q So do you travel then to Singapore as part of your

21 duties?

22 A No.

23 Q Are you still an active member of the Singapore

24 military?

25 A No.

1 Q Are you a reserve member then? I'm not
2 understanding.

3 MR. PEEK: He said reservist already.

4 THE WITNESS: I'm a reserve member.

5 BY MR. BICE:

6 Q Okay, my apologies. I didn't understand your terms.
7 Do you have access to the exhibits there, Mr. Toh?

8 A Yes. I have the exhibit in front of me in the
9 computer, yeah.

10 Q All right. If you could, I would like you to turn
11 to Exhibit Number 23.

12 A One second.

13 THE COURT: And this is a proposed exhibit?

14 MR. BICE: Proposed Exhibit Number 23, Your Honor.

15 THE COURT: Thank you.

16 MR. BICE: Is there an objection to Proposed 23?

17 THE COURT: Are you going to stipulate?

18 MR. RANDALL JONES: Your Honor, if he -- has he laid
19 a foundation?

20 THE COURT: No. He just asked if you objected, so I
21 asked.

22 MR. RANDALL JONES: I'm not objecting at this point.
23 I'm not -- but I'm not admitting it in. I want to see if he
24 can lay a foundation.

25 THE COURT: Why don't you proceed?

1 MR. BICE: Thank you, Your Honor.

2 BY MR. BICE:

3 Q Mr. Toh, can you see Exhibit Number 23?

4 A Yes, I'm looking at it now.

5 Q Can you tell me -- at the top it should say R.E.

6 Termination Notices. Is that correct?

7 A Yes.

8 Q Okay. Can you tell me what role you played in these

9 emails?

10 A I'm not exactly understand what you mean.

11 Q Well, what role did you play in the discussions that

12 are in these -- this email string, sir?

13 A I can't remember these discussions. I can't recall.

14 Q Okay.

15 MR. RANDALL JONES: Your Honor, if I can, I'm sorry,

16 interrupt. Maybe I can make this easier. There are a number

17 of exhibits that I presume they're going to want to use that

18 are from the production of Sands China or from the production

19 of Las Vegas Sands. And I certainly have no objection to them

20 using these documents, but I would ask because, again, if

21 we're going to -- I'd like to make that reciprocal then. If

22 we want to use some documents out of the production, then I

23 would certainly ask the same courtesy that if we're all

24 talking about the documents used in the production by Sands

25 China, with redactions or unredacted, that we agree that we

1 will stipulate to the admission of those documents.

2 MR. BICE: No, we will not make that stipulation,
3 Your Honor.

4 THE COURT: Okay. So, no.

5 MR. PEEK: Your Honor, I would have a further
6 objection to this email.

7 THE COURT: It isn't being offered yet.

8 MR. PEEK: Or this. Further objection to it.

9 THE COURT: He's asking Mr. Toh questions about Mr.
10 Toh's knowledge before he could lay the foundation.

11 MR. PEEK: Okay. Then I'll wait, I guess, until he
12 can lay a foundation because certainly my objection is going
13 to relevancy of something that was created even before Sands
14 China Limited was even an entity, over which there could be
15 any jurisdiction since there wasn't even an entity.

16 THE COURT: Okay.

17 MR. BICE: Your Honor, can we have an agreement that
18 you seem to be enforcing on my side that there will be one
19 party representing the witness? Because this is not --

20 THE COURT: Nobody is representing the witness, I
21 don't think. Maybe Mr. Jones is. But unfortunately I have
22 three different sets of defendants in this room and I'm not
23 --

24 MR. BICE: Not on this issue.

25 THE COURT: I'm not going to stop the three

1 defendants from discussing exhibit issues.

2 MR. BICE: Okay.

3 BY MR. BICE:

4 Q So, Mr. Toh, is it fair to say that looking at this
5 document you cannot tell me whether you were on this
6 communication whatsoever, correct?

7 A I have to say, I've never seen this document. This
8 is the first time I've seen this document, yeah.

9 Q Fair enough, sir. Could you go to Exhibit Number
10 15?

11 MR. PEEK: What number?

12 THE COURT: Proposed 15.

13 MR. BICE: Proposed Exhibit Number 15.

14 MR. PEEK: 15.

15 BY MR. BICE:

16 Q Or 16. My apologies, 16 first.

17 A Five six?

18 Q Exhibit 16, sir. One six.

19 A Okay.

20 MR. BICE: Any objection?

21 THE COURT: Well, you haven't asked any questions
22 about it yet.

23 MR. BICE: I was going to see if there's a
24 stipulation, Your Honor, to avoid that.

25 THE COURT: Do you have a stipulation?

1 MR. RANDALL JONES: Not at this point, Your Honor.
2 I just want to see if can lay the foundation.

3 THE COURT: They're not going to stipulate, Mr.
4 Bice, so let's just keep going.

5 MR. PEEK: We make the same offer that Mr. Jones did
6 previously, though, Your Honor, of reciprocal.

7 BY MR. BICE:

8 Q Mr. Toh, can you tell me whether you sent or
9 received this email string?

10 A I'm trying to recall. Let me go read through the
11 email.

12 Q Okay.

13 A I can't recall that.

14 Q Is it fair to say, Mr. Toh, that you cannot tell us
15 whether or not you sent or received this email?

16 A Yes, I cannot tell. Yeah, I cannot recall that.

17 Q You cannot tell us whether you were ever on it or
18 not. Is that fair?

19 A That's right.

20 Q Okay. If you would go to Exhibit 15.

21 THE COURT: This is Proposed 15?

22 MR. BICE: Yes, Your Honor.

23 MR. RANDALL JONES: Your Honor, there's an
24 additional issue here that I guess is at play, which is, as
25 you know, these are -- there's a confidential designation to

1 some of these and counsel would not agree that anything that
2 comes into the case remains confidential in this hearing, so
3 that's --

4 THE COURT: And I told you on the first day of the
5 hearing I wasn't going to impose confidentiality during the
6 hearing.

7 MR. RANDALL JONES: I'm mindful of that. That's why
8 I'm bringing this point up. So I assume Mr. Peek also would
9 agree that using these documents, if they did come in that
10 they would not remain confidential by stipulation. And so
11 that's an additional conundrum for me under the circumstances
12 because this is not the jurisdictional evidentiary hearing,
13 it's under different circumstances.

14 THE COURT: Well, the witness has just told me he
15 can't tell me if he's involved in this document, so he can't
16 lay a foundation because it's redacted and he can't tell.

17 MR. RANDALL JONES: And I understand that, Your
18 Honor. And I'm happy to stipulate to its admission if we will
19 get a reciprocal agreement from Mr. Bice and he would agree
20 that these documents retain their confidentiality, only for
21 the purpose of this sanctions hearing.

22 THE COURT: And he's already said no twice.

23 MR. RANDALL JONES: Well, I added the additional
24 issue of the confidentiality.

25 MR. PEEK: And, Your Honor, I'd like to just at

1 least address the Court's remark. I didn't hear Mr. Toh say
2 that he could not identify this because it was redacted. He
3 said he couldn't identify it. You have drawn a conclusion of
4 your own that he can't identify it because it's redacted.

5 THE COURT: Mr. Toh, why can't you identify whether
6 you were involved in this document?

7 THE WITNESS: No, I look at the topic itself. I
8 can't recall that I have involved in the discussion of the
9 topic.

10 THE COURT: And is it redacted so you can't tell if
11 you're a recipient or a sender of the email?

12 THE WITNESS: No, it's mainly -- I look at the
13 contents of the email.

14 THE COURT: Okay. But you can't tell if you were
15 the sender because it's blacked out, right?

16 THE WITNESS: Uh, you know, [unintelligible] -- I
17 think the content itself, I think it's really new to me. I
18 think first time I saw it. It seems to be. I mean, this is
19 like 2009. I don't recall I've seen the email, yeah.

20 THE COURT: Mr. Bice, you can go on if you'd like.

21 MR. BICE: Thank you, Your Honor.

22 BY MR. BICE:

23 Q Have you looked at Exhibit Number 15, Mr. Toh?

24 A Yes, I'm looking at it, yeah.

25 Q And can you tell me whether you sent or received

1 this email, Mr. Toh?

2 A By looking at the content of the email, I don't
3 recall I've seen this email.

4 Q Okay. We'd have to know -- in order for you to
5 figure out whether you were sent or received this email, we'd
6 need to be able to see who it was from and who it was to.
7 Would you agree with that?

8 A Uh, yeah, so that makes sense, yeah --

9 Q Sure.

10 A -- if you have that.

11 Q If we could see that then you would know whether or
12 not you were on it, right?

13 A Also, by looking at contents, the contents that, you
14 know, I can recall and probably I can tell whether I had seen
15 it or not, yeah.

16 Q Okay. But you can't recall, right?

17 A Yeah, the content itself.

18 Q It's too long ago?

19 A It's not familiar to me.

20 MR. PEEK: You're interrupting, Mr. Bice.

21 THE COURT: You've got to let him finish.

22 MR. BICE: Your Honor, there was a delay and I
23 didn't realize it.

24 THE COURT: I understand. It's not a criticism.
25 Mr. Toh, did you finish your answer?

1 THE WITNESS: Yeah, I say by looking at contents,
2 you know, I can tell whether I'm involved or not. I'm looking
3 at these contents, you know, I'm not familiar with -- I can't
4 recollect. Yeah.

5 BY MR. BICE:

6 Q Is it fair to say, Mr. Toh, it's been too long ago
7 so you can't recall the contents, whether you were involved?

8 MR. RANDALL JONES: Objection. I'm sorry, Mr. Toh.
9 Objection, Your Honor. That misstates his
10 testimony.

11 THE COURT: Overruled.

12 You can answer, sir.

13 THE WITNESS: Uh, it's not exactly, but if this is a
14 topic that I've seen before, probably I can recollect that.
15 But looking at this one, it seems like I can't recall I've
16 seen this before. Yeah.

17 BY MR. BICE:

18 Q Why don't we go to exhibit -- Proposed No. 32, Mr.
19 Toh. Looking at Exhibit Number 32, Mr. Toh, can you tell me
20 whether this was sent or received by you?

21 A This looks -- the contents probably, yeah.

22 Q So you think this one was sent or received by you,
23 Mr. Toh?

24 A Uh, I'm not seeing my name but I think I'm familiar
25 with some of this issue.

1 Q Well, who was it sent or received by?

2 MR. PEEK: Your Honor, before he answers that

3 question, I'm a little bit concerned with having Mr. Toh, if

4 he knows the identify of the individuals, violating the Macau

5 Data Privacy Act and subjecting himself to some sanctions by

6 the Macau government. And I don't think the question actually

7 goes to the question, do you know, so that's a yes or no.

8 THE COURT: That's correct.

9 MR. PEEK: But I'm just anticipating so that --

10 before we get -- I don't want to get Mr. Toh in trouble is

11 what I'm saying, Your Honor.

12 MR. BICE: Number one, Your Honor, before we get --

13 THE COURT: Don't make a speaking objection.

14 MR. BICE: Exactly.

15 THE COURT: Mr. Toh, please remember that you can

16 answer yes or no when Mr. Bice asks you if you know a

17 question, okay?

18 MR. BICE: Your Honor, before that happens again, I

19 would like for the microphones to be muted, as opposed to the

20 telling Mr. Toh in advance what to do. And I --

21 THE COURT: Well, no, what's going to happen is if I

22 have another speaking objection I'm going to get my fill out

23 the blank form and I'm going to fill in the blanks, because

24 this is silly.

25 Let's keep going.

1 BY MR. BICE:

2 Q Mr. Toh, are you a hundred percent sure on Exhibit
3 Number 32 that you've ever seen it before?

4 A It's quite a while. I mean, it's in 2009, December,
5 so I can't say a hundred percent sure, but I know that some of
6 the discussions related to the [unintelligible] probably I
7 kind of involved that before, yeah.

8 Q But you don't know who are the people involved in
9 this communication, correct, Mr. Toh?

10 A From this document I can't -- I'm not very sure
11 about who is involved, yeah.

12 Q Okay. Let's go to Exhibit Number 51, if you would.

13 THE COURT: That's a proposed exhibit?

14 MR. BICE: Yes, they're all proposed, Your Honor.

15 THE COURT: I'm trying to make your record clear.

16 THE WITNESS: 51?

17 MR. BICE: Yes, sir.

18 BY MR. BICE:

19 Q Can you tell me what this document is, sir?

20 A This is the other committee -- many of the other
21 committee meetings.

22 Q Okay. Who was in attendance at this meeting, sir?

23 A The attendance of the A.C. meeting will be the other
24 committee chairmen --

25 MR. PEEK: Your Honor, can we put this on mute?

1 THE WITNESS: -- and other committee member --
2 MR. PEEK: Can we put it on mute so I can --
3 THE WITNESS: -- myself, the --
4 THE COURT: Hold on a second, Mr. Toh. Hold on a
5 second.
6 Jill, can you mute him?
7 MR. PEEK: I'm happy to approach, Your Honor.
8 THE COURT: Can you mute us?
9 Mr. Toh, can you push your mute button for a minute?
10 MR. PEEK: No, that would just -- that just means
11 he's mute. Your Honor, can we just approach?
12 THE COURT: Sure.
13 MR. BICE: Who's doing the objecting and on what --
14 Does Las Vegas Sands Corporation have an objection?
15 THE COURT: Absolutely Mr. Peek has an objection.
16 Didn't you hear him?
17 I appreciate you not making a speaking objection.
18 Thank you very much.
19 Can you unplug my -- oh, no, I can't unplug my mike.
20 MR. BICE: What if we put the snow on?
21 THE COURT: No, he's muted.
22 COURT RECORDER: He's muted.
23 MR. BICE: Oh.
24 MR. PEEK: Okay, thank you.
25 (Bench conference begins)

1 MR. PEEK: What my concern here, Your Honor, is it's
2 just like when we have a Fifth Amendment privilege --
3 THE COURT: Sure.
4 MR. PEEK: -- or he's going to have a similar issue
5 here.
6 THE COURT: But Mr. Hughes is sitting right there
7 with him.
8 MR. PEEK: I know that and I understand that. But,
9 you know, he is Mr. Jones' client, and I'm sensitive to this
10 as everybody else.
11 THE COURT: So don't you think Mr. Jones should be
12 saying it? Okay. Well, here's the deal. I have serious
13 concerns --
14 MR. PEEK: I don't want him to not testify.
15 THE COURT: Well, he can't testify. He's telling me
16 he can't tell anything about the documents because they're
17 redacted.
18 MR. PEEK: But he's --
19 THE COURT: And he doesn't remember.
20 MR. PEEK: He's going to start giving names --
21 THE COURT: He might.
22 MR. PEEK: -- that are on this.
23 THE COURT: But the audit committee is public. The
24 members of the audit committee are public.
25 MR. PEEK: Okay.

1 THE COURT: Giving the names of the audit members,
2 audit committee members shouldn't be an issue. I don't know
3 why you think under Macau law it is. It's a public body.
4 It's a publicly traded company.

5 MR. RANDALL JONES: The lawyers in Macau told us
6 that it is an issue. And we've got a document from the OPDP
7 saying it is. And so, look, my preference is to give you
8 every name out there, but [unintelligible].

9 MR. PEEK: I'll let you deal with this.

10 MR. BICE: We've not seen any document that says
11 that people can't testify as to the identity of people in
12 Macau, so if they have a different document from OPDP, we need
13 to see that.

14 MR. RANDALL JONES: Well, the Macau Data Privacy law
15 says right it right in it.

16 MR. BICE: So then, Your Honor, I think the point is
17 rather --

18 THE COURT: Well, let's not argue.

19 MR. PEEK: I just want to --

20 THE COURT: We need to have the witness answer the
21 questions --

22 MR. BICE: Okay.

23 THE COURT: -- to the extent he think it's
24 appropriate.

25 MR. PEEK: I just want to know whether he's --

1 THE COURT: I don't know who prepped him and what
2 they told him about the Macau Data Privacy Act and his
3 obligations. I don't.

4 MR. PEEK: I know, but in any other judicial
5 proceeding I've been where a witness gets close to, you
6 know --

7 THE COURT: He's got his lawyer sitting right there
8 with him.

9 MR. RANDALL JONES: Well, and I'm his lawyer --

10 THE COURT: And I've had cases where I've got the
11 lawyer sitting right there on the witness stand to be able to
12 touch him when it is. Mr. Hughes is sitting one chair over,
13 or at least he was earlier.

14 MR. RANDALL JONES: Can we plug this back in, Your
15 Honor?

16 THE COURT: Yeah.

17 MR. PEEK: All right.

18 THE COURT: I understand what you're saying. I just
19 don't know what to do about it.

20 MR. PEEK: Okay.

21 (Bench conference concluded)

22 THE COURT: Mr. Toh, can you hear us? Mr. Toh, can
23 you hear me?

24 THE WITNESS: Yes, I can hear you.

25 THE COURT: All right. Mr. Bice has asked you if

1 you can identify who the members of the audit committee were
2 at that time. That's a yes or no answer. And then if you
3 can, then if Mr. Hughes thinks there is an issue, he will tell
4 you. Otherwise you should go ahead and answer.

5 THE WITNESS: Yes, I know who was the audit
6 committee member at that time, yes.

7 BY MR. BICE:

8 Q All right. Mr. Toh, let me ask it this way. Tell
9 me which members of the audit committee were absent at the
10 meeting that is referenced in this Exhibit Number 51. Tell me
11 who wasn't there.

12 A I can't -- I can't remember that.

13 Q You can't remember and the document doesn't tell us
14 who was or wasn't there, right?

15 A Yes.

16 Q Go to Proposed Exhibit 205, if you could. Are you
17 able to find that document, sir?

18 MR. MORRIS: Is that two zero five?

19 MR. BICE: Two zero five, Mr. Morris.

20 (Colloquy between the attorneys)

21 BY MR. BICE:

22 Q Mr. Toh, have you had a chance to look at Exhibit
23 205?

24 A I'm looking at it now.

25 Q Can you tell me who was -- this is for the board

1 meeting, is that correct?

2 A Yes.

3 Q And can you tell me who all was present and absent
4 at this board meeting?

5 A I can't -- I can't recall that.

6 Q Okay.

7 MR. BICE: Your Honor, at this time I would offer
8 into evidence 15, 16, 23, 32, 51 and Exhibit 205.

9 THE COURT: Any objection?

10 MR. RANDALL JONES: The only objection, Your Honor,
11 is if -- I'd be happy to reciprocate with Mr. Bice if he would
12 agree that they -- to the extent that any of these documents
13 are marked confidential.

14 THE COURT: Okay. I can't force him to stipulate.

15 MR. RANDALL JONES: I know that.

16 THE COURT: So the question is, do you have an
17 objection?

18 MR. RANDALL JONES: My objection is that they are
19 confidential and he won't stipulate, so that's an issue.

20 THE COURT: Okay.

21 MR. RANDALL JONES: And also that he won't
22 reciprocate with respect to foundation on other emails that
23 are at issue in this case.

24 THE COURT: Because 15, 16, 32, 51 and 205 are part
25 of the production that have been redacted, they are critical

1 to a determination by anyone on the facts in this case. While
2 I understand they are confidential or you argue they are
3 confidential, if I'm going to review them they're going to be
4 part of the public record. So they're admitted.

5 MR. BICE: Your Honor, and our point on this is very
6 simple.

7 THE COURT: Every one of them.

8 MR. BICE: Our point is, as Mr. Jones just
9 acknowledged, you cannot lay a foundation with any of the
10 documents.

11 THE COURT: None.

12 MR. BICE: That's exactly our point.

13 MR. RANDALL JONES: Actually, Your Honor -- well,
14 I'm sorry, I didn't mean to interrupt you, Todd. Go ahead.
15 If that's an editorial comment, I believe I should have an
16 opportunity to at least respond to it, Your Honor.

17 THE COURT: Sure. Do you think we could lay a
18 foundation on the documents, since he can't?

19 MR. RANDALL JONES: Absolutely we could lay a
20 foundation with those documents.

21 THE COURT: How?

22 MR. RANDALL JONES: I could get the personal
23 involved with these documents who could lay a foundation for
24 them.

25 THE COURT: Who?

1 MR. RANDALL JONES: I have ways to do that, Your
2 Honor.

3 THE COURT: No, I mean --

4 MR. RANDALL JONES: One of the --

5 THE COURT: How would the adverse party who is
6 unaware of who those people --

7 MR. RANDALL JONES: The adverse party could look at
8 the redaction log.

9 MR. BICE: Can we put him on mute, please, Your
10 Honor?

11 THE COURT: I've already ruled. Let's go.

12 MR. BICE: Thank you, Your Honor.

13 BY MR. BICE:

14 Q Mr. Toh, who made the decision to claim that the
15 Macau Data Privacy Act precluded Sands China from complying
16 with discovery in the United States?

17 MR. RANDALL JONES: I'm sorry, I didn't hear that
18 question, counsel.

19 THE COURT: Who made the decision?

20 MR. RANDALL JONES: Who made the decision to what,
21 Your Honor?

22 THE COURT: The Macau Data Privacy Act prevented
23 Sands China from complying with discovery obligations in the
24 United States.

25 MR. RANDALL JONES: Well, Your Honor, I would object

1 to the extent that that calls for attorney-client privilege
2 and instruct him not to answer to the extent that he has any -
3 - his knowledge comes from an attorney for the company or
4 outside counsel.

5 MR. BICE: Your Honor --

6 THE COURT: Mr. Toh, to the extent that you would
7 have to answer by telling me information you have from
8 litigation counsel as to made the decision, you are being
9 instructed not to answer that question and I am sustaining the
10 objection. However, if the source of your information is from
11 any source other than litigation counsel, then you need to go
12 ahead and answer it.

13 THE WITNESS: I know it is coming from our general
14 counsel.

15 MR. BICE: Well, Your Honor, general counsel is not
16 litigation counsel.

17 THE COURT: No, and that's why he told you who it
18 was.

19 BY MR. BICE:

20 Q So the only information you have on it is from
21 general counsel?

22 A Yeah, the general counsel, that's fine. Yeah.

23 Q And who is the general counsel that said that?

24 A Our general counsel is David Fleming.

25 Q Mr. Toh, since you're on the board, are there any

1 written policies concerning authorization levels for
2 executives such as Mr. Fleming?

3 A Uh, can it come again?

4 Q Sure. You're on the board of directors, correct?

5 A That's right.

6 Q Are there any written policies that concern Mr.
7 Fleming's authority?

8 A Yes. There's a policy about the -- the executive
9 party to make certain decisions, yeah.

10 Q And is it written?

11 A Yeah, in a policy. Yes, it's written, yeah.

12 Q Okay. Tell me what are the types of decisions that
13 require the board's authorization, since you're a board
14 member.

15 A Uh, for the -- let's say, for example, the -- to
16 invest in the capital expenditures up to a certain amount
17 that's above the executive, the management team can decide
18 when they go up to the board, or the expenditures that are
19 above a certain limit, then we would have to go up to the
20 board for approval.

21 Q Okay. Anything else? What else differentiates to
22 you actions that require board approval?

23 A There are a lot. I mean, I have to refer to the
24 document to tell you that. There are a lot of things that,
25 you know, require board approval, as long as it's above the

1 limit or the approval authority from the management, yeah.

2 Q Has Mr. Fleming -- Are there any -- Strike that.
3 You're aware of the Jacobs litigation, correct, this
4 litigation?

5 A Yes, I'm aware.

6 Q Okay. And the board is aware of it, too, correct?

7 A Yes.

8 Q Was the board aware of the Court's order requiring
9 Sands China to produce documents in the United States?

10 MR. RANDALL JONES: Objection, Your Honor, to the
11 extent that question calls for the invasion of the attorney-
12 client privilege.

13 THE COURT: Overruled. The board in and of itself
14 is not necessarily a person who has -- well --

15 MR. BICE: The board --

16 THE COURT: Wait, hold on a second. In your
17 particular board minutes, because I don't remember seeing any,
18 are there redacted portions of the board minutes?

19 MR. RANDALL JONES: There may be. I don't know.
20 But what does that have to do with my objection? I'm not sure
21 I'm following the Court.

22 MR. BICE: Exhibit 205.

23 THE COURT: Well, because there's two ways that
24 boards get information, and one of the ways boards get
25 information is through an executive session where counsel

1 provide them information that's treated in a very special way
2 and the confidentiality is preserved. The other way that
3 boards get information is from a business perspective that
4 they get the information. Typically in those cases where
5 boards go into executive session and are provided updates by
6 counsel there are redactions to the board minutes, or there
7 are separate minutes that say executive session and they have
8 a different level of protection. So that's what I'm asking so
9 I can evaluate whether information is provided to the board
10 regarding my orders is information that was treated as an
11 executive session item or as information that is a general
12 business discussion.

13 MR. RANDALL JONES: I understand the distinction
14 you're making, Your Honor. And again, so it's clear on the
15 record, my objection is to the extent that it calls for
16 attorney-client privileged information, and I think what your
17 position is is that other type of business-related information
18 is not privileged --

19 THE COURT: That is my position.

20 MR. RANDALL JONES: -- so my objection -- I can only
21 object to what is privileged. So to that extent, Your Honor,
22 the only concern I have is that it's clear to the witness what
23 the question is and how the question is phrased so that he
24 understands the distinction as well. That's my only -- that's
25 my concern about the point.

1 THE COURT: Okay. Mr. Bice, can you rephrase your
2 question and see if we can tailor it a little more?

3 BY MR. BICE:

4 Q Mr. Toh, was the board aware of the Court's order
5 to produce documents in the United States?

6 MR. RANDALL JONES: Objection. Same objection, Your
7 Honor. Vague and ambiguous as posed, so it potentially
8 invades the attorney-client privilege.

9 THE COURT: Mr. Toh --

10 First, don't make speaking objections.

11 Mr. Toh, it is important that you -- if you received
12 information from litigation counsel as part of a board meeting
13 that you not disclose the content of that information to me
14 until you give Mr. Jones another chance to object. If the
15 information came from another source than litigation counsel,
16 you can go ahead and answer.

17 MR. PEEK: And, Your Honor, I don't want to make --
18 have one of those pieces of paper signed, but I think the
19 question as framed -- if you want me to come up there and make
20 the objection, I'm happy to. But he said the Court's orders.
21 Order discovering -- ordering discovery. That's not what the
22 September 14th order says.

23 THE COURT: Sir, did you get a copy of my September
24 14th, 2012 order? Mr. Toh?

25 THE WITNESS: Can you come again?

1 THE COURT: In late 2012 I issued an order finding
2 that Sands China had not been honest with me and Las Vegas
3 Sands had not been honest with me and that certain information
4 had not been disclosed to me and in fact it had been hidden
5 from me. Was that order that I wrote provided to you as a
6 board member?

7 THE WITNESS: I haven't seen that.

8 THE COURT: Okay. And then later that year there
9 was an additional order that I entered that required Sands
10 China in complying with my discovery requests or with the
11 discovery requests in the case not to use the Macau Data
12 Privacy Act as part of its defense or its objections to that.
13 Was that order provided to you as a board member?

14 THE WITNESS: No, I only have -- (video skips) --
15 from our general counsel.

16 THE COURT: Okay. So, Mr. Bice, if you want to ask
17 some follow-up and try and avoid issues that will put us into
18 an attorney-client disclosure situation --

19 MR. BICE: I understand.

20 THE COURT: -- with litigation counsel.

21 MR. BICE: I just want the record to be clear, Your
22 Honor, I'm going to follow your instructions. I maintain that
23 they long ago --

24 THE COURT: I know.

25 MR. BICE: -- and through this proceeding made a

1 subject matter waiver and that this information is not
2 privileged. But I'm going to --

3 THE COURT: I disagreed with you on the first day of
4 the hearing.

5 MR. BICE: I'm going to follow your instructions.

6 BY MR. BICE:

7 Q Mr. Toh, did any of the Nevada lawyers ever make a
8 presentation to the board at all concerning the Jacobs
9 litigation? Yes or no, sir?

10 A Can you come again?

11 Q Sure. Have any of the Nevada lawyers made any form
12 of presentation to the Sands China Board concerning the Jacobs
13 litigation? Just yes or no.

14 A No.

15 Q Have they made any form of presentation -- well,
16 strike that. Have the board members even held a conference
17 call with the lawyers in the Nevada litigation? Yes or no?

18 A No.

19 Q Was the board ever provided a copy of the Court's
20 order of September 14?

21 MR. RANDALL JONES: I believe it's been asked and
22 answered, but that's fine, he can answer it again.

23 THE COURT: I asked him.

24 MR. BICE: The board or just him personally?

25 THE COURT: Asked him as a board member.

1 BY MR. BICE:

2 Q Was the full board ever provided a copy of that
3 order Mr. Toh?

4 A I can't recall that.

5 Q Okay. You received one from the general counsel,
6 that's all you can recall?

7 A I only heard it from general counsel.

8 MR. RANDALL JONES: That's -- Object, that misstates
9 his testimony.

10 THE COURT: He heard it from general counsel, he
11 didn't see it.

12 MR. BICE: Then I'm not hearing him correctly, Your
13 Honor. I apologize.

14 THE COURT: I understand. That's why I corrected
15 you.

16 MR. BICE: Okay.

17 THE COURT: Mr. Toh, you told me that you heard that
18 information from general counsel but you didn't see a
19 document. Is that accurate?

20 THE WITNESS: I didn't see that. That's right.

21 THE COURT: Thank you.

22 BY MR. BICE:

23 Q So do you have any -- Strike that. So as far as you
24 know, no board members ever saw a copy of the order?

25 A As I say, I only heard it from general counsel and I

1 have no -- I have no knowledge of whether the general counsel
2 showed the documents to any board member.

3 Q Okay. When you heard it from the general counsel,
4 was it at a board meeting or was this just the two of you
5 talking?

6 A I can't recall when I heard it, yeah.

7 Q All right. Mr. Toh, as the chief financial officer,
8 are you required to make some form of a quarterly statement to
9 the Hong Kong Stock Exchange on behalf of the company?

10 A Usually a statement will be issued by our company's
11 secretary. It happened to be our general counsel. Yeah.

12 Q Okay. But do you as the CFO sign any form of the
13 documents that are filed with the Hong Kong Stock Exchange?

14 A I can't recall that. You know, usually if the
15 general counsel is not available to sign it, then --
16 [unintelligible]-- I may sign it.

17 Q Do you know whether or not there was ever any
18 disclosure made to the Hong Kong Stock Exchange that Sands
19 China was not in compliance with a court order in the United
20 States?

21 MR. PEEK: Objection, relevancy, Your Honor.

22 THE COURT: Overruled.

23 MR. RANDALL JONES: Join in that objection, Your
24 Honor, for the record.

25 THE COURT: Still overruled.

1 THE WITNESS: Can you tell me the question again?

2 BY MR. BICE:

3 Q Sure. Was any form of disclosure made to the Hong
4 Kong regulatory authorities, I'll put it that way, that Sands
5 China was not in compliance with a court order in the United
6 States?

7 MR. RANDALL JONES: Same objection, Your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: I can't recall that, yeah.

10 BY MR. BICE:

11 Q Well, Mr. Toh, aren't you required to disclose any
12 materially adverse consequences that the company faces?

13 MR. RANDALL JONES: Objection, Your Honor.
14 Relevance and this has nothing to do with this hearing.

15 THE COURT: Sustained.

16 MR. BICE: Your Honor, I'd like to be heard on that.

17 THE COURT: Sure.

18 MR. BICE: They obviously didn't consider it to be
19 material, the consequences of violating the court's order, if
20 they didn't disclose it. And --

21 THE COURT: That's an argument issue. He's already
22 said he didn't disclose it.

23 BY MR. BICE:

24 Q What was your understanding of what were the
25 consequences of not complying with the order, as a board

1 member?

2 MR. RANDALL JONES: I'm sorry, could you repeat the
3 question?

4 THE COURT: The question was what was your
5 understanding of the consequences of not complying with the
6 order?

7 MR. RANDALL JONES: Well, I would object and
8 instruct him not to answer, to the extent that he got any of
9 that information from counsel.

10 MR. BICE: Your Honor, this is a board member of a
11 publicly traded company. And it doesn't matter whether he got
12 an understanding from counsel. He -- to the extent he has an
13 understanding, the source of his understanding is immaterial.
14 It's not privileged just because he got it from counsel.

15 THE COURT: Sometimes information that board members
16 obtain is privileged. There are some circumstances where that
17 occurs. This one, I agree with you.

18 So, sir, if you could answer the question, please.

19 BY MR. BICE:

20 Q Mr. Toh, what was your understanding of the
21 consequences for Sands China of not complying with the Court's
22 order?

23 MR. RANDALL JONES: Your Honor, I'm going to object
24 to the form of the question, then. And I don't want to make a
25 speaking objection but if you want me to further elaborate,

1 I'd be happy to do so.

2 THE COURT: And you think it requires speculation or
3 it's ambiguous or what?

4 MR. RANDALL JONES: I think that the question as
5 posed was if he -- and it was not as to any board action, it
6 was -- there was no reference to litigation counsel or any
7 other source of information. And so certainly the way the
8 question is posed, that was objectionable in my opinion on
9 several grounds.

10 THE COURT: Well, you objected on form of the
11 question, so that was why I was asking what form you thought
12 was a problem.

13 MR. RANDALL JONES: And I try to list it as several
14 forms. I'm sorry, that's what I meant to say to you, Judge.

15 THE COURT: Mr. Toh, to the extent you gained an
16 understanding from someone other than litigation counsel about
17 the consequences of not complying with the Nevada court order,
18 Mr. Bice is entitled to your understanding of what that was.
19 If your source of information, however, is from litigation
20 counsel, that would be privileged, in my opinion.

21 THE WITNESS: The information is coming from our
22 general counsel. Our general counsel.

23 BY MR. BICE:

24 Q All right. And what did your general counsel tell
25 you about the consequences?

1 MR. RANDALL JONES: Your Honor, again I'm going to
2 object about that. He's not talking to the board. Well, my
3 objection is unless he's talking about communication with the
4 board, then I would object on the basis of attorney-client
5 privilege. So the question is ambiguous at least.

6 THE COURT: Okay. Mr. Toh, what were the
7 circumstances under which the general counsel provided you
8 with that information?

9 THE WITNESS: That's when the -- when the company
10 got fined by the OPDP.

11 MR. RANDALL JONES: Well, Your Honor --

12 THE WITNESS: This is a party --

13 MR. RANDALL JONES: I'm sorry, Mr. Toh.

14 Your Honor, the reason I -- Can we just clarify, is
15 this a conversation he had with general counsel individually?

16 THE COURT: That's what I'm trying to find out.

17 MR. RANDALL JONES: And I think he was starting to
18 tell you what the discussion was.

19 THE COURT: No, he was giving me the timing.

20 MR. RANDALL JONES: Oh. Oh, okay.

21 THE COURT: It was when they were fined by the OPDP.

22 MR. RANDALL JONES: Just for -- if you would indulge
23 me, Your Honor, would you please just try to make sure that
24 he's not going to tell you what the advice was until we find
25 out the circumstances?

1 THE COURT: I'm trying.

2 MR. RANDALL JONES: Thank you. I appreciate that.

3 THE COURT: So, sir, you said that you heard from
4 general counsel when you got the fine from OPDP. Was that in
5 a meeting or a personal conversation with general counsel?

6 THE WITNESS: I recall just in the conversations. I
7 can't remember exactly when and just heard about that, yeah.

8 MR. BICE: Well, Your Honor, may I ask --

9 THE COURT: Was it in the hallway while you guys
10 were getting coffee, or was it in a meeting? Or were you
11 riding to work together?

12 THE WITNESS: I think it was probably in the -- it
13 could be in some discussions. I can't recall exactly. Yeah.

14 BY MR. BICE:

15 Q Mr. Toh, did the general counsel ever advise the
16 board about the consequences of not complying with the court's
17 order?

18 A I can't recall that, yeah.

19 Q You didn't think --

20 A Yeah, I can't remember. Yeah.

21 Q Do you keep documents about these board meetings?

22 A If we have the document of meeting?

23 Q Do you keep -- do your board minutes keep -- I'm
24 sorry. Do your board meeting minutes keep records of what the
25 general counsel informed you about?

1 A We have the board meeting minutes, so I believe if
2 this is mentioned in the board meeting, that should be in the
3 minutes, yeah.

4 Q Okay. So it would be reflected in a minute, in
5 board meeting minutes if you were ever advised by the general
6 counsel concerning the order. Is that right?

7 A If they say this, if it's brought up in the board
8 meeting, yes.

9 Q Were you involved in the decision to not produce
10 documents in the United States, Mr. Toh?

11 A No.

12 Q Was Mr. Tracy involved in that decision?

13 MR. RANDALL JONES: Object to the extent it calls
14 for speculation.

15 THE COURT: Sir, I don't want you to guess or
16 speculate, but if you know we're entitled to your personal
17 knowledge.

18 MR. PEEK: It also assumes facts not in evidence,
19 Your Honor, that the documents were not produced. He says
20 were you involved in the decision not to produce documents in
21 the U.S. Documents were produced.

22 THE COURT: They were redacted.

23 MR. PEEK: I understand that, but they were
24 produced. Personal information.

25 THE COURT: Sir, you can go ahead and answer if you

1 can.

2 THE WITNESS: I don't know. yeah. I have no
3 knowledge, yeah.

4 BY MR. BICE:

5 Q Do you know whether anyone in Las Vegas was involved
6 in making the decision not to comply with the court's order?

7 THE COURT: And by that you mean not to produce
8 documents in an unredacted form?

9 MR. BICE: Yes.

10 THE WITNESS: I don't know.

11 BY MR. BICE:

12 Q Did you ever talk to anyone in Las Vegas about that?

13 A No.

14 Q Who were the lawyers in Macau that were reviewing
15 records pursuant to the Court's order? Do you know?

16 THE COURT: And sir, that's a yes or a no answer.

17 THE WITNESS: Yes.

18 BY MR. BICE:

19 Q Who?

20 MR. RANDALL JONES: Your Honor, I object to the
21 extent that that would violate Macanese law.

22 THE COURT: Sir, is Mr. Hugh there with you?

23 MR. HUGHES: Yes, Your Honor.

24 THE WITNESS: Yeah.

25 THE COURT: Okay. Mr. Hugh, if at some point in

1 time you think you need to advise Mr. Toh related to answering
2 any questions, please feel free to do so. It will be easier
3 for you to do it if you think there is a potential issue where
4 he would have a -- what we would call in the United States a
5 Fifth Amendment problem, as opposed to trying to get the
6 lawyers here to make that decision. So if you as in-house
7 counsel foresee an issue, please feel free to tap him on the
8 shoulder. Okay?

9 MR. HUGHES: Yes, Your Honor.

10 THE COURT: Thank you. All right.

11 MR. RANDALL JONES: And, Your Honor, just to make it
12 clear, it's Hughes. It's H-U-G-H-E-S.

13 THE COURT: Oh, Hughes. Sorry, Mr. Hughes.

14 All right.

15 BY MR. BICE:

16 Q Mr. Toh, who were the lawyers, the Macau lawyers
17 that were reviewing the documents?

18 A I believe it's Mr. Hughes, yeah.

19 MR. HUGHES: You can identify Macau law firms that
20 aren't individual Macau lawyers.

21 THE WITNESS: Law firm, I can't recall that, yeah.

22 BY MR. BICE:

23 Q Do you recall any of the individual lawyers?

24 A No, I can't recall that.

25 Q Did you attend any meetings with the OPDP?

1 A No.

2 Q Did anyone brief you on the meetings at the OPDP?

3 A No.

4 Q Was any presentation ever made to the board
5 concerning the meetings with the OPDP?

6 A I can't remember, yeah.

7 Q Mr. Toh, did there come a time after the Jacobs
8 lawsuit was filed that you were interviewed by lawyers from
9 the United States?

10 A Can you come again?

11 Q Sure. After Mr. Jacobs filed this lawsuit, were you
12 subsequently interviewed by lawyers from the United States?

13 A I've been interviewed by the lawyers from the United
14 States, but I'm not sure whether it's related with Steve
15 Jacobs. It's more to the SEC investigations.

16 Q Okay. And were those lawyers from O'Melveny &
17 Myers?

18 MR. RANDALL JONES: Your Honor, object to relevance.

19 THE WITNESS: That's right.

20 MR. RANDALL JONES: Your Honor, I would object to
21 relevance. He's already said they weren't -- it had nothing
22 to do with Jacobs, so I would object to relevance.

23 THE COURT: The objection is overruled.

24 BY MR. BICE:

25 Q Mr. Toh, were you interviewed by O'Melveny & Myers

1 concerning a Las Vegas Sands corporate compliance
2 investigation?

3 MR. RANDALL JONES: Well, Your Honor, objection,
4 relevance.

5 THE COURT: Sustained.

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

7 MR. BICE: Your Honor, it goes to documents he has
8 reviewed with them.

9 THE COURT: Only to the extent it's in preparation
10 for his deposition. Documents he has reviewed in connection
11 with the other investigation is not relevant to this.

12 BY MR. BICE:

13 Q All right. I'll rephrase it this way. Mr. Toh, how
14 long were you interviewed by the lawyers at O'Melveny & Myers?

15 MR. RANDALL JONES: Objection, relevance.

16 THE COURT: Overruled.

17 THE WITNESS: You mean how long?

18 MR. BICE: Yes, sir.

19 THE WITNESS: You mean number of hours?

20 MR. BICE: Yes, sir.

21 MR. RANDALL JONES: Same objection, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: Was, yeah.

24 BY MR. BICE:

25 Q How many?

1 A I can't remember exactly, but I think it's a couple
2 hours. A few hours, yeah.

3 Q Do you remember when that was?

4 MR. RANDALL JONES: Objection, relevance, Your
5 Honor.

6 THE COURT: Mr. Bice, can you tie this up for me?

7 MR. BICE: I can, Your Honor. I'll withdraw that
8 and I'll rephrase it this way.

9 THE COURT: Thanks.

10 MR. BICE: I'll start on a different line.

11 BY MR. BICE:

12 Q Mr. Toh, were those lawyers from O'Melveny & Myers,
13 they were U.S. lawyers, correct?

14 A I didn't check their I.D., but I assume yes.

15 Q Okay. And how many of them were in the meeting with
16 you?

17 A Come again? How many of them?

18 Q How many of them were in the meeting with you?

19 A Uh, about three persons.

20 Q Okay. Did you have your own counsel present at that
21 meeting?

22 MR. RANDALL JONES: Objection, Your Honor,
23 relevance.

24 THE WITNESS: Yes.

25 THE COURT: Overruled.

1 BY MR. BICE:

2 Q And, Mr. Toh, did they show you documents from Las
3 Vegas Sands or from VML? Did they show you documents during
4 that meeting from VML?

5 MR. RANDALL JONES: Well, Your Honor -- well --

6 THE COURT: He has two more questions before I shut
7 him down.

8 MR. BICE: My foundation I think will be laid, Your
9 Honor.

10 THE COURT: That's why you get two more.

11 BY MR. BICE:

12 Q Did they show you documents, sir, from VML?

13 A Yeah, I saw some documents from VML.

14 Q Did those documents have any redactions on them?

15 A Because I'm in Macau, the documents that -- yeah.
16 No, I can't recall that.

17 Q There were no redactions, right?

18 MR. RANDALL JONES: Objection, misstates his
19 testimony.

20 THE COURT: Overruled.

21 Sir, can you confirm whether there were redactions
22 or not? One of us didn't hear you.

23 THE WITNESS: The documents in Macau, I can't recall
24 that they did redaction or not, yeah.

25 //

1 BY MR. BICE:

2 Q Okay. And so, Mr. Toh, just to wrap this up, U.S.
3 lawyers from O'Melveny & Myers were in Macau and reviewed
4 documents with you that were not redacted, correct?

5 MR. RANDALL JONES: Objection, Your Honor.

6 THE COURT: Overruled.

7 MR. RANDALL JONES: Misstates his testimony.

8 THE COURT: Please. Overruled.

9 And, Mr. Toh, if you could -- Did you hear the
10 question?

11 THE WITNESS: Yes, I hear the question. I say I
12 can't recall exactly whether there's redactions or not, yeah.

13 BY MR. BICE:

14 Q Well, let me ask you this, Mr. Toh. When was the
15 first time you were aware that redactions were going to be
16 made to the documents in Macau?

17 A I can't remember that, yeah.

18 Q Well, that was relatively recently, wasn't it?

19 MR. RANDALL JONES: Objection, Your Honor, assumes
20 facts not in evidence.

21 THE COURT: Overruled.

22 THE WITNESS: I can't remember that, yeah. Maybe a
23 couple of years ago, two years, I guess. I can't remember
24 exactly, yeah.

25 //

1 BY MR. BICE:

2 Q So it's your belief that there was discussions about
3 redactions a couple of years ago?

4 A No. I only know it -- I only know it, heard about
5 from our general counsel recently, yeah.

6 Q Okay. And so my question to you, sir, was the
7 documents that O'Melveny & Myers went over with you, you
8 understood that that was part of an investigation, correct?

9 A My understanding is investigation related to the --
10 I believe the SEC.

11 MR. RANDALL JONES: Your Honor, I'm going to have to
12 object here. Now he's asking for his understanding about
13 information from lawyers. So that is outside counsel, that's
14 improper.

15 THE COURT: Okay. Well, let me --

16 MR. BICE: He had his own lawyer there.

17 THE COURT: Wait. Let me ask the question.

18 Mr. Toh, when you met with the lawyers from
19 O'Melveny & Myers, do you remember any of the documents having
20 blacked out, like the documents you're looking at as exhibits
21 today that Mr. Bice went through?

22 THE WITNESS: Uh, I can't really remember that,
23 yeah.

24 THE COURT: Okay. And is the first time, sir, that
25 you remember dealing with redacted documents the ones that are

1 blackened out that you went over with Mr. Bice earlier today as
2 part of this litigation a couple of years ago?

3 THE WITNESS: Uh, they showed me some documents.
4 I'm not sure exactly if it's, you know, much different. I
5 think -- yeah, this one, this is the first time I saw these
6 documents. I can't remember exactly what's the documents that
7 I have seen, yeah.

8 THE COURT: Is it unusual for you to see the
9 documents with the blacking out on them?

10 MR. RANDALL JONES: Your Honor, just to be clear,
11 they're not blackened out.

12 THE COURT: On his?

13 MR. RANDALL JONES: No, they're not. There are just
14 deletions and it says -- it will just have a deletion. So it
15 doesn't have like a strike out like you and I might normally
16 see. It says personal --

17 THE COURT: Just a white line?

18 MR. PEEK: No, it has a name.

19 MR. RANDALL JONES: It has like -- where the name is
20 it says personal.

21 MR. BICE: Can I show the Court? I'll show the
22 Court.

23 THE COURT: Can I see one real quick?

24 MR. RANDALL JONES: Sure.

25 THE COURT: Because I'm confusing the witness.

1 MR. BICE: The board minute meetings (sic).
2 THE COURT: So it has the X's?
3 MR. PEEK: No, no, no, Your Honor. Do you see the
4 word, personal redaction?
5 THE COURT: Never mind.
6 MR. BICE: All right. So --
7 MR. PEEK: And, Your Honor, I think I need to join
8 in this objection as well because the investigation --
9 MR. BICE: Then I need -- then I would like to --
10 MR. PEEK: May I finish my objection?
11 MR. BICE: I would like --
12 THE COURT: Hold on a second. Let's finish with Mr.
13 Toh. The issue about O'Melveny & Myers, I think you've made
14 your point and you've made an adequate record related to those
15 documents and this witness' knowledge. Do you have other
16 information from this witness that you want to try and elicit?
17 MR. BICE: I do, Your Honor.
18 THE COURT: Okay.
19 MR. BICE: But I want --
20 MR. PEEK: Your Honor, I want to at least --
21 THE COURT: We're going to make a record on a lot of
22 stuff once I get the gentleman off the phone. I don't want to
23 try and influence his testimony by the argument you're going
24 to make.
25 MR. PEEK: I don't either, Your Honor, but I

1 represent Las Vegas Sands. The investigation was of Las Vegas
2 Sands. And I'm not sure that what he's talking about is --

3 THE COURT: Okay.

4 MR. PEEK: I'm reluctant to say something for fear
5 of having one of those little pieces of paper; you think I'm
6 doing a speaking objection.

7 THE COURT: I can just sua sponte hold you in
8 contempt.

9 MR. PEEK: No, I don't want to do that, Your Honor.
10 But I do want to make the point is that there's not a clear
11 record that these were VML Macau documents as opposed to Las
12 Vegas Sands documents that he was shown.

13 THE COURT: You're right, there is not.

14 MR. BICE: Then I want to make that record.

15 THE COURT: Okay, then ask him some more questions.

16 BY MR. BICE:

17 Q Okay. Mr. Toh, the documents that you reviewed you
18 testified earlier were documents that came -- that were from
19 VML; isn't that true?

20 A The document, the exhibit in the computers that you
21 have in front of --

22 Q No, sir. The documents that you were shown by
23 O'Melveny & Myers were from VML, weren't they?

24 A Yes.

25 Q And did O'Melveny & Myers leave those documents in

1 Macau?

2 A Yes.

3 Q Did they put them on a server somewhere?

4 MR. RANDALL JONES: Objection, Your Honor, calls for
5 speculation.

6 THE COURT: Overruled.

7 Sir, but don't guess or speculate. We'd only like
8 your personal knowledge.

9 THE WITNESS: I don't know, yeah.

10 BY MR. BICE:

11 Q You don't know what they did with the documents,
12 sir?

13 MR. RANDALL JONES: Objection, asked and answered.

14 THE COURT: Overruled.

15 THE WITNESS: The document I believe is with our
16 general counsel. They leave it with our general counsel.

17 BY MR. BICE:

18 Q Your general counsel has retained copies of what
19 O'Melveny & Myers showed you, correct?

20 A Yes.

21 Q Okay. To your knowledge, Mr. Toh, were other
22 executives at Sands China interviewed by O'Melveny & Myers?

23 THE COURT: And sir, we only want your personal
24 knowledge. I don't want you to guess or speculate.

25 THE WITNESS: Uh, yes.

1 BY MR. BICE:

2 Q Tell me the executives that were interviewed by
3 O'Melveny & Myers.

4 MR. RANDALL JONES: Your Honor, object to this --

5 THE WITNESS: I don't know.

6 MR. RANDALL JONES: Thank you.

7 BY MR. BICE:

8 Q Well, you know that some were, don't you?

9 MR. RANDALL JONES: Your Honor, objection; the
10 relevance. Again, we're going far afield from the issues
11 related to this hearing, and I've been trying to be --

12 MR. BICE: Your Honor --

13 THE COURT: Okay. Then I'm going to say what I'm
14 going to say, and if it affects things -- It appears from the
15 testimony of the witness that documents that were Sands China
16 or VML documents were provided to a U.S. law firm while they
17 were in Macau for purposes of interviewing witnesses. It
18 appears that from the testimony. It may or may not be true.
19 But to the extent that it appears that from the testimony
20 that's elicited, that's an important factor for me to consider
21 in whether your client was consistent in the way they treated
22 documents that included personal identifying information and
23 arguably, from your perspective, may have violated the Macau
24 Data Privacy Act by showing to other people. I recognize that
25 is an issue. In order for me to be able to evaluate that

1 issue, I have to hear evidence, so I'm going to let Mr. Bice
2 ask some more questions.

3 MR. RANDALL JONES: I understand, Your Honor, but I
4 want to make it clear there is no evidence as to whether or
5 not those documents were redacted or not. So there's no
6 evidence in the record that those documents were in unredacted
7 form.

8 THE COURT: There are two ways for us to find that
9 out. One, your client could voluntarily provide somebody with
10 a copy of that information, or two, the witness can be
11 questioned. Since I doubt your client is going to voluntarily
12 provide the information, I'm going to let Mr. Bice ask him
13 some more questions.

14 MR. BICE: Well, presumably if they were redacted it
15 wouldn't be difficult to provide them at all.

16 THE COURT: Mr. Bice, don't --

17 MR. BICE: I understand.

18 THE COURT: Don't help.

19 MR. RANDALL JONES: Your Honor, my only point is
20 that this witness has now testified at least twice if not more
21 that he does not remember if they were redacted or not.
22 That's his testimony.

23 THE COURT: He's also testified the first time he's
24 seen documents or knew about them was about two years ago,
25 which is part of my case, which is when the redaction issue

1 came up in 12/12.

2 MR. RANDALL JONES: I didn't argue with that point,
3 Judge.

4 THE COURT: Okay. That's why I think it's important
5 for me to consider as part of the evidence.

6 So, Mr. Bice, you can continue; hopefully briefly.

7 BY MR. BICE:

8 Q Mr. Toh, did the documents that you were shown by
9 O'Melveny & Myers have names on them?

10 A Can you come again?

11 Q Did the documents you were shown by O'Melveny &
12 Myers' lawyers from the United States have names on them?

13 A I can't recall exactly, yeah.

14 Q You can't recall whether any names were in any of
15 the documents that you were shown by O'Melveny & Myers, sir?

16 MR. RANDALL JONES: Objection, asked and answered,
17 Judge.

18 THE COURT: Overruled.

19 THE WITNESS: Can you come with question again?

20 BY MR. BICE:

21 Q Sure. Did the documents you were shown by O'Melveny
22 & Myers contain any people's names?

23 MR. RANDALL JONES: Objection, asked and answered.

24 THE COURT: Overruled.

25 THE WITNESS: Uh, I'm trying to recall that, yeah.

1 This is quite awhile ago.

2 THE COURT: That's okay, sir, you can take your time
3 if it assists you in remembering.

4 THE WITNESS: I saw --

5 MR. RANDALL JONES: Your Honor, again, objection.
6 It calls for speculation based on his --

7 MR. BICE: Your Honor --

8 THE COURT: Mr. Jones, let's let him finish the
9 answer.

10 MR. RANDALL JONES: I thought he had. He's answered
11 it twice.

12 THE WITNESS: Yeah, I can't exactly remember.

13 THE COURT: Thank you, sir.

14 BY MR. BICE:

15 Q Mr. Toh, did they show you documents from VML
16 concerning Mr. Jacobs?

17 A No.

18 Q No?

19 A For that, yeah.

20 Q Do you remember -- do you recall what they showed
21 you then?

22 MR. RANDALL JONES: Objection, Your Honor, asked and
23 answered. And as it relates to the -- if it does not relate
24 to the Jacobs matter, Your Honor, again, I would object. It
25 goes beyond the basis of this discussion.

1 THE COURT: I disagree.

2 BY MR. BICE:

3 Q Mr. Toh, you're telling the Court that you can't
4 remember anything about the documents that O'Melveny & Myers
5 showed you?

6 A I remember it's more related to the SEC
7 investigations.

8 Q I understand that, sir. But what sort of documents
9 were they showing you concerning that investigation?

10 A I remember it's more toward the documents, the email
11 I write, yeah.

12 Q So they showed you emails, did they not?

13 A Yeah, they showed me email I wrote and they want to
14 clarify what that mean to me, yeah.

15 Q Okay. So they showed you an email that you wrote
16 that had your name on it, correct?

17 A Yeah. Um-hm.

18 Q Prior to that had you given any form of consent
19 under the Macau Data Privacy Act?

20 A Yeah. For me I have a consent to the company to
21 disclose my personal information.

22 Q You have given the company a consent to disclose
23 your personal information?

24 A That's right.

25 Q When did you do that?

1 A Uh, as probably employee, I mean, yeah. So to
2 disclose information to the U.S., I have to give the consent,
3 yeah.

4 Q Oh, okay. So you didn't give them a consent to
5 disclose to anyone from the U.S., is that right?

6 A Only disclose to the company, yeah.

7 Q Okay. So now the O'Melveny & Myers lawyers that
8 were at this meeting, they were not representing you, were
9 they?

10 A No.

11 Q Well, didn't they in fact tell you that you might
12 want to consider getting your own counsel?

13 MR. PEEK: Objection.

14 MR. RANDALL JONES: Well, Your Honor, I'm going to
15 object to the form of the question.

16 THE COURT: Sustained.

17 MR. BICE: On privilege?

18 THE COURT: Um-hm. It's irrelevant.

19 BY MR. BICE:

20 Q Again --

21 THE COURT: It's irrelevant. Not on privilege,
22 irrelevant. Sorry. It doesn't go to the documents. I'm
23 concerned about documents. I don't care about the SEC
24 investigation otherwise.

25 //

1 BY MR. BICE:

2 Q Before I was asking you, sir, and I don't think we
3 got an answer, and if you gave us one, my apologies, did you
4 ever -- Strike that. Do you know who were the other
5 executives or employees that they interviewed?

6 THE COURT: He previously said he didn't know.

7 BY MR. BICE:

8 Q Did they interview Mr. Tracy?

9 MR. RANDALL JONES: Your Honor, objection. Again,
10 relevance. We just keep going around and around here.

11 THE COURT: Sustained.

12 MR. BICE: I'm trying to lay a foundation that this
13 claim by this litigant that this has precluded them from
14 reviewing the documents in Macau, having U.S. lawyers, is a
15 recent fabrication because --

16 THE COURT: Mr. Bice.

17 MR. BICE: Yes?

18 THE COURT: He can't tell us what documents may or
19 may not have been shown to Mr. Tracy, which would be the issue
20 that was important to me.

21 MR. BICE: I understand that. But I would like to
22 know who it was so that we can establish that, Your Honor.

23 THE COURT: You mean O'Melveny & Myers?

24 MR. BICE: This isn't just limited to him. That's
25 my point.

1 THE COURT: Okay.

2 MR. BICE: They showed him, for example, as he
3 admitted, they showed him an email that he wrote. The only
4 way they could have gotten that is there. And I want to know
5 who else they looked at, because it sounds like -- I have a
6 suspicion that there -- because -- Let's just lay this out
7 crystal clear for the Court. This company, Las Vegas Sands
8 Corporation, sent its auditors over there, who had retained
9 O'Melveny & Myers, and they were supposed to be doing a report
10 to the Gaming Control Board to claim that they had
11 investigated what had gone over there and that they didn't do
12 anything wrong. Well, I find that fascinating that this
13 litigant could report that to the Gaming Control Board, since
14 they're now telling you their U.S. lawyers aren't even allowed
15 to see personal data in documents and they can't even know the
16 personal data that exists. That must have been quite a
17 comprehensive investigation that they did and told the Nevada
18 Gaming Control Board about, since they are now telling Her
19 Honor we can't even look at the documents and people can't
20 even know the email names that are in the documents. And we
21 can't even give any description of who those people might or
22 might not be. That obviously is not true, except for in this
23 courtroom for Sands China.

24 MR. RANDALL JONES: Your Honor, can I respond?

25 THE COURT: Hold on a second. This witness has

1 already told you he doesn't know who else they interviewed,
2 Mr. Bice. So because my primary concern is the inconsistency
3 in the treatment of documents which may have had personal
4 identifying information, which is related to what you just
5 discussed, the witness, though, has said he doesn't know who
6 else was interviewed.

7 MR. BICE: But, Your Honor --

8 THE COURT: There's another way for you to find that
9 out.

10 MR. BICE: I know there is, but one of the ways we
11 always do it, for example, in a deposition is you ask them
12 specific names because it might jar their memory.

13 THE COURT: But this isn't a deposition, this is an
14 evidentiary hearing.

15 MR. BICE: Because we weren't allowed to depose him.
16 I get that. But we are doing the best that we can in light of
17 what this litigant has done. So I will move on. I
18 understand.

19 THE COURT: I understand what you're trying to do,
20 Mr. Bice. And to the extent it relates to documents and the
21 way documents may have been treated differently at different
22 times with different people, I'm going to let you ask those
23 questions.

24 MR. BICE: Understood. All right, Your Honor, we'll
25 move on.

1 MR. RANDALL JONES: Your Honor.

2 THE COURT: Yes, Mr. Jones.

3 MR. RANDALL JONES: I just want to make -- Mr. Bice
4 wants to give his closing argument, I understand that. But I
5 would also point out that the witness testified he gave his
6 consent to the company to review his personal data, so that's
7 obviously how they would have his personal emails.

8 THE COURT: How the company might. But if they were
9 released to a third party that's beyond the consent, that
10 sounds like a little bit of a problem. If it's the compliance
11 committee, that's a different issue. You'd think I would be
12 included in such a waiver or such a consent, but I guess not.
13 We'll talk about that later.

14 MR. BICE: And in fact, it's the U.S. --

15 MR. PEEK: Your Honor, it's also --

16 THE COURT: It's not the time to talk about it right
17 now, it's the time to finish the examination.

18 MR. BICE: It's the U.S. compliance committee.

19 MR. RANDALL JONES: I agree. I'd like to finish the
20 witness as well.

21 MR. PEEK: But isn't it also timing, Your Honor, as
22 to when these interviews occurred?

23 THE COURT: Those are all good issues, Mr. Peek, but
24 I'd like to have the witness answer questions so that I have
25 the evidence so that you can then make the arguments related

1 to what the evidence shows.

2 MR. BICE: I feel quite confident I asked him when
3 those occurred and it drew an objection was sustained as to
4 when those interviews occurred.

5 MR. PEEK: No.

6 THE COURT: I don't think it was on the when.

7 MR. RANDALL JONES: That is not correct.

8 MR. BICE: Okay.

9 THE COURT: If you don't remember, you can ask him
10 if he remembers.

11 BY MR. BICE:

12 Q All right. Mr. Toh, do you recall approximately
13 when you were interviewed by O'Melveny & Myers? I understand
14 you won't remember the exact date, but give me the approximate
15 date when.

16 A Uh, probably around 2011.

17 Q Sometime in 2011, right?

18 A Yeah.

19 Q All right.

20 A Yes.

21 Q And you understood that O'Melveny & Myers was -- the
22 work that they were doing concerned the United States
23 Securities and Exchange Commission, not the Hong Kong,
24 correct?

25 A Yes.

1 Q Okay. And you understood, did you not, that the
2 O'Melveny & Myers firm was representing the Las Vegas Sands
3 Corporation's audit committee and not Sands China, correct?

4 MR. RANDALL JONES: Well, Your Honor, again, I'm
5 going to have to interpose an objection here. Now he's
6 getting into attorney-client communications and how he would
7 get an understanding. That's irrelevant. It's also not
8 relevant to these proceedings about sanctions for my client in
9 this situation.

10 THE COURT: Are you saying -- I just need to make
11 sure that I understand your position. Are you saying that
12 O'Melveny & Myers' communications with him are privileged?

13 MR. RANDALL JONES: They may be. I don't know. All
14 I'm saying, Your Honor, you're talking about a lawyer --

15 THE COURT: Well, but you either got to say yes or no
16 now, because I'm in a hearing and I've got to make a ruling on
17 a privilege.

18 MR. RANDALL JONES: And, Your Honor, because I don't
19 know all the details of that situation --

20 THE COURT: O'Melveny & Myers, it was testified to
21 yesterday by Mr. Fleming that O'Melveny & Myers represented
22 the audit committee for the Las Vegas Sands.

23 MR. BICE: Mr. Raphaelson insisted that they were
24 separate.

25 THE COURT: And he said he had no direction and

1 authority over them because they relate to the audit committee
2 --

3 MR. BICE: Exactly.

4 THE COURT: -- which is typical in most publicly
5 traded companies.

6 So are you making a privilege objection or not?

7 MR. RANDALL JONES: Let me -- because this --
8 anytime you deal with privilege, it's sensitive. I want to
9 make sure I'm not --

10 MR. PEEK: We'll do it collectively, Your Honor.

11 (Defense counsel confer among themselves)

12 THE COURT: Mr. Toh, I am sorry for the repeated
13 delays and I know it is taking up a lot of your time very
14 early in the day for you. We appreciate your patience with
15 us. If you need to take a break now to go to the restroom or
16 get something to drink, please feel free to do so, get up and
17 move around while the lawyers over here consult about this
18 issue. Okay?

19 THE WITNESS: Okay, thank you.

20 THE COURT: Uh-huh. I'm going to take a break while
21 they consult, too.

22 MR. BICE: Thank you, Your Honor.

23 (Court recessed at 3:50 p.m., until 4:00 p.m.)

24 THE COURT: Mr. Toh, are you ready?

25 Mr. Bice, we're ready. Mr. Toh and I are ready.

1 MR. BICE: I'm ready.

2 THE COURT: And Mr. Jones is here.

3 MR. BICE: Where's Mr. Peek?

4 MR. RANDALL JONES: Everybody else is right behind

5 me.

6 MR. BICE: Can we go without Mr. Peek?

7 THE COURT: You can.

8 BY MR. BICE:

9 Q Okay. Mr. Toh, can you hear me, sir?

10 A Yes, I can hear you.

11 Q During the break, Mr. Toh, did you speak to anyone?

12 A Yeah. Just talked to Wyn.

13 Q Okay. You didn't speak to anyone else?

14 A No.

15 Q Okay.

16 MR. RANDALL JONES: I will represent we had no

17 contact whatsoever with Mr. Toh during the break, just to make

18 sure.

19 BY MR. BICE:

20 Q Earlier, Mr. Toh, you'd indicated that the O'Melveny

21 & Myers lawyers showed you some of your own emails; correct?

22 A Yes.

23 Q And they were asking you questions about what did

24 you mean by certain things that you said in the emails;

25 correct?

1 MR. RANDALL JONES: Well, objection, Your Honor. As
2 to any communications between Mr. Toh and O'Melveny I'm going
3 to object on the basis of attorney-client privilege.

4 THE COURT: Okay. And so tell me who O'Melveny &
5 Myers, based upon your understanding, was representing.

6 MR. RANDALL JONES: I'm very confident now in my
7 understanding about that situation. William Myers was
8 retained by the Audit Committee on behalf of the company --

9 THE COURT: The company being Las Vegas Sands?

10 MR. RANDALL JONES: Correct.

11 -- in an investigation involving Las Vegas Sands and
12 its affiliates, which specifically included Sands China, and
13 that there was a mutual interest in that investigation of all
14 companies, including Las Vegas Sands and Sands China, and I
15 would instruct him not to answer the question on that basis.

16 THE COURT: Okay. I just needed you to confirm for
17 me who you thought. That's why I asked you the questions
18 before.

19 MR. RANDALL JONES: I understand, Your Honor. And I
20 want to be very clear about my answer, because I know you
21 wanted a very precise response.

22 THE COURT: I was trying to get it.

23 Mr. Bice, you wanted to say something before I rule.

24 MR. BICE: That's right, Your Honor. This --

25 O'Melveny & Myers is representing the Audit Committee. They

1 are not representing the companies, and in fact they can't be
2 representing the companies. And so to pretend like they were
3 somehow representing the companies is legally impossible. Mr.
4 Toh has already testified he had his own counsel there and
5 they were interviewing him. They were not representing him.
6 They were conducting an investigation to try and convince the
7 United States Securities & Exchange Commission, as well as the
8 Nevada gaming authorities, that nothing had gone on over there
9 that they need to worry themselves about. And so to come into
10 court and now represent that Mr. Toh has an attorney-client
11 relationship with the O'Melveny & Myers lawyers is -- there is
12 no evidence to substantiate that. And it's their burden to
13 demonstrate it.

14 THE COURT: Because privilege is an important issue
15 and this privilege is one that is I think an important one
16 that needs to be briefed, I am going to sustain the objection
17 at this point in time subject to further briefing. If I make
18 a determination after receiving further briefing that in fact
19 the objection was not well founded, Sands China will have to
20 make Mr. Toh available for deposition.

21 MR. PEEK: That's fine, Your Honor. Thank you.

22 THE COURT: Okay. And it can be by video
23 conference, as opposed to live.

24 MR. PEEK: Thank you, Your Honor.

25 //

1 BY MR. BICE:

2 Q Mr. Toh, the emails that you were O'Melveny, to whom
3 had you sent them? In other words, there were emails that you
4 had with somebody else. Who was the someone else, sir?

5 A I can't recall exactly, but bending more to what the
6 [unintelligible].

7 Q I'm sorry. Can you spell the name for us.

8 A No, I can't recall the name. I say there are a
9 number of emails. I can't recall exactly who was in the
10 email, but mainly a lot of emails more local [unintelligible]
11 when the team in Macau, yeah.

12 Q Okay. So your recollection is that they were just
13 communications within Macau; correct?

14 A Maybe some -- or let's see. I can't recall exactly,
15 because it's long time ago, yeah.

16 Q I understand that. But do you have a recollection
17 that the email -- at least some of the email communications
18 were just communications within Macau?

19 A Yes.

20 Q Mr. Toh, did you oversee the IT Department at any
21 point in time?

22 A Not officially, but, I mean, just helping out. So
23 no.

24 Q All right. So helping out being what?

25 A Some administrative stuff, like, you know, approve

1 some expenditures and some administrative stuff, yeah.

2 Q Okay. Was there anyone else -- just one followup
3 question on your meetings with O'Melveny & Myers. Was there
4 anyone else present for those meetings -- or the meeting you
5 had except for you, your lawyer, and the O'Melveny & Myer
6 lawyers?

7 MR. RANDALL JONES: I'm sorry. Could you --

8 THE COURT: Who else was present?

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

10 THE COURT: I'm not as good as a court reporter,
11 but --

12 THE WITNESS: I can't remember who else is present,
13 I mean, 'cause it's couple years ago. I can't remember, Your
14 Honor.

15 BY MR. BICE:

16 Q Fair enough, Mr. Toh. Mr. Toh, can you tell me
17 this. Was the interview recorded?

18 A The interview -- yeah, my lawyer actually did, yeah,
19 what [[unintelligible]].

20 Q I'm sorry.

21 A I don't know whether the other [unintelligible]. My
22 lawyer represent me did record the [unintelligible] talk.

23 Q He recorded the questions you were asked?

24 A Yep. And then the answer I provide.

25 Q And the answers you provided. And you do not know

1 whether or not O'Melveny & Myers recorded those; correct?

2 A That's right.

3 Q Were you ever asked to give a consent under the Macau
4 Data Privacy Act for this lawsuit, the Jacobs lawsuit?

5 A No.

6 Q Okay. Were you asked to give one with respect to
7 the O'Melveny & Myers investigation?

8 A For the investigations -- just how I say that the
9 consent -- my privacy data, my personal data is to provide to
10 the company.

11 Q Uh-huh. Did they -- so you did not execute any sort
12 of other consent for that investigation; correct?

13 A No. I can't recall that. My consent is only to the
14 company, yeah.

15 Q All right. And so did you talk about -- did anyone
16 ask you to give a consent in this case regarding the Jacobs
17 case?

18 MR. RANDALL JONES: Well, Your Honor, I only object
19 to the extent that calls for attorney-client privilege. If
20 somebody asked him, that's a communication with counsel. And
21 to the extent that it's -- and, Your Honor, this is one of
22 those situations where I've -- I'm not so concerned about the
23 answer per se, but I am concerned about waiving privilege, and
24 so --

25 THE COURT: You're concerned about the precedent it

1 sets?

2 MR. RANDALL JONES: I am concerned about the
3 precedent it sets, Your Honor.

4 THE COURT: All right. Sir, I am going to ask you
5 not to answer that question and ask Mr. Bice to move on.

6 BY MR. BICE:

7 Q You said that your consent was only to the company
8 that you gave, the prior one. To which company was that, sir?

9 A To the VML.

10 Q Okay. All right. Before I was asking you about
11 your role with respect to the IT Department. As part of that
12 investigation that you're aware of that O'Melveny was
13 conducting did they -- did Mr. Dillon [phonetic] do data
14 searches for them on the VML databases?

15 A I don't know.

16 Q Did you ever discuss that with anyone?

17 MR. RANDALL JONES: Objection, Your Honor. To the
18 extent he discussed it with counsel I would object and ask him
19 not to answer.

20 THE COURT: Sir, if you can answer that question
21 without revealing anything you discussed with counsel, please
22 do. Otherwise, tell us you can't answer it. Or you could
23 tell me you don't remember or you don't know.

24 THE WITNESS: I don't know.

25 THE COURT: Thank you, sir.

1 BY MR. BICE:

2 Q Sir, do you know what the Clearwell database was?

3 A I don't know.

4 Q You never heard of that before? Have you ever heard
5 that word before, Clearwell?

6 A Again. Clear --

7 Q Clearwell.

8 A No.

9 Q And you said that the documents that you were
10 reviewed -- that you reviewed with O'Melveny & Myer are
11 currently in the possession of Mr. Fleming; is that right?

12 MR. RANDALL JONES: Objection. Asked and answered.

13 THE WITNESS: I believe is in our Legal Department.
14 I'm not sure the process of [unintelligible] or not. It's in
15 our Legal Department.

16 BY MR. BICE:

17 Q Thank you, sir. Mr. Toh, in 2010 did Venetian Macau
18 Limited, VML, did it maintain a backup system for its IT in
19 Mainland China outside of Macau?

20 A I'm not aware. I don't know, yeah.

21 Q You're not aware whether there were any backups in
22 Jhuhai?

23 MR. PEEK: Objection. Asked and answered, Your
24 Honor.

25 THE COURT: Overruled.

1 MR. BICE: I'm asking specific questions.

2 THE COURT: Don't you "sheez."

3 Sir, can you answer?

4 BY MR. BICE:

5 Q Zhuhai sound familiar?

6 A Yes.

7 Q Were there backups in Zhuhai?

8 A No. The backup is in Macau, because Zhuhai has only

9 access to the Macau system the perform job.

10 Q Okay. So there were never any backup systems that

11 were outside of Macau. Is that what you're saying?

12 A That's my understanding.

13 Q And where did you get that understanding?

14 A Based on some informations from the IT, yeah.

15 Q Mr. Toh, did you learn that data had been

16 transferred to the United States concerning Mr. Jacobs?

17 MR. RANDALL JONES: Objection, Your Honor, to the

18 extent that that question invades the attorney-client

19 privilege. I would instruct him not to answer.

20 MR. BICE: I'll rephrase.

21 MR. PEEK: And also relevancy, Your Honor.

22 THE COURT: Thank you. Wait. We're going to

23 rephrase the question.

24 BY MR. BICE:

25 Q I'll rephrase. Other than lawyers, Mr. Toh, did you

1 ever discuss with anyone the transfer of data to the United
2 States concerning Mr. Jacobs?

3 MR. PEEK: Objection. Relevancy, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: No.

6 BY MR. BICE:

7 Q When did you find out that it had been transferred?

8 MR. PEEK: Same objection, Your Honor, relevancy.

9 THE COURT: Overruled.

10 THE WITNESS: From our legal counsel.

11 BY MR. BICE:

12 Q Okay. But when, sir?

13 A I can't recall exactly. Maybe couple years ago.

14 Q Okay. Was that at a board meeting where that was
15 discussed?

16 A I can't recall that, yeah.

17 Q Did you attend any meetings with the Office of Data
18 Protection concerning either this matter or the SEK
19 investigation?

20 MR. PEEK: Objection.

21 THE COURT: The objection asked and answered is
22 sustained. He said no.

23 MR. BICE: I apologize, Your Honor.

24 THE COURT: It's okay.

25 MR. BICE: I did not recall asking him that. And

1 I'm losing track of my notes.

2 THE COURT: It's all right. I'm here to keep you
3 straight.

4 MR. BICE: Thank you.

5 THE COURT: Trying to get the witness out of here.
6 Promised my staff we would break early -- or at 5:00 today.

7 MR. PEEK: I told you it'd be two hours, Your Honor.

8 THE COURT: Thank you, Mr. Peek.

9 MR. BICE: Thank you. As the Court knows, I don't
10 think I've been doing all that much talking.

11 THE COURT: It just doesn't matter. Let's just get
12 this gentleman done so he can go about his life.

13 BY MR. BICE:

14 Q Mr. Toh, you knew Jeffrey Schwartz; correct?

15 A Yes.

16 Q He served on the board with you?

17 A He was, yeah.

18 Q Did also Mr. Irwin Siegel serve on the board with
19 you?

20 A Yes, he was.

21 Q And neither of them are any longer with the company;
22 correct?

23 A Yes.

24 Q Did Mr. Schwartz have interaction and knowledge
25 about Mr. Jacobs's work in Macau?

1 MR. RANDALL JONES: Object to the extent it calls
2 for speculation.

3 THE COURT: Overruled. To the extent you know, sir.

4 THE WITNESS: The question again?

5 BY MR. BICE:

6 Q Sure. Did Jeff Schwartz have knowledge and
7 information about Mr. Jacobs's work in Macau?

8 A Yes, I believe so, yeah.

9 Q How about Irwin Siegel? Did he have knowledge and
10 information about Mr. Jacobs's work in Macau?

11 MR. RANDALL JONES: Object again. Same objection,
12 Your Honor.

13 THE WITNESS: Yes.

14 THE COURT: To the extent you know, sir. Thank you.

15 MR. BICE: I want a short -- confer with my folks,
16 Your Honor.

17 THE COURT: Mr. Toh, we're getting near the end.
18 They're looking at their notes to see, and then I'm going to
19 let Mr. Jones stand up, and he may have some additional
20 questions for you.

21 THE WITNESS: Thanks.

22 MR. BICE: We'll pass the witness, Your Honor.

23 THE COURT: Mr. Jones, did you have any questions
24 you'd like to ask Mr. Toh?

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

1 THE COURT: Mr. Peek, do you think you have any
2 questions you want to ask Mr. Toh?

3 MR. PEEK: Not at this moment, Your Honor, but I --

4 THE COURT: Mr. Morris, do you think you have any
5 questions you want to ask Mr. Toh?

6 MR. MORRIS: No.

7 THE COURT: All right. So let's wait till Mr. Jones
8 answers my question.

9 MR. RANDALL JONES: Let me just confer with my
10 colleagues, Your Honor.

11 THE COURT: Mr. Jones, I'm not putting pressure on
12 you.

13 MR. RANDALL JONES: I appreciate that, Your Honor,
14 very much. I've got enough pressure as it is.

15 (Pause in the proceedings)

16 MR. BICE: Your Honor, Mr. Smith pointed out that
17 there was one additional exhibit I wanted to offer with this
18 witness. And my apology. It's Proposed Exhibit Number 59.

19 THE COURT: Is it one you've already asked the
20 witness if he can identify?

21 MR. BICE: No, actually. That's why --

22 THE COURT: Mr. Toh, could you please look at
23 Exhibit 59.

24 MR. BICE: That's why Mr. Smith was pointing it out
25 to me. I overlooked it.

1 MR. RANDALL JONES: Your Honor, I would make my same
2 offer that I made last time, and if that offer is agreed to,
3 then I would be happy to stipulate to the admission of this
4 document.

5 THE COURT: Okay. My guess is they're still saying
6 no.

7 Did you want to ask some questions about it?

8 MR. BICE: We will not as a condition of having
9 foundation for relevant documents stipulate to a foundation
10 for irrelevant ones when they are the documents from the
11 defendants. Presumably, they would know who the witnesses are
12 that are on those documents.

13 THE COURT: All right. So you're going to ask some
14 questions of Mr. Toh on 59 now.

15 MR. BICE: I am.

16 THE COURT: Okay. Go.

17 MR. RANDALL JONES: I'm sorry. Just for the record,
18 you admitted that, Your Honor?

19 THE COURT: I haven't admitted it.

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

21 THE COURT: I'm letting him ask some questions so I
22 can decide if I'm going to admit it.

23 MR. RANDALL JONES: I was distracted. I wasn't
24 sure.

25 THE COURT: He decided not to accept your proffered

1 stipulation.

2 MR. RANDALL JONES: I am not surprised.

3 CROSS-EXAMINATION (Continued)

4 BY MR. BICE:

5 Q Exhibit 59, sir, have you seen it?

6 A Yes, I'm looking at it.

7 Q You can tell me what this document is, can't you?
8 Because your name's not redacted on it.

9 A Yes. This is a Credit Committee meeting minutes.

10 Q Okay. And you're actually one of the attendees;
11 correct?

12 A That's right.

13 Q And all the attendees are listed on this one as
14 present; correct?

15 A Right.

16 Q All right. Does this appear to be a true and
17 correct copy of those minutes subject to a bunch of redactions
18 that are on it?

19 A Yep.

20 MR. RANDALL JONES: Your Honor, just I guess for the
21 record, not that I don't assume the Court's probably going to
22 admit this, but he's asking the witness to testify about
23 what's in the document before it's admitted, which is
24 improper.

25 THE COURT: No. He asked the witness if it appeared

1 to be a true and correct copy of the minutes of the Credit
2 Committee meeting at which the witness was an attendee.

3 MR. RANDALL JONES: Actually, I think the question
4 before that, where he said, and all the personal information
5 is in this document, isn't it --

6 THE COURT: That's not what he said. And it says
7 everybody was present at the meeting.

8 MR. RANDALL JONES: Well, that's the same -- I guess
9 I would take that as the same difference. But, in any event,
10 if the Court's going to admit it, it doesn't probably make any
11 difference.

12 THE COURT: Right.

13 MR. RANDALL JONES: Other than I'd make -- I'm just
14 pointing out the inconsistency.

15 THE COURT: Okay.

16 MR. BICE: I'm not sure what the inconsistency is,
17 but I would move this one into evidence, Your Honor.

18 THE COURT: Sir, does it appear to you to be an
19 accurate representation of what occurred at the meeting?

20 MR. RANDALL JONES: Your Honor, maybe you'll
21 rephrase it, maybe he'll understand it better.

22 THE WITNESS: There's noise in this -- are you
23 asking me questions?

24 MR. BICE: Yes.

25 THE COURT: Sir, is it an accurate copy of the

1 minutes?

2 MR. RANDALL JONES: Hey, guys, maybe if -- Steve,
3 Steve. You're coming across. I can't hear.

4 MR. PEEK: Sorry.

5 BY MR. BICE:

6 Q Mr. Toh, can you hear us, sir?

7 THE COURT: Somebody turn off your cell phone,
8 whoever it is that has it on.

9 BY MR. BICE:

10 Q Yes. Mr. Toh, the document that you're looking at,
11 Exhibit Number 59, does that appear to be a accurate copy of
12 the Credit Committee minute meetings [sic] from --

13 A Yes.

14 MR. BICE: Okay. Your Honor, I'd move it into
15 evidence.

16 THE COURT: Any additional objections, Mr. Jones?

17 MR. RANDALL JONES: No objections.

18 THE COURT: Be admitted.

19 (Plaintiff's Exhibit 59 admitted)

20 THE COURT: Now, Mr. Bice, do you have any further
21 questions for the witness?

22 MR. BICE: Yes.

23 BY MR. BICE:

24 Q Mr. Toh, do you know why on this document where all
25 the attendees are present are not redacted, but the names of

1 everyone else is? You go down and you look at "Topics
2 Discussed," all the individuals there have their names
3 redacted.

4 A I believe the name redacted is the customer
5 informations.

6 MR. BICE: Okay. Pass the witness. And I thank you
7 for the Court's indulgence.

8 THE COURT: Any additional questions, Mr. Jones?

9 MR. RANDALL JONES: Your Honor, I have no questions.

10 THE COURT: Mr. Toh, Mr. Jones has no questions.
11 I've got two more to ask.

12 Mr. Peek, any questions for Mr. Toh?

13 MR. PEEK: I have no questions, Your Honor. Thank
14 you.

15 THE COURT: And, Mr. Morris?

16 MR. MORRIS: None, Your Honor.

17 THE COURT: Thank you, Mr. Toh and Mr. Hughes. We
18 truly appreciate your patience with us. Have a very nice day.
19 Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: All right. It is now 4:24. There were
22 some issues that we had discussions about during this
23 particular of the video testimony, and I told you I would let
24 you make an additional record on any of those issues if you
25 would like. Does anyone feel there is anything else that you

1 need to make a record on that you did not get a full
2 opportunity to make a record on while we had this witness
3 appearing by video conference?

4 MR. MARK JONES: This witness, or Mr. Fleming?

5 THE COURT: This one. Because I stopped Mr. Peek at
6 least twice and told him I would give him an opportunity after
7 we finished the witness to elaborate on the objection he was
8 making.

9 MR. PEEK: And I think the objection was made, Your
10 Honor. I think the Court understood it. I don't think
11 there's any need to make further objection, because the
12 testimony's already come in.

13 THE COURT: All right. I'm just giving you the
14 opportunity if there is something.

15 MR. RANDALL JONES: Thank you.

16 THE COURT: Okay. We still have some video clips of
17 Mr. Leven to finish and Mr. -- is it Goldstein?

18 MR. RANDALL JONES: Goldstein, yes, Your Honor.

19 THE COURT: -- Goldstein to finish. And then I have
20 some cleanup issues I'll hit with you if we still have time.
21 So if we could return to the video deposition of Mr. Leven.

22 MR. RANDALL JONES: Your Honor --

23 THE COURT: Yes, sir.

24 MR. RANDALL JONES: -- because we took that last
25 break I was not able to take advantage of it to use the

1 facilitates.

2 THE COURT: 'Bye. We'll see you in a minute.
3 They've got to queue up. They're getting everything queued up
4 and ready to go.

5 MR. RANDALL JONES: All right. I'll be right back.

6 THE COURT: And, Mr. Bice, Mr. Pisanelli, the
7 question I am going to ask that you probably want to think
8 about the answer and Mr. Peek will probably think about the
9 answer, as well as Mr. Morris, is whether you want to do any
10 briefing on the O'Melveny --

11 MR. RANDALL JONES: It's closed. But that's okay.
12 I can deal with it.

13 (Pause in the proceedings)

14 THE COURT: -- is whether you want to do any
15 briefing on the O'Melveny & Myers privilege issue prior to me
16 making a ruling and/or arguing tomorrow. So are we ready?

17 MR. RANDALL JONES: Say that again, Your Honor.

18 MR. PEEK: Further briefing on the O'Melveny &
19 Myers? I thought you said you were going to -- I apologize.
20 I thought you said that you were going to then have it briefed
21 -- I don't know if you wanted it by tomorrow -- and then bring
22 Mr. Toh back or not bring Mr. Toh back?

23 THE COURT: I'm in the middle of an evidentiary
24 hearing.

25 MR. PEEK: I know.

1 THE COURT: It is an answer I didn't hear that
2 somebody may think it's relevant after I hear the answer. The
3 issues related to that investigation. I know that Mr. Bice
4 feels strongly about it, I know that Mr. JOnes and you feel
5 strongly about it.

6 MR. PEEK: We do. And --

7 THE COURT: In order to put anybody in a bad
8 position because I thought there was a colorable basis for the
9 assertion of the privilege, I said I that I would sustain the
10 privilege, but I would entertain further briefing on it, and
11 then if I made briefing and found it wasn't well founded what
12 would happen. The question is, since somebody thinks it's an
13 important issue, is it important enough that they want that
14 briefing done before we argue and I issue a decision on this
15 evidentiary hearing, or is it one that they feel we can do
16 later and I can finish this. So that's the question I'm
17 asking their side of the room, since they lost on the
18 objection.

19 MR. PEEK: I'll let them answer, then.

20 THE COURT: Then you can comment.

21 MR. PEEK: Thank you, Your Honor.

22 MR. BICE: Your Honor, we would like to make that
23 decision tomorrow --

24 THE COURT: That's fine. That's why I'm asking you
25 the question --

1 MR. BICE: -- after we examine Mr. Raphaelson.

2 THE COURT: -- so you can think about it.

3 MR. BICE: After we -- yes. And we'd like to think
4 about the evidence tomorrow after we examine Mr. Raphaelson.

5 THE COURT: Well, I would really like you to give me
6 the answer pretty soon after you examine Mr. Raphaelson so
7 that we'll all know --

8 MR. BICE: Thank you.

9 THE COURT: -- how much time you're going to spend.
10 Are we queued up for Mr. Leven's remaining
11 testimony? If we could "play," please.

12 DEPOSITION OF MICHAEL LEVEN, VOL. 2, PLAYED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. BICE:

15 Q Good morning, Mr. Leven.

16 A Good morning.

17 Q You understand that this a continuation of your
18 deposition?

19 A Yes.

20 Q Who is Jeff Schwartz?

21 A He's a board member of Las Vegas Sands and a board
22 member of Sands China.

23 Q Okay. Did you ever have any discussions with Mr.
24 Schwartz about SANDS China be a controlled entity?

25 A I could have. I don't remember specifically.

1 Q Showing you what's been marked as Exhibit Number 21,
2 Mr. Leven, let me know when you're done reviewing it.

3 MR. PEEK: What is the exhibit number?

4 MR. SMITH: Exhibit 21 of the depo is Proposed
5 Exhibit 46.

6 MR. PEEK: Thank you. That'd be nice to know.

7 MR. BICE: Sorry.

8 Dustin, hold on.

9 MR. PEEK: 46, or 47?

10 MR. SMITH: 46.

11 MR. RANDALL JONES: Can we do the rest of them while
12 we're sort of getting situated.

13 MR. PEEK: Can we do them one at a time?

14 BY MR. BICE:

15 Q Do you know -- do you have any reason to Las Vegas
16 that you did not receive this email from Mr. Schwartz?

17 A No.

18 MR. BICE: We would move it into -- we would move
19 the proposed exhibit into evidence, Your Honor.

20 THE COURT: Any objection?

21 MR. RANDALL JONES: I guess the objection would
22 be --

23 THE COURT: 46.

24 MR. RANDALL JONES: -- would be relevance.

25 MR. PEEK: Join in that objection, Your Honor.

1 THE COURT: And do you want to tell me why you don't
2 think it's relevance, since there's nobody here to be
3 influenced but me?

4 MR. RANDALL JONES: It's full unredacted, and it's
5 email between Las Vegas Sands and, as I understand, an email
6 between Las Vegas SANDS and Las Vegas Sands. And it's fully
7 unredacted. I understand Mr. Schwartz is not alive anymore,
8 but it's not relevant to the issue.

9 THE COURT: Mr. Bice, why is it relevant to my
10 evidentiary hearing on the sanctions issue?

11 MR. BICE: Goes to the issue to show you, Your
12 Honor, that Mr. -- this will be one of multiple exhibits shows
13 you that Mr. Schwartz was integrally involved in matters in
14 Macau, finances, compensation of Mr. Jacobs, and Mr. Jacobs's
15 performance, including, you will see towards the end of this
16 clip with Mr. Leven, Mr. Jacobs -- or Mr. Schwartz was one of
17 the people who had sought to -- or raised questions about
18 intervening and trying to save Mr. Jacobs from Mr. Adelson's
19 course of path. And Mr. Schwartz is now gone.

20 THE COURT: As opposed to the substantive issue,
21 since the document that is being shown is an unredacted
22 document, how does this relate to the prejudice issue for the
23 redacted documents?

24 MR. BICE: Because with the passage of time that
25 these defendants have secured with these redactions and their

1 invocation of the MPDPA to stall this case to a standstill for
2 now past four years, Mr. Schwartz has passed away, Mr. Siegel
3 is no longer around, Mr. Leven, as we now know, is gone. That
4 is part of our prejudice that we are outlining in this case to
5 the Court --

6 THE COURT: Okay.

7 MR. BICE: -- is because I do not believe that the
8 prejudice is limited to us that we have to show the redaction
9 alone is what causes the prejudice to us. Their misuse of the
10 MPDPA, including the redactions, has so stalled this case for
11 so long that witnesses are gone, memories of faded, and in
12 this particular case -- you'll see from the documents a rather
13 significant witness is gone.

14 THE COURT: So assume for a minute that I disagree
15 with you and that I think that our hearing is based upon the
16 prejudice related to the violation of my order related to the
17 production of documents related to the MDPA. Tell me how this
18 particular document relates to that prejudice issue.

19 MR. BICE: Because it shows for the record the
20 importance of Mr. Schwartz -- this and other documents that in
21 this frame show the importance of Mr. Schwartz and Mr.
22 Schwartz's role, and all of the evidence from Mr. Swartz is
23 now gone. And, Your Honor, the reason Mr. Schwartz passed
24 away in November of last year, this case has been stalled by
25 the defendants' misuse of this statute and claims that they

1 didn't understand your order. Remember, Your Honor, had they
2 been just up front with you and with us about this order and
3 just said, you know what, Your Honor, we're not going to
4 comply, we're not going to comply with it so let's just deal
5 with it now, this issue would have been resolved, what, two
6 years ago. But here we are again with witnesses gone,
7 memories faded, we're still arguing about the MPDPA.

8 THE COURT: The objection is sustained.

9 MR. BICE: So we will go to -- and I'm going to
10 submit these -- Your Honor, by tomorrow I will submit these
11 exhibits and the deposition transcript as an offer of proof so
12 that it is part of the record should the Supreme Court --

13 THE COURT: Absolutely.

14 MR. BICE: -- be asked to review this, all right.
15 Thank you.

16 MR. PEEK: Does that conclude all the clips, then,
17 Mr. Bice?

18 THE COURT: They're already proposed exhibits. Mr.
19 Bice, they're already proposed exhibits, so it's part of your
20 record along -- if you want to make an additional proffer,
21 though, or any additional things, we can certainly talk about
22 that. But the proposed exhibits that have been not admitted
23 are part of your record.

24 MR. BICE: We will submit -- what we will do, Your
25 Honor, is we will submit a short pleading that just outlines

1 the transcripts and the proposed -- or the deposition
2 testimony on this point and the proposed exhibits that relate
3 to it just to preserve our record.

4 Now if we --

5 THE COURT: We can talk about that if you want to do
6 that tomorrow.

7 MR. BICE: We'll submit that to you in the morning.

8 THE COURT: That's great.

9 MR. BICE: All right.

10 MR. PEEK: And I guess I would need to file --

11 THE COURT: Wait. I need to finish Mr. Leven's
12 deposition.

13 MR. PEEK: Okay. [Inaudible] need to file a
14 corresponding pleading objecting to it.

15 THE COURT: If you want. I mean, you know.

16 MR. BICE: So now, Dustin, we'll jump ahead to --

17 MR. SMITH: It's Depo Exhibit 57, and that equals --

18 MR. BICE: So hold on.

19 So, Jordan, tell them what the exhibit number is.

20 MR. SMITH: Depo Exhibit 57 is Plaintiff's
21 Proposed 77.

22 MR. PEEK: Thanks, Jordan.

23 MR. BICE: Do you have any objections to its
24 admission?

25 MR. RANDALL JONES: I would make the same proposal.

1 This exhibit I understand the relevance, and so I certainly
2 can't object on relevance to the issue before the Court. So I
3 would -- I am -- I am happy to admit it, Your Honor, if I
4 could get a similar --

5 THE COURT: You're not going to get the stipulation.
6 So do you have an objection?

7 MR. RANDALL JONES: Only on foundation, Your Honor.
8 Otherwise I think it's a fine exhibit.

9 MR. BICE: Your Honor, we would normally have such a
10 stipulation, but the point is --

11 THE COURT: I understand. I'm not trying to make
12 you stipulate. It doesn't offend me. Can we play.

13 MR. BICE: Yep. Please.

14 BY MR. BICE:

15 Q We've been marking 56, Mr. Leven -- or 57. I
16 apologize. Can you tell me what Exhibit Number 57 is, Mr.
17 Leven?

18 A I don't have the slightest idea what this is.

19 Q Could you make heads or tails out of even when it
20 addresses [[inaudible]].

21 A I'm looking at it three times. I have not the
22 slightest idea what it is.

23 Q Okay.

24 A I'm supposed to know? [Inaudible].

25 Q [Inaudible] tell me anything about Exhibit

1 Number 60?

2 MR. PEEK: What's this one now?

3 MR. SMITH: Depo Exhibit 60 is Plaintiff's Proposed
4 38.

5 THE COURT: Are you going to offer the last one?

6 MR. BICE: Yes. Which was --

7 MR. SMITH: 77.

8 MR. BICE: We offer Proposed 77, Your Honor.

9 THE COURT: Any additional objection?

10 MR. RANDALL JONES: Same objection we had before.

11 THE COURT: 77 will be admitted.

12 (Plaintiff's Exhibit 77 admitted)

13 THE COURT: Now we're up to 38?

14 MR. SMITH: Yes, Your Honor.

15 MR. BICE: Play, Dustin.

16 THE WITNESS: No. I wish you'd tell me, because
17 it's very strange. I don't know who it is. [Inaudible]
18 redactions.

19 MR. BICE: We would move Exhibit 38 into evidence,
20 also, Your Honor.

21 THE COURT: Any additional objections?

22 MR. RANDALL JONES: No additional objections, Your
23 Honor.

24 THE COURT: Be admitted.

25 (Plaintiff's Exhibit 38 admitted)

1 MR. BICE: The next one, Jordan?

2 MR. SMITH: The next one is Depo Exhibit 62 and,

3 ironically, Plaintiff's Exhibit 62.

4 MR. PEEK: I'm sorry?

5 MR. SMITH: 62.

6 MR. BICE: Proposed 62.

7 MR. PEEK: Thank you.

8 MR. BICE: Continue, Dustin.

9 BY MR. BICE:

10 Q -- what's been marked as Exhibit 62, Mr. Leven. Can

11 you tell me anything about this document?

12 A No.

13 Q And is the reason you can't tell me because it's got

14 all these redactions on it?

15 A I don't even recognize the -- this stuff at the

16 bottom.

17 MR. BICE: Your Honor, we would move Proposed

18 Exhibit 62 into evidence, Your Honor.

19 THE COURT: Any additional objections?

20 MR. RANDALL JONES: No additional objections.

21 MR. PEEK: No additional, Your Honor.

22 THE COURT: Be admitted.

23 (Plaintiff's Exhibit 62 admitted)

24 MR. BICE: Thank you. I believe that takes us now

25 to Mr. Goldstein, does it not?

1 MR. BICE: Randall, you had some -- okay.

2 THE COURT: You've got 20 minutes or less.

3 MR. BICE: We're going to play 1, and then 2 will be

4 next. So I'm just telling you up front, okay.

5 It's 8 minutes long. Dustin, play Clip Number 1.

6 DEPOSITION OF ROERT GOLDSTEIN PLAYED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. BICE:

9 Q Could you please state your name for the record.

10 A Yes. Robert Glen Goldstein.

11 Q And, Mr. Goldstein, can you tell me where you work.

12 A Las Vegas Sands.

13 Q All right. You know Steven Jacobs?

14 A I do.

15 Q All right. And how long have you known Mr. Jacobs?

16 A I met him when I came to work at the Sands. I'm not

17 sure what year that was.

18 Q All right. And did you ever reverse -- well, strike

19 that.

20 Did you ever have a -- after you had the discussion

21 with Mr. -- you say you had a discussion with Mr. Jacobs about

22 terminating any relationship with Cheung Chi Tai. Did you

23 ever direct Mr. Jacobs to change that?

24 A Change what?

25 MR. RANDALL JONES: Your Honor, objection. There's

1 a whole line of questioning that is again about Mr. Cheung Chi
2 Tai that I don't believe, at least from my reading of it, is
3 relevant to this hearing. And so I would object on relevance
4 grounds. And it's about -- it's about -- it's several pages
5 of testimony about that issue.

6 THE COURT: And again for our record, Cheung Chi Tai
7 is one of the junket operators.

8 MR. RANDALL JONES: That's right.

9 THE COURT: All right. Mr. Bice.

10 MR. BICE: Not only is Mr. Cheung Chi Tai one of the
11 junket operators, Your Honor, Larry Chiu, one of the Las Vegas
12 Sands Corporation's executives here, was interacting with him,
13 which is part of this testimony. And, as the Court knows, as
14 we have told you, we, of course cannot determine any of the
15 redactions about Cheung Chi Tai because the redactions conceal
16 the identity, as well as not only Cheung Chi Tai, Larry Chiu,
17 anyone that was dealing with them. That's our point.

18 THE COURT: Thank you.

19 The objection is overruled. Document's admitted.

20 MR. RANDALL JONES: Actually it's not --

21 MR. PEEK: It's not a document, it's the testimony,
22 Your Honor.

23 THE COURT: The testimony.

24 MR. RANDALL JONES: And, Your Honor, again, just so
25 it's clear, I'm not arguing about the redaction issue. My

1 only point is that there's a whole bunch of testimony here
2 about Mr. Cheung Chi Tai and Mr. Chiu that has nothing to do
3 with redactions whatsoever. It goes on for pages. And I
4 understand their argument. I'm not -- they can argue about
5 redactions related to Mr. Cheung Chi Tai and Mr. Chiu all they
6 want. I just don't see -- and I'd be happy to show the
7 testimony to the Court.

8 THE COURT: Well, but here's the issue. In order
9 for me to determine whether there's prejudice and the extent
10 of the prejudice I've got to know how pervasive some of these
11 people are and why if redactions are an issue where a search
12 term was used that included that person's name I have search
13 results, I have someone who conducted a review in Macau who's
14 unrelated to all of us here and who I can't ask to certify
15 anything to me who then makes a relevance determination, and
16 then I have the same group of people making a determination on
17 whether to do redactions, it's important to me to know for
18 purposes of determining the extent of the prejudice how much
19 involved this is so when Mr. Bice argues it or you argue
20 against it I have something for my backdrop.

21 So overruled. Play.

22 BY MR. BICE:

23 Q To not sever any relationship with Cheung Chi Tai?

24 MR. PEEK: Object to the form of the question, the
25 word "direct." There's no evidence of that.

1 THE WITNESS: I don't recall specifics other than we
2 -- Steve and I spoke about him. And then there was a decision
3 we should not have him involved in junkets, and I told him we
4 should not have have him there. It was his decision, because
5 he ran the place. But that's all I recall. I mean,
6 subsequently we also had Larry Chiu, who worked for Cheung Chi
7 Tai.

8 BY MR. BICE:

9 Q And did that happen, to your knowledge?

10 A It did happen.

11 Q And who is Mr. Chiu?

12 A He ran an Asian premium marketing for the Venetian
13 and today Las Vegas Sands.

14 Q Okay. And when you say Asian premium marketing what
15 does that mean?

16 A Mostly high-end business, the junkets. He's
17 involved in the junket relationships and also high rollers.

18 Q All right. And then so the decision was made to
19 have Mr. Chiu deal with Cheung Chi Tai?

20 A As I recall, we offered to have Larry speak to
21 Cheung Chi Tai because of the language barrier and also to
22 clarify what his role was with junket, and with all negative
23 press we decided to, as I recall, terminate the relationship.

24 Q All right. Did you ever get any reports back from
25 Larry Chiu about his communications with Cheung Chi Tai?

1 A Yes.

2 Q And what were those -- what was the report back?

3 A Well, that Cheung Chi Tai wanted to move away from
4 the junket business and would cease and desist.

5 Q Well, did you get the impression from Mr. Chiu that
6 Cheung Chi Tai acknowledged that he was involved in the junket
7 business?

8 A I don't recall either way.

9 MR. BICE: Stop, please. Dustin, is it possible for
10 you to just skip ahead to 17, line 15? I didn't really
11 realize there was a long discussion between myself --

12 MR. RANDALL JONES: Hence my objection, Your Honor.

13 THE COURT: You want him to play the rest of this,
14 all your objections?

15 MR. RANDALL JONES: No. I said hence my objection.

16 THE COURT: Oh. We can cut it out.

17 MR. RANDALL JONES: Right.

18 THE COURT: All right.

19 MR. BICE: I didn't perceive -- and I apologize. I
20 didn't perceive Mr. Jones's objection being to me playing this
21 portion of it.

22 MR. RANDALL JONES: Well, there was an objection
23 here of Mr. Peek where he says, "I'm going to object to this
24 line of questioning. It's not jurisdictional based. This is
25 going to the merits. I'm going to instruct the witness not to

1 answer."

2 THE COURT: Mr. Bice has already said he's going to
3 take it out, so we don't need to argue about it.

4 MR. RANDALL JONES: Oh. Okay. Very good.

5 THE COURT: He's skipping ahead.

6 MR. RANDALL JONES: Well, it was all about -- but
7 anyway, we're all on the same page now.

8 MR. BICE: 17, line 15, to the end of the clip.
9 Sorry, Dustin.

10 THE COURT: It's like when I ask people who are
11 winning an argument if there's anything else they want to say
12 and then they won't sit down and then they lose. Never mind.

13 BY MR. BICE:

14 Q Did you get the impression from Larry Chiu that
15 Cheung Chi Tai was acknowledging that he was involved in the
16 junket business in Macau?

17 A I don't recall whether he was or he wasn't. We just
18 wanted Cheung Chi Tai to be out if he was, to remove himself.

19 Q Okay. Now, did you get any form of written
20 information from Larry Chiu about his communication with
21 Cheung Chi Tai?

22 A I don't believe so.

23 Q Now, is Mr. Adelson involved in the decisions
24 relative how to deal with Cheung Chi Tai?

25 A He was involved in the discussions.

1 Q Okay. Was there any form of reporting I guess
2 requirements that the Macau casinos were required to make to
3 your department at the time in which Mr. Jacobs was there?

4 A I don't believe so.

5 Q Did you receive any form of daily reporting from the
6 Macau casinos at the time Mr. Jacobs was there?

7 A I saw flash reports, sure. They were companywide.

8 Q All right. And who all receives those?

9 A I don't know. A lot of -- dozens of people.

10 Q Is there a certain rank in which you have to be to
11 receive those?

12 A I'm not sure it's formal. You people -- the food
13 chain could be accounting folks, it could be audit people. I
14 don't recall. I don't recall.

15 Q Okay. And how would you receive those?

16 A Email.

17 Q Email. And you'd get them every day?

18 A Yeah.

19 Q All right. And what's the -- what's the basically
20 content of the flash?

21 A It's all numbers. It's, you know, table draw, slot
22 winning, ETGs, hotel occupancy, usual things you'd see in a
23 casino-hotel flash.

24 Q Okay. Was there a -- was there a -- provision isn't
25 the right word. Were there reports on significant customers

1 that would come out?

2 A No. I -- no.

3 Q Sorry.

4 A But there would be, you know, comments about -- on
5 the flash of large winners and losers.

6 Q Okay. And that would be on a daily -- would you --
7 would that -- I'm not -- I'm not being articulate. I
8 apologize. I just need to break it down.

9 There would be the large winners and losers, and
10 that would be in every flash essentially?

11 A Yes.

12 Q What would be the process by how you would approve
13 or disapprove of these credit line requests?

14 A I would speak to David.

15 Q Via phone?

16 A Mostly phone, yes.

17 Q Okay. And then would you ever send any form of
18 written approval, such as an email, response email?

19 A Yes.

20 Q Would that be the norm, or would that be the
21 exception?

22 A The norm.

23 Q Were there any that you are aware of that you denied
24 the requests?

25 A Yes.

1 Q Do you recall how many?
2 A No.
3 Q Are there particular ones that you denied? And
4 let's deal with anything prior to October of 2010.
5 A Particular ones? What?
6 Q Any -- any requests -- increases for requests that
7 you denied?
8 A I mean, if there were, I don't recall.
9 Q Who they were?
10 A Yeah.
11 Q Do you recall in this time frame or prior to October
12 of 2010 did you have any involvement in approving any credit
13 for any junket affiliated with Cheung Chi Tai?
14 MR. PEEK: What time frame now?
15 MR. BICE: Prior to October of 2010.
16 MR. PEEK: Okay.
17 THE WITNESS: I don't recall.
18 BY MR. BICE:
19 Q Prior to October of 2010, though, is it your
20 testimony that you had instructed -- or that Mr. Jacobs -- you
21 had advised Mr. Jacobs to cease doing business with Cheung Chi
22 Tai?
23 A Yes.
24 Q And you never advised him otherwise; is that fair?
25 A I -- I don't recall after reading the article any

1 other advice but to stop the association.

2 MR. BICE: That's the end of the video, Your Honor.

3 THE COURT: Is there another volume?

4 MR. BICE: Nope.

5 THE COURT: That's the end of our video deposition
6 that we're playing in lieu of live testimony.

7 MR. BICE: Yes.

8 THE COURT: Do you have any additional portions of
9 either the Leven deposition or of Mr. Goldstein's deposition
10 that you wish to play, Mr. Jones?

11 MR. RANDALL JONES: Perhaps. There was -- in the
12 original designations, and this is where it was not clear to
13 me and it's been reduced down of Mr. Leven Volume 2, I think
14 the original designations -- that's why it's a little
15 confusing to me, Your Honor.

16 THE COURT: I'm just asking, just like I do in every
17 case, if there's any additional portions of the depositions
18 that you would like played.

19 MR. RANDALL JONES: My hope.

20 THE COURT: Or read.

21 MR. RANDALL JONES: My hope is that --

22 MR. BICE: I actually -- sorry. I apologize, Mr.
23 Jones. My apologies.

24 MR. RANDALL JONES: That's all right. I don't know
25 if you were going to clarify something.

1 MR. BICE: Yeah. I have an objection.

2 MR. RANDALL JONES: Oh.

3 MR. BICE: He's within their possession and custody
4 and control. We asked that he be here. They're not allowed
5 to offer his testimony.

6 THE COURT: You offered the video deposition. If
7 they want to supplement, they can.

8 MR. BICE: That's under the rule of completeness,
9 Your Honor.

10 MR. RANDALL JONES: Anyway -- and I may not. I just
11 -- again, because I've got a cut-down version of the --

12 THE COURT: I understand. I'm just asking.

13 MR. RANDALL JONES: -- I'm just trying to look, I'm
14 just trying to find out, Judge. So --

15 (Pause in the proceedings)

16 MR. RANDALL JONES: So, Your Honor, we would want to
17 play just a portion of two pages.

18 THE COURT: Can you just read it?

19 MR. BICE: Can I know what it is first, please?

20 MR. RANDALL JONES: Sure. Starting on page 440.

21 MR. BICE: 440.

22 THE COURT: Is it Volume 1, or Volume 2?

23 MR. RANDALL JONES: Volume 2, Your Honor.

24 THE COURT: We don't have Volume 2. Mr. Bice, I've
25 got to have Volume 2 to publish it.

1 MR. BICE: I'm pretty sure you do have Volume 2.

2 MR. PEEK: He did hand you two volumes of Mr. Leven.

3 I saw him do it.

4 THE COURT: Here you go, Mr. Peek. Refer to page

5 440. Mr. Peek, you've got to stand up so I can swear you as a

6 reader.

7 STEPHEN PEEK SWORN AS READER

8 THE CLERK: Thank you. Please state and spell your

9 name for the record.

10 MR. PEEK: Stephen Peek, S-T-E-P-H-E-N P-E-E-K.

11 THE COURT: Mr. Jones, what line were you on?

12 MR. RANDALL JONES: I'm looking -- starting at

13 line 24 on page 440. And this had been in their original

14 designation.

15 THE COURT: It's okay. You don't have to explain.

16 All you have to do is read the question.

17 (Deposition of Michael Leven, Vol. 2, read as follows:)

18 CROSS-EXAMINATION

19 BY MR. RANDALL JONES:

20 "Q Exhibit 58 -- actually, I'm sorry, Exhibit 58

21 marked. This is 58, Mr. Leven. Can you tell me what 58 is.

22 "A Well, it seems to be related to 57, but I don't have

23 any idea what it is.

24 "Q Okay.

25 "A Very strange.

1 "Q Exhibit 59 marked. I'll show you what has been
2 marked as Exhibit 59, Mr. Leven. Can you make heads or tails
3 out of this document, Mr. Leven?

4 "A No. It's very strange."

5 MR. RANDALL JONES: And I believe that Exhibit 60
6 was referred to in the testimony and has been admitted into
7 evidence.

8 THE COURT: I admitted 60, but it was the 60 that's
9 marked here. What are 57, 58, and 59?

10 MR. BICE: Jordan, Exhibit 60 in the depo is exhibit
11 what in the proposed?

12 THE COURT: Well, I just need to cross-reference 57,
13 58, 59, and 60, I guess.

14 MR. SMITH: Exhibit 60 is Plaintiff's Proposed 38.

15 THE COURT: And 38's already been admitted.

16 MR. RANDALL JONES: Right. So I just want to make
17 sure --

18 THE COURT: 57, 58, and 59. Which are 57, 58, and
19 59 cross-reference?

20 MR. SMITH: Depo Exhibit 57 is Plaintiff's
21 Proposed 77.

22 THE COURT: Okay.

23 MR. SMITH: Deposition 58 is Plaintiff's
24 Proposed 76.

25 THE COURT: Okay.

1 MR. SMITH: Depo Exhibit 59 is Plaintiff's
2 Proposed 28.

3 THE COURT: And have I said how impressed I am that
4 you were able to do that so quickly? Good job.

5 So some of those were admitted, and some weren't.

6 MR. RANDALL JONES: So -- and I'll finish, and then
7 I'm going to move the admission of those exhibits, Your Honor.
8 But first let me -- I've just got a little bit more to read.

9 Starting at line 22 -- I'm sorry. Nope. Going to
10 the next page, page 442.

11 BY MR. RANDALL JONES:

12 "Q So this will be Exhibit 61."

13 MR. BICE: Hold on. What line are you on?

14 MR. RANDALL JONES: Line 1 on page 442.

15 MR. BICE: Sorry. My apologies.

16 MR. PEEK: And what line? Line 1?

17 MR. RANDALL JONES: Line 1, yeah. So the question
18 was:

19 BY MR. RANDALL JONES:

20 "Q So this will be Exhibit 61.

21 "A Well, if I'm looking at the first page, then this
22 action is against Las Vegas Sands Corporation. So it answers
23 the question as to who I would be representing if I went to
24 see the lawyers about the suit. I believe that's the first
25 page reading."

1 Do we know what 61 is?

2 MR. RANDALL JONES: You know what, Your Honor, I'm
3 sorry. I've got the ones that I wanted to get in, and so I
4 don't need to read any more.

5 THE COURT: So --

6 MR. SMITH: I need to make one clarification, Your
7 Honor. After you complimented me I realized I might have made
8 a slight mistake. I know. Jinxed myself.

9 Depo Exhibit 59 is not actually an identical copy of
10 Plaintiff's Proposed 28, so Depo Exhibit 59 isn't amongst one
11 of plaintiff's proposed.

12 THE COURT: Okay. It's not. Okay.

13 MR. SMITH: I apologize for the confusion.

14 MR. PEEK: Mr. Bice, may I step down?

15 THE COURT: If anyone wants to supplement with
16 Exhibit -- with Depo Exhibit 59 from Leven's deposition, I
17 will consider it.

18 MR. RANDALL JONES: We would like to supplement with
19 that exhibit.

20 THE COURT: Okay. You'll bring it to me in the
21 morning.

22 MR. RANDALL JONES: We will.

23 THE COURT: Multiple copies, three-hole punched.

24 MR. RANDALL JONES: We'll bring copies to the Court,
25 to the clerk, and to opposing counsel.

1 THE COURT: Anything else for the [unintelligible]
2 today?
3 MR. PEEK: Mr. Bice said I may step down, Your
4 Honor.
5 THE COURT: Thank you, Mr. Peek. But leave me the
6 transcript.
7 MR. RANDALL JONES: The only thing I would do is
8 move the admission of Exhibits 77, 76, and our proposed next
9 exhibit in order, which I believe would be 554 -- I'm sorry.
10 354. I got 200 exhibits ahead of myself, Your Honor.
11 THE COURT: Mr. Bice.
12 MR. BICE: What are these?
13 THE COURT: 76 and 77, one of which is already
14 admitted.
15 THE CLERK: 76 and 28 are not yet.
16 THE COURT: So you're offering 76 and 354?
17 MR. SMITH: 77 is already admitted.
18 THE CLERK: And 28.
19 MR. PEEK: And 28, wasn't that also, Dulce?
20 MR. RANDALL JONES: That's not -- no.
21 (Pause in the proceedings)
22 THE COURT: And 28?
23 MR. BICE: Okay. And what's their -- three what?
24 THE COURT: 28, 76, 77, and 354.
25 MR. BICE: I don't know what 354 is.

1 THE COURT: 354 is Exhibit 59 from the deposition.
2 MR. BICE: All right. Well, I have the exhibits
3 right here.
4 All right. I have no objection.
5 THE COURT: Okay. They'll be admitted.
6 (Plaintiff's Exhibits 28 and 76 admitted)
7 (Defendants' Exhibit 354 admitted)
8 THE COURT: Anything else before we break for the
9 evening?
10 MR. BICE: No.
11 MR. PEEK: Just an inquiry from me, Your Honor, as
12 to tomorrow. We have Mr. Raphaelson at 9:00 a.m.
13 THE COURT: We do?
14 MR. PEEK: And that is in the rebuttal. May I again
15 have a proffer?
16 THE COURT: Well, let me -- let me ask a question.
17 Mr. Bice --
18 MR. BICE: Yes.
19 THE COURT: -- have we now completed your case in
20 chief?
21 MR. BICE: Yes.
22 THE COURT: Are all of the exhibits that you believe
23 you wanted admitted admitted?
24 MR. BICE: I believe so, Your Honor.
25 THE COURT: All right. So do you rest for purposes

1 of the hearing?

2 MR. BICE: Yes.

3 THE COURT: Okay. Now, do you have any defense
4 witnesses?

5 MR. RANDALL JONES: We do not have any defense
6 witnesses, other than ones we've put on so far.

7 THE COURT: Okay. Those that you called out of
8 order.

9 MR. RANDALL JONES: That's correct.

10 THE COURT: All right. And do you have any
11 additional exhibits that have not already been admitted that
12 you would like to admit?

13 MR. RANDALL JONES: We do, Your Honor. And I know
14 Mark Jones has talked to Mr. Pisanelli about some stipulated
15 exhibits. I just want to make sure I know which have been
16 agreed to and which have not so I can make sure I'm not
17 duplicating.

18 THE COURT: Are there any that have been agreed to?

19 MR. PISANELLI: Yes.

20 THE COURT: Can somebody tell me what numbers they
21 are.

22 MR. MARK JONES: Your Honor, I believe that they are
23 Numbers 328, 338.

24 THE COURT: 328 and 338 will be admitted.

25 (Defendants' Exhibits 328 and 338 admitted)

1 MR. BICE: Hold on. We need to verify what these
2 are. We had discussions about documents, not about numbers.

3 THE COURT: Okay. HOLD on a second while we confirm
4 that the numbers match the documents they believe they
5 stipulated to.

6 MR. MARK JONES: 328.

7 MR. BICE: 328 is fine.

8 THE COURT: Now you're on 338.

9 MR. PEEK: And there's 329, too.

10 THE COURT: 329 was admitted on Monday.

11 THE COURT: You're on 338.

12 MR. BICE: That's fine. Yes to 338.

13 THE COURT: 338's admitted. What's your next one
14 you believe you have a stipulation on, Mr. Jones?

15 MR. MARK JONES: Not a stipulation, Your Honor, on
16 these, but --

17 THE COURT: Were those all of the ones you believe
18 you and Mr. Pisanelli reached a stipulation on?

19 MR. MARK JONES: Right.

20 THE COURT: Okay. Now give me the rest of your list
21 of ones you would love to have in evidence.

22 MR. RANDALL JONES: We would love to have in
23 evidence Exhibit 323, which is a letter from Mr. Bice to Mark
24 Jones -- actually, I'm sorry, a letter from Mr. Jones to Mr.
25 Bice.

1 THE COURT: 323 on my list says an email request to
2 Steven Jacobs for consent with proposed consent attached.

3 MR. RANDALL JONES: Letter is probably a bad way --
4 it was an email request for that purpose, Your Honor.

5 THE COURT: I'm looking at a description.

6 MR. RANDALL JONES: That is -- that's an accurate
7 description, Your Honor.

8 THE COURT: Is there an objection to 323?

9 MR. PISANELLI: We can take a look at it real quick.

10 THE COURT: Okay.

11 MR. RANDALL JONES: And, Your Honor, the related one
12 is Exhibit 324, which is Mr. Bice's letter -- actual letter in
13 response, as opposed to an email.

14 THE COURT: Well, let's do 323 first.

15 MR. RANDALL JONES: I just want to let you -- give
16 you a heads up. That's -- because they're related. But
17 understood.

18 (Pause in the proceedings)

19 THE COURT: Somebody's got to have an electronic
20 device on near a mike.

21 MR. BICE: We don't have any issue on 323 or 324,
22 Your Honor. But if those are going to be offered now --

23 THE COURT: They are.

24 MR. BICE: -- then we will have some response
25 exhibits --

1 THE COURT: Well, but that would be rebuttal.
2 MR. BICE: -- to them.
3 THE COURT: And I'm not to your rebuttal yet.
4 MR. BICE: Got it. Thank you, Your Honor.
5 THE COURT: So 323 and 324 are admitted.
6 (Defendants' Exhibit 323 and 324 admitted)
7 MR. BICE: Okay.
8 THE COURT: Next, Mr. Jones?
9 MR. RANDALL JONES: I believe the next ones are
10 admitted. Exhibit 341, which is just a copy of the MPDPA. I
11 believe they have a copy on their exhibit list, too, but it's
12 a different exhibit number.
13 THE COURT: Any objection to the MDPDPA [sic]? Is
14 it translated?
15 MR. RANDALL JONES: Yes it is, Your Honor.
16 THE COURT: Lovely.
17 MR. BICE: Well, it says "Unofficial Translation."
18 MR. RANDALL JONES: It is the unofficial
19 translation. Well, the Chinese and I think Portuguese
20 versions are attached, but I don't know if any of us in the
21 courtroom can read them, but --
22 THE COURT: I have repeatedly said I don't read
23 either Portuguese or Chinese.
24 MR. RANDALL JONES: Nor do I. And that is the
25 unofficial version from the Chinese Government Website, just

1 so the Court's aware of that. I believe it even says that on
2 the document.

3 THE COURT: Any objection? Be admitted.

4 (Defendants' Exhibit 341 admitted)

5 THE COURT: Now, do you want to tell me which one of
6 yours you want admitted? Do you want your version admitted
7 too, Mr. Bice, if it's different?

8 MR. BICE: No. That's fine.

9 THE COURT: Okay. Any additional exhibits you would
10 like admitted, Mr. Jones?

11 MR. RANDALL JONES: Exhibit 350, which is the Okada
12 discovery.

13 THE COURT: That you have a fight on. So we'll get
14 to that in a minute.

15 Is there any additional exhibits beyond the 354 that
16 I admitted earlier.

17 MR. RANDALL JONES: Yes, Your Honor. There are
18 parts of Exhibit 325, and they were -- this is part of the
19 electronic --

20 THE COURT: I don't admit parts of electronic
21 exhibits.

22 MR. RANDALL JONES: Well, what I wanted to tell the
23 Court is that we only have -- we only have -- let's see. I
24 think there --

25 THE COURT: 213,000 documents in that list.

1 MR. RANDALL JONES: Yes. And we do not want to
2 actually introduce those. We want to introduce I think
3 12 pages. I could give the Court Bates Numbers of those
4 12 pages, and obviously counsel will want to see those. But
5 so it's easy for them to reference them, all of those
6 documents are documents that they attached as exhibits of
7 redacted documents to their March -- I believe it was March of
8 2013 Rule 37 motion for sanctions related to this very issue.

9 THE COURT: Lovely.

10 MR. RANDALL JONES: So it was their --

11 THE COURT: Please read the numbers for Mr. Bice so
12 he can check.

13 MR. RANDALL JONES: I will do so.

14 THE COURT: Because this may be something he has to
15 check overnight.

16 MR. RANDALL JONES: These would be Sands China Bates
17 numbers. So SCL -- and I'll give him an easier way to find
18 them, but just for the record, the Bates numbers would be
19 SCL110407 through -- okay. I'm sorry. The next one would be
20 SCL102669, SCL10 --

21 THE COURT: So they're not sequential.

22 MR. RANDALL JONES: Correct, Your Honor.

23 MR. BICE: Your Honor, since we're not going to --

24 THE COURT: Okay. So what I'm going to ask you to
25 do, Mr. Jones, is I'm going to ask you to email those pages to

1 Mr. Bice after you get back to your office. So that means
2 before 8:00 o'clock tonight that someone will email those to
3 Mr. Bice so he can either look at them this evening or
4 tomorrow morning, and then you will identify them by your next
5 in order exhibit numbers, and then I will address them as
6 proposed exhibits. But it's important to me that you get them
7 to him tonight so he has the opportunity to look at them
8 before he gets here tomorrow at 9:00 o'clock.

9 MR. RANDALL JONES: And I will also tell him that
10 they are exhibits 9 through 23 of his motion. So that's an
11 easier way for him to find them.

12 But I'll still do this, Todd. I'll get them to you
13 tonight. But your Exhibits 9 through 23 -- well, there's a
14 unredacted version, it's the same Bates Number, Your Honor,
15 and a redacted version of the same exact document.

16 THE COURT: It's okay. You're going to send copies
17 to Mr. Bice tonight.

18 MR. RANDALL JONES: Yes, I'm going to do that.

19 THE COURT: And then you're going bring printed
20 copies to me tomorrow and mark them individually as the
21 exhibits next in order, and our first item of business will be
22 to talk about your Proposed Exhibits 355 to whatever.

23 MR. RANDALL JONES: Understood, Your Honor. And the
24 only other -- then that's it other than the Exhibit 350.

25 THE COURT: Okay. So Exhibit 350 we have previously

1 had an objection to relevance that I overruled. However, I
2 did not admit the document, because there was not a foundation
3 to it. Since it is not a filed document, it is a discovery
4 document, it's not part of my court record and I'm not going
5 take judicial notice of it. So you're now offering it just to
6 offer it.

7 Is there an objection to its admission?

8 MR. PISANELLI: Yes.

9 THE COURT: Okay. So you're going to have to do
10 something more.

11 MR. RANDALL JONES: I would call Ms. Spinelli to the
12 witness stand.

13 MR. BICE: We will object to that.

14 MR. PISANELLI: We would object to that, as well.

15 MR. RANDALL JONES: Your Honor, the rules provide --
16 sorry.

17 MR. PISANELLI: We've heard the expert of -- I can't
18 even think of the case now -- Club Vista and how it's
19 protected for trial counsel, tell us what it means and doesn't
20 mean, now wanting to call us to the stand because they didn't
21 put anyone on their trial list for something which we believe
22 has no relevance whatsoever, since Wynn was never sanctioned,
23 we've never even had a discussion about its objection. So I
24 know you've overruled that objection, but it's hearsay, it's
25 lack of foundation, and there is no basis whatsoever to call

1 Ms. Spinelli, who she's supposed to be the only person that
2 this information can come from.

3 If they really wanted this thing and it was so
4 important to their case, they would have put someone like Mr.
5 Peek, for instance, on their own witness list, who I would
6 welcome the opportunity to cross-examine. But that's not the
7 point. He's not on their list, either.

8 THE COURT: If he's called, you're only going to get
9 to ask him questions related to the document.

10 MR. PISANELLI: But whatever he does, Your Honor, he
11 can't get around the hearsay problem there, either.

12 MR. RANDALL JONES: Your Honor, I was only going to
13 ask foundational questions. Just to be clear, that's all I
14 was going to ask. I understand the concern, but the Court
15 itself actually called Ms. Spinelli up to the witness stand --

16 THE COURT: I did.

17 MR. RANDALL JONES: -- to lay a foundation for a
18 document they wanted to get into evidence. So I don't think
19 that -- and by the way, the rules provide that anybody in the
20 courtroom is subject to being called as a witness.

21 THE COURT: That's absolutely true. The rules do
22 provide that.

23 MR. RANDALL JONES: So I would not ever, ever want
24 to intrude into attorney-client privilege. I'm only going to
25 lay -- ask her questions, if necessary, and I would rather

1 avoid doing that, but I believe it's relevant to the
2 litigation, and so I would simply ask her foundational
3 questions, if it's a true and correct copy of a response to a
4 discovery request that their office filed in the Okada-Wynn
5 case. That's all I would ask.

6 THE COURT: With no additional questions?

7 MR. RANDALL JONES: With no additional questions.

8 MR. PISANELLI: Your Honor, does this open up --
9 this type of gamesmanship open up the opportunity for us to
10 call Mark Jones to the stand in rebuttal to talk about his
11 meetings with the OPPD or however that is?

12 THE COURT: I sure hope not, because that would more
13 than a foundational question about a document. All I need to
14 know is whether the document is a true and correct of one that
15 has been prepared by someone. Now, Mr. Peek can only say it's
16 a true and correct copy of a document he received.

17 MR. PISANELLI: Hold on. Hold on a minute.

18 THE COURT: I certainly don't want anybody to tell
19 me if it's a -- you know, any of the issues related to it, but
20 I'm not simply going to admit the document. And there's only
21 two people who can tell me if it's a true and correct copy,
22 Ms. Spinelli, who is the author of it, or the recipient of it.
23 Those are my two choices.

24 MR. PISANELLI: There are some real concerns about a
25 party and their lawyer using discovery in one case to be used

1 in another case, which open counsel up to disqualification
2 motions. So if we're going to put someone on the stand, it
3 should be Mr. Peek, and we should be able to establish the
4 foundation that will probably result in an analysis of whether
5 he belongs in the Okada case after this stunt. Ms. Spinelli
6 has nothing to do with this, and if this is the path they want
7 to go down, they have to bear all consequences of that path.

8 THE COURT: I don't agree. There are two people who
9 can get called. You have a choice of who the two people are.
10 You've asked Ms. Spinelli to be the person. Ms. Spinelli,
11 I've previously sworn you, so, if you want, I can still have
12 that oath.

13 My question is -- to you is is Exhibit -- and I'm
14 going to ask the question so there is no question about going
15 further than the question that is intended to you. Is
16 Proposed Exhibit 350 a true and correct copy of a document you
17 prepared?

18 MS. SPINELLI: I need to see the document, Your
19 Honor.

20 THE COURT: That will be great. The clerk has them.
21 But I'm going to ask the question, because I don't
22 want to run the risk of someone else --

23 Dulce where is the exhibit? Up there in the second
24 -- the third binder?

25 THE CLERK: Of the defendants.

1 THE COURT: Don't even sit down in that witness
2 chair, because I don't want a risk of someone else asking you
3 a question.

4 MR. PISANELLI: Your Honor, while she's looking at
5 that, we still have the unaddressed problem of hearsay.

6 THE COURT: Hold on a second. 350.

7 MR. RANDALL JONES: If they'll stipulate, I would
8 prefer that.

9 THE COURT: Guys, stop arguing. You know they're
10 not going to stipulate.

11 MR. RANDALL JONES: All right. I was just trying to
12 make an offer.

13 THE COURT: Don't sit down.

14 MS. SPINELLI: I'm not sitting down again.

15 THE COURT: But you can have M&Ms.

16 MS. SPINELLI: It isn't.

17 THE COURT: It isn't.

18 MS. SPINELLI: It is an incomplete document.

19 THE COURT: Okay. So the objection is sustained.

20 MR. PISANELLI: Thank you, Your Honor.

21 MR. RANDALL JONES: Your Honor, just so the Court's
22 aware, and I understand the point, we only attached those
23 pages that relate to the MPDPA. So if that's the case, then I
24 will --

25 THE COURT: You'll have to try again with 350A.

1 MR. RANDALL JONES: I will do that, Your Honor.

2 THE COURT: All right.

3 MR. BICE: Your Honor, since -- we do want to be
4 heard on this. Since Mr. Jones says anyone who is in the
5 courtroom can be called as a witness, we would call Mark Jones
6 tomorrow as a rebuttal witness concerning the disclosures
7 about the MPDPA and his meetings.

8 THE COURT: You are welcome to call anybody you want
9 on rebuttal. I will address whether I will hear from the
10 witness tomorrow morning when you call him.

11 MR. BICE: Okay. Thank you, Your Honor.

12 THE COURT: All right. So right now I've got what?
13 I've got a 350A coming, I've got exhibits following 355
14 coming. Are there any additional witnesses that --

15 (Off-record colloquy - Clerk and Court)

16 THE COURT: Are there any additional exhibits that
17 you're going to want admitted?

18 MR. RANDALL JONES: No, Your Honor, and -- well --

19 THE COURT: Okay. So we're going to address 354
20 through whatever your next in order are, potentially 350A, and
21 then after I ask if you're going to rest, I will then go to
22 the rebuttal case of the plaintiff.

23 MR. BICE: Thank you, Your Honor.

24 THE COURT: Yeah. We're planning on starting at
25 9:00. Is there anything else?

1 MR. RANDALL JONES: Your Honor, I would just make a
2 point that -- and I understand they can do whatever they want,
3 but I don't want to be in a position where -- I would hate to
4 have to be in a position where I have to subpoena Ms.
5 Spinelli, but she's been in the courtroom every day for these
6 hearings. She doesn't have to be here.

7 MS. SPINELLI: I will be present.

8 MR. BICE: We'd ask the same --

9 MR. PISANELLI: And even if she's not, they still
10 have Mr. Peek, who I invite to get on that stand.

11 THE COURT: Okay. Guys.

12 MR. RANDALL JONES: And Mr. -- and Mr. Jones is
13 going to be here tomorrow.

14 MR. BICE: Fair enough.

15 THE COURT: We're going to all still act like
16 professionals and adults, because I respect all of you. I've
17 worked with all of you for a long time, you're all good
18 lawyers. And we're going to get through this difficult
19 process related to this very sensitive issue. It's going to
20 have a really good record, and then you're all going to go up
21 to Carson City and hopefully get six or seven people to listen
22 to you as to who's right and whether the decision that I
23 ultimately make is appropriate or not given the Supreme
24 Court's review.

25 MR. BICE: Thank you, Your Honor.

1 THE COURT: My goal is simply to make sure you have
2 a good record. And if that means that we do a couple little
3 things differently than we otherwise do and I don't admit
4 documents that I might typically just take because there's
5 concerns, then I'm going to have you lay that foundation, and
6 it may mean a lawyer gets to lay the foundation. I'm sorry.

7 MR. BICE: And we understand that, Your Honor. But
8 our only point on this is we think that we are entitled to
9 rebuttal, and that includes both Mark Jones and Mr. Peek
10 tomorrow. Especially if the Okada document comes in.

11 THE COURT: And Mr. Raphaelson.

12 MR. BICE: And Mr. Raphaelson. And let me tell you
13 why this issue comes in about Okada. Mr. Peek has
14 information, they're making insinuations about this document
15 establishes X, we are entitled to cross-examine Mr. Peek,
16 since he's the one that gave it to him, about the
17 circumstances and evidence that we believe would contradict
18 the alleged inference that they are trying to assert that is
19 within his knowledge.

20 THE COURT: You can tell me you're going to call
21 anybody you want in your rebuttal case.

22 MR. BICE: Thank you, Your Honor.

23 THE COURT: I will then decide whether I will hear
24 from them --

25 MR. BICE: Thank you.

1 THE COURT: -- tomorrow when you tell me you want to
2 call them.

3 MR. BICE: Thank you, Your Honor.

4 THE COURT: In the meantime, I want you to think
5 about that issue I raised with you earlier, Mr. Bice.

6 MR. BICE: Yes.

7 THE COURT: Which is whether you're going to want
8 briefing on that privilege issues related to O'Melveny & Myers
9 before we close. I'm not asking you to answer now. I'm
10 asking you to think about it tonight.

11 MR. BICE: Whether I'm going to need to do briefing
12 is going to depend upon Mr. Raphaelson tomorrow, Your Honor.
13 We think we can establish that for him.

14 MR. PEEK: And, Your Honor, that brings up the point
15 as to the proffer as to the rebuttal testimony for Mr.
16 Raphaelson. Because I think we are entitled to a proffer.

17 THE COURT: Mr. Bice, what do you want Mr.
18 Raphaelson to say? Because somebody's saying he can't
19 possibly be rebuttal.

20 MR. BICE: He obviously is rebuttal, Your Honor.
21 We've heard --

22 THE COURT: What is the subject matter that he is
23 rebuttal?

24 MR. BICE: We heard testimony today, not only
25 rebuttal, but we had witnesses, including Mr. Toh, claiming

1 that, number one, he couldn't recall a number of documents
2 about this investigation that O'Melveny & Myers did. We've
3 heard a representation today that there was attorney-client
4 communications relative to that relationship when Mr.
5 Raphaelson had testified otherwise prior before, we're
6 entitled to pursue that. We're entitled to pursue the point
7 with Mr. Raphaelson -- let me get my notes here, Your Honor.

8 MR. PEEK: So far I've heard documents and
9 representation.

10 THE COURT: And I was originally told he was going
11 to be called related to the testimony of the general counsel,
12 too, that there was some issue there. And I don't remember
13 what that was, I didn't write it down. The local general
14 counsel.

15 MR. BICE: We also -- yes. We also intend to --

16 MR. PEEK: Too many people talking, Your Honor. I
17 couldn't hear you.

18 MR. BICE: We intend to cross-examine Mr. -- or to
19 seek rebuttal from Mr. Raphaelson, since Mr. -- as you'll
20 recall, Mr. Fleming claimed he couldn't recall what input he
21 got from people, including Mr. Raphaelson. We intend to
22 inquire into that. They want to assert the privilege so we'll
23 have the record, that's fine, but we're going to make -- we
24 think that --

25 THE COURT: I think you already inquired into that.

1 Mr. Raphaelson said he had no recollection of providing any
2 input.

3 MR. BICE: I don't believe that was his
4 recollection.

5 MR. PEEK: That is what he said, Your Honor.

6 MR. BICE: I don't believe that was his testimony,
7 Your Honor, is that --

8 THE COURT: That's my recollection of what he said.

9 MR. BICE: And then again this issue comes back to
10 the O'Melveny & Myers information is also part of it, Your
11 Honor.

12 THE COURT: Well, I think clearly the O'Melveny &
13 Myers issue is one that he can be brought back on rebuttal
14 given the testimony we had today and the objection, because he
15 had testified inconsistently with that on Monday.

16 MR. PEEK: I disagree that there's inconsistency,
17 but I will follow up with him.

18 THE COURT: Okay.

19 MR. PEEK: Because I don't understand when you say
20 the inconsistency. Are you talking about the representation
21 we made in claiming the privilege?

22 THE COURT: No. He told me that O'Melveny & Myers
23 didn't represent the company, he couldn't give them any
24 direction, he had no contact with them, he had to assist them,
25 but they were the audit or compliance committee, I can't

1 remember which one he said, and that so they were separate.
2 That's my recollection of his testimony.

3 MR. PEEK: That's a different issue, Your Honor,
4 than whether or not they are the lawyer for the company as the
5 audit committee's lawyer making an investigation of the
6 company.

7 THE COURT: Okay.

8 MR. PEEK: It has to be independent.

9 THE COURT: All right.

10 MR. PEEK: That is not necessarily inconsistent with
11 what he said.

12 THE COURT: And he may well explain that to me so I
13 don't think it's inconsistent anymore, but to me it seemed
14 like the two didn't gibe from what I heard today.

15 MR. PEEK: I understand that, Your Honor.

16 THE COURT: So I'm saying that he was -- it seemed
17 different to me.

18 MR. PEEK: I understand that.

19 THE COURT: I don't have the connection that I need.
20 So to that extent I think he should be here. I would like to
21 take him as soon as we finish the exhibits, but if the
22 defendants haven't yet rested, I'm not going to take him until
23 after the defendants rest.

24 MR. PEEK: I understand, Your Honor.

25 THE COURT: Okay.

1 MR. RANDALL JONES: So at 9:00 o'clock, Judge?

2 THE COURT: We're starting -- you can start earlier,

3 if you want.

4 MR. RANDALL JONES: We could start at 9:00 just

5 because of all the things we got to do tonight.

6 THE COURT: Okay. I'll see you at 9:00 o'clock.

7 MR. PEEK: Okay. Before, Your Honor --

8 Mark or Randall. Before everybody leaves, Randall.

9 THE COURT: They're huddling again.

10 (Pause in the proceedings)

11 THE COURT: Was there something else?

12 MR. RANDALL JONES: We have nothing else, Your

13 Honor.

14 THE COURT: Lovely. I will see you about 9:00 in

15 the morning. Please try to be on time. I did -- as I told

16 you, I moved my doctor's appointment to tomorrow afternoon so

17 we could accommodate Mr. Toh today. So if we're not done when

18 it's time for me to leave for the doctor, we'll have to come

19 back on Friday.

20 MR. BICE: Thank you, Your Honor.

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

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

23 (Court recessed at 5:21 p.m., until the following day,

24 Thursday, February 12, 2015, at 9:00 a.m.)

25 * * * * *

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

PLAINTIFF'S WITNESSES

Michael Leven				
(Depo Vol. 1)	5			
Toh Hup Hock	62			
Michael Leven				
(Depo Vol. 2)	146	166		
Robert Goldstein	155			

* * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
---------------------	-----------------

PLAINTIFF'S EXHIBIT NO.

28	171
38	153
59	141
60	54
62	154
76	171
77	153

* * *

DEFENDANT'S EXHIBIT NO.

323	175
324	175
328	172
338	172
341	176
354	171

* * *

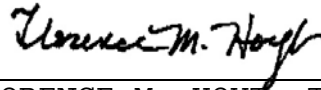
CERTIFICATION

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

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE MOTION FOR SANCTIONS - DAY 4

THURSDAY, FEBRUARY 12, 2015

APPEARANCES:

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

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

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

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

SA000389

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

2 (Court was called to order)

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

6 MR. RANDALL JONES: Yes, Your Honor.

7 THE COURT: Did we get that?

8 THE CLERK: Yes, Your Honor.

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

11 MR. RANDALL JONES: That's correct.

12 THE COURT: What are those proposed numbers?

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

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

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

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

21 THE COURT: To where?

22 MR. RANDALL JONES: I'm sorry?

23 THE COURT: What's the last number?

24 MR. RANDALL JONES: The last number through -- so
25 355 through 369A. I know we got through [inaudible].

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

2 MR. RANDALL JONES: That sounds right.

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

7 MR. RANDALL JONES: That's right.

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

9 MR. RANDALL JONES: We did.

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

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

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

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

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

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

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

1 purported exhibit or not.

2 THE COURT: That's Proposed 325.

3 MR. BICE: Yeah. Because we got them at -- about
4 9:00 o'clock we got these last night.

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

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

12 THE COURT: So let me ask a question.

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

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

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

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

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

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

3 MR. BICE: Okay.

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

6 MR. BICE: No, it is not.

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

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

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

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

20 THE COURT: Okay.

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

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

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

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

12 MR. RANDALL JONES: I do.

13 THE COURT: Which ones are they of this list?

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

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

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

21 THE COURT: I can understand.

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

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

1 renewed motion."

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

4 MR. BICE: It is.

5 THE COURT: Do you stipulate to that one?

6 MR. BICE: Yes.

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

9 MR. BICE: It is.

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

11 MR. BICE: Yes.

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

14 MR. BICE: It is not.

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

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

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

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

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

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

10 THE COURT: Okay.

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

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

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

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

24 MR. RANDALL JONES: Understood, Your Honor.

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

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

4 MR. RANDALL JONES: That is true.

5 THE COURT: What is your evidentiary basis for that?

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

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

18 MR. RANDALL JONES: Every one of the --

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

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

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

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

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

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

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

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

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

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

20 MR. BICE: Yes.

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

23 THE COURT: Yes.

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

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

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

14 THE COURT: That's correct.

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

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

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

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

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

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

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

8 THE COURT: It was not --

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

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

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

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

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

8 MR. RANDALL JONES: Your Honor --

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

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

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

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

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

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

21 THE COURT: He did.

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

1 THE COURT: He did testify about that.

2 MR. RANDALL JONES: And we have examples of those.

3 So at a bare --

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

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

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

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

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

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

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

7 MR. RANDALL JONES: Well, even --

8 THE COURT: Or, I'm sorry --

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

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

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

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

24 MR. RANDALL JONES: Other than Mr. Ray.

25 THE COURT: There may be a number of different

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

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

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

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

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

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

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

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

1 than I am. Makes my life a lot easier.

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

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

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

9 THE COURT: Mr. Peek --

10 MR. PEEK: Yes, Your Honor.

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

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

21 MR. BICE: Yes.

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

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

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

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

3 THE COURT: I know.

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

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

12 MR. BICE: That is what --

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

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

18 MR. BICE: That is correct, Your Honor.

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

21 All right. So Mr. --

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

1 argument.

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

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

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

10 MR. BICE: Correct.

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

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

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

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

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

21 MR. PEEK: Okay.

22 MR. BICE: Thank you, Your Honor.

23 MR. PEEK: And we will --

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

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

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

4 MR. RANDALL JONES: Yes, Your Honor.

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

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

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

11 MR. RANDALL JONES: That's right.

12 THE COURT: Okay.

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

1 earliest possible time.

2 THE COURT: Okay.

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

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

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

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

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

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

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

6 THE COURT: That was correct.

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

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

23 MR. RANDALL JONES: Agreed. And so --

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

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

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

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

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

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

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

24 MR. RANDALL JONES: Sure.

25 THE COURT: -- have other issues that happen.

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

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

17 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

22 MR. RANDALL JONES: Sure.

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

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

3 MR. RANDALL JONES: Be happy to do so.

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

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

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

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

16 THE COURT: Okay.

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

21 (Pause in the proceedings)

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

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

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

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

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

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

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

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

13 MR. PISANELLI: Okay.

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

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

1 establish the foundation or the authenticity of these
2 documents.

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

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

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

12 THE COURT: Okay.

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

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

18 MR. PISANELLI: Fair enough.

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

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

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

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

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

21 MR. PISANELLI: Yes.

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

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

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

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

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

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

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

11 MR. PISANELLI: Sure.

12 THE COURT: -- at the moment.

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

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

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

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

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

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

25 MR. RANDALL JONES: I disagree with that, Your

1 Honor. And maybe I can make this simpler.

2 THE COURT: Okay.

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

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

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

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

24 MR. RANDALL JONES: It is a --

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

1 THE COURT: Hold on a second.

2 MR. BICE: I apologize, Your Honor.

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

4 MR. RANDALL JONES: It is a six-page brief that was

5 filed on the 9th of February. And I have a copy, if the Court

6 would like.

7 THE COURT: Hold on a second.

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

9 THE COURT: Hold on a second, please.

10 MR. BICE: Oh. I apologize.

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

12 name.

13 THE COURT: Wait.

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

15 9th.

16 THE COURT: I don't have a nine-page brief. I have

17 about a twelve-page brief and I have a six-page brief.

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

19 Honor.

20 THE COURT: Okay.

21 MR. RANDALL JONES: It's -- Memorandum of Sands

22 China Limited Regarding Exhibit 350 is the title of the

23 document.

24 THE COURT: Nope.

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

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

3 Excuse me, Counsel.

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

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

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

23 MR. PISANELLI: They're more generalized?

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

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

1 about the general objections.

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

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

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

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

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

18 THE COURT: Does that include documents from Federal
19 Court?

20 MR. PEEK: I think it does.

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

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

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

1 from Federal Court --

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

4 THE COURT: Okay.

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

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

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

12 THE COURT: Okay. Hold on.

13 MR. RANDALL JONES: Yes.

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

16 (Pause in the proceedings)

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

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

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

23 Then you have number 224, which is page 150.

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

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

1 That request also appears to stand on its own.

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

4 THE COURT: Hold on. Let me keep reading.

5 (Pause in the proceedings)

6 THE COURT: Then we're on page 161.

7 MR. RANDALL JONES: That is correct.

8 MR. BICE: Your Honor, the request --

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

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

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

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

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

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

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

25 MR. BICE: And the general objections --

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

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

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

24 THE COURT: I understand.

25 MR. PISANELLI: -- further reason why he should

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

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

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

9 THE COURT: That appears to be correct.

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

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

14 MR. RANDALL JONES: I understand.

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

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

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

1 And with respect to --

2 THE COURT: From across the street.

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

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

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

6 MR. RANDALL JONES: And other than that, I'm not

7 sure that we have on our side any other housekeeping matters

8 to be addressed, unless Mark Jones maybe does.

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

10 MR. MARK JONES: Your Honor, during the second day

11 of David Fleming's testimony there was a discussion as to

12 paragraph 9 of his August 21, 2012, affidavit. And in that --

13 and I'm looking at page 222 and 223 of the transcript of our

14 proceedings, and that was where he had discussed a subordinate

15 lawyer in his office that had also had some involvement with

16 the OPDP. He was reluctant to give that name. He asked that

17 -- or he said he would try to get a consent. And I just

18 wanted to pass on -- you had given us 10 days to provide that

19 consent for your consideration, but I just wanted to say we

20 have not received that consent yet. But he -- I understand

21 that -- or that the consent has been given, and wanted to tell

22 the Court that that name is Graca Serava [phonetic] and that

23 is spelled G-R-A-C-A.

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

25 MR. MARK JONES: He gave that name to you

1 previously.

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

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

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

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

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

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

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

16 THE COURT: Thank you.

17 MR. MARK JONES: Thank you.

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

21 THE COURT: Okay.

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

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

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

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

4 THE COURT: I did.

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

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

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

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

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

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

24 MR. PEEK: You asked me the question --

25 THE COURT: I did.

1 MR. PEEK: -- and so I'm answering the question.

2 And obviously the reason --

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

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

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

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

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

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

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

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

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

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

1 you're able to distribute what you have and identify whether
2 it is something that needs to be marked as a separate exhibit
3 or something that is going to require testimony related to it,
4 let me know, and I'll come back in. In the meantime it
5 doesn't sound like there's anything we can do productively.

6 And it's 10:15, and I've been trying all morning to be --

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

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

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

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

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

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

1 one.

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

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

7 THE COURT: Well, okay. So --

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

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

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

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

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

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

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

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

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

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

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

21 THE COURT: Is the list here?

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

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

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

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

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

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

11 MR. PISANELLI: Thank you.

12 What we'd like to know is if they're intending to
13 show you the totality of redacted documents, which we have our
14 number, and the amount of documents that were replaced, and we
15 have our number. We think the sum total is around just under
16 10,000 documents that remained unredacted with no replacement.
17 Is that what we're getting from them, those numbers?

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

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

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

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

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

14 THE COURT: Was that the really long document?

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

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

22 MR. PISANELLI: Exactly.

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

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

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

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

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

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

12 MR. BICE: Let's do it.

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

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

17 MR. BICE: We'll get it.

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

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

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

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

3 MR. PEEK: Pardon?

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

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

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

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

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

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

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

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

21 MR. BICE: Correct.

22 MR. PEEK: -- for the replacement documents.

23 MR. MARK JONES: And one from me.

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

1 foundation that the Court has asked us to lay.

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

5 MR. PEEK: But Mr. Bice --

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

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

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

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

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

24 MR. BICE: Correct.

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

1 MR. BICE: That's not --

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

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

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

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

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

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

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

25 MR. BICE: We are getting the CDs.

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

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

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

10 If I have a CD that was given by Jacobs to you, it
11 wouldn't be an issue in this case. But if I had one and you
12 said, yes, that is the CD they sent us and now we're going to
13 fight about the documents that are part of that production,
14 then for purposes of this discovery sanction hearing and
15 sanction hearing related to my order dated September 14th,
16 2012, I would take that as part of my record. But you're not
17 doing that. In a typical Rule 37 hearing I would actually
18 have the answers to interrogatories that were verified and
19 signed; my order saying, do better; the second supplement
20 where you didn't do better again; the next order where I said,
21 really I meant it when I said do better; and then I would have
22 another supplement that would still be insufficient, and then
23 I would have a hearing. And so I would have all of those
24 steps in evidence. I seem to skip that here, and I think it's
25 because of the volume of information and the fact that you're

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

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

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

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

14 THE COURT: The 200,000 pages.

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

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

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

20 THE COURT: No. I want the record to be clear.
21 There were 200-and-some thousand pages, and I was told we have
22 10 or 15 out of that we want to admit. Under my electronic
23 exhibit protocol if you want to change an electronic exhibit,
24 I need a new submission, because I can't admit only portions
25 of the electronic exhibit.

1 MR. PEEK: I get that, Your Honor.

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

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

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

7 MR. PEEK: And I misspoke, Your Honor.

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

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

16 In addition --

17 THE COURT: Apparently we don't have it.

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

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

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

1 THE COURT: I don't have them.

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

4 THE COURT: I don't have it.

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

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

10 MR. RANDALL JONES: That's pages.

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

13 MR. RANDALL JONES: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 THE COURT: Do you want to try again tomorrow?

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

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

17 THE COURT: For partial rebuttal.

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

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

21 MR. BICE: Yes.

22 THE COURT: All right.

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

25 THE COURT: Yes, you can have a personal convenience

1 break, Mr. Peek.

2 MR. PEEK: Thank you, Your Honor.

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

4 THE COURT: Are we ready?

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

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

9 IRA RAPHAELSON, PLAINTIFF'S REBUTTAL WITNESS, SWORN

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

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

14 DIRECT EXAMINATION

15 BY MR. BICE:

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

1 A I testified to that and other things.

2 Q Okay. And who are the members of the audit -- who
3 were the members of the Audit Committee when O'Melveny was
4 representing?

5 A To be clear, Mr. Bice, I testified that they
6 represented the Audit Committee and the company.

7 Q And the company. Okay.

8 A The company being Las Vegas Sands.

9 Q Okay. Did they represent Sands China?

10 A There was a mutual interest between Las Vegas Sands
11 and Sands China.

12 Q My question was is did they represent Sands China?

13 A I know they represented Las Vegas Sands. I did not
14 engage them either for Las Vegas Sands or for Sands China.
15 I'm familiar with the documents that engaged them for Las
16 Vegas Sands.

17 Q Were you the one that engaged them?

18 A I just said I was not the one who engaged them.

19 Q Okay. Apologies. When were they engaged?

20 A Sometime in the spring of 2011. I can't give you a
21 precise date. I don't have an engagement letter in my head.

22 Q And generally, what were they engaged to do?

23 A They were engaged by the Audit Committee pursuant to
24 resolution by the Board of Directors to advise the Audit
25 Committee and the company that the Audit Committee was

1 delegated to be the living embodiment of in connection with
2 responding to the SEC subpoena that was received in February
3 of 2011, in a variety of shareholder demand letters and
4 derivative actions that were in the process of being filed in
5 I believe beginning in early 2011, Your Honor, and then into
6 the middle or even the fall of 2011.

7 Q Okay. Is their work in that regard ongoing to this
8 day?

9 MR. RANDALL JONES: Objection, Your Honor.
10 Relevance.

11 THE COURT: Overruled.

12 THE WITNESS: O'Melveny's responsibilities have
13 changed over time. Can I explain?

14 BY MR. BICE:

15 Q Does it still include the work that you've
16 described?

17 MR. PEEK: Your Honor, may he explain in order to be
18 complete in the answer.

19 THE COURT: Hold on a second.

20 Let's answer yes or no first as to whether it still
21 exists.

22 THE WITNESS: Could you repeat your question.

23 BY MR. BICE:

24 Q Sure. The work that they were engaged in to do in
25 2011 concerning the SEC subpoena, is that ongoing today?

1 A As a technical matter, yes.

2 THE COURT: Okay. And if you need to explain, sir,

3 you can. Or Mr. Peek can make a note and have you explain

4 when it's his turn.

5 THE WITNESS: Very well, Your Honor. Thank you.

6 BY MR. BICE:

7 Q As part of their duties to the Audit Committee --

8 strike. Let me rephrase it this way. Was one of their duties

9 on behalf of the Audit Committee to conduct an investigation.

10 MR. RANDALL JONES: And, Your Honor, again,

11 objection. Relevance to this case and the sanction.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 BY MR. BICE:

15 Q As part of that investigation did they go to Macau?

16 A Yes.

17 Q Can you tell me who the lawyers were from O'Melveny

18 that went to Macau.

19 MR. PEEK: Objection. Foundation, Your Honor, as to

20 time.

21 THE COURT: Overruled.

22 THE WITNESS: I don't know who went before I showed

23 up, and after I showed up I only know some of the names. I

24 don't know all of the names.

25 //

1 BY MR. BICE:

2 Q Can you tell me the names that you do know.

3 A I know that Richard Grime and Dan Schulman went on
4 at least one occasion each. I know that other O'Melveny
5 lawyers went, some from the United States, some from the main
6 land, some from Hong Kong. But I do not know their names, Mr.
7 Bice.

8 Q Understood. Now, as part of their -- prior to you
9 being there at Sands, okay, do you know whether or not the
10 O'Melveny lawyers went to Macau and reviewed documents in
11 Macau?

12 A I don't know.

13 Q Did they bring any documents back from Macau?

14 THE COURT: And this is from before he was in --

15 MR. BICE: Correct.

16 THE COURT: Okay.

17 THE WITNESS: I don't know that, either.

18 BY MR. BICE:

19 Q Have you seen any such documents that they brought
20 back from Macau?

21 A I don't know if they brought back documents. It
22 would be difficult for me to have seen them.

23 Q All right. I just want to make sure. After you
24 joined the company and they went to Macau and they went to
25 Macau --

1 A The company being Las Vegas Sands, so we're clear.

2 Q Yes, sir. After you joined Las Vegas Sands, just so

3 the record's clear and I recall, that date was what again?

4 A November 1, 2011.

5 Q So after November 1, 2011 --

6 A Although to complete the answer, I was physically

7 present on Halloween, which was the Monday, Your Honor.

8 THE COURT: And here we call that Nevada Day.

9 THE WITNESS: Nevada Day. Very well, Your Honor.

10 BY MR. BICE:

11 Q All right. So --

12 A I learned something in my fourth year.

13 Q After November 1 of 2011, did O'Melveny lawyers go

14 to Macau?

15 A Yes.

16 Q Okay. Did they review documents in Macau?

17 A I don't know.

18 Q Okay.

19 A I believe they did, but I didn't watch them do it.

20 Q Understood. Do you believe that they were able to

21 review documents in an unredacted form in Macau?

22 MR. RANDALL JONES: Back to the form of the

23 question. Lacks foundation.

24 THE COURT: Overruled.

25 Sir, I don't want you to guess or speculate, but if

1 you know, I'd love to hear the answer.

2 THE WITNESS: I believe they reviewed documents in
3 Macau in an unredacted form. Whether those documents
4 contained personal data or not I do not know.

5 BY MR. BICE:

6 Q Okay. Do you know, of the documents that they
7 reviewed, and I'm talking about after November 1, 2011, did
8 they bring any documents back from Macau?

9 A I don't believe so, Mr. Bice. And I can explain
10 without going into privileged conversations, Your Honor.

11 THE COURT: Okay.

12 MR. BICE: Well, I'll let --

13 MR. PEEK: Can he do that, Your Honor, to complete
14 his answer?

15 THE COURT: If he can do it without explaining
16 privileged -- without going into privileged communications I'd
17 love to hear the answer. But if Mr. Bice then wants to test
18 things then we're in a slightly different issue.

19 MR. PEEK: He can. But I would like him to be able
20 to explain that. He's always entitled to complete his answer.

21 THE COURT: So, you wanted to say something else.

22 THE WITNESS: I did, Your Honor. There came a point
23 in time, and I do not recall the date as I sit here, that
24 O'Melveny and Myers met with the OPDP in a very --
25 //

1 BY MR. BICE:

2 Q How do you know that?

3 A Because lawyers working for Las Vegas Sands were
4 present.

5 Q So O'Melveny is not the one that told you that?

6 A I didn't say who told me.

7 Q Well, who told you that.

8 A I don't believe that I can do that, Your Honor,
9 without going into a privileged conversation.

10 MR. BICE: But he can't testify -- he's trying to
11 testify to certain things and then claim that I want to
12 withhold the testing of this. He doesn't have any personal
13 knowledge it seems. Somebody told him something that he wants
14 to say the substance of without revealing who.

15 MR. PEEK: Your Honor, I don't think the who -- the
16 who does not --

17 THE COURT: Hold on. Let's wait and see when Mr.
18 Peek has a chance if he figure out a way to elicit the
19 testimony you want to explain.

20 Mr. Peek, make yourself a note.

21 Mr. Bice, go to the next question.

22 BY MR. BICE:

23 Q Okay. So O'Melveny -- as part of those interviews
24 -- strike that. As part of their investigation did they
25 interview personnel in Macau?

1 A They did.

2 Q Did they tape record those interviews?

3 A Not to my knowledge.

4 Q Was one of their duties, was it to generate a report
5 on their investigation?

6 MR. PEEK: Your Honor, how is this rebuttal now?
7 I'm going to object. This is not rebuttal.

8 THE COURT: Because I had an issue I believe
9 yesterday related to the interview by Mr. Toh of the O'Melveny
10 & Myers folks who indicated that he reviewed documents with
11 them and could not recall the specific circumstances or
12 whether redactions existed.

13 So, because you and I then had a discussion as to
14 whether it would have been an appropriate thing for me to
15 consider if Sands China had previously allowed its outside
16 lawyers to review unredacted documents including personal data
17 with witnesses as part of their interviews and whether there
18 has been a change in the way Sands China treats those
19 documents. I said it was a fair area of inquiry. And I still
20 think it's a fair area.

21 MR. PEEK: And this is of the interview in 2011?

22 THE COURT: Absolutely.

23 MR. PEEK: I don't remember what the question was
24 now.

25 THE WITNESS: The question was whether they tape

1 recorded, and I thought I answered no.

2 BY MR. BICE:

3 Q No. I apologize. Did they do a report of their
4 investigation?

5 A They did not. They did not.

6 Q Okay. Did they prepare any sort of written summary
7 of their investigation?

8 A Any sort?

9 Q Yes.

10 A Yes.

11 Q Okay. On more than one occasion?

12 A They prepared draft witness summaries.

13 Q Okay. Did it contain the personal information of
14 those people?

15 MR. PEEK: Your Honor, this goes down to the work
16 product, and I would instruct him not to answer, because this
17 is [unintelligible].

18 THE COURT: Sustained.

19 MR. RANDALL JONES: I would join that objection,
20 Your Honor.

21 BY MR. BICE:

22 Q Do you know of what witnesses?

23 A As I sit here now I can't give you all the names. I
24 have seen names since October of '13.

25 Q Which names?

1 MR. PEEK: Your Honor, again, this goes to the work
2 product, and we're asserting the work product privilege here.

3 MR. BICE: Counsel, how this is work --

4 THE COURT: The identification of witnesses is work
5 product?

6 MR. PEEK: I believe it is to be, Your Honor.

7 MR. RANDALL JONES: Well, Your Honor, I would join
8 the objection only to the extent that the identification of
9 witnesses would be the work product of the law firm and what
10 witness to talk to and --

11 THE COURT: But you know that that can't be
12 protected. It still has to be disclosed. Whether it has to
13 be disclosed in this group is a different issue because of the
14 relevance issues to that investigation to this. I don't
15 really care what happened with that investigation. I cared
16 what documents they looked at and what condition the documents
17 were in when they looked at them.

18 MR. PEEK: Then why don't we get to that issue, Your
19 Honor, as opposed to dance around all these other things?

20 THE COURT: Because Mr. Bice wants to know who was
21 interviewed so that he can then ask him if they were
22 unredacted or redacted documents.

23 MR. BICE: Exactly. And, Your Honor, you can't
24 assert work product from a different case inside of another
25 case. And unless they want to claim that these cases are all

1 intertwined with each other, which heretofore they've insisted
2 they were not as I recall.

3 MR. RANDALL JONES: Your Honor, I appreciate the --

4 THE COURT: All right. Mr. Bice, I'm going to
5 sustain the objection because it is not relevant to the
6 specific inquiry I am making. However, if upon the additional
7 briefing you and I discussed yesterday I may require the
8 disclosure of those witnesses to ascertain whether unredacted
9 documents, including personal data were reviewed by the
10 O'Melveny & Myers folks.

11 BY MR. BICE:

12 Q Mr. Raphaelson, do you know whether or not O'Melveny
13 & Myers stored -- let me phrase it this way, that the data --
14 did they conduct a data search in Macau?

15 A O'Melveny & Myers conducted a document search and
16 they conducted an electronic search. The result --

17 Q So they looked at -- I apologize. I didn't mean to
18 cut you off. Go ahead, sir.

19 A So far as I know, the results of those searches
20 remain in Macau.

21 Q So you say that they did a document search as in
22 physical documents?

23 A That is what I meant, yes.

24 Q Okay. So it would be your belief that as part of
25 reviewing those document they read them?

1 MR. RANDALL JONES: Object to the form of the
2 question. Assumes facts not in evidence, lack of foundation.

3 THE COURT: Overruled.

4 THE WITNESS: The answer would be not all of them,
5 no.

6 BY MR. BICE:

7 Q Okay. But they looked at them would be your
8 assumption in order to determine which documents they wanted
9 to make part of their record and which they did not. Fair?

10 A Not fair.

11 Q Not fair. Okay. And then they conducted electronic
12 searches, as well?

13 A I don't know what order they did it in.

14 Q And somewhere has that data that they preserved --
15 did they create a database?

16 A I don't know if they created one or more databases.
17 I know they created at least one.

18 Q Okay. And does it go by a name?

19 A You know, I'm sure it does, but I'm not sure that I
20 ever heard it or that I'd be -- and since I don't believe I
21 ever heard it I can't say that it's something that I would
22 know. I know who their electronic service provider was in the
23 United States. I don't know if they used the same data
24 service provider in Macau or a different one.

25 Q Okay. And who was the one in the U.S., was it

1 Staltz or --

2 A Would be Stroz.

3 Q Stroz. That's right.

4 A S-T-R-O-Z.

5 Q Okay. Have you ever heard anyone talk about a

6 database back in Macau using the name Clearwell or a system to

7 search it called Clearwell?

8 A Mr. Bice, the word Clearwell rings a bell. I can't

9 associate it with any of the other things you've included in

10 your question.

11 Q Okay.

12 A Which is not to exclude the possibility either. I

13 just can't associate it with it.

14 Q Okay. So is it fair to say, Mr. Raphaelson, that

15 since you've joined the company in November of 2011, it has

16 been your belief that O'Melveny was allowed to look at

17 unredacted documents containing personal data in Macau.

18 MR. RANDALL JONES: Object to the form of the

19 question, Your Honor.

20 THE COURT: Overruled.

21 MR. PEEK: I'm going to object on attorney-client

22 privilege, Your Honor. Because that would only come from

23 O'Melveny to him.

24 THE COURT: No. It might come from other places

25 besides O'Melveny.

1 MR. PEEK: You are correct --

2 THE COURT: And it might come from other places that

3 aren't attorney-client.

4 MR. PEEK: To the extent then that he did not -- it

5 came from lawyers --

6 THE WITNESS: I don't have a source for

7 understanding what O'Melveny looked at before or after I

8 became general counsel of Las Vegas Sands other than the

9 lawyers I spoke with, with one narrow exception. I saw boxes

10 of -- I saw boxes with O'Melveny's name on it in a locked room

11 that O'Melveny deposited there when O'Melveny left Macau.

12 BY MR. BICE:

13 Q Those -- does that data still exist, those boxes?

14 A Those boxes still exist.

15 Q Okay. The documents in the box are still in them?

16 A I don't actually know that there -- other than from

17 a privileged source that there are documents in there. But if

18 there are in fact documents -- if there were documents in

19 there, put there by O'Melveny, whatever O'Melveny put in there

20 remains there to this day.

21 THE COURT: So you saw boxes. They were in a sealed

22 condition. They had O'Melveny's name on them, and they're

23 still there?

24 THE WITNESS: Exactly, Your Honor.

25 THE COURT: And you don't know what's inside them

1 except from a privileged source?

2 THE WITNESS: Exactly, Your Honor.

3 THE COURT: Okay.

4 BY MR. BICE:

5 Q Let me come back and I'll rephrase my question. So
6 do you have a belief one way or the other, Mr. Raphaelson, as
7 to whether O'Melveny was reviewing unredacted documents in
8 Macau?

9 MR. RANDALL JONES: I'll object to the form of the
10 question, Your Honor. To the extent it calls for attorney-
11 client privileged information I would instruct him -- well, I
12 can't instruct him not to answer, but I believe it's an
13 improper question if it calls for information from an
14 attorney.

15 THE COURT: We're trying to avoid privileged
16 communications being disclosed unintentionally. You know that
17 as well anybody else. So if you think it discloses a
18 privileged thing, tell us your only source is attorneys and
19 then we'll move on. And if you need the question again, let
20 us know.

21 THE WITNESS: Your Honor, my beliefs on this topic
22 are informed beliefs, and the information is sourced with
23 attorneys --

24 THE COURT: Okay.

25 THE WITNESS: -- with whom the company and I are in

1 privity with.

2 THE COURT: So that would require disclosure of
3 privileged information to answer it?

4 THE WITNESS: That's correct, Your Honor.

5 THE COURT: Okay.

6 BY MR. BICE:

7 Q And you've discussed that with no one else in the
8 company other than the litigation counsel?

9 A I'm sorry.

10 Q And you've discussed that with no one else in the
11 company except litigation counsel? You don't have any other
12 source of information about what they reviewed?

13 A What they reviewed?

14 Q Yeah.

15 A I know from Ben Toh that they reviewed financial
16 data.

17 Q Okay.

18 A But I took your question to be an inquiry into
19 unredacted information including personal data.

20 Q Okay. And all I want to clarify is is that the only
21 source of information you would have about them reviewing
22 personal data -- when I say, "them," being O'Melveny, came
23 from O'Melveny?

24 A No, sir.

25 MR. RANDALL JONES: Misstates his testimony.

1 Objection. Misstates his testimony.

2 BY MR. BICE:

3 Q My apologies. I misunderstood then. So can you
4 tell me what other sources you might have had on that issue.

5 A Mr. Fleming, Mr. Urganson on a hearsay basis, and
6 there may be one other lawyer on a hearsay basis, but that
7 would be it.

8 Q Have you discussed that with any members of the Las
9 Vegas Sands Board?

10 MR. RANDALL JONES: Objection, Your Honor. Calls
11 for attorney-client privileged communication.

12 THE COURT: This is the existence of the
13 communication as opposed to the substance.

14 So if you can answer, either yes or no.

15 THE WITNESS: I'm not quite sure what you mean by
16 that. If you are asking me, did I discuss with for instance
17 the Audit Committee whether or not O'Melveny had reviewed data
18 to include personal data or begun the review of data to
19 include personal data and abandoned that review, the answer
20 would be yes.

21 MR. PEEK: Your Honor, can we have a time out,
22 because I have to go downstairs.

23 THE WITNESS: Pardon.

24 THE COURT: Yes. We can take a brief --

25 MR. PEEK: I'm going to make it as brief --

1 THE COURT: And where is she, what floor?
2 MR. PEEK: She's on the third -- Judge Allf is on
3 the third floor, Your Honor.
4 THE COURT: Good luck with that.
5 Sir, I would recommend you get up and move around.
6 He has to go put a settlement on the record in another case.
7 MR. PEEK: And I will advise Judge Allf that we have
8 some urgency to getting this done, too.
9 THE COURT: One would hope.
10 MR. BICE: Thank you, Your Honor.
11 THE COURT: We'll see you when you get back, Mr.
12 Peek.
13 MR. PEEK: Thank you, Your Honor.
14 THE COURT: So Mr. Bice can't be here tomorrow. So
15 if we don't finish today, what do you guys want to do?
16 MR. RANDALL JONES: Well, Your Honor, my hope --
17 THE COURT: I'm happy to take any breaks you want
18 from my CityCenter bench trial that's going to last four
19 months long.
20 MR. RANDALL JONES: I would hope we can finish
21 today. My closing --
22 THE COURT: I have to leave at noon.
23 MR. RANDALL JONES: The reason I say that, Judge --
24 THE COURT: It's 10:59.
25 MR. RANDALL JONES: Based on what I understand still

1 needs to be done is we're still trying to put together the
2 information the Court has suggested we need to put together
3 for the Court to even consider the admission of our remaining
4 exhibits. We're trying to do that right now so that by 1:00
5 o'clock we'll have the information. Hopefully that won't
6 result in a lengthy discussion with the counsel and the Court.
7 And so if we start by 1:30, I've got I think an hour and a
8 half, that's assuming I really go slow.

9 THE COURT: I can't be here this afternoon.

10 MR. RANDALL JONES: Oh. That's right. What time do
11 you have to leave, Your Honor?

12 THE COURT: When we break at lunch I'm not going to
13 be back today. I have a meeting -- I have a legislative
14 meeting and I moved my doctor's appointment to 1:30 today.

15 MR. RANDALL JONES: I'm sorry. I thought it was
16 later that you had the appointment.

17 THE COURT: It was originally later, but then I
18 moved it today. And the only time I could get in was right at
19 1:30.

20 MR. RANDALL JONES: Well, Your Honor, let me put it
21 this way. I will do whatever I have to do to set aside any
22 other engagements to be here whenever you want.

23 THE COURT: Well, it's not like I don't have other
24 stuff to do.

25 MR. RANDALL JONES: Oh. I know you --

1 THE COURT: It's when your ready I'm happy to take a
2 break from the CityCenter bench trial.

3 MR. RANDALL JONES: Well, I'm -- since I'm ready
4 now, that means whenever the Court's available I'm available.

5 THE COURT: And opposing counsel's available, too.

6 THE WITNESS: Your Honor, might I confer with Mr.
7 Morris for one minute to see if we can proceed without Mr.
8 Peek so as to maximize the Court's time.

9 MR. RANDALL JONES: Are you willing to substitute
10 for Mr. Peek for the remaining --

11 MR. MORRIS: Sure.

12 THE WITNESS: There's a question that would need to
13 be answered, and I need to ask that in a privileged context.
14 So if I might inquire --

15 THE COURT: Do you have any objection, Mr. Bice?

16 MR. BICE: No.

17 THE COURT: Then yes, you may.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Well, thank you to Mr. Bice, too.

20 (Pause in the proceedings)

21 MR. BICE: All right. Mr. Morris, for purposes --
22 for this proceeding we will not claim that your temporary
23 representation of a company constitutes any form of a conflict
24 or waiver. As you will recall, I think you represented the
25 company during the appeal and during at least three if not

1 four and perhaps five writ petitions.

2 MR. MORRIS: Yes.

3 THE COURT: Have I only had five in this case? This
4 case actually has more writ petitions than CityCenter did.

5 MR. BICE: Yes.

6 THE COURT: Mr. Morris, are you going to stand in as
7 Las Vegas Sands' counsel temporarily, understanding that the
8 plaintiffs are not going to hold you to that representation in
9 any other part of this case?

10 MR. BICE: Yes.

11 THE COURT: Is that okay with you?

12 MR. MORRIS: It's all right with me.

13 THE COURT: Mr. Peek's back.

14 Mr. Peek, Mr. Morris is going to pretend to be
15 counsel for -- he is going to be counsel for Las Vegas
16 Sands --

17 MR. PEEK: Okay.

18 THE COURT: -- for a limited purpose. And no one is
19 going to take any adverse action against the company or
20 Mr. Morris as a result of his appearance for a limited purpose
21 in this particular hearing for Las Vegas Sands while you go
22 down to be with Judge Allf.

23 MR. PEEK: I'm going down there in 15 minutes. And
24 if I get up and leave he's here.

25 THE COURT: And he will pass the baton back to you

1 when you're done.

2 MR. PEEK: I'm fine with that, Your Honor. He will
3 do a far better job than I.

4 THE COURT: Did I correctly recite what we all
5 agreed to do?

6 MR. BICE: You did. Thank you. I'm sure we can be
7 done in 15 minutes.

8 THE WITNESS: Thank you, Your Honor. And for the
9 record in keeping with the Court's earlier admonishment to me,
10 while I'm still under oath the sole consultation with counsel
11 was for that purpose.

12 THE COURT: Thank you, sir.

13 THE WITNESS: Thank you.

14 BY MR. BICE:

15 Q All right. Mr. Raphaelson, before we took that
16 short break, did O'Melveny & Myers make any presentation about
17 its Macau investigation to the Nevada Gaming Control
18 officials?

19 MR. PEEK: Objection, Your Honor. Relevancy.

20 MR. BICE: Communicating data inside the United
21 States on the company's behalf, Your Honor.

22 THE COURT: Okay. To a limited extent that you are
23 seeking the existence of documents that were disclosed with
24 personal data in an unredacted form that had their source in
25 Macau I will let you answer that -- ask that question.

1 BY MR. BICE:

2 Q Did they make a presentation to the Nevada Gaming
3 Control Board based upon their investigation in Macau?

4 MR. PEEK: Your Honor, same objection. And as the
5 Court knows under 463.3407 there is an absolute privilege of
6 any communications made.

7 MR. BICE: It's a defamation privilege.

8 THE COURT: There is, absolutely.

9 MR. PEEK: I'm sorry. I didn't hear the Court. I
10 heard Mr. Bice retort.

11 THE COURT: I said, absolutely. But the fact that
12 without telling me which documents, that documents in an
13 unredacted form from Macau with personal data were provided is
14 relevant to my proceeding.

15 THE WITNESS: The answer to the Court's question is
16 no.

17 MR. BICE: And I need to be clear on this. Your
18 Honor, that privilege, Your Honor, that privilege is not an
19 evidentiary privilege. It is a privilege against defamation
20 for saying things to the Board.

21 THE COURT: Well, there's also an evidentiary
22 privilege related to the Gaming Control Board's admissions.

23 MR. BICE: Well, Your Honor, I'll pull out the
24 briefs and I'll pull out your ruling in the Golden Gaming
25 matter where the Court's position was is that whatever went to

1 the Board the company had to provide.

2 MR. PEEK: Can we move on, Your Honor. I think he's
3 answered the question anyway.

4 MR. BICE: I'll address that --

5 THE COURT: Is that the Fremont Street Experience
6 case?

7 MR. BICE: No. That's the Golden Gaming/Corrigan
8 matter, Your Honor.

9 THE COURT: Oh. Yeah.

10 MR. BICE: I will bring those briefs back, Your
11 Honor.

12 THE COURT: No. Don't bring them back.

13 MR. BICE: The position was was that Golden Gaming
14 gave any information --

15 MR. PEEK: Can we move on, Your Honor. I think he's
16 answered the question.

17 MR. BICE: Can I finish. I mean, this constant
18 interruption --

19 THE COURT: Wait. I don't remember the
20 Golden Gaming-Corrigan case well enough to be able to follow
21 you. Mr. Bice, unfortunately that case has been closed for
22 what, four years now? And my recollection about the
23 transaction in that case and the information that was provided
24 to the Board for approvals is vague at best.

25 MR. BICE: Understood. I'm not arguing with you

1 about that.

2 THE COURT: Okay.

3 MR. BICE: What I'm saying is this is not a
4 privilege. It is not an evidentiary privilege, and if we have
5 to brief that we will.

6 THE COURT: Okay.

7 MR. BICE: But my point here is, my question to Mr.
8 Raphaelson was a simple one. Did they make a presentation to
9 the Board?

10 THE COURT: The Gaming Control Board. And my
11 question was more limited, was did they provide the documents
12 from the source in Macau in an unredacted form with the
13 personal data, which he answered no.

14 THE WITNESS: And I answered the Court's question,
15 no. And respectfully, Mr. Bice, and I have no idea what
16 Golden Gaming is or was, it is my understanding from A.J.
17 Burnett, who's the Chairman of the Nevada Gaming Control
18 Board --

19 MR. BICE: Move to strike.

20 THE COURT: Denied.

21 You can finish.

22 BY MR. BICE:

23 Q Do you want to tell us what Mr. Burnett told you?

24 A Yes.

25 Q Okay. Go ahead.

1 A I'm not in privity with Mr. Burnett.

2 Q Okay. Go ahead.

3 A I am regulated by Mr. Burnett as an affiliate of a
4 licensed entity.

5 Q Okay.

6 A And Mr. Burnett has instructed me that any
7 submission to the Nevada Gaming Control Board that we deem
8 covered by the attorney-client privilege, we, as Las Vegas
9 Sands deemed covered by the attorney-client privilege is fully
10 protected by Nevada law from production. That's his position.

11 Q That's a different question, Mr. Raphaelson.

12 A I'm trying to explain why I can't answer -- why I
13 don't believe I can answer your question.

14 Q My question was not the contents. My question was
15 very simple. Did they make a presentation to the Gaming
16 Control Board concerning their investigation?

17 MR. RANDALL JONES: Objection, Your Honor.
18 Relevance, then. Because your question was about unredacted
19 documents, and the witness answered that question. That
20 question is irrelevant to these proceedings. And that's why I
21 believe the Court qualified the question as it did.

22 MR. BICE: No it is not, Your Honor.

23 THE COURT: Well, see. What I would ask as a Judge
24 is different than you litigants and lawyers would ask.

25 Mr. Bice, why do you think the fact of a

1 presentation is relevant?

2 MR. BICE: Because they transferred the identity of
3 the people, and they communicated that information here in the
4 state to certain people. I have a reason to believe that.
5 And now what they're doing, however, in front of this Court,
6 they're taking the position that these names can't even be
7 uttered.

8 THE COURT: You mean the ones that O'Melveny & Myers
9 interviewed and put in their summary?

10 MR. BICE: Well, not only people that they
11 interviewed -- and, Your Honor, to sit there and say, well, we
12 didn't bring the redacted documents out, which I have
13 substantial doubts that that assertion is accurate, but let's
14 just -- let's play it out. But we nonetheless copied down the
15 contents so that we could tell the Nevada Gaming Control Board
16 that we actually did a thorough investigation to make it
17 appear that it was a thorough investigation. They've got a
18 double standard.

19 They're engaging -- with all due respect, the
20 company is engaging in double speak about what they can and
21 cannot do. They have one standard when it benefits them
22 because the Gaming Control officials might do something about
23 their licensing status, so they take one approach with them;
24 but because it's not advantageous to produce documents inside
25 this litigation in this court, notwithstanding a Court order

1 that they do so, they've got a different view. And that's --
2 we're entitled to demonstrate that.

3 MR. RANDALL JONES: Your Honor, I thought this was a
4 sanctions hearing against my client, Sands China, but it
5 sounds like Mr. Bice -- in fact, it would be -- anybody who
6 walked in the room would be convinced that Mr. Bice was
7 talking about sanctioning Las Vegas Sands for conduct it had
8 with respect to the Gaming Control Board here in the state of
9 Nevada. So I would respectfully suggest --

10 THE COURT: I don't think that's what he's trying to
11 do. I think what --

12 MR. RANDALL JONES: Well, based on what he just
13 said, Your Honor.

14 THE COURT: Wait. Here's what I think he's trying
15 to do, and I'm not sure I'm going to let him do it today. I
16 think he is trying to show me that information from Macau that
17 included personal data, whether it was taken in the form of
18 unredacted documents or summaries of unredacted documents, was
19 then carried to the United States, where someone on behalf of
20 Las Vegas Sands then made certain disclosures of that
21 information that would have been treated as protected if it
22 had remained in Macau. I think that's what he's trying to do.

23 MR. RANDALL JONES: Judge, assuming that is what
24 he's trying to do, he's already answered that to his knowledge
25 any O'Melveny documents stayed in Macau, have never left Macau

1 -- so that's done. That he has no idea if they ever looked at
2 unredacted documents. He knows they looked at documents.
3 He's already testified to that. He's already testified to
4 your question, which did they -- did Gaming Control Board get
5 presented anything in Las Vegas or in Nevada by Las Vegas
6 Sands of unredacted documents, and he said, no.

7 So all of the questions that relate to the issues
8 that you're concerned with in this hearing as I understand it
9 have been answered. So what -- Mr. Bice apparently doesn't
10 like the testimony of the witness, and so he apparently has
11 some other source of information that he thinks is correct.
12 But even if he does, he apparently can't get that information
13 out of this witness. So at this point this is just becoming
14 plain harassment and badgering the witness.

15 MR. BICE: And then speaking --

16 THE COURT: Wait. I'm going to let you ask the
17 question. And then we may end pretty quick, though.

18 BY MR. BICE:

19 Q Were you present for this presentation at the Board?

20 A I was present for one presentation -- I'm sorry, two
21 presentations to the Nevada Gaming Control Board.

22 Q Who all was present during the ones that you were
23 there on?

24 MR. RANDALL JONES: Your Honor, I don't know if
25 that's protected or not, but I have a concern here of Mr.

1 Raphaelson talking about issues that are collateral issue that
2 would potentially put him in a position to be in violation of
3 Nevada law with respect to presentation to the Gaming Control
4 Board.

5 MR. BICE: This is hardly a collateral issue, Your
6 Honor. These two litigants have one version of the facts for
7 the Court and one version of the facts for everybody else, and
8 it's a convenient -- it is a position of convenience for this
9 litigant.

10 THE WITNESS: Mr. Bice, it's simply not true.

11 MR. RANDALL JONES: And, Your Honor, if that --

12 MR. BICE: I think it's completely true, Mr.
13 Raphaelson.

14 MR. RANDALL JONES: And Mr. Bice should not be
15 casting those stones when we seek the Okada responses.

16 THE COURT: Guys, let's -- gentlemen, let's --

17 MR. RANDALL JONES: I'm sorry, Your Honor. I
18 apologize to the Court. I apologize.

19 THE COURT: Okay. Let's just hold on. I'm pulling
20 up the Gaming Control Board privilege for a reason, because I
21 need to read it again because it's been a while.

22 MR. PEEK: 463 --

23 THE COURT: Yeah. I know.

24 (Pause in the proceedings)

25 MR. PEEK: Your Honor, I'm going to go downstairs

1 and --

2 THE COURT: Goodbye.

3 MR. PEEK: You're in good hands with Mr. Morris, Mr.
4 Raphaelson. I think you know that, so --

5 THE WITNESS: Thank you, Mr. Peek.

6 (Pause in the proceedings)

7 MR. MORRIS: 463.3407

8 THE COURT: And I'm looking at 3403, too, because it
9 relates to confidentiality.

10 MR. RANDALL JONES: I'm sorry. What statute are we
11 looking at, Your Honor?

12 THE COURT: 463.3403 and .3407. It doesn't appear
13 to me that the privilege relates to who was in attendance at a
14 meeting with members of the board. While the contents of
15 those communications may be protected under certain
16 circumstances, the attendance at a meeting does not appear to
17 be protected.

18 THE WITNESS: If the Court is ordering me to answer
19 the question, I'll answer the question.

20 THE COURT: Yes, unless your counsel directs you
21 otherwise, in which case you're then in a different situation
22 and we talk about it.

23 BY MR. BICE:

24 Q Who was in attendance at the meeting, sir, that you
25 attended?

1 A I can't give you all the names because I don't know
2 all the names.

3 Q Okay.

4 A Representatives of the Nevada Gaming Control Board
5 itself, some of its staff. Representatives of the
6 Pennsylvania Gaming Control Board -- actually staff members,
7 no members of the board. And staff members of the Casino
8 Regulatory Authority of Singapore.

9 Q They were all present?

10 A Along --

11 Q I'm sorry.

12 A I'm sorry.

13 Q Were they all physically present?

14 A No. But I wasn't finished.

15 THE COURT: He hadn't finished his list.

16 MR. BICE: Oh, my apologies.

17 THE WITNESS: My turn?

18 MR. BICE: Yes, sir.

19 THE WITNESS: Okay. At one of the meetings all
20 three members of the audit committee were present. That is
21 the Las Vegas Sands audit committee, Your Honor. And there
22 may have been a federal investigator, but I'm not certain, at
23 one of the meetings. And Mr. Urgenson, who is outside counsel
24 to the company in connection with the SEC matter, who was with
25 Kirkland & Ellis at the time. And I was present, as I

1 mentioned earlier.

2 Q Okay. And was that at both meetings or just one?

3 Both that you attended, sir?

4 A My recollection is that Mr. Urgenson and I were
5 present at both meetings, but that the audit committee members
6 were only present at one of the two meetings.

7 Q At one. Understood.

8 A But that recollection may be in error.

9 Q Is it your recollection that a representative of the
10 United States Government was present for both of the meetings
11 that you attended?

12 A I have a recollection of a representative of the
13 federal government being present for one of the meetings.

14 Q One.

15 A I do not have a firm recollection as to the second
16 meeting.

17 Q All right. And who was the U.S. representative?
18 Did you know the name?

19 A (No audible response).

20 Q You didn't know who it was. Okay.

21 A I can't say I didn't know who it was. The
22 individual may very well have told me what his or her name was
23 at the time. I have a recollection of a federal presence.

24 Q Okay.

25 A I do not remember the gender, the name.

1 Q The age. Anything, right? Okay. All right. Mr.
2 Raphaelson, as I understand it, and this is really just yes or
3 no, it is your position that you discussed privileged matters
4 in the presence of all of those people in that meeting?

5 A No, I did not discuss matters in the presence of all
6 those people.

7 Q Is it your position that privileged matters were
8 discussed in the presence of all of the people that you've
9 identified?

10 A Yes.

11 Q And who disclosed those privileged matters?

12 MR. RANDALL JONES: Well, objection.

13 MR. BICE: I'm just asking for identity, not
14 substance.

15 MR. RANDALL JONES: I'm sorry, did you withdraw the
16 question?

17 MR. BICE: No.

18 MR. RANDALL JONES: I would object on the grounds
19 that revealing who disclosed privileged matters would be a
20 violation of the privilege.

21 MR. MORRIS: I agree with that, Your Honor, and
22 object to it also.

23 THE COURT: Well, wait. It depends if you're
24 talking about an attorney-client disclosure or a gaming
25 privilege disclosure because I've got two different privileges

1 working in concert here.

2 MR. MORRIS: The statute, Your Honor, says that if
3 there's any Chapter 49 privilege involved here, that it's not
4 waived. It remains absolute.

5 MR. BICE: That's what it says.

6 THE COURT: That's exactly what it says in subpart
7 (2).

8 MR. MORRIS: Yes.

9 MR. BICE: Presenting it to the Gaming Control Board
10 does say that, but the federal courts have said that
11 disclosing privileged information to a federal officer is a
12 waiver and it is a subject matter waiver, gentlemen.

13 THE COURT: Well, but, and it's --

14 MR. MORRIS: Not in this proceeding it isn't.

15 MR. RANDALL JONES: Exactly.

16 THE COURT: Well --

17 MR. BICE: If it is a disclosure to a federal law
18 enforcement official, it was a waiver.

19 THE COURT: It's not an issue that I am in a
20 position to resolve at this point, given the vague description
21 of a federal representative who may have been present.

22 MR. BICE: Understood.

23 THE COURT: But I also have a number of different
24 people who were in the room who may not all be protected under
25 NRS 463.3407.

1 MR. BICE: Correct.

2 THE COURT: But the objection is sustained because
3 this is one I have to have further briefing on, Mr. Bice.

4 MR. BICE: Understood. Let me lay some -- let me
5 just get the foundation for that briefing.

6 THE COURT: Absolutely.

7 BY MR. BICE:

8 Q It was your understanding that the person that was
9 there in a federal capacity was a federal law enforcement
10 official, correct?

11 A Yes.

12 Q Was it your understanding that it was someone from
13 the Department of Justice?

14 A It was neither a member of the fraud section nor an
15 Assistant U.S. Attorney.

16 Q I apologize, Mr. Raphaelson, now my hearing is bad
17 today. Did you say it either was or it wasn't?

18 A It was neither --

19 Q It was neither.

20 A -- a member of the fraud section nor an Assistant
21 U.S. Attorney. So that's the Justice Department as I
22 understand you're talking about it.

23 Q All right. Was it a member --

24 A If you're talking about the Justice Department so as
25 to include the FBI, don't recall what agency.

1 Q All right, fair enough. That was going to be my
2 follow-up, so thanks.

3 A And I don't recall who stayed in the room and who
4 left the room.

5 Q Okay. Were any -- and again, I'm not asking for
6 substance, were any documents shown during this meeting that
7 you were in attendance at, the two meetings you attended?

8 MR. RANDALL JONES: Your Honor, I would object to
9 the extent that we're talking about any documents other than
10 documents from Macau, because any other documents have no
11 relevance to these proceedings and it is an attempt by Mr.
12 Bice to get information in a collateral proceeding that he can
13 use to harass Las Vegas Sands and Sands China. So at this
14 point unless he can tie it back to the purpose we're here for,
15 you've given him a lot of latitude to let him go with this
16 witness far afield, and I understood the purpose was, as you
17 stated, to talk about documents related to redactions in this
18 case which are subject to the Rule 37 motion. So that
19 question is clearly --

20 THE COURT: No, that's not what it was, Mr. Jones.
21 Let me say it more clearly.

22 MR. RANDALL JONES: Okay.

23 THE COURT: My concern is and remains whether
24 unredacted documents in Macau involving personal data were
25 reviewed by O'Melveny & Myers and then either taken from Macau

1 or summarized and then transmitted other places that appears
2 to be inconsistent with the position that's taken in this case
3 related to the Macau Data Protection Act.

4 MR. RANDALL JONES: And I do understand that.

5 THE COURT: So that was my concern; not just the
6 documents themselves but the process related to it.

7 MR. RANDALL JONES: And I do understand that, Your
8 Honor, and I appreciate that point. My response, though, is
9 that Mr. Raphaelson has already testified --

10 MR. BICE: Can we stop the speaking objections, Your
11 Honor, in the presence of the witness? Now we're going to
12 have a summary of, well, here's what I think Mr. Raphaelson
13 said. And we had this exact same experience with Mr. Fleming.

14 THE COURT: I know.

15 MR. BICE: And I have a vivid example of it for our
16 closing from that transcript where Mr. Fleming said one thing
17 and then we had a page long speaking objection from Mr.
18 Jones, and all of a sudden Mr. Fleming had a completely
19 different recollection of events.

20 THE COURT: Yes, and he's going gardening now.

21 MR. RANDALL JONES: Your Honor, my point -- my point
22 is simply this. The question has been asked and answered
23 specifically as to --

24 THE COURT: Here's why I'm going to let him answer.

25 MR. RANDALL JONES: --the inquiry you are concerned

1 about.

2 THE COURT: Well, no. Here's why I'm going to let
3 him answer, because my question to him that I asked was were
4 the Macau documents given to them in an unredacted form? He
5 said no. Mr. Bice's concern, and he's correctly pointed out
6 to me that if those -- that information was summarized and
7 then provided in other documents, that may also be an
8 indication I should consider. To the extent it's happened,
9 I'm not going to get into the substance of it because of these
10 privileges until further briefing occurs, but it's important
11 for the foundation to know if I've got to listen to that
12 argument and if I've got to have briefing on it as to whether
13 any documents that may fall within those categories actually
14 were created and exist.

15 MR. RANDALL JONES: Well, Your Honor, there's
16 certainly a way to do that. Were there summaries of
17 unredacted Macanese private data to your knowledge discussed?
18 So that's the inquiry. Is there unredacted Macanese private
19 data that was somehow -- that's what I understood you were
20 concerned about --

21 THE COURT: That is --

22 MR. RANDALL JONES: -- in one form or another taken
23 outside of Macau.

24 THE COURT: That's my concern.

25 MR. RANDALL JONES: And I believe the answer to that

1 question has been given, but, and so --

2 THE COURT: I'm going to let Mr. Bice test it. I
3 understand your position.

4 Mr. Morris, was there anything else that you wanted
5 to add?

6 MR. MORRIS: He's testified to what I believe you're
7 interested in. And point of fact, Your Honor, if that is your
8 interest, this is your proceeding. Why don't you ask him that
9 question?

10 THE COURT: I did ask him.

11 MR. MORRIS: He's already said that. He's already
12 told you what his position is.

13 THE COURT: So would you like to --

14 MR. BICE: My question --

15 THE COURT: It's not my hearing. This is Mr.
16 Bice's. Mine was the one last year -- two years ago.

17 BY MR. BICE:

18 Q My question was simple. Were -- I'm not asking for
19 the substance -- were any documents shown?

20 A To the best of my recollection no documents from --

21 Q Was a -- Sorry, my apologies. I didn't mean to cut
22 you off.

23 A No documents from Macau were shown, to the best of
24 my recollection. No summary of material was presented by
25 O'Melveny that included material that was protected by the

1 Macau Data Privacy Act.

2 Q So you'll tell us that much of what was discussed,
3 but --

4 MR. RANDALL JONES: Your Honor, object to the form
5 of the question.

6 MR. BICE: This is exactly my point of that speaking
7 objection.

8 THE COURT: That's not -- Wait, wait. That's not
9 telling us what was discussed. That's focusing on the context
10 that I've tried to frame.

11 MR. BICE: This is the direct product of this
12 speaking objection.

13 THE COURT: Mr. Bice, can you ask your next
14 question?

15 BY MR. BICE:

16 Q Was a PowerPoint presentation made?

17 A I'm not prepared to answer that question, Your
18 Honor, without it impinging on privilege.

19 Q Just the existence?

20 THE COURT: So you believe that may be because of
21 the existence of that communication you're concerned may be
22 protected by NRS 483.3407?

23 THE WITNESS: As well as analogs at the CRA and
24 Pennsylvania Gaming Control Board.

25 MR. BICE: Your Honor, this is my point. So he

1 wants to say, well, I want to say that certain things weren't
2 discussed, but then if you want to test me on that and what's
3 in the PowerPoint, then, well, I'm not even going to
4 acknowledge that document existed. That is this, again,
5 selective invocation of when it suits their interest. It's
6 just like -- their claim of privilege is no different than
7 their claim under the MPDPA. It's all the same. If it helps
8 us we've got no issue with it. If we think it harms us, all
9 of a sudden, as their own I.T. director said, the stone wall
10 goes up because we don't want it to come out.

11 MR. RANDALL JONES: Your Honor, can I respond to
12 that point?

13 THE COURT: Sure.

14 MR. RANDALL JONES: Your Honor, Mr. Raphaelson has
15 volunteered that no redacted documents that would violate the
16 MPDPA to his recollection were shown. No summaries of any
17 information was presented from Macau that to his recollection
18 would have violated the Macau Data Privacy Act. So the
19 question then becomes, is a PowerPoint somehow -- assuming it
20 existed or didn't exist, going to further enlighten this Court
21 about the issue that is paramount, of paramount concern to the
22 Court.

23 MR. MORRIS: It's been asked and answered.

24 MR. RANDALL JONES: So there is no -- this is simply
25 going on a fishing expedition for trying to get other ways to

1 get the same answer or otherwise invade this privilege -- or
2 confidential and privileged discussions that is inappropriate,
3 Judge. And how far afield is Mr. -- I know what Mr. Bice
4 wants to do and I hear his constant refrain about -- and I'm
5 going to get carried away myself and I don't want to do that,
6 Judge.

7 THE COURT: Good.

8 MR. RANDALL JONES: The bottom line is he has got
9 the information that is relevant to this inquiry. The Court
10 needs to put an end to this. This is inappropriate to go any
11 further. And I think the Court has given great latitude to
12 Mr. Bice.

13 THE COURT: I think if we're going to go further, I
14 need to have it on briefing.

15 MR. BICE: I'm sorry, Your Honor?

16 THE COURT: If we're going to go further on this, it
17 needs to be after briefing. Okay?

18 MR. BICE: Understood, Your Honor.

19 BY MR. BICE:

20 Q Mr. Raphaelson, when did you learn about the prior
21 data transfers that came from Macau? I'm just asking about
22 the date, that's all. Since you started at the company after
23 November 1 of 2011, at some point you learned about those
24 documents that your company possessed, correct?

25 MR. RANDALL JONES: Objection, Your Honor,

1 relevance.

2 THE COURT: Overruled.

3 THE WITNESS: I want to know what you mean by
4 documents transferred. If you mean the Kostrinsky collection
5 and the materials that Gayle Hyman had transferred to her that
6 are the subject of Exhibit -- I think 98.

7 THE COURT: 98.

8 MR. BICE: 98. That's right.

9 THE WITNESS: Then I learned of those materials
10 sometime in 2011. Whether it was the day I started or the end
11 of the year, I couldn't fix for you, but sometime in 2011.

12 MR. RANDALL JONES: Your Honor, I believe that was
13 also asked and answered the first time Mr. Raphaelson
14 testified, but be that as it may.

15 MR. BICE: I don't believe that's true.

16 THE COURT: I don't recall that being, but my notes
17 may be in error.

18 BY MR. BICE:

19 Q Do you recall -- so sometime -- My apologies.

20 MR. RANDALL JONES: Go ahead.

21 BY MR. BICE:

22 Q Sometime at the -- Prior to the end of 2011. Did I
23 understand you correctly, sir?

24 A That is what I testified to.

25 Q Okay. And you also knew -- were you aware -- were

1 you present -- were you in the presence of the courtroom for
2 the sanctions hearing that Her Honor held --

3 A No.

4 Q -- when Mr. Peek testified?

5 A I was not present for the sanctions hearing.

6 Q You were not. All right. Well, I will represent to
7 you that Mr. Peek testified that he was constrained to
8 disclose to the Court that data existence in the United
9 States. Are you the one that constrained him?

10 MR. RANDALL JONES: Objection, Your Honor.

11 MR. MORRIS: Object.

12 THE COURT: Sustained.

13 MR. MORRIS: There's no foundation for that. What he
14 wants to represent is not evidence.

15 THE COURT: I said sustained. I sustained the
16 objection. You don't have to argue once I sustain.

17 MR. BICE: Again, Your Honor, these will draw
18 objections. I want to lay the foundation for purposes of
19 the --

20 THE COURT: You can ask him.

21 MR. BICE: -- for purposes of the appeal.

22 THE COURT: I understand.

23 MR. BICE: The inevitable appeal.

24 BY MR. BICE:

25 Q Did you review any of those documents with Mr. Peek

1 prior to being disclosed to the Court that they were here?

2 A I don't believe so.

3 Q Were you provided any copies of any?

4 A I don't believe so.

5 Q Do you recall seeing any marital communications
6 between Mr. Jacobs and his wife that were being circulated
7 around the company prior to the date of disclosure to Her
8 Honor?

9 MR. RANDALL JONES: Your Honor, objection. I'd like
10 to have the relevance. I'd like to have it tied back to this
11 proceeding.

12 THE COURT: Overruled.

13 THE WITNESS: The answer is I don't believe so.

14 BY MR. BICE:

15 Q Were you responsible after November 1 of 2011 for
16 overseeing the litigation on behalf of Las Vegas Sands
17 Corporation in this case?

18 MR. RANDALL JONES: Your Honor, objection. How is
19 this rebuttal?

20 THE COURT: Sustained.

21 BY MR. BICE:

22 Q Was it your decision, Mr. Raphaelson, to not
23 disclose the data transfers?

24 MR. RANDALL JONES: Objection, Your Honor, how is
25 this rebuttal?

1 THE COURT: Sustained.

2 BY MR. BICE:

3 Q Let's go to Exhibit 194.

4 A Mister --

5 Q Let's go to Exhibit 194.

6 THE COURT: 194.

7 MR. BICE: Ah, my apologies. May I ask the bailiff

8 to get him Exhibit 194?

9 THE COURT: He's going.

10 MR. BICE: There should be only one.

11 THE COURT: And that's a proposed exhibit?

12 MR. BICE: No, I believe it was admitted, Your

13 Honor. I might be wrong.

14 THE COURT: 194 is admitted? Okay.

15 BY MR. BICE:

16 Q I'm going to ask you to go to Exhibit --

17 MR. BICE: Your Honor, may I approach --

18 THE COURT: Sure.

19 MR. BICE: -- so I can find the document for him to

20 make it easier for this exhibit.

21 THE COURT: It's only 35 pages long. It shouldn't

22 be too bad.

23 MR. MORRIS: We're still looking at Exhibit 194?

24 THE COURT: That's what they told me.

25 MR. BICE: We're looking at Exhibit A to Exhibit 1.