IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 69802

LAS VEGAS SANDS CORP., A NEVADA CORPORATION; SAND CHINA LTD., A CAYMAN ISLANDS CORPORATION; SHELDON 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

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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 III OF IV** properly addressed to the following:

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So there's Exhibit 1, Mr. Morris. I'm going to show him Exhibit 1 to Exhibit 194.

THE COURT: Sir, does that have a Bates number down on the bottom or a control number?

MR. BICE: It has a document 2014-09274.

THE WITNESS: And what is it you'd like me to look at, Mr. Bice?

MR. BICE: I've got to let them find it first, sir, before I can ask you a question.

MR. MORRIS: Let me look at the page you're looking at so I can see.

MR. BICE: Of course, Mr. Morris, let me bring it over.

(Mr. Bice shows exhibit to Mr. Morris)

MR. MORRIS: Okay.

MR. BICE: Okay.

BY MR. BICE:

Q Mr. Raphaelson --

MR. BICE: Randall, are you ready? Sorry.

MR. RANDALL JONES: I think I am.

MR. BICE: Can I show you?

MR. RANDALL JONES: Sure, that would probably be quicker.

(Mr. Bice shows exhibit to Mr. Jones)

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BY MR. BICE:

Q Okay. Just brief, Mr. Raphaelson, have you seen this document before, Exhibit 1 to Exhibit 194?

A I have seen a lot of documents, Mr. Bice, over time and a lot of them bearing the caption in this case. I can't tell you whether I've seen this particular one in this form or not. I don't know.

Q Do you recall being present at the oral argument at the supreme court concerning the writ petition? Or were you?

A There were several writ petitions. I was present for some, not all.

Q Okay. Do you recall there being a claim by your companies, being Las Vegas Sands Corporation and Sands China, that the record had been misrepresented? Do you recall that?

A I do not.

Q Did you authorize the filing of this document with the Exhibit A attached to it, Mr. Raphaelson?

MR. RANDALL JONES: Your Honor, I believe that that -- I mean, that's really --

THE COURT: My 194 says it's a Steven Jacobs opposition.

MR. BICE: It is an attachment to the -- it's a pleading that they filed.

THE COURT: Okay.

MR. BICE: Exhibit A is their filing.

THE COURT: Okay.

MR. BICE: Or Exhibit 1 is their filing, Your Honor.

THE COURT: I understand what you're saying now. Thank you.

MR. BICE: All right.

MR. RANDALL JONES: Authorizing the filing. Again, we're in an area where I would think we need to be very cautious, Your Honor, and that would involve a communication between Mr. Raphaelson and counsel.

THE COURT: Well, if you want to make that objection, I'll certainly rule on it.

MR. RANDALL JONES: Well, I guess for the record, Your Honor, I would object that that would appear to invade the attorney-client privilege. And so out of an abundance of caution I want to be careful about this.

THE COURT: Okay.

Sir, to the extent that you're authorizing things is advice or counsel of an attorney, I'm going to sustain Mr. Jones' objection.

BY MR. BICE:

Q Did you review it prior to its filing?

A I believe I told you I can't tell you --

Q Okay.

A -- whether I reviewed this in this form or not.

Q Were you aware that -- were you aware that Sands

China and Las Vegas Sands were claiming that the Court sanctions order only applied to documents that were then located in the United States?

MR. RANDALL JONES: Your Honor, to the extent that that would -- is information that would come from counsel, I would have to object, interpose an objection as to his understanding.

THE COURT: To the extent that it calls for attorney-client privileged information, it's sustained. If you have information from other sources, you can answer.

THE WITNESS: I can't answer on another basis.

MR. BICE: All right. Thank you, sir.

All right. Your Honor, this will be my last topic. I know it's going to draw lots of objections. I'm just going to go down really quick so I have my record, all right?

THE WITNESS: Am I done with the book?

MR. BICE: You are, sir.

BY MR. BICE:

Q Her Honor and I had a disagreement, and as you know from your experience, Mr. Raphaelson, she always wins those, so I just need to make my --

A I would have agreed with her without that.

Q I just need to make my record on this, all right. Did you give Mr. Fleming or anyone else at Sands China input on complying with the Court's sanctions order?

MR. RANDALL JONES: Objection to the extent it calls for attorney-client privilege information.

THE COURT: Sustained.

BY MR. BICE:

Q Do you know whether or not Mr. Peek gave input on whether or not to comply with the sanctions order?

MR. MORRIS: Objection.

THE COURT: Sustained.

BY MR. BICE:

Q Do you know whether or not the Kemp Jones firm gave input on whether or not to comply with the sanctions order?

MR. MORRIS: Objection.

THE COURT: Sustained.

BY MR. BICE:

Q Do you know whether or not Mayer Brown gave input on whether or not to comply with the Court's sanctions order?

MR. MORRIS: Objection.

THE COURT: Sustained.

BY MR. BICE:

Q Do you know whether or not O'Melveny & Myers gave input on whether or not to comply with the Court's sanctions order?

MR. MORRIS: Objection.

THE COURT: Sustained.

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BY MR. BICE:

Q Mr. Raphaelson, did you encourage Mr. Fleming to not comply on Sands China's behalf with the Court's sanctions order?

MR. MORRIS: Objection.

THE COURT: Sustained.

BY MR. BICE:

Q Did you tell Mr. Fleming or anyone affiliated with Sands China that you thought it would -- that you did not think there would be any real consequences for violating the order?

MR. MORRIS: Objection.

THE COURT: Sustained.

BY MR. BICE:

Q Did you tell anyone affiliated with Sands China that it would work to the company's advantage if the case were delayed more?

MR. MORRIS: Objection.

THE COURT: Sustained.

BY MR. BICE:

Q Did you encourage anyone to not comply?

MR. MORRIS: Objection.

THE COURT: Sustained. Any more?

MR. BICE: Let me confer with my team, Your Honor.

THE COURT: Okay.

MR. BICE: I believe we're done.

We'll pass, Your Honor. Pass the witness.

THE COURT: Would you like to ask any questions?

MR. RANDALL JONES: Your Honor, I have no questions for Mr. Raphaelson.

THE COURT: Mr. Morris?

MR. MORRIS: I do not.

THE COURT: Thank you, sir. We appreciate your time. I'm so sorry you got inconvenienced so many days in a row.

THE WITNESS: Thank you, Your Honor. You did indicate to me that I'd have the opportunity to explain the one question about the appointment of O'Melveny.

MR. BICE: Well --

THE COURT: Mr. Jones seems to be asking you that question just now. Could you tell?

MR. BICE: There were no --

THE WITNESS: Actually I thought it might come from Mr. Morris for LVS.

MR. BICE: I didn't hear the question.

THE COURT: Now here comes Mr. Peek.

THE WITNESS: Mr. Peek.

THE COURT: Mr. Peek, you had a note to ask the witness to explain something. It's your turn now.

MR. RANDALL JONES: They just passed the witness.

MR. PEEK: I think the note was, Your Honor, regarding the meeting at the OPDP. I'm trying to look at my notes here because I ran downstairs.

THE COURT: It had to do with the appointment of O'Melveny & Myers, if I remember correctly.

MR. PEEK: Oh.

THE COURT: Sir, was there an answer that you wanted to explain to Mr. Peek?

MR. PEEK: Regarding O'Melveny & Myers.

THE WITNESS: There is, Your Honor, if I might.

MR. PEEK: Please do, sir.

THE WITNESS: Your Honor, as is sometimes the case in the course of corporate governance, decisions are made at a board level to surrender the decision making on behalf of the company that the board is represent -- that the living embodiment is representative of to a subset. Sometimes it is a subset of the board, sometimes it is counsel within management. In this particular matter upon receipt of the subpoena from the SEC and in connection with the derivative matters indicated earlier, the audit committee was appointed. The audit committee appointed its own counsel. Its counsel did not communicate substantively with the general counsel, with management, or with the remainder of the board until October of 2013 when the board as a whole received the matter back. All those matters are in our public filings. And that

is the sequence of events to which I can best explain O'Melveny's representation of the company, being Las Vegas Sands, and the audit committee.

During the course of O'Melveny's investigative work, Mr. Fleming and I had a mutual understanding of Sands China and Las Vegas Sands' mutual interest in insuring that O'Melveny & Myers could get maximum access to information. That included making witnesses available. If the witnesses wanted lawyer representation as individuals, that included making lawyers available to them. And that included securing from those individuals consents under the Macau Data Privacy Act. Those are all things that I'm aware of that I believed were responsive to Mr. Bice's earlier question.

That's all I had, Your Honor. Thank you.

THE COURT: Was there anything else you wanted to ask him that was on your list of things you were to follow up on?

MR. PEEK: There was not on my list. I wasn't here for the last, so I'm hesitant to --

THE COURT: I think on the last I had lots of objections I sustained.

Mr. Morris, given that additional answer, is there anything from you?

MR. MORRIS: No.

THE COURT: Mr. Bice?

MR. BICE: Yes.

DIRECT EXAMINATION (Continued)

BY MR. BICE:

Q So you said -- I wrote this, I think I wrote this down right. You said that you and Mr. Fleming had an arrangement to give maximum access, correct, to O'Melveny?

A Correct.

Q And to do that you rounded up consents from everybody that you wanted O'Melveny to talk to, right?

A I personally didn't round up a single consent, Mr. Bice.

Q Somebody did, right?

A It was done through Macau counsel, yes.

Q Okay. And do you know how many consents were obtained?

A I do not.

Q How many consents were obtained to provide maximum cooperation with the Court's ruling in this case, Mr. Raphaelson, to your knowledge, by Sands China?

A I know a number of consents were obtained by Sands China in order to produce documents. That I know.

Q Okay. How many?

A I don't know the number.

MR. BICE: Nothing further, Your Honor.

MR. RANDALL JONES: Your Honor --

THE COURT: Anything further, Mr. Jones?

MR. RANDALL JONES: Well, yeah, I think I might, actually.

CROSS-EXAMINATION

BY MR. RANDALL JONES:

Q Mr. Raphaelson, if I told you that Mr. Adelson, Mr. Leven, Mr. Goldstein and Mr. Kay gave consents to have their personal, private data searched, are they the top executives -- at least at the relevant time to this litigation as you understand it, were they top executives at Las Vegas Sands? You understand my question, Las Vegas Sands.

A They were according to public filings the top officers of the company, yes.

Q If somebody was going to try to control Las Vegas Sands from Las Vegas, would consents be needed for any individuals, to your knowledge, to be able to make such an argument if you wanted to make such an argument?

A I'm not sure I understand the question, Mr. Jones.

Q Let me put it I guess another way. To your knowledge would anybody living in Macau that was a resident of Macau that worked for Sands China Limited, would they have been able to control the Sands China Limited company from Las Vegas for those employees that were living in Macau, to your knowledge? Can you imagine any way, shape or form they could do that?

MR. BICE: Foundation, Your Honor.

THE COURT: Sustained. You've got to ask the question a little bit more narrow.

MR. RANDALL JONES: Yes, I'll try, Your Honor. It's a very convoluted question.

THE COURT: It was very complicated.

BY MR. RANDALL JONES:

Q I guess my question, Mr. Raphaelson, is were there -- I know this is sort of a self-contradictory question, but that's what I'm understanding about this litigation from the plaintiff's perspective. If you have an executive that lives in Macau -- for example, take Mr. Jacobs, for example, when he was the CEO of the company. Could he control Sands China, to your knowledge, from Las Vegas when he was the CEO of the Sands China Company?

MR. BICE: Your Honor, is this about redaction?

THE COURT: The objection is sustained.

MR. RANDALL JONES: I have nothing further for Mr. Raphaelson.

THE COURT: Mr. Bice, did you have anything else?

MR. BICE: No.

THE COURT: Thank you, sir. We really appreciate your time. Have a lovely afternoon and I hope you don't have to come back.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. So what is our plan?

MR. RANDALL JONES: Your Honor, I'll make myself available any day next week. I have some other things that I would have to move, but I will make myself available.

THE COURT: Well, no. What I want to know is what is your plan? What do you still need to do?

MR. RANDALL JONES: We need to do closing arguments. We need to close our case.

THE COURT: No, you've got some documents --

MR. RANDALL JONES: We need to close our case formally with the exhibits that we want to proffer, and I'll do that any time that the Court will allow us to do that. Hopefully we could do it today if the Court had time. If the Court doesn't, we'll do it whenever the Court --

THE COURT: Well, I don't know how long I'm going to have to be at the doctor. The last time I was there on Friday I was there for two and a half hours, so I don't know if I'm going to be there that long again today.

My question is, you indicated to me that you thought you were going to have to have somebody testify. Earlier you told me that, then you were going to follow the process I was hoping we could do. And I still don't know what we're doing to get the prior documents that were produced, as I guess you did rolling document productions --

MR. RANDALL JONES: Sure.

THE COURT: -- how those are documented so that they can be admitted.

MR. RANDALL JONES: What we have, Your Honor, we have the letters from counsel to plaintiff's counsel with the Bates ranged for each one of those. We are preparing the actual -- the form in which those productions were made for each separate one. I believe they were done by disk. In some cases they may have been thumb drives. We're putting all that information together with the indexes. We have the indexes for the production as well that went with them. And what my proposal to the Court or my plan to the Court would be to then put on Mr. Peek, who was involved in most of those productions, to authenticate that information for that limited purpose, and Mark Jones to authenticate the production as to the other limited production. And I will then try to -- I'll try, whether the Court wants to agree to it or not, authenticate the particular exhibits that we have pulled out of those productions as a separate exhibit for part of those productions.

THE COURT: Well, once the others are admitted you can just pull them out and mark them separately if you want or not.

MR. RANDALL JONES: That's what I've done in the past, but I wasn't sure in this case how the Court wanted to handle that, so.

THE COURT: But first I've got to get the big one in.

MR. BICE: Let me see if I can do the chronology here. Maybe we could just come to an agreement on this. Can we agree that pursuant to the first production of the Court's order by -- over the dates of January 2, 3 and 4 of 2013 Sands China produced a grand total of 5,195 documents?

MR. RANDALL JONES: Your Honor, I will -- if Mr. Bice -- if his representations are accurate as to the productions -- again, when he asks me that question, I take him at his word. But again, I haven't looked at the documents so I can't tell. But if that's an accurate statement --

THE COURT: Can you guys do it by a written stipulation?

MR. RANDALL JONES: I'm happy to do that, to sit down with Mr. Bice and try to agree to exactly what happened when. And if he's concerned -- if he wants to make his point about the date the productions occurred and how little information was produced at a particular point in time, then he I think -- I understand that's a legitimate point for him to try to make. Obviously my intent would try to be get in the information that I want to get in the record to the Court. So if there is a reason that he feels it may make sense for him to do such a stipulation and it benefits his case, I'm willing to sit down and try to do that.

MR. BICE: It's not going to benefit my case. I'm just trying to streamline the process. I can't be here tomorrow.

THE COURT: Well, and my only concern --

MR. BICE: I just can't.

THE COURT: It's okay. I'm not criticizing you. It was a half day hearing and this is day four.

MR. RANDALL JONES: I'm willing to do it, Todd, if you want to try to do that. Sure.

THE COURT: My only concern is that typically I don't have a dispute among the parties about what the productions are. I have a dispute from the parties about the substance of the discovery responses and whether they're sufficient. So usually everyone stipulates to admit the discovery responses with the documents that were related to them and then we have a fight about whether there's compliance. I can't even, in this case, get you guys to stipulate to what the discovery responses are. And as you all know, I don't see the discovery responses except when I have a discovery motion. So that's my concern. I --

MR. BICE: I think we stipulated to all of their discovery responses on the first day. I mean, that was our --

THE COURT: But I don't think they had the documents attached to them.

MR. BICE: That was my recollection.

THE COURT: You stipulated on the first day to 301 through 322, and then 226 -- No, I'm sorry, 227, 229.

MR. BICE: You're right. Those are their -- those early ones are their answers to the response or the requests for production. But the documents -- the only thing that they contain is a Bates range of certain alleged responsiveness. Okay. So your point is you don't know when each document was added pursuant to each request and when it came in, when the replacements purportedly arrived, etcetera, etcetera, and that's what you need to know.

THE COURT: Especially since the replacements bear the same Bates numbers.

MR. BICE: Bates numbers. Exactly.

MR. RANDALL JONES: And I'm willing to stipulate to that chronology. I think we can come to an agreement. If Mr. Bice just wants to say, look, I just want to put in there when each thing came in and what it was, we would -- I would stipulate to that.

THE COURT: Well, and I think there's an easy way to do it, given the stipulation that 301 through 318 is -- if I can just get an electronic storage device that's an "A" to those exhibits that says and these are the documents that were provided with this written discovery response, I think we've then tied off that loop.

MR. BICE: I'm sure we can do that for you because I

think that then gets what our point is and it satisfies what their point is. Their point is the following, as I understand it. We attached a bunch of documents to our motion. Their contention is, well, that's true and they were all redacted, but before you file that motion, we had given you unredacted versions of half of those documents or even more, all right. Our point is what happened from our perspective is you gave us a boatload of redacted documents. A few days before the depositions you gave us some unredacted documents, and then after the depositions you gave us more and more unredacted documents.

THE COURT: Right. And I understand. And I'm not trying to fight with you guys, I'm trying to document for purposes of my record what happened when and which documents were produced at a certain period of time because I have to evaluate the prejudice issue in addition to the willfulness issue. And so I've got all these competing issues I have to evaluate and I can't do it by just getting your database --

MR. RANDALL JONES: Your Honor --

THE COURT: -- because the database doesn't give me --

MR. RANDALL JONES: I follow what you're saying and I understand why the timing is important and I'm happy to work with Mr. Bice to work that out so the Court can see what came in when. The only other issue that I have that relates to

this is Mr. Bice I think has said something about their Rule 37 motion, the exhibits weren't complete. I took those, at least I thought I did, right from the exhibits to the motion, but we didn't add all the pages. And if he's concerned that we didn't, because I didn't think some were relevant, but I wasn't trying to exclude things that were -- that he thought were relevant. I'm happy to replace those exhibits with the full exhibits from that motion.

MR. BICE: Fine.

MR. RANDALL JONES: And so all the pages could be in there.

THE COURT: And that relates to the documents that do not have A's that are 355 through 369.

MR. BICE: I actually think they do have A's. That's where the -- I think they've reversed it.

MR. RANDALL JONES: They did reverse it. I found that out last night about 9:00 o'clock or so.

THE COURT: Okay. So --

MR. RANDALL JONES: So that's what I will work with Mr. Bice, if that's acceptable.

THE COURT: That should be really easy.

MR. RANDALL JONES: I think it would be.

THE COURT: Somebody pulls a copy of the motion and then just tears it apart.

MR. BICE: I agree.

MR. RANDALL JONES: And then, Your Honor, the other thing that we are going to endeavor to do, which I didn't find out until I was preparing for this hearing last week, was that they replaced the unredacted documents with the same Bates number, which I have to agree with you I have not heard of doing before. And had I know about that earlier -- I was very confused myself on how we deal with that. So I'm going to go back and see if there is a method that we can come up with that I can discuss with Mr. Bice, in consultation with Mr. Bice so we can all try to have a better record of what was redacted versus what is unredacted.

THE COURT: Well, I won't need that if -- you'll need it in the future.

MR. RANDALL JONES: For the future.

THE COURT: But what I will need is if I get the electronic data that went with Exhibit 301 through Exhibit 318, I don't need you to change the numbers. In fact, I don't want you to change the numbers.

MR. BICE: Right.

THE COURT: I want them as they were produced.

MR. RANDALL JONES: Oh, sure. No, I understand that.

THE COURT: And then eventually I think absolutely you should fix the situation that's creating confusion for all of us, but that's a different issue. I've got to have the

record as it exists in front of me now.

MR. RANDALL JONES: What I would suggest, and this is a suggestion for counsel and the Court to consider, is with respect to the unredacted documents that we have submitted to the Court as part of this record, whether they come -- I know they haven't come in yet or not, but if they do come in that we give some kind of a designation to the limited documents we are talking about, as with a -- in a parenthetical with a "U" for unredacted or something of that nature. And I can discuss that with Mr. Bice as well to see if that makes sense for this limited record that there is some designation that even though they have the same Bates number as a redacted document, there's an indication that this other document was unredacted by a different reference to the number.

THE COURT: Well, I have two groups of documents that I think are going to create concern with that, and those are the documents that are at Proposed 325 and at Proposed 330. Those are what I'm referring to as your database.

MR. RANDALL JONES: Yes.

THE COURT: Because I've got no idea how those documents came to be in the way they are now.

MR. RANDALL JONES: Well, like I said, what I will do, Your Honor, I will work with Mr. Bice to try to figure out a system that makes some sense. And before we implement it, I'll get with Mr. Bice and maybe we can get with your clerk

and figure out a way -- if that makes sense to us, see if it makes sense to the Court.

THE COURT: And how much more time do you anticipate that you will need with me for any additional evidentiary presentation and closing arguments?

MR. RANDALL JONES: Your Honor, the only thing I have is the documents that -- the only thing I have is the documents that we're talking about.

THE COURT: Mr. Peek has more stuff.

MR. PEEK: Well, I have something, Your Honor, which we talked about earlier, which is to respond to the Court's inquiry and also Jason Ray's testimony regarding whether or not the transferred documents were searched for purposes of providing information to Mr. Jacobs.

THE COURT: I have Mr. Ray's testimony. Whether you want to provide it --

MR. PEEK: I know you do and I --

THE COURT: I haven't asked you to rest.

MR. PEEK: I know. And that's why I say I want to present somebody who will testify to the fact that that collection of transferred documents was searched, or which portions of it were searched.

THE COURT: And if you want to present evidence of that, I will listen.

MR. PEEK: Well, given there's --

THE COURT: But it's got to be evidence and not lawyer argument. So --

MR. PEEK: I agree with you, Your Honor. So we would need some time to be able to pull that together and make sure I get the right witness.

THE COURT: Do you want to brief the O'Melveny & Myers issue before you close?

MR. BICE: No. I'm going to --

THE COURT: Okay.

MR. BICE: That's going to be a much broader issue. We don't need you to resolve that --

THE COURT: Okay.

MR. BICE: -- to deal with this sanction. We will be dealing with that in a different --

THE COURT: That's different.

MR. BICE: -- in a different setting.

THE COURT: Okay. So, Mr. Peek and Mr. Jones, I want you next week to figure out how much additional time of mine you need for your evidentiary presentation before you rest. Once you figure that out, will you please call the other side and see if you can agree how much time you think you need. And let's please use Mr. Peek's method of estimating rather than anyone else's, because Mr. Peek has gotten yelled at by me more than you guys have for under-estimating, so he has a new way that he's done it for the last

six or seven years.

MR. PEEK: And part of that estimation will be predicated on whether or not Mr. Jones and Mr. Bice can agree on these other things.

THE COURT: Yeah, and if they don't agree then triple the time.

MR. PEEK: There you go.

THE COURT: And then once we've figured out how much that evidentiary presentation time is, how much time you need for argument. And then since I'm going to be in a long bench trial, I will then tell them what days they will have off after we negotiate what you need and I can figure it out in not inconveniencing too many international witnesses, because they've got a bunch of international witnesses, too.

MR. PEEK: Thank you, Your Honor. So we're excused now for the day?

THE COURT: I don't know. I'm waiting.

MR. BICE: So we're going to get back to you early next week and tell you --

THE COURT: How about mid-week, since Monday is a holiday?

MR. PEEK: Yeah, sometime mid-week. Monday is a holiday.

THE COURT: Mid-week.

MR. RANDALL JONES: I'll work with Mr. Bice. I'll

make myself available.

THE COURT: So Wednesday you guys are going to speak to each other and somebody will let my people know that you've either come up with an idea of how much more time you need or you haven't. And if you're still working on it, what I can do to speed your decision making.

Mr. Pisanelli, you're looking at me with that look you give me when I've done something that's totally off base, or at least you think I have.

MR. PISANELLI: No, I'm not quite there yet. I'm worried that we're on the clock for this jurisdictional hearing.

THE COURT: For me?

MR. PISANELLI: No, we are, on this jurisdictional hearing.

THE COURT: Oh, you're absolutely on a clock because I've got no idea how the Nevada Supreme Court calculates anything related to Rule 41(e) --

MR. PISANELLI: Not -- actually not that clock.

THE COURT: -- given some of their unpublished decisions.

MR. PISANELLI: Yeah, not that clock. I'm talking about your clock that you gave us for the jurisdictional hearing. Part of what we're doing here, of course, is putting our cards on the table to you of how badly we have been

prejudiced by the behavior of the defendants.

THE COURT: Well, aren't we doing that evidentiary hearing starting on April 22nd?

MR. PISANELLI: Right. And the longer this drags on we're going closer and closer to that hearing that we don't want to move by one minute.

THE COURT: Well, remember, I was -- I'm not moving it. Well, I shouldn't have to move it. I should be done with City Center. Remember, I originally had wanted to have the sanctions hearing at the same time right before. I moved it up here because Mr. Jones correctly pointed out there might be some due process issues for his client if he didn't know what type of evidentiary sanctions I decided to issue, if I choose to issue those instead of some other type of sanctions. He was absolutely correct. So I moved this hearing up a couple of months.

MR. PISANELLI: I recall.

THE COURT: So I think we have a little more time than what you're worried about.

MR. PISANELLI: If we wrap this thing up next week, then everything I'm saying right now is not a concern, but if this continues to drag on week after week in finding time and cooperation, that's when I'm going to get nervous.

THE COURT: You're not going to have -- they can't do that. I don't have that much time in my life.

MR. PISANELLI: Okay, good.

MR. RANDALL JONES: And just as I said, I'll make myself available if we do it -- I'm willing to do it next week. If we get -- I don't want to delay this. For personal reasons I would like to get this wrapped up. So I have no interest in delaying it further.

THE COURT: Well, my only concern is I need you to give me how much time you really think you need and then I'm going to add whatever amount I think is fair on top of the amount you give me, so that when I tell my people they're taking that many days off, it's really only that many days off.

MR. RANDALL JONES: Mr. Bice and I will be back to the Court by Wednesday, and I'm ready to go any time after that.

THE COURT: Well, Mr. Peek has to figure out what he's going to do with his witness issues.

MR. RANDALL JONES: Well, I mean, when I say that, Mr. Bice --

MR. PEEK: We do talk to each other here, Randall and I.

MR. BICE: Yeah, we would just propose that each side stipulate for argument, stipulate to a time amount each side gets and that's it. And let's just --

THE COURT: Well, I do that frequently.

MR. BICE: We should do that.

THE COURT: But that's argument. This is I've got to get the rest of their evidence in.

MR. BICE: Yeah, that's fine. That's fine.

MR. PEEK: Your Honor, I just wanted to address the filing of Mr. Bice this morning.

THE COURT: Leven's -- the testimony by Mr. Leven?

MR. PEEK: Yeah, which is a proffer regarding the deposition of Michael Leven which has to do with Mr. Schwartz, you may recall.

THE COURT: Uh-huh.

MR. PEEK: I don't think I have anything to add, nor do I think -- I'll ask Mr. Jones.

THE COURT: Okay. But if you do, then will you file it?

MR. PEEK: Have anything to add to what we already said.

THE COURT: I'm not worried about it. If you add something else -- we discussed it on the record. But if for purposes of the record because I told him to move the video up because I wasn't going to let him do that part, you can file something too if you need to. And that's only the pages of the deposition that I told people to skip.

MR. PEEK: That's correct.

THE COURT: Anything else? Have a lovely holiday.

MR. RANDALL JONES: Thank you, Your Honor.

MR. BICE: Thank you, Your Honor.

MR. RANDALL JONES: Thank you for your patience.

(Court recessed at 12:02 p.m., to reconvene at a date to be determined)

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NAME	DIRECT	CROSS	REDIRECT	RECROSS
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* * *

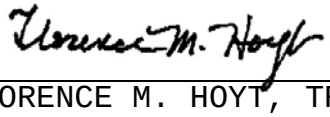
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS, Plaintiff(s), vs LAS VEGAS SANDS CORP, ET AL, Defendants.	**Case No.** 10 A 627691 **Dept. No.** XI **Date of Hearing:** 02/09-12/2015 and 03/02-03/2015

DECISION AND ORDER

This matter having come on for an evidentiary hearing related to Plaintiff Steven C. Jacobs' ("Jacobs") Renewed Motion for NRCP 37 Sanctions for violating this Court's September 14, 2012 sanctions order[1] before the Honorable Elizabeth Gonzalez beginning on February 9, 2015 and continuing, based upon the availability of the Court and Counsel, until its completion on March 3, 2015; Plaintiff Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of record, James J. Pisanelli, Esq., Todd L. Bice, Esq. Debra L. Spinelli, Esq., and Jordan T. Smith, Esq., of the law firm Pisanelli Bice PLLC; Sands China Ltd. ("SCL") appearing by and through its attorney of record J. Stephen Peek, Esq. of

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[1] Jacobs filed his motion on February 8, 2013. When hearing Jacobs' motion, the Court determined that "Jacobs ha[d] made a prima facie showing as to a violation of this Court's orders which warrants an evidentiary hearing." (Order Regarding Pl.'s Renewed Mot. for NRCP 37 Sanctions on OST, March 27, 2013, p. 2.) The Court found, "Sands China violated this Court's September 14, 2012 Order by redacting personal data from its January 4, 2013 document production based upon the MPDPA . . . ." (Id.) Accordingly, the Court determined that an evidentiary hearing was appropriate. However, before that evidentiary hearing could be held, Sands China sought extraordinary relief before the Nevada Supreme Court, contending that it could not be sanctioned for what it claimed was complying with a foreign law. After the Nevada Supreme Court denied the requested petition for extraordinary relief on August 7, 2014, Las Vegas Sands v. Eighth Judicial District Court, 130 Nev. Adv. Op. 61, 331 P.3d 876, 877 (2014), the evidentiary hearing was scheduled for February 9, 2015. The hearing lasted longer than anticipated and concluded on the sixth day with argument on March 3, 2015.

the law firm Holland & Hart LLP and Randall Jones, Esq., Mark M. Jones, Esq., and Ian P. McGinn, Esq. of the law firm Kemp, Jones & Coulthard, LLP; Defendants Las Vegas Sands Corp. ("LVSC") appearing by and through its attorney of record J. Stephen Peek, Esq. of the law firm Holland & Hart LLP; and Defendant Sheldon G. Adelson ("Adelson") appearing by and through his attorney of record, Steve Morris, Esq. and Rosa Solis Rainey, Esq. of the Morris Law Group; the Court having read and considered the pleadings filed by the parties; reviewed transcripts of prior hearings; having reviewed the evidence admitted during the evidentiary hearing; and having heard and carefully considered the testimony of the witnesses called to testify; the Court having considered the oral and written arguments of counsel, and with the intent of deciding the limited issues before the Court related to appropriate sanctions, if any, pursuant to NRCP 37, related to SCL's decision to produce documents with MDPA redactions in violation of this Court's prior sanctions order[2] makes the following findings of fact and conclusions of law:

I.
PROCEDURAL POSTURE

On August 26, 2011, the Nevada Supreme Court issued a stay of certain proceedings in this matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues related to SCL. The Court granted Jacobs request to conduct jurisdictional discovery prior to the evidentiary hearing. The order granting the jurisdictional discovery was ultimately entered on March 8, 2012. Due to numerous discovery disputes and stays[3] relating to petitions for extraordinary relief, to date, the Court has been unable to conduct the evidentiary hearing on jurisdiction.

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[2] The Court incorporates certain findings and conclusions made following the September 2012 hearing relevant to the issues raised in this second sanctions hearing.

[3] The parties have not agreed that the stays issued act as a tolling or extension of the period under NRCP Rule 41e. As such, the Court has informed the parties that, immediately upon the conclusion of the jurisdiction hearing, scheduled to commence on April 20, 2015, it plans to set the trial of this matter prior to the earliest expiration of the period under NRCP Rule 41e, October 19, 2015.

On February 8, 2013, Plaintiff filed a Renewed Motion for NRCP 37 Sanctions on Order Shortening Time ("Renewed Motion") asserting that SCL had violated the Court's December 18, 2012 Order and its September 14, 2012 Sanctions Order by producing documents with MDPA redactions. In its February 25, 2013 Opposition to that motion, SCL erroneously claimed that the Court had expressly permitted it to redact personal data to comply with the MDPA and identified the steps that had been taken to mitigate the effects of the personal data redactions. SCL explained that LVSC had located 2100 duplicates of the redacted documents in the U.S. and had produced them in unredacted form. In addition, the Macanese lawyers who did the redactions created a redaction log that identified the entity that employed the individuals whose personal data was redacted.

At a hearing held on February 28, 2013 (and in an Order entered on March 27, 2013), the Court found that SCL had violated its September 14, 2012 order by redacting personal data from its January 4, 2013 production based on the MDPA, and it set a date for a hearing to "determine the degree of willfulness related to those redactions and the prejudice, if any, suffered by Jacobs." (3/27/13 Order at 2:14-18). The Court also ordered SCL to search and produce the documents of all 20 custodians relevant to jurisdictional discovery by April 12, 2013. The Order provided that the Defendants "are precluded from redacting or withholding documents based upon the MPDPA." (Id. at 3:2-3).

On April 8, 2013, Defendants filed a Writ of Prohibition or Mandamus regarding the Court's March 27, 2013 Order with the Nevada Supreme Court. While that writ was pending, the Court stayed its March 27 Order to the extent that it required the additional production of documents from Macau.

After briefing and oral argument, the Supreme Court denied the Petition on August 7, 2014. The Court concluded that its intervention would be premature before this Court decided if, or the extent to which, sanctions were warranted. However, the Court outlined a number of factors this Court must consider in deciding "what sanctions, if any, are appropriate" in light of SCL's redaction of personal information from documents it produced out of Macau in January

2013. (August 7 Order at 10). Those factors include: "(1) 'the importance to the investigation or litigation of the documents or other information requested'; (2) 'the degree of specificity of the request'; (3) 'whether the information originated in the United States'; (4) 'the availability of alternative means of securing the information'; and (5) 'the extent to which noncompliance with the request would undermine important interests of the United States or compliance with the request would undermine importance interests of the state where the information is located.'" Id. at 7-8.

II.
FINDINGS OF FACT

1. SCL is a publicly held Cayman Island corporation, which is listed on the Hong Kong Stock Exchange. SCL's initial public offering was in November 2009. LVSC owns approximately 70% of SCL's stock. (3d Am. Compl. ¶ 3).

2. SCL's indirect subsidiary, Venetian Macau Ltd. ("VML"), owns a gaming subconcession in Macau and owns and operates a number of resort and casino properties there.

3. Jacobs was SCL's CEO until he was terminated on or about July 23, 2010. On October 20, 2010, Plaintiff filed this suit against SCL and LVSC.

4. SCL moved to dismiss the complaint for (among other things) lack of personal jurisdiction.

5. After this Court denied SCL's motion to dismiss, SCL sought an extraordinary writ in the Nevada Supreme Court. The Nevada Supreme Court issued an Order Granting Petition for Mandamus on August 26, 2011. That Order directed this Court to "revisit the issue of personal jurisdiction" over SCL "by holding an evidentiary hearing and issuing findings regarding general jurisdiction." The Order further directed this Court to "stay the underlying action, except for matters relating to a determination of personal jurisdiction" until that task was completed. *Id.*

6. Prior to litigation, in approximately August 2010, certain electronically stored information including a ghost image of hard drives of computers used by Steve Jacobs in Macau and copies of his outlook emails were transferred by way of electronic storage devices (the "transferred data")[4] to Michael Kostrinsky, Esq., Deputy General Counsel of LVSC.

7. Kostrinsky requested this information in anticipation of litigation with Jacobs after learning of receipt of a letter by then general counsel for LVSC from Don Campbell.

8. This transferred data was placed on a server at LVSC and was initially reviewed by Kostrinsky.

9. The attorneys for SCL at the Glaser Weil firm were aware of the existence of the transferred data on Kostrinsky's computer from shortly after their retention in November 2010.

10. The transferred data was reviewed in Kostrinsky's office by attorneys from Holland & Hart.

11. On April 22, 2011, in house counsel for SCL, Anne Salt, participated in the Rule 16 conference by videoconference and responded to inquiry by the Court related to electronically stored information and confirmed preservation of the data.[5]

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[4] Some of the original devices on which this electronically stored information was transported are in the Court's evidence vault. Exhibit 217.

[5] The order scheduling the Rule 16 conference provided in pertinent part:

C. The purpose of this conference is to expedite settlement or other appropriate disposition of the case. Counsel/parties in proper person must be prepared to discuss the following:

(1) status of 16.1 settlement discussions and a review of possible court assistance;
(2) alternative dispute resolution appropriate to this case;
(3) simplification of issues;
(4) the nature and timing of all discovery;
(5) an estimate of the volume of documents and/or electronic information likely to be the subject of discovery in the case from parties and nonparties and whether there are technological means, including but not limited to production of electronic images rather than paper documents and any associated protocol, that may render document discovery more manageable at an acceptable cost;

12. At no time during the Rule 16 conference did Ms. Salt or anyone on behalf of SCL advise the Court of the potential impact of the Macau Personal Data Privacy Act (MDPA) upon discovery in this litigation.

13. Following the Rule 16 conference with the Court, the parties filed a Joint Status Report on April 22, 2011, in which they agreed that the initial disclosure of documents pursuant to NRCP 16.1 would be made by SCL and LVSC prior to July 1, 2011. The MDPA is not mentioned in the Joint Status Report as potentially affecting discovery in this litigation.

14. Following the Rule 16 conference, no production or other identification of the information from the transferred data was made.[6]

15. Beginning on May 13, 2011, representatives of VML had a number of communications and meetings with the Macau's Office of Personal Data Protection ("OPDP") regarding the collection, review, and transfer of documents in Macau to respond to discovery requests in this case and subpoenas issued by U.S. government authorities. (SCL Ex. 346).

16. Beginning with the motion filed May 17, 2011, SCL and LVSC raised the MDPA as a potential impediment to production of certain documents.

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(6) identify any and all document retention/destruction policies including electronic data;
(7) whether the appointment of a special master or receiver is necessary and/or may aid in the prompt disposition of this action;
(8) any special case management procedures appropriate to this case;
(9) trial setting; and
(10) other matters as may aid in the prompt disposition of this action.

[6] Despite the testimony of Jason Ray, it is unclear whether the search terms were ever run for the custodians for which electronically stored information exists on the transferred data and what , if any, production was made from the transferred data.

17. Sometime after Jacobs commenced this action in October 2010, the United States Securities and Exchange Commission, issued at least one subpoena to LVSC seeking information, some of which was located in Macau.

18. LVSC's general counsel, Ira Raphaelson, emphasized the seriousness in which LVSC and SCL took their obligations relative to the United States government's requirements. In response, the LVSC Board of Directors voted to vest the "full power of the Board" with LVSC's audit committee. That committee was then empowered to engage the O'Melveny and Myers law firm ("O'Melveny") as legal counsel to address the United States' requests.

19. Raphaelson recalled conferring with David Fleming, SCL's General Counsel. Raphaelson claims that he wanted to ensure that "maximum access" was given to information that SCL possessed.

20. As part of Raphaelson's "maximum access" discussion, O'Melveny lawyers from the United States were sent to Macau and given access to SCL's files and servers to conduct searches for information. Raphaelson testified that "a number of consents" were obtained under the MDPA so that O'Melveny would have access to documents and be able to interview executives in Macau. Raphaelson indicated that the company was even willing to provide separate independent legal counsel for any Macau personnel if they so desired. Raphaelson could not recall the number of consents obtained.

21. One of those Macau executives interviewed by O'Melveny was Ben Toh, SCL's Chief Financial Officer and a member of SCL's Board of Directors. Toh recalled that he was interviewed by the O'Melveny lawyers sometime in 2011. During that interview, he was shown documents. While he could not recall all of the specifics, he did believe that some of the

documents were emails that originated in Macau and what he was shown was in an unredacted form.

22. U.S. lawyers were allowed to review unredacted documents in Macau, but the record is incomplete as to what those documents were and whether any of those documents were brought back to the United States. Raphaelson acknowledged that O'Melveny made at least two presentations concerning its review where members of the Nevada Gaming Control Board, gaming regulatory bodies from Pennsylvania and Singapore, and at least one U.S. federal law enforcement official were present. Raphaelson asserted privilege as to the nature of those presentations, except to affirmatively assert that no documents from Macau or any summaries were disclosed.[7]

23. In December 2011, Plaintiff served Requests for Production of Documents ("RFPs") to SCL and LVSC based on the categories of documents the Court had permitted him to discover during jurisdictional discovery.

24. SCL and LVSC served their respective responses and objections to the RFPs on January 23 and January 30, 2012. (SCL Exs. 302 and 307).

25. On March 22, 2012, this Court entered a Stipulated Confidentiality Agreement and Protective Order that, among other things, specifically allowed the parties to redact information to comply with foreign data protection laws, including the MDPA.

26. At a hearing on June 9, 2012, counsel for SCL represented to the Court that the documents subject to production were in Macau; were not allowed to leave Macau; and, had to be reviewed by counsel for SCL in Macau prior to requesting the OPDP for permission to release those documents for discovery purposes in the United States.

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[7] The Court anticipates further briefing on this issue.

27. At the time of the representation made on June 9, 2012, the transferred data had already been copied; the copy removed from Macau; and reviewed in Las Vegas by representatives of LVSC.

28. In contrast to what SCL and LVSC have repeatedly told this Court in the past, the evidence presented at this hearing demonstrates that U.S. lawyers were given access to SCL's Macau data and were allowed to review it and use it for their purposes.

29. The transferred data was stored on a LVSC shared drive totaling 50 – 60 gigabytes of information.

30. Prior to July 2011, LVSC had full and complete access to documents in the possession of SCL in Macau through a network-to-network connection.

31. Beginning in approximately July 2011, LVSC access to SCL data changed because of corporate decision-making.

32. Prior to the access change, significant amounts of data from Macau related to Jacobs was transported to the United States and reviewed by in house counsel for LVSC and outside counsel, and placed on shared drives at LVSC.

33. On June 27, 2012, in a written status report, LVSC and SCL advised the Court that LVSC was in possession of over 100,000 emails and other electronically stored information that had been transferred "in error".

34. In the June 27, 2012 status report, LVSC admits that it did not disclose the existence of the transferred data because it wanted to review the Jacobs electronically stored information.

35. On September 14, 2012, this Court entered a Decision and Order ("September 2012 Order") following an evidentiary hearing, stemming from a lack of candor to this Court by SCL and LVSC as to the location of, and their access to, discoverable information, claiming that the MDPA excused their compliance with discovery.

36. Based upon the evidence adduced, this Court found in the September 2012 Order that LVSC and SCL's "lack of disclosure appears to the Court to be an attempt to stall discovery, and in particular, the jurisdictional discovery in these proceedings . . . . Given the number of occasions the MPDPA and the production of electronically stored information by Defendants was discussed there can be no other conclusion that that the conduct was repetitive and abusive." The Court found "willful and intentional conduct with an intent to prevent" Jacobs and the Court from accessing, and ruling upon, discoverable information in the jurisdictional proceedings. (*Id.*

37. As an ameliorative sanction, this Court ordered that "[f]or jurisdictional discovery and the evidentiary hearing related to jurisdiction, LVSC and SCL will be precluded from raising the MDPA as an objection or as a defense to admission, disclosure or production of any documents."[8] They were further sanctioned $25,000 and required to cover Jacobs' reasonable attorneys' fees. LVSC and SCL "did not challenge" this Court's September 2012 Order – which precluded their use of the MDPA in jurisdictional discovery – with the Nevada Supreme Court.[9]

38. SCL has continued to identify the MDPA as a basis for not complying with its discovery obligations and has redacted all so-called personal data – the names and personal identifiers including email addresses – on all documents produced from Macau.

39. Raphaelson could not recall the substance of the input he provided to Fleming concerning compliance with the September 2012 Order.

40. In October 2012, SCL retained new counsel. SCL's new counsel informed Plaintiff's counsel that they intended to travel to Macau and requested a meet-and-confer

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[8] In the September 2012 Order, the Court recognized that this restriction did not prevent the Defendants from raising any other appropriate objection or privilege

[9] *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 878 (2014).

regarding "the custodians for whom information should be reviewed and the search terms to be used to identify potentially responsive jurisdictional information from those custodians." (SCL Ex. 99).

41. Fleming testified that he obtained input from not only Raphaelson, but also attorneys Robert Rubenstein, Randall Jones, Mark[10] Jones, Mike Lackey, Wyn Hughes, and Ricardo Silva in determining his course of action. (Day 1, pp. 152-56.) Based upon the input he received, Fleming claims that he made the decision not to comply with the September 2012 Order and that the decision is one thus based in "good faith".

42. Mr. Fleming personally met with the OPDP about a dozen times before the Court's September 14, 2012 Order. (2/9/15 Hearing Tr. at 169:12). He testified that he obtained advice from Macanese lawyers and approached the OPDP "to see how we could overcome what I perceived to be a potential problem in delivering documents which had personal data." (*Id.* at 140:5-25). The OPDP took the position that "under no circumstances could data of a personal nature be transmitted to Las Vegas in accordance with any requirement imposed on SCL" without either the consent of the data subject or OPDP's approval. (2/9/15 Hearing Tr. at 141:1-18).

43. VML made several attempts to secure OPDP's approval, arguing that (as the data controller) it had a legitimate reason for processing personal data to search for responsive documents and for transferring that data outside of Macau. It also suggested that, insofar as this case is concerned, the interests of the data subjects could be protected through a protective order. In letters issued in October 2011 and again in August 8, 2012, the OPDP rejected VML's arguments. It noted that the litigation was not pending in Macau, that VML was not a party to

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[10] It appears the transcript inadvertently states "Mike."

the litigation, and that VML had no legal obligation to respond. Under those circumstances, the OPDP took the position in its August 8, 2012 letter that VML did not have "the legitimacy" even to process the data, let alone to transfer it. (SCL Ex. 333 at 13, 15). The OPDP also rejected the argument that sufficient protection existed in the U.S. to allow the transfer. *See id.* at 14-15, 19-20. And while the OPDP suggested that data could be transferred with consent of the data subject, it warned that the consent had to be "freely" given, "specific" and "informed" and that, particularly in the employment relationship, it was important to ensure that the data subject was not "influenced by his or her employer" and was able to freely make a choice to consent or not. *Id.* at 10-11.

44. After Defendants informed this Court of the 2010 transfer of Jacobs' data from Macau to LVSC in Las Vegas, Mr. Fleming had series of conversations with the OPDP about the situation. He described the OPDP as being "furious" about the transfer and noted the public statements Macau's secretary of finance made at about that time stating that under no circumstances should there be any breach of Macau law with respect to data privacy issues and that Macau had a "zero tolerance" policy with respect to such breaches. (*Id.* at 143:14-144:2; 2/10/15 Hearing Tr. at 231:14-21). The OPDP opened up an investigation of VML and ultimately fined it for allowing Jacobs' electronically stored information to be transferred to Las Vegas. (2/10/15 Tr. at 228:13-229:22).

45. After a further discussion with the OPDP in or about October 2012, which was attended by U.S. counsel for SCL, and a letter submitted in November 2012, the OPDP eventually stepped back from the position it had taken in August 2012 that precluded VML from even searching documents that contained personal data. The OPDP agreed to allow such searches to take place, so long as Macanese lawyers reviewed the documents that were identified

as responsive. The OPDP rejected the suggestion that Hong Kong lawyers could do so and reiterated its position that any transfer of personal data would have to be with its consent or the consent of the data subject. (*See* 2/9/2015 Hearing. Tr. at 135:13-22). In fact, Mr. Fleming testified that beginning at the end of November 2012 the deputy director of the OPDP "advised us monthly that we were not to transmit data out of Macau unless we had the data subject's consent." (2/9/15 Hearing Tr. at 141:1-18).

46. After the September 2012 Order, Macau's OPDP informed SCL that its request to transfer data concerning this litigation was incomplete and was based upon the wrong provisions of the MDPA. (Ex. 102; Day 2, pp. 176-78.) OPDP informed SCL that its request to transfer could not be considered absent corrections and additional information being provided. (*Id.*)

47. Fleming concedes that he knew that OPDP considered SCL's requests to be incomplete. Yet, no action was taken to remedy the deficiencies that OPDP noted. (*Id.*) Fleming claimed that there was insufficient time in light of the deadlines set by this Court. Even though SCL was still producing documents as late as January 2015 in redacted form, Fleming concedes SCL had taken no action to address the inadequacies that OPDP had noted in 2012.

48. The OPDP also informed SCL that it could pursue available remedies in the Macau courts concerning its desire to transfer data. (Ex. 102.) Fleming acknowledged that he knew of available avenues but he took no action in that regard. This is despite the fact that one of the means in which the MDPA expressly authorizes a transfer of data "for compliance with a legal obligation" "or for the . . . exercise of defence [sic] of legal claims." (Ex. 341.)

49. SCL concedes that it did not seek consents from any of its Macau personnel. Fleming's only explanation was to claim that it would be too cumbersome to do so. In prior arguments to this Court, SCL has insisted it could face potential liability if it even sought

consents because it could be accused of having put pressure on personnel in order to obtain the consent.

50. Raphaelson's revelation that "a number of consents" were obtained when LVSC and SCL wanted access to information to address the United States' investigation contradicts the rationale SCL has given for its inaction here. As Toh even acknowledged, he believed that he had granted consent for LVSC to access his personal data pursuant to his employment arrangement. Even though Toh and other SCL executives were the custodians that SCL had been ordered to search for jurisdictional discovery, not a single such consent was sought.

51. The fact that consents were later obtained from four Nevada residents – Adelson, Goldstein, Leven and Kay – nearly two years after the ordered production is not evidence of good faith. These four executives are United States residents. Their emails are located in Nevada and not even subject to the MDPA, a fact that SCL and LVSC have conceded. Obtaining consents from United States residents while knowingly not seeking consents from Macau personnel – several of whom were actual custodians – is further evidence as to SCL's lack of good faith relative to this Court's orders and its discovery obligations.

52. Fleming concedes that he received the September 2012 Order, and understood that it prohibited SCL from using the MDPA as a basis for not producing documents. He also understood that the September 2012 Order precluded SCL from using the MDPA as a basis for redacting documents in this litigation. Fleming acknowledged that the order was sufficiently "clear" to him as to what it precluded. (Day 1, pp. 147-48, 150-51; Day 2, p. 179.)

53. The SCL Board of Directors was never provided a copy of the September 2012 Order. (Day 3, pp. 89-93.) Nor was the SCL Board provided copies of this Court's subsequent order requiring production of jurisdictional documents. (Day 3, p. 90.) According to Fleming,

he did not involve the Board in making a decision as to complying with this Court's September 2012 Order. Fleming claims that neither the Board nor even the CEO was asked to make a decision on what is now being recast as a serious problem for SCL.[11]

54. The Board held no meetings concerning the consequences of noncompliance. (Day 1, pp. 157-58.) Nor did the SCL Board vote or authorize redactions that were in knowing violation of this Court's September 2012 Order. (*Id.* at pp. 166-167.) Further underscoring its attitude concerning this Court's Order, there is no indication that SCL disclosed to any regulatory authorities its conscious decision to violate an order of a United States court. (Day 3, p. 94.)

55. Although Fleming noted that the MDPA contained potential criminal sanctions, no evidence was presented that the MDPA had ever been enforced in such a fashion or that there was any risk of such sanctions when complying with the orders of a U.S. court. SCL presented no actual evidence that its Board members or officers feared any potential reprisals by complying with this Court's orders.

56. Fleming acknowledged that SCL had in fact violated the MDPA on at least two prior occasions. One of them involved the large data transfer that SCL and LVSC undertook which was concealed from this Court and had occurred even before Jacobs had commenced this litigation. There were no outstanding court orders compelling the transfer of that data. Yet, for that wholesale transfer, SCL paid a nominal fine, which was roughly equivalent of $2,500 U.S. dollars. (Day 2, p. 229.) For the other separate violation, SCL was fined the same nominal amount of roughly $2,500 U.S. dollars. (*Id.*)

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[11] Until one business day prior to the hearing, SCL maintained that the identity of the persons involved in the decision making to violate this Court's September 2012 Order was privileged. On February 6, 2015, SCL stated that the decision was made by Fleming.

57. There are apparently no restrictions upon taking documents or electronically stored information that contain personal data out of Macau as a matter of routine business. When SCL's executives travel, they are not required to surrender that information at the border of Macau, nor do they. According to Fleming, the OPDP has supposedly given authorization – although no such writing or any form of documentation was actually presented – for data to be carried out of Macau in the ordinary course of business. As Fleming conceded, SCL could not run its business without doing so.

58. SCL's attitude towards compliance with this Court's September 2012 Order stands in sharp contrast with how it claims to have cooperated with "maximum access" relative to United States government investigations.

59. The prejudice that SCL has inflicted with its noncompliance has been exacerbated by SCL's attempts to benefit from its own noncompliance with the Court's ameliorative sanction.

60. Despite the entry of this Court's September 2012 Order, SCL continued to cite the MDPA as a basis for its non-review and non-production of documents. This necessitated Jacobs filing his initial Motion for NRCP 37 Sanctions on November 21, 2012.

61. On December 4, 2012, SCL filed a motion for a protective order. That motion explained that SCL had just received permission from the OPDP to review documents in Macau and that SCL would be producing documents after they had been reviewed and personal data had been redacted by Macanese lawyers. SCL asked the court to allow it to limit its search to documents for which Jacobs was the custodian, on the ground (among others) that Plaintiff already had whatever documents he needed to make his jurisdictional case and that fundamental principles of fairness and proportionality required the court to limit SCL's production obligations. (SCL Motion for Protective Order at 22-23).

62. The Court held a hearing on December 18, 2012 and ordered SCL to produce all jurisdictional documents no later than January 4, 2013. (Court Minutes, Dec. 18, 2012; Order, Jan. 16, 2013 ("Sands China shall produce all information in its possession, custody, or control that is relevant to jurisdictional discovery, including electronically stored information ('ESI'), within two weeks of the hearing, on or before January 4, 2013").)

63. At the same hearing, the Court denied SCL's motion for a protective order and denied Plaintiff's motion for sanctions without prejudice. In ruling on Plaintiff's Rule 37 motion, the Court noted that it had never entered an order requiring SCL to produce specific documents and thus any motion for sanctions was premature. (12/18/12 Hearing Tr. at 28:18-19). The Court then ordered SCL to produce all documents relevant to jurisdictional discovery by January 4, 2013. (*Id.* at 24:12-15).

64. At the December 18. 2012, hearing, counsel for SCL explained the constraints imposed by the MDPA on transfers of personal data out of Macau:

> Mr. Randall Jones: The issue is whether or not . . . our client is allowed to take certain information out of the country. And so I just want to make sure that's clear on the record. . . . We will continue to do our best to try to comply with the Court's orders as best we can. . . . I hope the Court does appreciate this is a complicated situation, and . . . . we're trying to make sure that we – the lawyers and our client comply with your discovery.
>
> The Court: I understand.
>
> Mr. Peek: Yeah. We need to have redactions as part of that, as well, as that's—I understood—
>
> The Court: I didn't say you couldn't have redactions.
>
> Mr. Peek: That's what I thought.
>
> The Court: I didn't say you couldn't have privilege logs. I didn't say any of that Mr. Peek.

(12/18/12 Hearing Tr. at 26:17-27:14).

65. After the Court denied the Motion for Protective Order, SCL contacted FTI Consulting ("FTI") to handle the technical work in Macau. (2/10/15 Hearing Tr. at 15:9-12). FTI set up a technology-processing center at the Venetian Macau and built a dedicated server to collect, process, and search data. (*Id.* at 17:3-8, 17:15, 71:16-19). Once potentially relevant documents were identified using search terms, approximately two dozen Macanese contract lawyers reviewed the documents for relevance and then redacted all personal information before the redacted documents were transferred to the United States for further processing and production. (*Id.* 103:6-17). The Macanese lawyers were the only ones who were allowed to view the documents in their unredacted form. Neither FTI nor any of SCL's counsel in this action reviewed those documents in unredacted form.

66. Despite the fact that Jacobs' discovery requests had been pending since 2011, Fleming concedes that he did not even engage lawyers in Macau – who he understood would have to conduct the document review – until after the December 18 hearing. (Day 2, pp. 239-40.)

67. FTI's project manager for this undertaking was Jason Ray. Ray testified that FTI was "engaged to collect and facilitate in the collection of electronic data for a set list of custodians, to process that data for culling and search analysis, to select documents that were potentially relevant for human review, and to support the human review and ultimate production of those documents from Macau." (Day 2, pp. 14-15, 24.)

68. The document review was done in the Venetian Macau where FTI set up its technology-processing center. FTI gathered data that was collected by Venetian Macau IT personnel and did some additional data collections from servers, individual computers, laptops,

and desk tops of only approximately 6-9 custodians. All of the data was then processed and loaded into FTI's case review tool called "Ringtail." (Day 2, pp. 20, 73-74, 77.)

69. FTI was informed by one of SCL's attorneys – Kristina Portner of the law firm Mayer Brown – that FTI was given "explicit authorization" to see the metadata of the documents for purpose of searching and review management. Purportedly, this approval was given by the OPDP. FTI did not communicate with OPDP or see any written authorization. (Day 2, pp. 21-22, 68-69.)

70. As a result, FTI could view some personal data that is contained within the metadata even though FTI could not look at documents. Metadata can contain personal data including email addresses, names of senders, names of recipients, and the name of folders where data is stored. (Day 2, pp. 22, 62-64.)

71. Ray testified that searches in the Ringtail program are run based upon "search term families," which are groups of individual criteria that are then applied to a data set of documents. Each criterion can have associated with it a Boolean search of any level of complexity. In other words, search term families are built with Boolean search terms. Then, the Boolean search term families are run against the index of data, which produces a search result of relationships that are in the database, and reportable, *i.e.* this document contains one or more criteria from the Boolean search term family. (Day 2, pp. 20, 80-82.)

72. Attorneys from Mayer Brown provided FTI with the Boolean search terms to be run against the index. FTI, as an electronically stored information vendor, is not familiar enough with the case to create its own search terms for responsive documents. There is an iterative process reporting with counsel on the results of those searches and the search terms change over

time based upon the results of the search. Searches can be modified to be more or less expansive to generate more or less responsive documents. (Day 2, pp. 20, 81-83, 86.)[12]

73. Most often, the Boolean search terms consist of the names of individuals. (Day 2, pp. 82, 89-90, 94, 280.) The significance of this point cannot be understated here since SCL later redacted all of the names from the responsive documents prior to producing them to Jacobs.

74. While SCL initially claimed that Jacobs had not provided any input on the appropriate search terms, the evidence at the hearing demonstrated otherwise, including that Jacobs had provided additional search terms, some of which SCL incorporated and others which were not included. (Ex. 215.)

75. The search terms were run in December 2012 and identified approximately 70,000 responsive documents for review. (Day 2, p. 93.)

76. The review of the documents was conducted in a second conference room at the Venetian Macau because FTI employees and SCL's counsel in this case were purportedly not permitted to see any of the documents that were being reviewed or handled. (Day 2, pp. 20, 112-113.)

77. SCL's review for relevancy and responsiveness was conducted by Macau attorneys and "Macau citizens." As Ray explained, because SCL had not sought to hire reviewers until a week before Christmas, SCL could not find a sufficient number of "competent Macau lawyers" to conduct the review. (Day 2, pp. 98-103, 106, 143-44, 238.) Thus, non-

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[12] FTI assisted SCL with two productions from Macau. The second production was completed in March/April of 2013. The second search was an expanded search of terms and additional custodians. (Day 2, pp. 88, 148-149.) Jacobs proposed additional search terms for this production. (Day 2, pp. 151-171.) Not all of Jacobs' proposed changes were incorporated. The documents from the second search were not produced to Jacobs until January 2015. (Day 2, p. 286.)

lawyer paralegals, legal secretaries, and "other people" with supposed "legal knowledge" were used to make relevancy determinations in Macau.[13] No lawyers involved in this litigation reviewed documents in Macau for relevancy or responsiveness.

78. The lack of transparency in SCL's procedures is highly problematic. SCL presented no evidence of any training of the so-called Macau reviewers or their qualification to be making relevancy/responsiveness determinations for discovery in a Nevada lawsuit. Ray concedes that FTI did not do any subject matter training for the Macanese reviewers and he did not know if anyone provided any subject matter training. FTI only provided training on how to use the computerized review tool. (Day 2, pp. 98-103, 106.)

79. Search terms without any substantive review cannot be relied upon to insure responsiveness to discovery requests. The review process of at least a portion of the retrieved data generally provides the transparency necessary for the Court to rely upon the responsiveness of results. Here there is no transparency due to the redactions.[14]

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[13] This revelation is in contrast to Sands China's representations to the Court and to Jacobs made in its so-called "Report on its compliance with the Court's ruling of December 18, 2012."

[14] The Sedona Conference has published its Cooperation Proclamation. The Sedona Conference® Cooperation Proclamation, 10 SEDONA CONF. J. 331 (2009 Supp.). The intent of the proclamation is "to promote open and forthright information sharing, dialogue (internal and external), training, and the development of practical tools to facilitate cooperative, collaborative, transparent discovery."

More recently the Sedona Conference has published a cooperation guide which reiterates this principle in part:

> Finally, a few overarching points: when making decisions unilaterally—before opposing counsel is identified—do so in anticipation of cooperation. Document the reasonable and good faith efforts you are making to comply with your obligations in a manner that you can share with opposing counsel once identified, if necessary. All cooperative efforts, actually, should be transparent so that if opposing counsel does not reciprocate and motion practice ensues, the court will know the steps you have taken to try to avoid unnecessary discovery disputes. Lastly, even if your case is already under way, it is never

80. As the Macanese reviewers were also redacting the documents at the same time they were reviewing for relevancy and privilege, no one involved in this litigation was allowed to see what in fact was being redacted and what documents were being excluded from the production. (Day 2, pp. 103-104.) According to SCL and Ray, the Macau reviewers were supposed to be redacting information from which the identity of a person could be known, which principally meant person's names were redacted.

81. Once the review was complete, the redactions were burned onto the document images and then the images and metadata were packaged for production. This production was then sent to Mayer Brown electronically. (Day 2, pp. 113-114, 119.) According to Ray, the Macau reviewers determined that only 15,000 documents out of the some 70,000 documents identified by the search terms were sufficiently relevant/responsive to be produced. (Day 2, p. 110.)

82. The redaction of all names and personal identifiers from the documents exacerbates an already problematic review process. The lack of transparency – with unidentified Macau reviewers making determinations as to types of documents that should be subject to disclosure – highlights the prejudice from SCL's noncompliance.

83. The Court can have little confidence in such a nontransparent process. No litigant should be required to accept it, particularly under the circumstances of this case. The redactions made to the documents – eliminating all names and other identifying information about identities – casts doubt as to fairness and thoroughness of the entire search, vetting and production process.

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too late to adopt a cooperative approach to fact-finding consistent with the Cooperation Points set forth below.

THE SEDONA CONFERENCE® COOPERATION GUIDANCE FOR LITIGATORS & IN-HOUSE COUNSEL, March 2011 version.

Because many of the search terms were in fact names, the veracity and completeness of the search cannot be tested against the documents that were flagged for production as SCL has made it impossible for Jacobs to know the identity of any of the names in the redacted documents. Thus, because several of the search terms are in fact names of people, the search terms themselves are redacted. Such a process is ripe for abuse and fails to meet the standards of fairness for discovery in a Nevada court.

84. Because in many instances the actual search terms are redacted, Jacobs cannot himself even run searches against the redacted documents.

85. The Defendants themselves confirmed that redacted documents are effectively useless in terms of evidentiary value, particularly emails since those contain the identity of the sender, recipient and other names, all of which SCL has redacted and made inaccessible.

86. SCL's continuing misuse of the MDPA in violation of this Court's September 2012 Order has perpetuated the already lengthy delay of this action to Jacobs' prejudice. This action has now been pending for over four years and merits discovery has been stayed until this Court is able to resolve SCL's jurisdiction defense.

87. Fleming acknowledges he knew the effect and what was required by the Court's September 2012 Order. As he testified:

> Q. Okay. And when you saw it did you understand that it precluded you - - or, I'm sorry, it precluded the company from redacting any documents pursuant to the MPDPA?
>
> MR. RANDALL JONES: Mr. Fleming - -
>
> THE WITNESS: Yes, of course I did. I told Her Honor exactly that a few minutes ago.
>
> BY MR. BICE:
>
> Q. All right. So you were - - you did not misunderstand as to which documents it applied; correct?

A. Of course not.

Q. You know that it applied to all of the documents that were then located in Macau; correct?

A. Correct.

(Day 1, p. 148.)

88. Fleming concedes that he recognized that the September 2012 Order did not permit redactions to be made under the MDPA. Nonetheless, he claimed that he made the decision not to comply with this Court's order and would proceed to make redactions. Fleming then claimed under questioning by SCL that he had been led to believe that redactions were permitted. He claims that he could not recall who told him that this Court had authorized the redactions to be made. Fleming acknowledges that he was going to make the redactions notwithstanding the terms of this Court's September 2012 Order and that this Court's supposed approval of redactions merely gave him more comfort. The Court only gave authorization for redactions based on privilege.

89. Undue delay in the prosecution of any case is prejudicial, but acutely so here. Witnesses have left LVSC and SCL. As LVSC's own general counsel acknowledges, memories fade with time. One key witness, former SCL Board member, Jeffrey Schwartz, died during this latest delay of this case. Raphaelson was unaware of any attempts to preserve evidence from Schwartz prior to his passing.

90. The result of the delay has been the permanent loss of evidence in this case, which underscores why a reliable and thorough production of contemporaneous documents is all the more necessary here. This Court resolved the MDPA's use by SCL two years ago. Yet, it continues to be enlisted as a tool of delay and obstruction to this very day.

91. SCL claims that it has endeavored to mitigate some of the prejudice by searching for and producing some of the relevant/responsive documents in an unredacted form by locating copies that were already outside of Macau.

92. On or before January 4, 2013, SCL produced 4,707 documents from Macau consisting of about 27,000 pages. Most of those documents contained personal data redactions.

93. After the January 4 production, SCL undertook extensive efforts to locate duplicates of the documents produced from Macau in the United States, so those documents could be produced without MDPA redactions. Among other things, FTI transferred the hash code values of the documents located in Macau (which do not contain personal data) to the United States and searched LVSC's documents for duplicates. (2/10/15 Hearing Tr. at 23:21-24:4). FTI also transferred the documents it had collected in the United States for LVSC to Macau and performed 11 separate search iterations in an attempt to locate documents in the LVSC database that were duplicates of the documents that SCL had located in Macau. (*Id.* at 27:8-19, 31:2-20). FTI was able to locate thousands of duplicate documents in the U.S., which were subsequently produced without MDPA redactions in a series of replacement productions. (*Id.*). Jason Ray of FTI estimated that, given a normal schedule and without the complications posed by the MPDPA redactions and the attempt to locate duplicates in the U.S., FTI would have charged approximately $400,000 for the work it did in connection with SCL's January 2013 production. The additional work caused the bill to increase to approximately $2.4 million. (*Id.* at 33:11-13).

94. After its initial production in early 2013, SCL later produced "replacement images," *i.e.* unredacted (or less redacted) duplicates of certain documents originally produced redacted from Macau that were later found in the United States. SCL has now produced over

17,500 documents consisting of more than 124,000 pages in response to jurisdictional discovery. Approximately 9,600 of those documents have been produced without any MDPA redactions.

95. As noted above, after it produced redacted documents, SCL searched for and found many duplicates. SCL also unredacted portions of the remaining redacted documents after securing consents from Adelson, Leven, Goldstein and Kay.

96. At least 7,900 documents from SCL's production remain redacted with the names and identities of all participants in those documents removed. At least 7,900 documents – of the 15,000 documents, which SCL's Macau reviewers determined were relevant/responsive to jurisdictional discovery from the 70,000 returned by the search terms – remain effectively unproduced to Jacobs due to the redactions. The identity of all participants in those documents remains redacted and they are effectively unusable as confirmed by SCL's own witnesses.

97. SCL's attempt to locate duplicates of certain of the documents outside of Macau and later production of them in an unredacted form[15] does not mitigate the prejudice to Jacobs. Thousands of documents relevant and responsive to the jurisdictional issue remain unproduced in violation of this Court's September 2012 Order.

98. There is no cure to the prejudice from this continued nonproduction. According to SCL, it has done everything possible to locate all duplicates that could exist outside of Macau and all documents that are still redacted will remain that way because it is not going to comply with this Court's prior ameliorative sanction, which precluded SCL reliance on the MDPA to avoid production.

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[15] The Court applauds SCL's efforts to locate the duplicate documents through the use of hash codes and additional review. Unfortunately given the large number that remain redacted the prejudice remains.

99. The replacement documents SCL was able to locate and produce were not done in a timely fashion. The replacement documents were not produced early enough to be used during jurisdictional discovery depositions, which were completed in early February, 2013.

100. The video deposition of former SCL and LVSC Board member, Mike Leven, was played to the Court. Leven was shown a number of the redacted emails and testified he would not have "the slightest idea" what the documents were about or how they pertain to this case because of the redactions. Leven conceded that he could not make heads or tails out of the documents because all of the names and identifying information was missing. (Day 3, pp. 152-154.)

101. Toh, who testified live via videoconference, confirmed the same. Toh was similarly shown a number of the emails as well as a copy of Board meeting minutes where all the names were redacted. Toh confirmed that he could not recall these events and could not even identify who was involved or to what they necessarily pertained. Again, documents with all of the names redacted, particularly email, are effectively rendered useless from an evidentiary standpoint.

102. These redacted documents are those that the unidentified Macau reviewers determined were relevant/responsive to jurisdictional discovery. Yet, SCL has effectively destroyed the evidentiary value of all of the redacted documents, particularly the emails, through its willful violation of this Court's September 2012 Order.

103. SCL's reference to the amount of money it has expended in redacting and searching for duplicates outside of Macau is not evidence of good faith so as to militate against the imposition of serious sanctions. To the contrary, the fact that SCL would expend what it claims are in excess of $2 million so as to not comply with this Court's September 2012 Order

only highlights how even significant monetary sanctions will not bring SCL to cease its misconduct.

104. The evidence elicited from Ray confirms that SCL could have expended at least $2 million less in discovery costs had it simply complied with this Court's discovery orders. Instead, because of time constraints brought on by its own delays and noncompliance, SCL claims that it incurred an additional $2 million in expenses with FTI as a product of its efforts to continue to use the MDPA as a shield against discovery in violation of this Court's September 2012 Order. (Day 2, pp. 47-50.)

105. The Court's prior $25,000 sanction and the additional evidentiary sanctions imposed by the September 2012 Order have proved insufficient to deter SCL from continuing to act in violation of this Court's orders and derogation of Jacobs' rights.

106. There is evidence that SCL has selectively applied the MDPA over the course of this litigation.

107. Any finding of fact stated hereinabove that is more appropriately deemed a conclusion of law shall be so deemed.

III.
CONCLUSIONS OF LAW

108. The MDPA and its impact upon production of documents related to discovery has been an issue of contention between the parties in motion practice before this Court since May 2011.

109. The MDPA has been an issue concerning documents, which are the subject of the jurisdictional discovery.

110. Following the previous sanctions hearing, the Court concluded after hearing the testimony of witnesses that the transferred data was not brought to the United States in error,

but was purposefully brought into the United States after a request by LVSC for preservation purposes.

111. The transferred data remains relevant to the evidentiary hearing related to jurisdiction, which the Court intends to conduct.

112. The change in corporate policy regarding LVSC access to SCL data made during the course of this ongoing litigation was made with intent to prevent the disclosure of the transferred data as well as other data.

113. As the transferred data had already been reviewed by counsel, the failure to search this transferred data and produce documents from these data sources without redaction (except for privilege) further belies any claim of good faith.

114. The violation of the September 2012 order appears to the Court to be an attempt by SCL to further stall the jurisdictional discovery in these proceedings.

115. "Under NRCP 37(b)(2), a district court has discretion to sanction a party for its failure to comply with a discovery order, which includes document production under NRCP 16.1." *Clark Co. School Dist. v. Richardson Const. Co.,* 123 Nev. 382, 391; 168 P.3d 87, 93 (2007). Sanctions can be imposed "only when there has been willful noncompliance with the discovery order or willful failure to produce documents as required under NRCP 16.1." *Id.* (emphasis added). SCL bears the burden of proof on the issue of willfulness.

116. The second factor that must be considered in deciding whether and the extent to which sanctions should be imposed for a violation of a discovery order is the extent to which the violation caused the opposing party to suffer prejudice. *Young v. Johnny Ribiero Bldg. Inc.*, 106 Nev. 88, 93, 787 P.2d. 777, 780 (1980). *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 870; 900 P.2d 323, 325 (1995) ("[f]undamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue"). Plaintiff bears the burden of showing prejudice.

117. The Nevada Supreme Court held that a number of additional factors should be considered in this case, where a party does not comply with a court order on the ground that foreign laws preclude it from doing so. Those factors include: "(1) 'the importance to the investigation or litigation of the documents or other information requested'; (2) 'the degree of specificity of the request'; (3) 'whether the information originated in the United States'; (4) 'the availability of alternative means of securing the information'; and (5) 'the extent to which noncompliance with the request would undermine important interests of the United States or compliance with the request would undermine importance interests of the state where the information is located.'"

118. Here, SCL cannot dispute the relevancy of the unproduced documents to the ongoing jurisdictional dispute. Even with questions as to the completeness of the Macanese review, the reviewers deemed these redacted documents to be sufficiently relevant/responsive to be produced regarding jurisdictional discovery. Access to all of the responsive documents is important to the ability of any party to test the adequacy of the search results, a process which has been defeated by the redactions undertaken in violation of this Court's September 2012 Order.

119. Jacobs' jurisdictional discovery requests were specific. The Court had previously ruled upon the scope of Jacobs' jurisdictional discovery requests and approved them. (Order Re: Pl.'s Mot. to Conduct Jurisdictional Discovery & Def.'s Mot. for Clarification, March 8, 2012, on file.); SCL did not present any evidence that Jacobs' discovery requests were not specific or that it somehow did not understand or that these documents were not relevant to those requests. SCL's representative from FTI, Ray, confirmed that the redacted documents were relevant.

120. It appears that many of the documents with MDPA redactions originated and are based solely in Macau. However, that fact does not militate against sanctions or their importance to the jurisdictional issues.

121. At the time of the entry of the September 2012 order– over two years ago – this Court recognized that "[t]he delay and prejudice to the Plaintiff in preparing his case is significant . . . ."

122. One of the principal sanctions this Court imposed for the misrepresentations and lack of candor continues to be ignored by SCL.

123. The decision by Fleming on behalf of SCL to violate the Court's previous orders clearly involved his balancing of issues related to the MDPA, business interests in Macau, and Macanese governmental authorities. However, SCL's failure to at a minimum provide supplemental information to the OPDP or to file an appeal with the Macanese courts belies any claim of good faith.

124. SCL did nothing for over two years regarding OPDP's instructions that SCL's request was defective. SCL provides no explanation for this conscious inaction, which again contradicts its claims that it has been acting in good faith.

125. The evidence indicates that SCL could obtain consents, but consciously chose not to seek consents from most custodians in this action. Only four consents were obtained and then only well after the deadline for production in January 2013. SCL made no effort at all to obtain consents from the Macau-based custodians.

126. SCL made a business decision that to violate this Court's September 2012 Order. Its after-the-fact claims of a "good faith" defense do not comport with the actual evidence adduced at the hearing before this Court.[16]

127. Jacobs does not have any "substantially equivalent" means of obtaining the redacted documents. SCL concedes that the thousands of documents, which remain redacted, are located only in Macau and that it has been unable to locate any other source to produce them. Jacobs has no other method of obtaining the personal data identifying the decision-makers, attendees, senders, recipients, of subject(s) of the documents and communications. SCL's redaction logs are of no assistance as they contain only generic descriptions of individuals and Jacobs' jurisdictional theories require that the precise identities of the relevant individuals be known. The redaction logs are in no way "substantially equivalent" substitutes.

128. SCL admits that at least 7,900 documents from its production remain redacted with the identity of authors, recipients and participants undisclosed and incapable of determination.

129. The United States has a "substantial" interest in "vindicating the rights of American plaintiffs" and a "vital" interest "in enforcing the judgments of its courts." *Richmark Corp.*, 959 F.2d at 1477. "[T]he United States has a substantial interest in fully and fairly adjudicating matters before its courts, [and] [a]chieving that goal is only possible with complete discovery." *Chevron Corp.*, 296 F.R.D. at 206 (internal quotations omitted).

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[16] SCL asserted attorney-client privilege as to the input Fleming received from attorneys in forming his "good faith" decision to violate this Court's order. Jacobs maintains that making claims of good faith based upon advice of counsel constitutes a waiver of that advice, because it goes to whether the claim of "good faith" is legitimate. At this juncture, the Court has drawn no inference or conclusion on the claim of privilege and its potential waiver. Jacobs may proceed by way of separate motion on this point if he so chooses.

130. When considering Macau's purported interests, the Court must consider "'expressions of interest by the foreign state,' 'the significance of disclosure in the regulation . . . of the activity in question,' and 'indications of the foreign state's concern for confidentiality ***prior to the controversy***.'" *Richmark Corp.*, 959 F.2d at 1476 (quoting RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 442 cmt. c) (bold added). In the absence of earlier statements of interest, a foreign government can express its interests by formally intervening in an action or filing an amicus brief. *See Chevron Corp.*, 296 F.R.D. at 206-07 (government can intervene); *see also In re Rubber Chem. Antitrust Litig.*, 486 F. Supp. 2d 1078, 1082 & n.2 (N.D. Cal. 2007) (foreign government offering to submit amicus brief as it had done in other matters).

131. Although it has been fined nominal amounts by the OPDP previously, SCL has presented no evidence that it – or its officers and executives – face actual or serious consequences for complying with an order of a United States court. *See In re Air Crash at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. at 379.

132. SCL's exchanges of correspondences with the OPDP are not evidence that SCL faces the threat of serious consequences. In fact, SCL's failure to provide more complete information as requested by OPDP calls this assertion into question.

133. The United States has an overwhelming interest in ensuring that its citizens, including Jacobs, receive full and fair discovery to uncover the truth of their judicial claims. Nevada has the same interest.

134. SCL did not present any evidence of an official statement of the Macanese government outside of, and before, this litigation regarding its interests in preventing SCL's disclosure of personal data. SCL's exchanges of correspondence with the OPDP regarding this

litigation do not express a sovereign interest in the redaction of the personal data in this case and leave open the ability of SCL to provide more complete information for consideration.

135. The lack of a true Macanese interest in this personal data is further evidenced by the fact that SCL executives utilize email while travelling; SCL regularly transmits personal data out of Macau during the course of its business; and personal data was reviewed by non-Macanese citizens in response to internal and U.S. regulatory investigations.

136. SCL's refusal to comply with the Court's September 2012 Order is willful. It is not factually impossible for SCL to produce the documents from Macau in unredacted form, as would be the case if SCL did not possess or control the requested documents. SCL can direct its vendor to remove the redactions. SCL has simply elected not to comply.

137. SCL's continued use of the MDPA in violation of the Court's September 2012 Order is willful and not supported by good faith.

138. The letters sent to the OPDP do not evidence good faith. SCL's request did not provide the necessary information and were deemed deficient. After learning that its requests were deficient, SCL failed to remedy its inadequate request.

139. SCL's continued reliance upon the MDPA despite the Court's September 2012 Order appears to be a concerted effort at continued delay and obstruction.

140. The continued use the MDPA has inflicted severe prejudice on Jacobs. He has been denied access to proof, he is unable to determine if he has received all of the discovery to which he is entitled, important witnesses have died or become unavailable, and his day in Court has been interminably delayed.

141. The law presumes that the delay has imposed severe prejudice upon Jacobs. *Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042 (2010) ("continued discovery abuses

and failure to comply with the district court's first sanctions order evidences their willful and recalcitrant disregard of the judicial process, which presumably prejudiced" opposing parties.).

142. Because the continuing redactions are willful and designed to deprive Jacobs's access to sources of proof – sources, which even SCL's Macau reviewers determined, were relevant to the jurisdictional issues– SCL's conduct gives rise to a presumption that the non-produced evidence is favorable to Jacobs and adverse to SCL. NRS 47.250(3) and (4). SCL has willfully suppressed the information that it has redacted so as to gain advantage. Therefore, the Court presumes (subject to SCL's ability to rebut such presumption) that the concealed evidence would benefit Jacobs and would belie SCL's defense of personal jurisdiction. *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006) (explaining that adverse presumption arises when evidence has been willfully suppressed with the intent to prejudice an opposing party).

143. Nevada Rule of Civil Procedure 37 underscores the basis for sanctions. It authorizes sanctions for "willful noncompliance with a discovery order of the court." *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

144. "Fundamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue." *GNLV Corp.*, 111 Nev. at 870, 900 P.2d at 325 (citing *Young,* 106 Nev. at 92, 787 P.2d at 779-80).

145. Jacobs is entitled to adverse evidentiary sanctions for the jurisdictional hearing and the Court awards monetary sanctions to avoid further repetition.

146. The Supreme Court has announced a number of factors to consider when assessing the propriety of a sanction:

> The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the

> feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.
>
> *Young*, 106 Nev. at 93, 787 P.2d at 780.

147. In this case, the Court has outlined a number of additional factors this Court must consider in deciding "what sanctions, if any, are appropriate" in light of SCL's redaction of personal information from documents it produced out of Macau in January 2013. (August 7 Order at 10). Those factors include:

> (1) 'the importance to the investigation or litigation of the documents or other information requested'; (2) 'the degree of specificity of the request'; (3) 'whether the information originated in the United States'; (4) 'the availability of alternative means of securing the information'; and (5) 'the extent to which noncompliance with the request would undermine important interests of the United States or compliance with the request would undermine importance interests of the state where the information is located.'

Id. at 7-8

148. The sanctions identified in Part IV are appropriate given SCL's willful noncompliance, the prejudice to Jacobs from any lesser sanction, the severity and repetitiveness of SCL discovery misconduct in this action, the feasibly and fairness of other available and lesser sanctions, the lack of effect of the Court's prior sanction, and the need to deter SCL from further discovery abuses during the remainder of the litigation. These sanctions will not penalize SCL for any improprieties of its attorneys because the discovery abuses and use of the MDPA appears to be driven by the client. *Young*, 106 Nev. at 93, 787 P.2d at 780.

149. This repeated conduct shows a disregard for this Court's orders, including the previous ameliorative sanctions order, however, the conduct does not rise to the level of striking the defense of jurisdiction as urged by Plaintiff, striking pleadings as exhibited in the Foster v.

Dingwall, 227 P.3d 1042 (Nev. 2010) or the entry of default as in Goodyear v. Bahena, 235 P.3d 592 (Nev. 2010) cases.

150. SCL's ongoing noncompliance is incompatible with and undermines the search for truth. By its September 2012 Order, this Court has already imposed sanctions upon SCL, including precluding it from further using the MDPA as a basis for not complying with its jurisdictional discovery obligations. As the Nevada Supreme Court confirmed, SCL "did not challenge" the September 2012 Order precluding SCL's use of the MPDPA here. *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 878 (2014).

151. The Nevada Supreme Court explained, "the mere presence of a foreign international privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply with Nevada discovery rules. Rather, the existence of an international privacy statute is relevant to the district court's sanctions analysis in the event that its order is disobeyed." *Id.*

152. Again, this is not a case where a party is simply disregarding an order to produce documents. SCL has already been sanctioned once, and that sanction was that it could no longer rely upon the MDPA as a basis for noncompliance. That sanction remains binding upon SCL.

153. The delay in holding the evidentiary hearing was attributable, not solely to the MDPA redaction issue, but also to the privilege issues surrounding some of the documents Plaintiff took with him when he left Macau and Defendants late decision to review and update the privilege and redaction logs related to those documents prior to the Court completing the review of those documents *in camera*.

154. After evaluating the factors in Ribiero v. Young, 106 Nev. 88 (1990) and those provided by the Nevada Supreme Court in this case, the Court finds:

a. The decision by SCL to violate this Court's first sanctions order in failing to produce documents without redaction pursuant to the MDPA to Plaintiff was knowing, willful and intentional conduct with an intent to prevent the Plaintiff access to information discoverable for the jurisdictional proceedings;

b. The repeated nature of SCL's conduct is further evidence of the intention to disregard this Court's first sanctions order;

c. Based upon the evidence currently before the Court it appears that testimonial evidence from at least one witness has been irreparably lost;

d. There is a public policy to prevent further abuses and deter litigants from concealing discoverable information in an attempt to advance its claims; and

e. The delay and prejudice to the Plaintiff in preparing his case is significant, however, a sanction less severe than striking defenses can be fashioned to ameliorate the prejudice.

155. The Court after evaluation of the evidence and testimony, weighing the factors and evaluating alternative sanctions determines that evidentiary and monetary sanctions are an alternative less severe sanction to address the conduct that has occurred in this matter.

156. After considering all of the above factors and the evidence presented at the hearing, the Court finds that a combination of sanctions as described in Part IV of this decision is the best way to rectify the undermining of the discovery process caused by SCL's ongoing and continuing violations of this Court's September 2012 Order.

157. Any conclusion of law stated hereinabove that is more appropriately deemed a finding of fact shall be so deemed.

IV.

ORDER

Therefore, the Court makes the following order:

a. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL will be precluded from raising the MDPA as an objection or as a defense to use, admission, disclosure or production of any documents.[17]

b. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL is precluded from contesting that Jacobs's electronically stored information (approx. 40 gigabytes) is rightfully in his possession.[18]

c. For purposes of the evidentiary hearing related to jurisdiction, SCL is precluded from calling any witnesses on its own behalf or introducing any evidence on its own behalf. SCL may object to the admission of evidence, arguments of counsel, and to testimony of witnesses during the evidentiary hearing related to jurisdiction; cross-examine witnesses during the evidentiary hearing related to jurisdiction; and, argue the application of the evidence to the law during the opening and closing arguments of the evidentiary hearing related to jurisdiction.

d. During the evidentiary hearing related to jurisdiction, the Court will adversely infer, subject to SCL's ability to rebut that inference (within the evidentiary constraints set forth in the paragraph above), that all documents not produced in conformity with this Court's September 2012 Order are adverse to SCL, would contradict SCL's denials as to personal jurisdiction, and would support Jacobs' assertion of personal jurisdiction over SCL.

---

[17] This does not prevent SCL from raising any other appropriate objection or privilege.

[18] This does not prevent SCL from raising any other appropriate objection or privilege.

e. Within 10 days of entry of this order, SCL will produce to Jacobs the documents identified as a result of a search run using the same custodians and search terms described in Exhibit 213 against the electronically stored information contained in the transferred data, or, alternatively, may reproduce copies of the electronically stored information (in a searchable format) contained in the transferred data to Plaintiff to run his own searches. The only redactions permitted will be for privilege.

f. For purposes of jurisdictional discovery, Plaintiff may, at his sole discretion and upon five judicial days written notice, retake any previously taken deposition and examine the deponent on the information produced as a result of the preceding paragraph. Plaintiff's reasonable attorney's fees and expenses as well as court reporters, videographers and interpreter expenses for retaking any deposition may be awarded upon application to the Court.

g. Within 10 days of entry of this order, SCL will make a contribution of $50,000 to the Clark County Law Foundation; $50,000 to the Legal Aid Center of Southern Nevada; $50,000 to the Clark County Law Library; $50,000 to the Sedona Conference; and $50,000 to the Nevada Bar Foundation. Proof of these contributions must be filed with the Court.

h. Reasonable attorneys' fees of Plaintiff will be awarded upon filing an appropriate motion for those fees and expenses related to Plaintiff Steven C. Jacobs' ("Jacobs") Renewed Motion for NRCP 37 Sanctions for violating this Court's September 14, 2012 sanctions order.

Dated this 6th day of March, 2015

ELIZABETH GONZALEZ
District Court Judge

Certificate of Service

I hereby certify that on or about the date filed, this document was copied through eservice or e-mail, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper person as follows:

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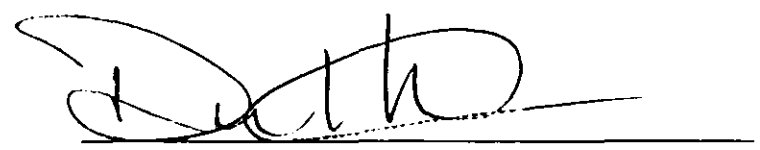

Dan Kutinac

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD., a Cayman Islands corporation,

Petitioner,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number: 67576

District Court Case Number: A627691-B

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner Sands China Ltd. ("SCL") is a Cayman Islands corporation whose stock is publicly traded on the Stock Exchange of Hong Kong Limited. Las Vegas Sands Corp. ("LVSC"), a publicly-traded Nevada corporation, owns the majority of Petitioner's stock.

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I. INTRODUCTION

A. The District Court's Sanctions Order—the Run-Up to a Jurisdictional Evidentiary Hearing on April 20, 2015

Petitioner Sands China Ltd. ("SCL") does business in Asia; it is at home in Macau where its principal place of business is located. SCL does not do business in Nevada, nor has it done so in the past. When the company was sued in Las Vegas by Plaintiff, it moved to dismiss for lack of jurisdiction, which the district court denied in 2011, holding that SCL's "pervasive contacts" with Nevada subjected it to personal jurisdiction in Las Vegas.

In August 2011, this Court granted SCL's writ petition, vacated the district court's order denying the company's motion to dismiss because the court did not specify what made up the "pervasive contacts" with Nevada, and ordered the district court to hold an evidentiary hearing and make findings of fact to determine whether SCL can be subjected to jurisdiction here. That jurisdictional evidentiary hearing is scheduled to take place on April 20, 2015 (the "April 20 hearing"), but SCL will not be permitted to participate and present its defense to jurisdiction then or ever, unless this Court grants this petition for mandamus. Here's why:

On March 6, 2015, the district court, following an evidentiary hearing on sanctions, entered its Decision and Order (the "Sanctions Order") prohibiting SCL from presenting any evidence at the April 20 hearing. Why? Because during "jurisdictional discovery," SCL redacted personal data (identity information) from documents located and produced from Macau, SCL's home jurisdiction, in compliance with Macau's Personal Data

Protection Act ("MPDPA") when it produced documents to Plaintiff in response to orders of the district court. There's more:

The district court also stated that it will draw an adverse inference at the hearing that all documents containing the redactions (which are not relevant to jurisdiction) "would contradict SCL's denials as to personal jurisdiction and would support [Plaintiff's] assertion of personal jurisdiction over SCL." Thus, SCL may not present its defense at its own jurisdictional hearing. And one more thing: The Sanctions Order requires SCL to pay $250,000 to various law-related organizations and to reimburse Plaintiff for his attorneys' fees.

The district court imposed these extraordinary sanctions, without explaining exactly why the redacted data was relevant to jurisdiction over SCL. Nor did the court dispute SCL's evidence showing that Macau's laws *required* SCL to make the redactions. Instead, the court largely adopted Plaintiff's conclusory assertions of "prejudice" and "willfulness" without providing any analysis of its own of the five factors this Court previously directed it to consider in its Order on August 7, 2014 in Case No. 62944 that allowed the sanctions hearing to proceed and resulted in the Sanctions Order that this Petition addresses.

Thus, the Sanctions Order brings us full circle 3-1/2 years after the Court reversed the district court for its failure to find facts to support its conclusion in 2011 that SCL is subject to personal jurisdiction in Nevada because of its "pervasive contacts" here.

The draconian sanctions imposed by the Sanctions Order, unless overturned by this Court, will ensure that SCL will be subject to jurisdiction ***not by evidence*** of its pervasive contacts with this state taken at

the April 20 hearing, as ordered by the Court in 2011, ***but by sanction*** for redacting personal data having no relevance to the jurisdictional issue. The Sanctions Order is a profound, clear abuse of the district court's discretion that jettisons the due process of law to which SCL and every litigant in Nevada's courts is constitutionally entitled. In order to allow this Court's review of the fundamental unfairness of the procedural status of this matter, SCL also requests postponement of the scheduled April 20, 2015 jurisdictional hearing before the district court.

B. This Court's Precedents Support Writ Review.

"This court has original jurisdiction to issue writs of prohibition and mandamus" and "also all writs necessary or proper to the complete exercise of its appellate jurisdiction." Nev. Const. Art. 6, § 4. Mandamus is the appropriate, and indeed the only, avenue available to SCL to challenge the district court's imposition of sanctions. *See Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 5 P.3d 569 (2000) (Court lacked appellate jurisdiction to review contempt order); *City of Sparks v. Second Jud. Dist.*, 112 Nev. 952, 954, 920 P.2d 1014, 1015 (1996) (a writ of mandamus will lie to control a discretionary act where the district court's "discretion is abused or is exercised arbitrarily or capriciously") (overturning order imposing monetary sanction).

II. ISSUES PRESENTED BY THIS WRIT PETITION

(1) Whether the district court abused its discretion by concluding that Plaintiff had proven that SCL's redactions caused him "severe

prejudice" without determining whether the redacted data was even relevant to the jurisdictional issues before the court.

(2) Whether the district court abused its discretion by not properly considering the factors that this Court directed it to evaluate in determining what, if any, sanctions should be imposed on SCL.

(3) Whether the district court violated Due Process by imposing sanctions that (a) were grossly disproportionate to the nature of the alleged violation; and (b) deprived SCL of the opportunity to present any defense in the April 20 jurisdictional hearing.

III. STATEMENT OF FACTS

A. Plaintiff's Claims.

Plaintiff Steven C. Jacobs was formerly the CEO of SCL, which operates gaming, hotel and other business ventures in Macau through its wholly-owned subsidiary, Venetian Macau Ltd. ("VML"). March 6, 2015 Order ("March 6 Order"), PA43793 ¶¶ 1-3. SCL's stock is publicly traded on the Hong Kong Stock Exchange. *Id.* LVSC is SCL's majority shareholder. *Id.*

Jacobs was terminated as SCL's CEO in July 2010. *Id.* Three months later, he filed this lawsuit, claiming that LVSC had hired and then wrongfully terminated him. *Id.* Jacobs asserted only one claim against SCL, alleging that it breached a contractual obligation by refusing to honor Jacobs' attempt to exercise options to purchase 2.5 million shares of SCL

stock.[1] The option agreement (which was offered to Jacobs in China) provides that it is governed by Hong Kong law.

In December 2010, SCL moved to dismiss on the ground that SCL does business exclusively outside the United States and thus is not subject to the jurisdiction of the Nevada courts. After the district court denied the motion, SCL sought an extraordinary writ in this Court. *Id.* ¶¶ 4-5.

On August 26, 2011, this Court issued its Order Granting the Petition for Mandamus. PA234-37. In its Order, the Court directed the district court "to revisit the issue of personal jurisdiction" over SCL "by holding an evidentiary hearing and issuing findings regarding general jurisdiction," while staying all aspects of the underlying action "except for matters relating to a determination of personal jurisdiction." *Id.*

B. The District Court Allows Plaintiff to Take Jurisdictional Discovery.

On remand, the district court issued an order allowing Plaintiff to pursue jurisdictional discovery, including the depositions of four high-ranking LVSC executives (Sheldon Adelson, Michael Leven, Robert Goldstein, and Kenneth Kay) and document production in 11 broad categories of documents. PA539-44.

In December 2011, Plaintiff issued 24 Requests for Production of Documents ("RFPs") to SCL and LVSC. On March 22, 2012, the district court entered a Protective Order that expressly allowed the parties to redact information to comply with the MPDPA. PA547**,** ¶¶ 4(a), 7.

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[1] The district court recently allowed Jacobs to file a Third Amended Complaint, which adds conspiracy and defamation claims against SCL.

Defendants thereafter began producing responsive documents, most of which focused on LVSC's interactions with SCL.

C. The Discovery Obligations Imposed on SCL Conflict with Macau's Data Protection Act.

SCL did not immediately produce documents raising Macau data privacy issues in response to Plaintiff's RFPs because it was trying to persuade Macau's Office of Personal Data Protection (the "OPDP") to permit the transfer of documents containing personal data to the United States. PA4396 ¶¶ 10, 12; PA15911-30. SCL's subsidiary, VML, had initiated these discussions a year earlier, in May 2011, shortly before SCL alerted the district court to the potential impediment to document production posed by the MPDPA. PA4396 ¶ 9.

Prior to September 2012, SCL's General Counsel personally met with the OPDP on about a dozen occasions. PA4143:3-12. He testified that he obtained advice from Macanese lawyers and approached the OPDP "to see how we could overcome what I perceived to be a potential problem in delivering documents which had personal data." PA4114:21-23. Macanese officials told the General Counsel that "'under no circumstances could data of a personal nature be transmitted to Las Vegas in accordance with any requirement imposed on SCL'" without either the consent of the data subject or OPDP's approval. PA4115:1-18.

VML made several attempts to secure the OPDP's approval, arguing that it, as the data controller, had a legitimate reason for processing personal data to search for responsive documents and for transferring that data outside of Macau. PA4143:3-12; PA4396 ¶ 12 . It also suggested that,

insofar as this case is concerned, the interests of the data subjects could be protected through a protective order. PA15928. The OPDP rejected that position, and on August 8, 2012 refused to allow VML even to search data containing personal information in order to respond to the RFPs issued to SCL. PA15911-30.

D. The District Court's September 14, 2012 Order.

In June 2012, Defendants disclosed to the court that in 2010 LVSC had transferred over 100,000 emails and other ESI for which Plaintiff was the custodian from Macau to the United States for document preservation purposes. PA587:7-8. Defendants explained that the transfer was made "in error"—that is, without considering the ramifications of the MPDPA—and that it had not previously been disclosed because Defendants were concerned that producing the documents might constitute additional violations of the MPDPA. PA587:8-13. However, after meeting with OPDP, Defendants concluded that Macanese law did not preclude production of documents that had previously been transferred out of the country. PA587:6-16. Defendants promised to search all of the transferred data for responsive documents. PA587.

After Defendants disclosed the transfer of Plaintiff's ESI to the U.S., the district court *sua sponte* convened the first sanctions hearing from September 10-12, 2012. The hearing was to focus on whether the outside lawyers appearing before the district court had violated their duty of candor in not revealing the existence of the transferred data prior to the June disclosure. At the conclusion of the hearing, the court issued an order making no findings as to the outside lawyers, but shifting its focus to a

finding that the Defendants had "concealed" the transfer from the court prior to voluntarily disclosing it on June 27, 2012. PA1364 ¶ 30.

Based on this finding, the court sanctioned Defendants by, among other things, precluding them "[f]or purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction . . . from raising the MPDPA as an objection or defense to admission, disclosure or production of any documents." PA1367 ¶ b.

E. Macau Insists on Strict Compliance with its Data Privacy Act.

After Defendants publicly disclosed the 2010 transfer of Plaintiff's data from Macau to the United States, the OPDP initiated an investigation to determine whether that transfer violated the MPDPA. PA4633:13-4634:12; PA4397 ¶ 14. On August 2, 2012, Macau's Secretary for Economy and Finance announced that if the government found "any violation or suspected breach" of Macau's data privacy laws, government officials "will take appropriate action ***with no tolerance***. Gaming enterprises should pay close attention to and comply with relevant laws and regulations." PA4636:18-25 (emphasis added).

On August 8, 2012, the OPDP rejected SCL's request to transfer data to the United States to respond to document requests in this case and other matters. PA15911-30. The OPDP stated that SCL did not have "the legitimacy" under the MPDPA even to process the data, let alone to transfer it outside of Macau. Thus, the OPDP barred SCL from even searching relevant data to determine whether there were responsive documents in Macau. PA15914. The OPDP also warned SCL in writing that consents to data transfers had to be "freely" given, "specific" and "informed" and that,

particularly insofar as SCL's employees were concerned, it was important to ensure that the data subject was not "influenced by his or her employer" and was able to freely make a choice to consent or not. PA15921.

In October 2012, SCL retained new U.S. counsel, who travelled to Macau to meet with the OPDP in an attempt to convince the agency to reconsider its position. PA4144:13-18; PA1433:9-14. Following that meeting, the OPDP agreed to allow VML to search for documents responsive to Plaintiff's jurisdictional RFPs, so long as Macanese lawyers reviewed the documents identified as responsive. PA4109:13-22. Beginning at the end of November 2012 the deputy director of the OPDP advised SCL monthly that the company was not to transmit data out of Macau unless it had the data subject's consent. PA4115:1-18.

F. The District Court's December 18, 2012 Ruling.

On November 21, 2012, Plaintiff filed a Rule 37 motion claiming that SCL should be sanctioned because it had not yet reviewed the electronically-stored information in Macau. In response, SCL filed a motion for a protective order, stating that the OPDP had authorized the review of documents in Macau but had stated that Macanese lawyers would either have to redact the data or get consents. PA1433:9-24. SCL asked the court to allow it to limit its search to documents for which Plaintiff was the custodian, on the ground (among others) that Plaintiff already had the documents relevant to his jurisdictional case and that fundamental principles of fairness and proportionality required the court to limit SCL's production obligations.

On December 18, 2012, the district court denied Plaintiff's motion for sanctions on the ground that it had ***never*** entered an order requiring SCL to produce specific documents. PA1690:24-1691:1; 1686:20**.** The district court also denied SCL's motion for a protective order and ordered SCL to immediately produce all documents "relevant to jurisdictional discovery," giving it only 17 days, including Christmas and New Year's, to accomplish that task. PA1686:12-18. The district court did ***not*** order SCL to use Plaintiff's list of merits custodians, but rather left it to SCL to decide whose documents should be searched for jurisdiction purposes. At the same time, the district court in response to counsel's question stated "I didn't say you couldn't have redactions." PA43827 ¶ 64.

G. SCL's Response to the December 18, 2012 Ruling.

After the district court ruled, SCL immediately contacted FTI Consulting ("FTI") to handle the technical work in Macau. PA4420:9-12). FTI sent representatives from the United States and Hong Kong to set up a technology processing center at the Venetian Macau and built a dedicated server to collect, process, and search data. PA4422:3-15, PA4476:16-19. Once potentially relevant documents were identified through the use of search terms, Macanese contract lawyers reviewed the documents for responsiveness and then redacted all personal information before the documents were transferred to the United States for further processing and production. PA4508:6-17.

Between January 2 and 4, 2013, SCL produced 4,707 documents from Macau consisting of about 27,000 pages, most of which contained personal data redactions. PA15876. However, SCL also undertook extensive efforts

to locate duplicates of the documents produced from Macau in the United States, so those documents could be produced without MPDPA redactions.[2] PA43814 ¶ 93. This additional work increased SCL's costs to approximately $2.4 million. PA4438:11-13.

H. The District Court's March 27, 2013 Ruling.

At the district court's suggestion, PA1735:23-24, Plaintiff filed a renewed motion for sanctions on February 8, 2013 claiming, *inter alia*, that SCL had violated the court's December 18, 2012 Order and its September 14, 2012 Order by producing documents with MPDPA redactions.

In opposing the motion, SCL argued that it had not violated the court's prior orders, and cited the extensive steps taken by Defendants to mitigate the effects of the personal data redactions. PA1929-46. SCL explained that (1) LVSC had located 2100 duplicates of the redacted documents in the U.S. and produced them in unredacted form; and (2) SCL had created a "Redaction Log" that identified the entity that employed the individuals whose personal data was redacted. SCL also stressed that if Plaintiff identified any specific redacted documents that he believed could

[2] In particular, SCL's vendor, FTI, transferred the hash code values of the documents located in Macau (which do not contain personal data) to the United States and searched LVSC's documents for duplicates. PA4428:21-4429:4. FTI also transferred the documents it had collected in the United States for LVSC to Macau and performed 11 separate search iterations in an attempt to locate documents in the LVSC database that were duplicates of the documents that SCL had located in Macau. PA4432:8-19, 4436:2-20. FTI was able to locate thousands of duplicate documents in the U.S., which were subsequently produced without MPDPA redactions in a series of replacement productions. (*Id*.).

be relevant to the jurisdictional issue, SCL would conduct additional searches for unredacted copies of such documents in the U.S. or attempt to obtain the consents of the specific individuals whose information was redacted. PA1941:15-1942:2; PA43717. Plaintiff never responded to SCL's offer.

On March 27, 2013, the Court issued an order finding that SCL had violated its September 14, 2012 order by redacting personal data from its January 4, 2013 production based on the MPDPA. PA2258:14-18. Although the order did not expressly prohibit redactions (and SCL did not understand the order to prohibit redactions of documents then in Macau, *see* PA4658:5-22; PA1689:8-11), the district court concluded that the redactions constituted a violation of its September 14, 2012 order. Accordingly, the court set a date for a hearing to "determine the degree of willfulness related to those redactions and the prejudice, if any, suffered by Jacobs." PA2258:14-18. The court also ordered SCL to search and produce by April 12, 2013 the documents of the 20 custodians that Plaintiff had identified for *merits* discovery. Finally, the court precluded Defendants from "redacting or withholding documents based upon the MPDPA." PA2258:19-59:3.

I. Defendants Seek Relief in This Court.

On April 8, 2013 Defendants filed for a Writ of Prohibition or Mandamus in this Court. While that writ petition was pending, the district court stayed its March 27, 2013 Order to the extent that it required the production of additional documents from Macau and postponed the planned sanctions hearing. On August 7, 2014, this Court denied

Defendants' Petition on the ground that its intervention would be premature before the district court decided if, or the extent to which sanctions, if any, were warranted. August 7, 2014 Order in Nevada Supreme Court Case No. 62944, on file herein, at 11-12. This Court then specified the factors that the district court must consider in determining "what sanctions, if any, are appropriate." *Id*. at 7-8.

J. SCL Seeks Relief Based on *Daimler AG*.

In January 2014, the U.S. Supreme Court issued a major ruling dealing with general jurisdiction. In *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014), the Court held that the key issue in determining general jurisdiction is not where the corporation "does business," but where it is "at home"—a standard that typically will be met "***only*** where [the corporation] is incorporated or has its principal place of business.'" *Viega GmbH v. Eighth Judicial Dist.*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1158 (2014 (Case No. 59976)) (emphasis added).

Based on *Daimler AG*, SCL filed a motion to recall this Court's August 26, 2011 mandate directing the district court to hold an evidentiary hearing on the issue of personal jurisdiction. *See* January 28, 2014 Mot. To Recall Mandate in Nevada Supreme Court Case No. 58294, on file herein. SCL argued that *Daimler AG* precludes the exercise of general jurisdiction over SCL in Nevada because SCL is a Cayman Islands corporation with its principal place of business in Macau. This Court denied SCL's motion on May 19, 2014, on the ground that "even under *Daimler AG*," the district court needed to make certain factual findings to resolve the jurisdictional

issue. *See* May 19, 2014 Order in Nevada Supreme Court Case No. 58294, on file herein.

On June 26, 2014, SCL filed a motion for summary judgment on jurisdiction, arguing that *Daimler AG* demonstrates that plaintiff's theories of general jurisdiction are no longer legally viable. PA2467-2478. In response to that motion, plaintiff argued, for the first time, that SCL's principal place of business was in Nevada because Nevada was supposedly SCL's "nerve center," where all key decisions are made. PA2502-2504. Plaintiff cross-moved for summary judgment. The district court denied both motions without any analysis of the legal issues the parties had raised, on the ground that unspecified issues of fact required an evidentiary hearing.

In October 2014, SCL raised *Daimler AG* again in a motion to reconsider the previously stayed portion of the district court's March 27, 2013 Order requiring SCL to produce unredacted documents from Macau. In its motion, SCL explained that *Daimler AG* repudiated at least two of Plaintiff's general jurisdiction theories. First, SCL could not be found to be "at home" in Nevada merely based on its purchase of goods and services from entities located in Nevada. *See Daimler AG*, 134 S. Ct. at 757. Second, SCL could not be sued in Nevada on the theory that LVSC acts as SCL's agent because *Daimler* specifically rejected that theory. 134 S. Ct. at 759-60.

SCL explained that in light of *Daimler* many if not most of Plaintiff's RFPs were utterly irrelevant, and that, in any event, LVSC's production of thousands of unredacted documents from Las Vegas provided the jurisdictional information that Plaintiff had requested. PA2745-50. SCL also noted that it had secured MPDPA consents from Messrs. Adelson,

Leven, Goldstein and Kay—the four LVSC executives Plaintiff had deposed—and that their names had been "unredacted" from the Macau documents. PA2750. Finally, SCL noted that it had asked Plaintiff to consent to have his personal data unredacted to facilitate discovery to him, but he refused to do so. PA2743.

The district court denied SCL's motion to reconsider. SCL thereafter produced the remaining documents from Macau, with personal data redacted except for the data of the four individuals who had given their consent.

Thus, at the time of the second sanctions hearing last month, SCL had produced over 17,500 documents—including approximately 9,600 documents containing no MPDPA redactions—in response to jurisdictional discovery. *See* PA15876; PA3066-3889; PA43505:1-6. In total, Defendants had produced over 41,000 documents consisting of more than 290,000 pages. *See id*. In addition, Defendants had made four of their executives available for deposition on the issue of jurisdiction. PA539. Finally, Plaintiff had in his possession approximately 40 gigabytes of data that he had taken from Macau following his termination. PA43828 ¶ "b."[3]

K. The Second Sanctions Hearing.

From February 29 to March 2, 2015, the district court conducted a second sanctions hearing in which SCL presented evidence addressing each of the factors identified in this Court's August 7, 2014 Order.

[3] By referencing the district court's order, SCL does not waive claims of privilege, and expressly reserves all rights with respect to the documents.

1. The Evidence Presented at the Hearing.

At the Hearing, Plaintiff called LVSC's Executive Vice President and Global General Counsel, who described the investigations conducted by U.S. lawyers in Macau and the access they had to Macanese documents. PA4014-4061. In an attempt to support his prejudice claim, Plaintiff cited only 27 redacted documents out of the more than 7,900 redacted documents produced by SCL. *See* PA4711-12, 4713-15, 4716-18, 4719, 4720, 4721-22, 4724-27, 4728-33, 4735-36, 4737, 4738-39, 4740-44, 42850-55, 42853, 42854-55, 42857, 42858, 42860-66, 42868-73, 42877-42877-A, 42878-42879-B, 42880, 42881-83, 42885-93, 42895-96, 42899, and 42901-02. Plaintiff provided no explanation of how the redacted personal data in those documents (or in any others) could be relevant to the jurisdictional issue.

Through videoconferencing, SCL presented the testimony of its General Counsel (from Macau and Hong Kong) and its Chief Financial Officer (from Macau). PA4106, 15555. SCL's General Counsel testified that he made the decision to redact the personal data in the Macau documents following a series of meetings with the OPDP. PA4109:13-22. As a result of those meetings, the General Counsel concluded that he had "no choice" but to redact personal information from the documents. PA4110:8-18. He explained that in light of the "very strict approach" taken by the OPDP, a decision not to redact the data would have been "irresponsible for a public company" and "contrary to my fiduciary obligations to protect the company and its shareholders." *Id*.; PA4636:14-24. He also noted that the OPDP had sanctioned VML in April 2013 for the 2010 transfer of Plaintiff's ESI to the United States. He added that the OPDP could impose additional fines for subsequent violations (up to 80,000 Macau dollars per event) and

that corporate officers and directors could be subject to imprisonment of up to two years. PA4118:22-4119: 2.

SCL also presented the testimony of a representative of FTI, the e-discovery vendor retained by Defendants to search for and produce documents. PA4408. The FTI representative testified to the processes used to search for responsive documents. PA4408-4451.

2. The District Court's March 6, 2015 Order

On March 6, 2015, the district court issued an order finding that SCL had acted willfully and intentionally "to prevent the Plaintiff access to information discoverable for the jurisdictional proceeding." PA43827 ¶ "a." The court further found that Plaintiff had been "severely prejudiced" because he had been denied access to the redacted information, could not determine whether he "has received all of the discovery to which he is entitled," and had suffered delays in the litigation. PA43823 ¶ 140.

Based on these findings, the district court issued its March 6, 2015 Order precluding SCL from presenting any testimony or evidence at the jurisdictional hearing. PA43828 ¶ "c." In the Order, the court stated that it would also draw a rebuttable adverse inference (that SCL is prohibited from countering by testimony or documents) that documents with MPDPA redactions would support Plaintiff's jurisdictional theories (whatever they might be). PA43828 ¶ "d." Finally, the court ordered SCL to (1) pay a total of $250,000 to various law-related organizations; (2) conduct certain searches of Macau data that had been transferred to the U.S.; and (3) pay Plaintiffs' attorneys fees. PA43829.

IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

The district court's decision imposing unprecedented sanctions of exceptional severity was an abuse of discretion warranting this Court's review. To appreciate the magnitude of the district court's errors, it is first necessary to review five critical facts that provide the context for the issues presented in this Petition.

First, under this Court's mandate**,** the sole issue before the district court was whether it has jurisdiction over a foreign corporation doing business in Macau. Under controlling law, this question generally involves a simple determination of where the foreign corporation is incorporated or where it maintains its principal place of business, which needs little discovery. Yet, in this case, the district court required both SCL and LVSC to provide discovery on a massive scale that is unprecedented and unnecessary in jurisdictional proceedings, including multiple depositions, the production of thousands of documents, and the creation of a special "Relevancy Log" to identify all documents that SCL withheld on grounds that they were irrelevant to jurisdiction. The resulting log is 37,000 pages. PA5263-15465, PA15951-42828.

Second, the alleged violation in this case differs in two dispositive respects from the violations in virtually every other case involving major discovery sanctions: (1) the alleged violation here consists of *redactions,* not a wholesale refusal to ***produce*** documents; and (2) the district court made ***no finding*** that the redacted data (which consists primarily of the names of Macanese residents) was in any respect relevant to the jurisdictional issue. The case thus presents a stunning contrast between the nature of the

alleged discovery violation and the disproportionately punitive sanctions imposed by the district court.

Third, SCL went to great lengths and expense to provide alternative sources for the redacted data in an effort to accommodate its discovery obligations within the framework of the MPDPA, the law of its home jurisdiction. Among other things, SCL requested a search in the U.S. for unredacted copies of the Macau redacted documents, and it obtained "consents" from LVSC's key executives to waive their rights under the MPDPA so that their names could be "unredacted" from the Macanese documents. SCL also asked Plaintiff to provide a similar waiver, *but he refused to do so*—thus invoking (ironically) his own rights under the MPDPA in a transparent effort to manufacture prejudice.

Fourth, the district court found that SCL redacted the personal data with an intent to prevent Plaintiff from obtaining "discoverable information." Yet nowhere in its Order did the district court provide *any* factual support for this critical finding. Nor did the court explain how this finding could be reconciled with (1) the undisputed evidence showing that the Macanese government *required* SCL to make the redactions; and (2) SCL's extensive efforts to find alternative ways to provide Plaintiff with the redacted information (such as searching for duplicate copies in the U.S. and securing "consents" from key executives). Finally, the court, in divining SCL's "intent," wholly ignored the compelling fact that SCL had absolutely ***no motive*** to redact the personal information for litigation advantage because the redacted data had no evidentiary value at all.

Fifth, the district court's Sanctions Order denies due process of law to SCL. The Order bars SCL from introducing any witnesses or evidence in

the jurisdictional evidentiary hearing the Court ordered the district court to hold 3-1/2 years ago. As a result, the Order prohibits SCL from affirmatively defending itself at its own jurisdictional hearing! The Order also gives the district court virtually unbounded discretion in deciding the jurisdictional issue, permitting it to draw the non-specific inference that all of the redacted documents "*would contradict SCL's denials as to personal jurisdiction and would support Jacobs' assertions as to personal jurisdiction*." (emphasis added). By reducing the jurisdictional hearing to a show trial in which SCL can present no evidence, these provisions violate both due process and NRCP 37.

Based on these facts—and for the reasons set forth below—the district court's decision was an abuse of discretion that should be vacated.

A. The District Court's Sanctions Order Rests on Both Legal and Factual Errors

In its August 7, 2014 Order, this Court identified the following five factors as relevant in determining "what sanctions, if any," should be imposed in a case involving an international data privacy statute:

1. the importance to the investigation or litigation of the documents or other information requested;
2. the degree of specificity of the request;
3. whether the information originated in the United States;
4. the availability of alternative means of securing the information; and
5. the extent to which noncompliance with the request would undermine important interests of the United States or compliance with the request would

> undermine importance interests of the state where the information is located.

(Aug. 7, 2014 Order, at 7-8). *Id.* at 7-8 (quoting the Restatement (Third) of Foreign Relations Law § 442(1)(c) (1987)). Under settled law, these factors require a court to engage in a "particularized analysis" that includes a careful balancing of competing interests and sets forth the specific facts supporting each of its conclusions. *Societe Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522, 543-44 n.29 (1987). In this case, the district court failed to conduct the requisite analysis in dealing with each of the five factors.

1. The District Court Made No Factual Findings that the Redacted Personal Data Was "Important" to the Jurisdictional Issue

The first factor cited by this Court—the "importance" of the withheld information—requires an assessment of two issues: (1) whether the evidence sought is "cumulative of existing evidence," *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1475 (9th Cir. 1992); and (2) whether the evidence is "essential" to the proof of Plaintiff's case. *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 193 (E.D.N.Y. 2010).

In this case, the district court made ***no detailed factual findings***—and provided no "***particularized analysis***"—on either issue. In addressing the "importance" of the redactions, the court cited no specific facts showing that the redacted information was "essential" to Plaintiff's ability to prove his jurisdictional claims. *See* PA43819 ¶ 118. Indeed, the court did not identify a single jurisdictional issue as to which the redacted data would be marginally relevant, much less "essential" or "important." *Id.* Instead, the

court relied entirely on conclusory assertions drawn from Plaintiff's proposed findings that likewise are unsupported by reason or specific facts. *See id.*

For example, the district court asserted that the redacted data was "important" to Plaintiff's ability to "test the adequacy of the search results," without explaining why the redactions would have this effect. PA43819 ¶ 18. Similarly, the court asserted that Plaintiff could not prove his jurisdictional case without knowing the "identities" of the redacted names in the Macau documents, but it provided no explanation as to why. PA43821 ¶ 127. Likewise, the court asserted that the personal redactions "effectively destroyed the evidentiary value" of the redacted documents, but it provided no explanation—and cited no examples—to support the claim. PA43816 ¶ 102, 43817 ¶ 108, 43821 ¶ 127.

With respect to the "non-cumulative" issue, the district court made *no finding of any kind* showing that the redacted data was non-cumulative to all the other evidence produced by Defendants, or the 40 megabytes of data that Plaintiff took with him from Macau. Indeed, the Order did not even describe the enormous amount of jurisdictional discovery produced by Defendants, much less explain why the redacted data was not cumulative in light of that enormous production.

Three characteristics of the redacted documents explain why the court was unable to make any findings showing that the redacted documents are "important:": (1) with rare exceptions, the redactions do not obscure or eliminate the central meaning of the documents; (2) even if the redactions do obscure the meaning, an unredacted copy provided by LVSC

is often available;[4] and (3) in most if not all of the redacted documents, the contents reflect SCL personnel discussing mundane topics, such as the logistics of Board meetings in Macau. *See*, *e.g.*, PA42853 (discussing the location of an event); PA42877 (list of purchase orders of gaming equipment).

Thus, at the sanctions hearing, Plaintiff failed to present *any evidence* showing that the redacted data was relevant to any jurisdictional issue, even though he bore the burden of proof to show "prejudice." To support his request for sanctions, Plaintiff presented *only 27 documents* (out of a total SCL production of more than 7,900 redacted documents) which he claimed were either "unintelligible" or otherwise not usable. *See* PA4711-12, 4713-15, 4716-18, 4719, 4720, 4721-22, 4724-27, 4728-33, 4735-36, 4737, 4738-39, 4740-44, 42850-55, 42853, 42854-55, 42857, 42858, 42860-66, 42868-73, 42877-42877-A, 42878-42879-B, 42880, 42881-83, 42885-93, 42895-96, 42899, and 42901-02. Yet even as to these documents Plaintiff could make no showing of prejudice. In the case of 15 of the 27 exhibits, LVSC had provided unredacted copies of the same documents (s*ee* documents

[4] *Compare* PA4738-39 (Pl.'s Ex. 77) *with* PA42904-06 (SCL's Ex. 370); PA4719 (Pl.'s Ex. 28) *with* PA42908 (SCL's 372); PA4721-22 (Pl.'s Ex. 38) *with* PA42909-10 (SCL's 373); PA4735-36 (Pl.'s Ex. 62) *with* PA42911-12 (SCL's 374); PA42850-51 (SCL's Ex. 355) *with* PA42852-53 (355A); PA42852 (SCL's Ex. 357) *with* PA42856 (357A); PA42860-66 (SCL's Ex. 360) *with* PA42867 (360A); PA42868-73 (SCL's Ex. 361) *with* PA42874-42876-D (361A); PA42881-83 (SCL's Ex. 365) *with* PA42884-42884-B (365A); PA42885-93 (SCL's Ex. 366) *with* PA42894-42894-H (366A); PA42895-96 (SCL's Ex. 367) *with* PA42897-42898-A (367A); PA42900 (SCL's Ex. 368) *with* PA42900 (368A); and PA42901-02 (SCL's Ex. 369) *with* PA42903-42903-A (369A). These documents are also demonstrated side-by-side in SCL's closing argument presentation at PA43612-43617, PA43625, 43628-37, 43659-77, and 43744-89.

identified in n.4, *supra*), while four other exhibits pre-date SCL's corporate existence (s*ee* PA42853, PA42868-73, 42877-877-A, PA42901-02, and PA43638-40), and the remaining eight exhibits have irrelevant content, such as venues for lunch and a list of gaming equipment purchase orders (*see*, e.g., PA43645-6, 4737).

The following pages display one of the 27 supposedly "prejudicial" documents *cited by Plaintiff* and the unredacted version provided by Defendants.

REDACTED

Retention of Persona Law Firm

From:
Personal Redaction @venetian.com>

To:
"Personal Redaction @lasvegassands.com>, "Personal, "Personal @glprop.com>, "Personal Redaction @venetian.com.mo>, Personal "Per @pacificbasin.com>, "Personal Redaction @kcs.com>, Person @pacific-alliance.com, "Personal " <Personal @venetian.com>

Cc:
"Personal Redaction @lasvegassands.com>, "Personal Redaction @venetian.com.mo>

Date:
Thu, 02 Sep 2010 11:50:45 +0800

Attachments:
Written_Resolution_Appointment_Macao_Counsel.txt (2.68 kB)

Dear Board of Directors,

Please find attached a written resolution authorizing the Company to enter into an exclusive agreement with Personal *Law Firm for the provision of legal services in Macao.*

In consideration for the legal services provided, the Company will pay approximately US$1.3 million per year until terminated by either party providing 60 days written notice.

The authorization guidelines currently being discussed by the Board require the Company to seek Board approval for contracts exceeding US$1 million. I would therefore be grateful if you could review the attached resolution and sign where applicable. I apologise for the short notice, however as we wish to sign this Agreement tomorrow, I would appreciate a signed copy being scanned and emailed to me cc Personal *@venetina.com.mo or by fax to* Personal

Please send the original to:

Personal Redaction

Should you have any questions, please do not hesitate to contact me.

Personal Redaction

UNREDACTED

Retention of Alves Law Firm

From: "Siegel, Irwin" <irwin.siegel@venetian.com>

To: "Adelson, Sheldon" <adelson@lasvegassands.com>, "Leven, Michael" <mike.leven@lasvegassands.com>, "Schwartz, Jeffrey" <jschwartz@glprop.com>, "Toh, Benjamin" <benjamin.toh@venetian.com.mo>, David Turnbull <dmt@pacificbasin.com>, "Iain Bruce (KCS HK)" <iain.bruce@kcs.com>, rchiang@pacific-alliance.com, "Siegel, Irwin" <irwin.siegel@venetian.com>

Cc: "Hyman, Gayle" <gayle.hyman@lasvegassands.com>, "Tracy, Edward" <edward.tracy@venetian.com.mo>

Date: Thu, 02 Sep 2010 03:50:45 +0000

Attachments: Written_Resolution_Appointment_Macao_Counsel.txt (2.68 kB)

Dear Board of Directors,

Please find attached a written resolution authorizing the Company to enter into an exclusive agreement with Leonel Alves' Law Firm for the provision of legal services in Macao.

In consideration for the legal services provided, the Company will pay approximately US$1.3 million per year until terminated by either party providing 60 days written notice.

The authorization guidelines currently being discussed by the Board require the Company to seek Board approval for contracts exceeding US$1 million. I would therefore be grateful if you could review the attached resolution and sign where applicable. I apologise for the short notice, however as we wish to sign this Agreement tomorrow, I would appreciate a signed copy being scanned and emailed to me cc anne.salt@venetina.com.mo or by fax to +853 2888 33 81

Please send the original to:

The Venetian Macao Resort Hotel
Legal Department
Executive Offices - L2
Estrada da Baía de N. Senhora da Esperança, s/n
Taipa
Macau
(Attn: Ms. Anne Salt)

Should you have any questions, please do not hesitate to contact me.

Irwin A. Siegel
Macau Cell+853 6280 8000
Macau Office +853 8118 2038
Cell (404) 272-1822
Home (404) 467-9701
NC (828) 526-1793

This failure of proof reflects this inescapable fact: the personal data redacted from the Macau documents has *no jurisdictional significance at all.* Plaintiff's jurisdictional claims focus on Las Vegas as the alleged "nerve center" for SCL's operations. PA2503:1-4. To support this conjured theory, Plaintiff claims that the control of SCL's business in 2010 resided in Las Vegas, where LVSC executives allegedly made key decisions for SCL, including the decision to terminate Plaintiff. PA2501:16-19. Under this theory, the documents relevant to his jurisdictional claim would reside in Las Vegas—the alleged "nerve center," for SCL's operations and the home of the LVSC executives who allegedly masterminded SCL's affairs.

Thus, any personal data redacted from documents in Macau would not be relevant to Plaintiff's "Las Vegas-centered" jurisdictional claims. Therefore, the names, addresses and related personal identification information redacted from the *Macau* documents could not assist Plaintiff in proving that *Las Vegas* was the "nerve center" for SCL's Macau operations, and that the LVSC executives controlled SCL's operations, all of which the district court failed to consider.

Even if the SCL redactions could be viewed as marginally relevant, the redacted data is plainly cumulative of the more than 24,000 unredacted documents that LVSC produced in response to the *same* discovery requests—a production that *Plaintiff never claimed was inadequate.* This production included (among many other documents):

1. minutes and other records of SCL board meetings;
2. travel records of LVSC executives who attended the SCL board meetings in Hong Kong and Macau;
3. records of LVSC executives who served as acting executives for (or provided other services to) SCL;

4. e-mails and other communications among LVSC personnel and SCL personnel; and

5. contracts, agreements and other documents relating to the relationship between LVSC and SCL.

PA3473-3889. LVSC also submitted for deposition the four LVSC executives who allegedly "directed" SCL's affairs from Las Vegas.

In addition, SCL undertook what even the district court recognized were "extensive efforts" to locate and produce unredacted copies of the Macau documents in the U.S. PA43814 ¶ 93. SCL also provided Plaintiff with a "Redaction Log" that (among other things) identified the employer of each individual whose name SCL had redacted in the Macau documents. PA4225-4387, 4750-4751-5262. SCL also obtained "consents" from the four key LVSC executives to "unredact" their names from any documents originating in Macau—thus ensuring that the names of the executives who allegedly controlled SCL from Nevada were unredacted in *all* of the responsive documents produced by LVSC and SCL. PA43815 ¶ 95; PA3890-3893. Finally, SCL offered to conduct more searches for duplicate documents or seek specific consents for any documents Plaintiff identified as being important to his jurisdiction theories–but Plaintiff never responded to the offer.

In total, LVSC produced more than 24,000 responsive documents, and SCL produced more than 17,500 responsive documents, with approximately 7,900 of those documents containing redactions. PA43814-43815 ¶¶ 92-96. This enormous volume of discovery provided details on virtually every aspect of the SCL-LVSC relationship that could be even remotely relevant to Plaintiff's jurisdictional theories, including theories

that are no longer viable under *Daimler*. In light of this massive production, the redacted personal data in the Macau documents was plainly cumulative of evidence Plaintiff already received from Defendants and of the 40 gigabytes of data he had taken from Macau. The redactions are, therefore, inconsequential.

Thus, the facts of this case sharply contrast to the facts of *Richmark* and the other sanctions cases in which the courts have found the withheld information to be "important" to the litigation. In this case, the withheld information consisted only of redacted personal data, not entire documents. In addition, the redactions in this case were not relevant to Plaintiff's "Las Vegas-centered" jurisdictional claims, but even if they were, the redacted data was plainly cumulative of the extensive jurisdictional evidence produced by Defendants. Finally, in this case, unlike *Richmark* and the others, the district court made **no detailed factual findings**—and provided **no "particularized analysis**"—showing how the redacted personal data could relate to any jurisdictional issue, or why it was "important" to Plaintiff's jurisdictional claims.

For these reasons, the district court's Order should be vacated.

2. The Jurisdictional Discovery Was Broad and Unreasonably Burdensome

The second factor this Court ordered the district court to consider focuses on the "specificity" of the discovery requests and "how burdensome" the requests are. *Richmark*, 959 F.2d at 1475. This inquiry reflects the principle that "[g]eneralized searches for information" should be discouraged if a foreign law prohibits the disclosure of the information.

Richmark, 959 F.2d at 1475. This principle applies with special force to jurisdictional proceedings which, as the U.S. Supreme Court has noted, should not require "much in the way of discovery." *Daimler*, 134 S. Ct. at 762 n. 20.

In this case, the district court concluded that Plaintiff's discovery requests were "specific"—and therefore not unduly burdensome—because the court previously had reviewed and approved the requests. PA43819 ¶ 119. But as shown below, the mere fact that the court previously approved the requests does not establish either their specificity or diminish the unreasonable burden they imposed. Indeed, in this case, the district court issued two exceptionally burdensome orders governing jurisdictional discovery.

First, the district court issued an order permitting Plaintiff to conduct jurisdictional discovery on 11 broad categories of documents. PA539. Plaintiff thereafter served *both* LVSC *and* SCL with 24 Requests for Production ("RFPs"). The RFPs called for documents relating not only to the SCL Board and LVSC executives, but also to such far-ranging subjects as SCL's business dealings with Nevada companies, SCL's audit committee meeting minutes, SCL's initial public offering, and the financing analyses for various SCL projects in Macau. PA3058, 3060. The court also permitted Plaintiff to take the depositions of four senior LVSC executives (Messrs. Adelson, Leven, Goldstein and Kay). PA540 ¶¶ 1-4.

These requests were overbroad when issued, and even more so in light of subsequent decisions by this Court and the U.S. Supreme Court declaring that the controlling issue in determining jurisdiction over a foreign corporation is not where the corporation "does business," but

where it is "at home." *Viega GmbH v. Eighth Judicial Dist.*,; 130 Nev. Adv. Rep. 40, 328 P.3d at 1158 (emphasis added) (*quoting Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014)). Under these decisions, a court can generally find a corporation to be "'at home' ***only*** where [the company] is incorporated or maintains its principal place of business." *Id. Viega*, 328 P. 3 at 1158.

Notwithstanding these decisions (which rendered many of Plaintiff's RFPs wholly irrelevant),[5] the district court insisted on full compliance with Plaintiff's requests. Accordingly, in 2012 and 2013, LVSC produced approximately 24,000 documents responsive to Plaintiff's requests, and SCL produced close to 5,700 responsive documents. PA15876, 3066-3347, 3473-3889. The SCL production included approximately 4,700 documents with personal data redacted, but SCL undertook "extensive efforts" to locate more than 2,100 copies of the Macau documents in the United States, which it then produced in unredacted form. PA43814-43815 ¶ 93-94; PA15876.

Nor is that all. On March 27, 2013, the district court *sua sponte* issued a second order directing SCL to substantially increase its document production by searching the records of 13 additional individuals whom Plaintiff had denominated *merits* custodians long before this Court issued its jurisdictional mandate. PA2257-60. The court imposed this search requirement without any finding of jurisdictional relevance, rejecting SCL's argument that such a broad search would inevitably result in thousands of

[5] As just one example, Plaintiff sought all documents relating to SCL's contacts with Nevada vendors for goods to be used *in Macau*, even though the fact that the goods were to be used in Macau made the documents irrelevant to the jurisdictional analysis. *Daimler AG*, 134 S. Ct. at 756-57.

non-responsive documents. *See Id.*; PA2211:14-23. The court also ordered SCL to log *all documents* that it retrieved through these additional searches (but withheld on relevance grounds), so that the court could then review the withheld documents and consider whether additional sanctions should be imposed. PA2258:26-2259:1.

In compliance with this order, SCL produced more than 4,000 additional documents that were located outside Macau and more than 7,000 documents that were located in Macau. PA15876, PA3348. For the Macau documents, SCL redacted personal data in compliance with the MPDPA, and produced a 37,000+-page "Relevancy Log" as required by the district court's order. PA5263-15465, 15951-42828.

In total, Defendants spent more than $4 million and produced more than 40,000 documents in compliance with the district court's jurisdictional discovery orders. PA15876, PA3066-3889; PA4438:5-14. Such grossly overbroad and oppressively burdensome orders for jurisdictional discovery are unprecedented in Nevada law. Indeed, SCL has found no case in *any* jurisdiction in which a court imposed discovery obligations of comparable breadth and burden on a foreign corporation for the sole purpose of jurisdictional discovery.

The discovery orders in this case contrast sharply with the discovery orders in other cases that uphold sanctions for non-compliance with discovery orders. In each of the other cases, the court dealt with requests for narrowly-defined categories of documents that were indisputably "crucial" to the litigation. For example, in *Richmark*, the plaintiff requested information about the defendant's "current assets" to facilitate the enforcement of a judgment, 959 F.2d at 1475, while in *Linde* the plaintiffs

requested information about specific bank accounts to prove a link between the defendant and terrorist groups. 269 F.R.D. at 193.

By contrast, in this case, the district court ordered SCL to produce documents dealing with virtually every aspect of SCL's relationship with LVSC—notwithstanding that LVSC had produced an enormous volume of documents in response to the same requests—and then *sua sponte* doubled the number of custodians that SCL was required to search without any showing of jurisdictional relevance. The court also ordered SCL to log every one of the resulting documents that SCL deemed jurisdictionally irrelevant so the court could review the documents to determine if additional sanctions were warranted.

The sweeping breadth of these requests—and the magnitude of the resulting costs and burdens on SCL—counsel heavily against the imposition of sanctions for redacting inconsequential personal identification information.

3. None of the Redacted Documents Originated in the U.S.

The third factor cited by this Court focuses on whether the requested documents (and the individuals required to produce them) reside in a foreign country. *Richmark*, 959 F.2d at 1475. If so, this factor **weighs against sanctions** because such individuals "are subject to the law of that country in the ordinary course of business." *Id.* at 1475.

In this case, the documents produced by SCL were documents that originated in Macau and could be found only in Macau. The district court did not dispute this fact, but said that it "does not militate against sanctions or their importance to jurisdictional issues," without any explanation for

this remarkable conclusion. PA34820 ¶ 120. In so concluding, the district court ignored this Court's directive, as well as settled law holding that the location of the relevant documents in a foreign country "weighs against requiring disclosure"—and thus weighs against the imposition of sanctions for obeying the foreign country's laws. *Richmark*, 959 F.2d at 1475.

4. Plaintiff Had Alternative Sources for the "Information Sought"

The rationale underlying the fourth factor cited by this Court is that "there is no reason to require a party to violate foreign law" if "substantially equivalent" means are available to obtain the relevant information. *Richmark*, 959 F.2d at 1475.

In its Order, the district court found that Plaintiff "does not have any 'substantially equivalent' means of obtaining *the redacted documents*." PA43821 ¶ 127 (Emphasis supplied). This finding, however, was error as a matter of law. The correct legal test is whether the "*information sought*"—as opposed to the actual documents—can be obtained from another source. *Richmark*, 959 F.2d at 1475.

Plaintiff clearly had an alternative means for obtaining the "information sought"—the discovery provided by LVSC *and* the 40 gigabytes of documents he took from Macau. As noted earlier, in response to Plaintiff's jurisdictional discovery requests, LVSC produced more than 24,000 unredacted documents, including unredacted copies of ***all responsive Macau documents found in the United States.***

Not only did this production respond to each of the *same* discovery requests that Plaintiff served on SCL, but it also provided Plaintiff with all

the evidence relevant to his jurisdictional claims. Not surprisingly, during the hearing, Plaintiff did not identify *a single jurisdictional fact or issue* that the LVSC documents and depositions did not adequately address. *Not one*.

Yet, in its four-sentence paragraph addressing the "alternative sources" factor, the district court did not mention the massive discovery that Plaintiff obtained from LVSC. PA43821 ¶ 127. As a result, the court made no determination as to whether the available documents and depositions provided a "substantially equivalent" means for obtaining the requested information. This, too, was error.

The district court also ignored one other critical fact: Plaintiff repeatedly refused to cooperate with Defendants in their efforts to locate alternative sources for the redacted data. When Defendants asked Plaintiff to waive his rights under the MPDPA and consent to the "unredaction" of his name from the Macau documents to increase his jurisdictional discovery, he refused to do so. PA4745-4749. When Defendants asked Plaintiff to identify any specific documents that he claimed had jurisdictional significance (so that Defendants could obtain relevant consents), Plaintiff refused to respond. PA1941:25-1942:2; PA43717. These refusals clearly show that Plaintiff had no genuine interest in "discovering the truth," but instead took every opportunity to generate false issues of "prejudice" by frustrating Defendants' efforts to provide alternative sources of discovery.

Thus, in dealing with the "alternative sources" factor, the district court applied the wrong legal test to determine the availability of alternative sources, it failed to address (or even mention) LVSC's production as a "substantially equivalent" alternative, and it ignored

Plaintiff's refusal to cooperate with Defendants in locating alternative sources. These critical failings provide another reason why the district court's Order should be vacated.

5. The District Court Failed to Properly Balance National Interests.

In its August 7, 2014 Order, this Court pointedly noted that the "existence of an international privacy statute is relevant to the district court's sanctions analysis in the event the order is disobeyed." *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 331 P.3d 876, 878 (2014). In such a case, the court must assess whether compelled disclosure would "affect important substantive policies or interests" of either the United States or Macau, giving due respect to the "special problems" of foreign companies faced with conflicting obligations. *Richmark*, 959 F.2d at 1476; *see also Aerospatiale*, 482 U.S. at 544 n.29 (1987).

The district court, however, gave *no weight* to Macau's interest in enforcing the MPDPA, finding instead, without evidence, the "lack of a true Macanese interest in this personal data," in part because the Macau government had failed to appear before the court in Las Vegas to advocate its interests. PA43822 ¶¶ 130, 134. (So much for comity.) The court reached this conclusion even though it contradicted other findings the court made in the Order, including the following:

(1) the OPDP informed SCL that "under no circumstances" could SCL transfer personal data from Macau to Nevada without either the consent of the subject or the agency's approval (PA43800 ¶ 42);

(2) the OPDP repeatedly rejected the suggestion that the U.S. legal system provided sufficient protection

for the confidentiality of the data to permit a transfer (PA43800 ¶ 43); and

(3) the OPDP was "furious" when it learned that in 2010 LVSC had transferred Plaintiff's data from Macau to Las Vegas without first obtaining the OPDP's consent (PA43801 ¶ 44).

In light of these express findings, the district court clearly erred in disregarding Macau's interest in the enforcement of its privacy statute.

The district court also erred in finding that the United States has an "*overwhelming* interest" in compelling the disclosure of the redacted personal data in this case. PA43822 ¶ 133 (emphasis added). To support that finding, the district court relied exclusively on conclusory and highly generalized statements that apply to every case in this country—*e.g.*, the United States has a compelling interest in "ensuring that its citizens, including Jacobs, receive full and fair discovery to uncover the truth of their judicial claims." *Id.*; *see also* PA43821 ¶ 129. At no point did the district court make any finding—or provide any analysis—showing how the redacted personal data *in this case* implicated any specific United States interest or the Plaintiff's "judicial claims."

This omission is yet another example of the Court's larger failure (discussed above) to explain exactly how the redacted personal data is relevant to any jurisdictional issue in the litigation. The March 6 Sanctions Order contrasts sharply with orders in other sanctions cases where the courts made detailed findings precisely showing how the withheld information implicated particular United States interests. For example, in *Linde*, the district court found that the withheld documents implicated "the substantial public interest in compensating victims of terrorism and

combating terrorism." 706 F.3d at 99. There is no public interest in compelling SCL to violate the laws of its home jurisdiction.

Accordingly, the district court erred in balancing the respective national interests by (1) giving no weight to Macau's interest in enforcing its data privacy law, notwithstanding the court's express findings demonstrating that interest; and (2) describing the interest of the United States as "overwhelming" without any explanation based on the facts of this case.

Thus, the district court committed multiple material legal and factual errors in applying this Court's five-factor sanctions analysis. Not only did the court fail to provide a "particularized analysis" with detailed explanations and specific factual support, but it also made "findings" that were contrary to both the evidence of record and other findings in the Order. For these reasons, the Order should be vacated and the case remanded with instructions to proceed directly to the jurisdictional hearing.

B. The District Court's Sanctions Order Violates Rule 37 Standards.

The district court's Order also violates the standards governing the imposition of sanctions under NRCP 37. Under these standards, a court should consider the prejudice suffered by the party seeking disclosure, the non-disclosing party's degree of willfulness, and the extent to which possible sanctions are "tailored" to fit the violation. *See, e.g., Sparks*, 112 Nev. 952, 920 P.2d at 1016.

These factors provide three additional reasons why the district court's order must be vacated.

1. No Evidence Supports the District Court's Finding that Plaintiff Suffered Prejudice.

The courts have repeatedly recognized that sanctions are not appropriate in cases where the alleged violation did not prejudice the opposing party. *See*, *e.g.*, *Gallagher v. Magner*, 619 F.3d 823, 844 (8th Cir. 2010). In this case, as shown above, the district court made no finding that the redacted personal data had any substantive importance for Plaintiff's jurisdictional case. Instead, the court based its prejudice finding primarily on the assertion that the redactions caused unspecified "delays" and the "permanent loss of evidence." PA43812-43813 ¶¶ 86, 89-90.

This finding not only lacks evidence to support it, but it is also contrary to the evidence showing that many factors contributed to the delays in the jurisdictional hearing, including (as the Order expressly notes) the district court's rulings on various privilege issues. PA43826 ¶ 153. On October 1, 2013, this Court granted a stay while it decided Defendants' Petition (Case No. 63444) challenging the district court's privilege rulings. After this Court decided Defendants' Petition on August 7, 2014, the district court required an additional four months to complete its review of Defendants' privilege designations. As a result, the resolution of the privilege issues alone delayed the jurisdictional hearing for more than 14 months.

Not surprisingly, then, in its Order, the district court does not explain the period of delay it attributes to the "redaction" issue or identify factual

basis that would support such an attribution. Nor does the Order identify any specific evidence that was "permanently lost" because of a delay attributable to the "redaction" issue.

Indeed, the only specific "lost evidence" identified in the Order is a single reference to the death of a former SCL (and LVSC) board member named Jeffrey Schwartz. PA43813 ¶ 89. Although the Order describes Mr. Schwartz as a "key witness," there is no description of the specific jurisdictional evidence he could have provided—or why that evidence would not have been cumulative of other evidence in the case.

Accordingly, the record contains no support for the district court's finding that the "redaction" issue caused "delays" that prejudiced Plaintiff.

2. No Evidence Supports the District Court's Finding that SCL Acted with an Intent to Prevent Access to Discoverable Information.

A Nevada district court can impose sanctions on a party only if the party engages in *willful noncompliance* with a discovery order. NRCP 37(b)(2). In assessing willfulness, the court is required to consider whether circumstances beyond the non-complying party's control "contributed to the non-compliance." *Societe Internationale Pour Participations Industrielles et Commericales, S.A. v. Rogers*, 357 U.S. 197, 211 (1958); *LeGrande v. Adecco*, 233 F.R.D. 253, 257 (N.D.N.Y. 2005). In this case, however, the district court concluded that SCL acted with an intent to prevent Plaintiff from obtaining discoverable information, PA43827 ¶ 154a, but nowhere in its Order did the court cite *any* facts to support this critical conclusion.

Nor did the court explain how this conclusion could be reconciled with the undisputed testimony provided by SCL's General Counsel showing that the OPDP *required* SCL to redact personal data. In that testimony—which the district court does not challenge in its Order—SCL's General Counsel described a series of meetings and communications with the OPDP in which the agency made increasingly clear that it would not permit unredacted documents to be transferred to the United States. PA4108:15-25 4114:12-4115:18, 4117:6-4118:2, 4143:3-12. To be sure, when the General Counsel and SCL's U.S. lawyers met with OPDP (following the district court's first sanctions order), the agency agreed to allow Macanese lawyers to review and redact the documents—but it continued to insist that the redactions must be made to comply with the MPDPA. PA4109:13-24, 4110:1-6, 4109-4410. Based on these and other OPDP communications, the General Counsel concluded that he had "no choice" but to comply with the "very strict approach" taken by the agency. PA4110:8-20, 4114; 12-4115:18, 4583:1-16, 4602:25-4603:3. These unchallenged facts establish that the OPDP's communications—which were obviously a factor beyond SCL's control—substantially "contributed" to SCL's decision to redact personal information from the documents, while obeying the district court's order to *produce the content of the documents*.

The district court's "intent" finding also ignores the extraordinary lengths to which SCL went in an effort to accommodate the MPDPA with the court's discovery orders. If SCL's goal was to conceal evidence by redacting personal data from the Macau documents, it would not have (1) dispatched its U.S. lawyers to Macau to try to persuade the OPDP to permit the production of the unredacted documents; (2) undertaken

"extensive efforts" to search in the U.S. for unredacted copies of the Macau documents (a step that even the district court "applauded," PA43814-15 ¶¶ 93, 97 n.15); or (3) obtained the consents of the LVSC executives to "unredact" their names in the Macau documents. Nor would SCL have engaged in its unsuccessful effort to obtain Plaintiff's cooperation by asking him to provide a similar consent or to identify specific documents that he claimed have jurisdictional importance. This entire course of conduct clearly impeaches the district court's "finding" that SCL acted with an intent to prevent Plaintiff from obtaining access to jurisdictional evidence. PA43826-7 ¶ 154a.

The district court also ignored the compelling fact that SCL had absolutely **no motive** to prevent Plaintiff from obtaining evidence by redacting personal data from Macau documents. As shown above, the redacted information has no evidentiary value at all. Neither Plaintiff nor the district court ever identified a single issue of jurisdiction to which the data has any relevance or importance. SCL would not have undertaken the enormously costly effort to redact the personal data from thousands of documents—or incurred the substantial risk of a sanctions finding in this proceeding—if it were not compelled to do so by Macanese law.

Finally, in its "Conclusions of Law," the district court made two statements that warrant special comment. First, the court stated that the "discovery abuses and use of the MDPA *appear to be driven by the client*." PA43825 ¶ 148 (emphasis added). The court cited absolutely no evidence to support this exceptionally unfair statement, nor could it do so—the statement is categorically wrong. Indeed, the court could not possibly have had a factual basis for its belief that the "client" drove the alleged

"discovery abuses" because Defendants did not waive their attorney-client privileges in either the first or second sanctions hearings—and the court disclaimed drawing any impermissible inference from Defendants' reliance on the attorney-client privilege.[6]

Second, in its "Conclusions of Law," the district court also stated that the "change in corporate policy regarding LVSC access to SCL data … was made *with intent to prevent the disclosure of the transferred data as well as other data*." PA43793 ¶ 112. The court appeared to base this conclusion (which tracks an identical conclusion set forth in its September 14, 2012 Order, PA1364, ¶ 29)[7] on the fact that Defendants have allegedly "selectively applied the MPDPA over the course of this litigation." PA43827, ¶ 106. But as noted above, the court could not have a factual basis for the belief that the corporate clients acted with an intent to engage in "discovery abuse" unless the court impermissibly drew an adverse inference from the companies' invocation of the attorney-client privilege.

This is particularly true in light of the undisputed evidence showing that the MPDPA is a relatively new law in Macau and that SCL's understanding of its requirements changed following the company's

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[6] No adverse inferences can be drawn from a party's decision not to waive the privileges and work product protection afforded by Nevada law, under NRS 49.095 and Nevada Rule of Civil Procedure 26(b)(3). *See*, *e.g.*, *Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208, 226 (2d Cir. 1999) (there is "no precedent supporting . . . an [adverse] inference based on the invocation of the attorney-client privilege").

[7] While, as this Court has noted, Defendants did not appeal the district court's imposition of sanctions in September 2012 for failing to disclose the transferred data, Defendants categorically dispute—then and now—the district court's conclusion that they acted with an intent to prevent the disclosure of evidence.

meetings with OPDP. (PA4163, ¶¶ 8-9; PA1360 ¶ 1). Most notably, the transfer of the Macau data that led to the district court's September 14, 2012 order occurred *before* SCL or VML had their first meeting with OPDP. *Id.* Furthermore, as stressed above, SCL had **no motive** to use the MPDPA for litigation advantage because the redacted names of Macanese residents have no evidentiary significance.

Whatever their basis, the fact that the district court unmistakably holds these wrongheaded beliefs is an insurmountable impediment to SCL obtaining a fair hearing in the district court. As discussed below, this reality, together with a long and unbroken pattern of unreasonable and grossly burdensome orders, compels SCL to request re-assignment of this case.

3. The District Court's Sanctions Were Not Tailored to Fit the Alleged Violation.

We know from precedent that "due process require[s] that discovery sanctions be just and that sanctions *relate to the specific conduct at issue*." *GNLV Corp. v. Serv. Control Corp.*, 11 Nev. 866, 870, 900 P.2d 323, 325 (1995) (emphasis added). This means that a court imposing sanctions "must design the sanction to fit the violation." *Sparks*, 112 Nev. 952, 920 P.2d at 1016.

To this end, the court should "weigh, among other factors, the harshness of the sanctions, the extent to which the sanctions are necessary to restore the evidentiary balance upset by incomplete production, and the non-disclosing party's degree of fault." *Linde, 706* F.3d at 115. For example, a "court could instruct a jury to presume the truth of a factual allegation

from a party's failure to produce key evidence *relevant to that allegation*." *Id.* at 92 (emphasis added).

In this case, however, the district court did not engage in any "tailoring" of any kind. At no point did the court explain why the exceptionally harsh sanction of precluding SCL from presenting any evidence at its own jurisdictional hearing is necessary to "restore the evidentiary balance" purportedly upset by SCL's decision to redact jurisdictionally meaningless personal data. The district court also failed to explain why the additional search of electronic data (with no showing of jurisdictional relevance) and the payment of $250,000 to various law-related organizations was "proportionate" to the nature of the alleged violation. Nor could the district court provide such an explanation. The decision to redact the data did not upset the "evidentiary balance" because the redacted data had *no evidentiary value*.

Furthermore, even if the redactions had some relevance, a tailored remedy would be to adversely infer that the redacted names are those of individuals Plaintiff chose as part of his effort to establish personal jurisdiction. *See In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 386-87 (9th Cir. 2010). Instead, the district court imposed *both* preclusion *and* adverse inference sanctions that are wholly disproportionate to the nature of the alleged violation.

SCL has found only two cases in which the courts imposed sanctions of comparable severity on foreign corporations. Both cases involve facts that are in no manner comparable to the facts here. In *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee.*, 456 U.S. 694 (1982)—a case that did not involve an international privacy statute—the U.S. Supreme

Court upheld the striking of a foreign company's jurisdictional defense after the company repeatedly refused to comply with orders to produce documents relevant to the "critical issue in proving personal jurisdiction"—*i.e.*, the companies' "contacts" with the forum state. 456 U.S. at 708. Because the evidence was critical to the jurisdictional defense, the companies' refusal to produce the evidence warranted a finding that their jurisdictional defense lacked merit. *Id*. at 709.

In *Linde*, a case favored by the Plaintiff, the district court sanctioned a foreign bank by precluding it from contesting certain issues at trial after it refused to comply with orders to produce documents that were "essential" to the plaintiffs' ability to prove "not only that defendant provided financial services to terrorists, but also that it did so knowingly and purposefully." *Linde*, 269 F.R.D. at 203. The court stressed that the bank's efforts to obtain its government's authorization to comply with the orders were "calculated to fail," *id*. at 199, and that, in any event, the bank's refusal to produce the documents in any form undermined the "substantial public interest in compensating the victims of terrorism and combating terrorism." *Linde*, 706 F.3d at 99.

By contrast, in this case, SCL did not engage in a wholesale refusal to produce entire documents, much less withhold documents that were "critical" to determining the merits of its jurisdictional defense. Nor did SCL make half-hearted approaches to the OPDP that were "calculated to fail" or undermine a substantial public interest in combating terrorism. Rather, SCL made **limited redactions** of personal data having no evidentiary value in compliance with the laws of its home jurisdiction, **while producing the content of the documents**. It then made "extensive

efforts" to find alternative sources for the redacted data in ways that even the district court "applaud[ed]." PA43814 15 ¶¶ 93, 97 n.15.

Accordingly, the facts of *Insurance Corp. of Ireland* and *Linde* underscore the district court's failure in this case to tailor the sanctions it imposed to fit the alleged violation.

C. The District Court's Order Violates Due Process

There can be no doubt that the district court's preclusion and adverse inference sanctions will deprive SCL of a fair hearing. By stripping SCL of its right to present any evidence, the sanctions are tantamount to a directed finding of personal jurisdiction.

The U.S. Supreme Court has recognized that a sanction can violate Due Process in two situations. First, the Court has held that a sanctions order can violate Due Process if the non-compliant party's refusal to produce documents does not support a presumption that the party's claim lacks merit. *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 351 (1909). This situation arises when the court's order requires the production of documents that are not relevant or material to the litigation. *Linde*, 706 F.3d at 116; *see also Insurance Corp of Ireland,* 456 U.S. at 705. In this case, as shown above, the redacted data has no relevance to the jurisdictional issue.

Second, the Court has held that a sanctions order can violate Due Process if the party's failure to comply was "due to inability and not to willfulness, bad faith, or any fault of petitioner." This holding reflects the rule that a party cannot be penalized "for a failure to do that which it may not have been in its power to do" and that "any reasonable showing of an

inability to comply" would have been sufficient. *Hammond Packing*, 212 U.S. at 351. *See also Rogers*, 357 U.S. at 209, 212.

This principle also applies here. SCL's decision to redact documents resulted not from bad faith or willful disobedience, but from the requirements of Macanese law. This, indeed, is the only rational explanation for SCL's many attempts to accommodate the conflicting demands of the OPDP and the district court by (among other things) producing unredacted copies of the documents found in the U.S. and attaining waivers from the LVSC executives.

Accordingly, the district court's order imposing preclusion, adverse inference and other sanctions on SCL violates due process and must be vacated.

D. This Case Should Be Reassigned.

The district court's punitive and grossly unjust sanctions order is the most recent in a long history of rulings, comments, and findings that create an "objectively reasonable basis for questioning" the court's impartiality, and its ability to effectively manage this litigation. *In re IBM*, 45 F.3d 641, 644 (2d Cir. 1995). This Petition is Defendants' fifth Petition for a Writ of Mandamus in this five-year-old case in which the district court has yet to determine whether it has jurisdiction over SCL. This Court granted three of Defendants' first four Petitions, and it denied the fourth to allow the district court to hold its planned sanctions hearing—which has now led to this fifth Petition.

This record of repeated writs and stalled litigation reflects, in part, the apparent bias that the district court holds against Defendants. The

mere fact that the district court believes, without a factual basis for its belief, that Defendants—the *clients*—decided to "conceal evidence" and "abuse" discovery demonstrates that the court cannot serve in this case as a "neutral, impartial administrator of justice." *United States v. Torkington*, 874 F.2d 1441, 1447 (11th Cir.1989). *See also*, 12/6/12 Tr., at 51:11-14 and 12/18/12 Tr., at 7:13-17) (court refers to "management's" decision to "mislead the court" and "avoid discovery obligations").

This animus has, at a minimum, created the appearance of a court that has pre-judged every major issue against SCL, including, of course, the March 6, 2015 sanctions decision. In its August 7, 2014 Order, this Court directed the district court to utilize the five specified factors to decide "what sanctions, ***if any***, are appropriate." Aug. 7, 2014 Order, at 10 (emphasis added). Yet, on remand, the district court made clear that it had *already decided* to impose sanctions, and it would conduct the hearing simply to determine what specific sanctions it would impose on SCL. 8/14/2014 Tr., at 29:10-13 ("There's going to be a sanction because I already had a hearing, and I made a determination that there is a sanction").

Even apart from its apparent bias, the district court has issued orders that are so unreasonable and burdensome as to call into question its ability to effectively and fairly manage this litigation. As one example, the extraordinary burden of requiring SCL to create a 37,000 page log of *irrelevant* documents so that the court could determine whether to impose additional sanctions is unprecedented. Compelling SCL to create this massive log served no purpose other than to increase SCL's burdens and costs in these proceedings—all *before the district court has even determined that its has jurisdiction over the company*. Equally, if not more burdensome,

was the unreasonable and, indeed, punitive two-week deadline the court imposed on SCL to produce documents from Macau in December 2012, over the holidays, as well as the court's *sua sponte* decision in March 2013 to double SCL's discovery obligations without any showing that the additional discovery had any jurisdictional relevance.

These decisions are so lacking in moderation and fundamental fairness as to require a new judge to preserve the appearance of a neutral forum to conclude litigating this case. SCL therefore requests to have this case reassigned if remanded.[8]

V. CONCLUSION

Petitioner respectfully requests that this Court grant the Petition and enter an order vacating the district court's March 6, 2015 order.

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[8] This Court has on occasion reassigned cases on remand. *See, e.g.*, *FCH1 LLC v. Rodriguez*, 335 F.3d 183, 190 (2014); *Boulder City, Nevada v. Cinnamon Hill Assocs.*, 871 P.2d 320, 327 (Nev. 1994); *Echeverria v. State*. 62 P.3d 743, 745-46 (Nev. 2003). The Court should do so here.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2007 in Palatino 14 point font.

I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 12,266 words.

Finally, I hereby certify that I have read this **PETITION FOR PROHIBITION OR MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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Attorneys for Petitioner

VERIFICATION

1. I, Wyn Hughes, declare:
2. I am the interim Co-General Counsel at Sands China Ltd., the Petitioner herein;
3. I verify that I have read the foregoing **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS**; that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury of the laws of the United States and the State of Nevada, that the foregoing is true and correct.

This declaration was executed on the 19th day of March, 2015 in Macao SAR, People's Republic of China.

Wyn Hughes

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY ON 3/23/15

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

VIA ELECTRONIC

James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
400 S. Fourth Street, 3rd Floor
Las Vegas, Nevada 89101

Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., A NEVADA CORPORATION; AND SANDS CHINA LTD., A CAYMAN ISLANDS CORPORATION,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE,
Respondents,
and
STEVEN C. JACOBS,
Real Party in Interest.

No. 67576

FILED

APR 0 2 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION IN PART AND GRANTING STAY

This is a petition for a writ of prohibition or mandamus challenging a district court order imposing sanctions for violations of a discovery order. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Writ relief is an extraordinary remedy, and whether a petition for extraordinary relief will be considered is solely within this court's discretion. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). Such relief is "is generally unavailable to review discovery orders," unless certain limited exceptions, not present here, apply. *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. No. 61, 331 P.3d 876, 878 (2014) (citing *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 128 Nev. Adv. Op. No. 57, 289 P.3d 201, 204 (2012); *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*,

127 Nev. Adv. Op. No. 15, 252 P.3d 676, 679 (2011)). After reviewing the documents on file in this matter, we conclude that the only portion of the district court's March 6, 2015, order that may warrant relief is the portion directing Sands China Ltd. to make contributions of $50,000 to each of five different legal organizations, and we will entertain the petition in that respect only. As writ relief is not warranted with respect to the remainder of the district court's order, *id.*, the petition is denied in all other respects.

In light of the foregoing, we grant petitioners' motion for stay to the extent that we stay the portion of the district court's order directing Sands China Ltd. to make monetary contributions to third parties, until further order of this court. We deny the motion for stay in all other respects.[1]

It is so ORDERED.[2]

_____ C.J.
Hardesty

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

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[1]We also lift the temporary stay entered in this matter on March 17, 2015; as noted above, we stay the portion of the district court's order directing the payment of monetary contributions to third parties.

[2]The Honorable Kristina Pickering and the Honorable Ron Parraguirre, Justices, were voluntarily recused from this matter.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Kemp, Jones & Coulthard, LLP
Holland & Hart LLP/Las Vegas
Morris Law Group
Pisanelli Bice, PLLC
Eighth District Court Clerk

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS, Plaintiff(s), vs LAS VEGAS SANDS CORP, ET AL, Defendants.	**Case No.** 10 A 627691 **Dept. No.** XI **Date of Hearing:** 04/20-22/2015, 04/27-30/2015, 05/04-05/2015 and 05/07/2015

AMENDED[1] DECISION AND ORDER

This matter having come on for an evidentiary hearing related to the Defendant Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party, the Nevada Supreme Court's Order Granting Petition for Writ of Mandamus,[2] and the Writ of Mandamus issued by the Nevada Supreme Court to this Court on August 26, 2011 (collectively "Writ") beginning on April 20, 2015 and continuing, based upon the availability of the Court and Counsel, until its completion on May

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[1] On May 28, 2015, this Court granted Plaintiff's Motion to Modify/Correct Decision and Order. Based upon the issues related to the loss of the electronic file the Court has taken the opportunity to not only make the corrections requested in the Motion but also those other corrections that had been made in the prior electronic version prior to its unfortunate and inadvertent loss due to what the Court's IT staff described as "operator error".

[2] The Nevada Supreme Court directed this Court "to hold an evidentiary hearing on personal jurisdiction, to issue findings of fact and conclusions of law stating the basis for its decision following that hearing, and to stay the action as set forth in this order until after entry of the [this Court's] personal jurisdiction decision." Sands China Ltd. v. Eighth Judicial Dist. Court of State ex rel. Cnty. of Clark, No. 58294, 2011 WL 3840329, at *2 (Nev. Aug. 26, 2011). Since then, the parties have engaged in jurisdictional discovery. The decisions in Daimler AG v. Bauman, 134 S.Ct. 746, 761 (2014), and the Nevada Supreme Court's decision in Viega GmbH v. Eighth Judicial Dist., 130 Nev. Adv. Rep. 40, 328 P.3d 1152 (2014) were made subsequent to that decision and have been considered by the Court in evaluating the propriety of the exercise of general, specific and/or transient jurisdiction over SCL.

7, 2015; Plaintiff Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of record, James J. Pisanelli, Esq., Todd L. Bice, Esq., Debra L. Spinelli, Esq., and Jordan T. Smith, Esq., of the law firm Pisanelli Bice PLLC; Sands China Ltd. ("SCL") appearing by and through its attorney of record J. Stephen Peek, Esq. of the law firm Holland & Hart LLP and Randall Jones, Esq., Mark M. Jones, Esq., and Ian P. McGinn, Esq., of the law firm Kemp, Jones & Coulthard, LLP; Defendants Las Vegas Sands Corp. ("LVS") appearing by and through its attorney of record J. Stephen Peek, Esq. of the law firm Holland & Hart LLP; and Defendant Sheldon G. Adelson ("Adelson") appearing as a witness and by and through his attorney of record, Steve Morris, Esq. and Rosa Solis Rainey, Esq. of the Morris Law Group; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the evidentiary hearing;[3] and having heard and carefully considered the testimony of the witnesses called to testify; the Court having considered the oral and written arguments of counsel, and with the intent of deciding the limited issues before the Court related to jurisdiction over SCL,[4] makes the following findings of fact[5] and conclusions of law: [6]

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[3] As a result, of an *in camera* review conducted by this Court related to discovery disputes, additional documents not admitted in evidence have been previously reviewed. For purposes of this decision, the Court relies upon the evidence admitted during this hearing and the two prior evidentiary hearings conducted.

[4] The Court notes, as the Nevada Supreme Court noted in Trump v. District Court, 109 Nev. 687, 693, n.2 (1993), given the intertwined factual issues present between the facts supporting the claims made by Plaintiff and the facts relating to the jurisdictional issues the procedure undertaken in this case, is not an efficient use of judicial resources.

[5] The findings made in this Order are preliminary in nature based upon the limited evidence presented after very limited jurisdictional discovery and may be modified based upon additional evidence presented to the Court and/or jury at the ultimate trial of this matter.

[6] The Writ of Mandamus issued to this Court on August 26, 2011 states:

> NOW, THEREFORE, you are instructed to hold an evidentiary hearing on personal jurisdiction, to issue findings of act (sic) and conclusions of law stating the basis for your decision following that hearing,. . . .

I.
PROCEDURAL POSTURE

Jacobs filed this suit on October 20, 2010, against SCL claiming that SCL breached contractual obligations it allegedly owed him by refusing to honor his demand to exercise certain stock options following his termination. On December 22, 2010, SCL moved to dismiss the complaint for (among other things) lack of jurisdiction. Jacobs opposed the motion on February 9, 2011, arguing that the Court had jurisdiction over SCL and that it also had transient jurisdiction because the complaint was served in Nevada on Michael A. Leven ("Leven"), who was then the Acting Chief Executive Officer of SCL.

On March 15, 2011, this Court denied the SCL motion stating:

> Here there are pervasive contacts with the State of Nevada by activities done in Nevada by board members of Sands China. Therefore, while Hong Kong law may indeed apply to certain issues that are discussed during the progress of this case, that does not control the jurisdictional issue here.

March 15, 2011 Transcript p. 62, lines 3 to 7. The Nevada Supreme Court issued an Order Granting Petition for Mandamus on August 26, 2011.

On August 26, 2011, the Nevada Supreme Court issued a stay of certain proceedings in this matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues related to SCL. The Court granted Jacobs request to conduct jurisdictional discovery prior to the evidentiary hearing. The order granting the jurisdictional discovery was entered on March 8, 2012. Due to numerous discovery disputes[7] and stays[8] relating to petitions for extraordinary relief, the evidentiary hearing on jurisdiction was delayed.

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[7] Certain evidentiary sanctions were imposed upon SCL in the Order entered March 6, 2015.

a. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL will be precluded from raising the MDPA as an objection or as a defense to use, admission, disclosure or production of any documents.

II.
BURDEN OF PROOF

There are significant issues related to the appropriate burden of proof to be utilized in this case that have been well briefed by counsel. The typical standard on a motion to dismiss for lack of jurisdiction is a *prima facie* standard. In Trump, the Nevada Supreme Court noted that a preponderance of the evidence standard may be the appropriate standard in a "full evidentiary hearing".[9] The Nevada Supreme Court also made mention of a case in the Trump decision which suggested a third standard --"likelihood of the existence of each fact necessary to support personal jurisdiction"[10] -- may be appropriate.[11]

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b. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL is precluded from contesting that Jacobs's electronically stored information (approx. 40 gigabytes) is rightfully in his possession.

c. For purposes of the evidentiary hearing related to jurisdiction, SCL is precluded from calling any witnesses on its own behalf or introducing any evidence on its own behalf. SCL may object to the admission of evidence, arguments of counsel, and to testimony of witnesses during the evidentiary hearing related to jurisdiction; cross-examine witnesses during the evidentiary hearing related to jurisdiction; and, argue the application of the evidence to the law during the opening and closing arguments of the evidentiary hearing related to jurisdiction.

d. During the evidentiary hearing related to jurisdiction, the Court will adversely infer, subject to SCL's ability to rebut that inference (within the evidentiary constraints set forth in the paragraph above), that all documents not produced in conformity with this Court's September 2012 Order are adverse to SCL, would contradict SCL's denials as to personal jurisdiction, and would support Jacobs' assertion of personal jurisdiction over SCL.

[8] The parties have not agreed that any stays issued act as a tolling or extension of the period under NRCP Rule 41(e). As such, the trial of this matter was set by Order entered on May 27, 2015 to commence on October 14, 2015, prior to the earliest expiration of the period under NRCP Rule 41(e), October 19, 2015.

[9] 109 Nev. at 693.

[10] This third standard and the circumstances in which it may be appropriate to utilize was explained as:

> If, however, the court finds that determining a motion on the *prima facie* standard (thereby deferring the final jurisdictional determination until trial) imposes on a defendant a significant expense and burden of trial on the merits in the foreign forum that

A traditional preponderance of the evidence standard is inappropriate for this case because of the limited discovery done to date due to the stay and the inextricably intertwined facts between jurisdiction and merits. These limitations impact the ability of the parties to conduct a "full evidentiary hearing". A jury demand has been filed; Jacobs has a right to a jury trial on the jurisdictional defense raised by SCL. Given the inextricably intertwined issues between the conduct of representatives of LVS and SCL, the Court shares the concerns expressed by counsel for LVS regarding the potential impact of these findings and conclusions upon LVS. Despite these concerns, the Court makes findings and reaches conclusions related to jurisdiction, *solely to comply with the Writ*, upon a preponderance of the evidence standard *based solely on the evidence presented.* The findings and conclusions are preliminary in nature and may not be used by the parties or their counsel for any purpose other than this Court's compliance with the Writ.[12]

> it is unfair in the circumstances, the court may steer a third course that avoids both this unfair burden and (especially when the jurisdictional facts are enmeshed with the merits) the morass of unsettled questions of law regarding "issue preclusion" and "law of the case". This third method is to apply an intermediate standard between requiring only a *prima facie* showing and requiring proof by a preponderance of the evidence. Thus, even though allowing an evidentiary hearing and weighing evidence to make findings, the court may merely find whether the plaintiff has shown a likelihood of the existence of each fact necessary to support personal jurisdiction.

Boit. v. Gar-Tec Products, Inc., 967 F. 2d 671 at 677 (1st Cir. 1992).

[11] Another standard which might be appropriate for consideration, but which was not raised by the parties, is the standard of substantial evidence used for judgment on partial findings made under NRCP 52(c).

[12] Given the inextricably intertwined issues of jurisdiction with the facts surrounding the merits issues, i.e. the termination of Plaintiff's employment and associated stock option(s), the evidentiary hearing and the jurisdictional discovery necessary prior to the hearing have not been a wise use of judicial resources. Unfortunately, as a result of the process imposed upon this Court because of the Writ, the parties will have only a few months to conduct the merits discovery and be ready for trial.

III.
FINDINGS OF FACT

1. Jacobs filed this suit on October 20, 2010 against SCL claiming that SCL breached contractual obligations it allegedly owed him by refusing to honor his demand to exercise certain stock options following his termination.

2. On December 22, 2014, Jacobs filed a Third Amended Complaint, alleging three new claims against SCL: conspiracy, aiding and abetting his alleged wrongful termination by LVS, and defamation as a result of statements made during the course of the litigation by LVS's and SCL's chairman, Adelson. Jacobs contends that there is specific jurisdiction over SCL on all three claims.

3. LVS is a Nevada corporation with its principle place of business in Las Vegas, Nevada. LVS is headed by Adelson who serves as LVS's Chairman of the Board of Directors. LVS is a publicly-traded company in the United States. Through subsidiaries, LVS operates casinos in Nevada, Pennsylvania, Macau, and Singapore.

4. In early 2009, Leven became Chief Operating Officer ("COO") of LVS.

5. Leven had previously served on the LVS Board.

6. Leven asked Jacobs to assist him as a consultant.

7. Jacobs became a consultant to LVS through Vagus Group, Inc., an entity Jacobs owned. In that role, Jacobs began assisting with the restructuring of LVS's Nevada operations. In doing so, Jacobs, Leven and Adelson met extensively in Nevada. They also traveled to Macau to review LVS's operations there.

8. While Jacobs was assisting LVS as a consultant, all of its Macau operations and assets were held through wholly-owned subsidiaries, one of which was Venetian Macau Limited ("VML").

9. Leven discussed bringing Jacobs on directly, on a temporary basis, to help oversee and restructure LVS's Macau operations. Jacobs and Leven discussed the terms of this temporary engagement. These discussions principally occurred while both Jacobs and Leven were in Las Vegas working on the LVS restructuring.

10. One of the tasks that Jacobs was assigned was restructuring Macau operations for the potential of spinning the Macau assets off into a yet-to-be-formed publicly-traded subsidiary for LVS. This would serve as a financing means by which LVS could raise additional capital to recommence construction on certain existing, but delayed, projects in Macau.

11. On April 30, 2009, Leven advised that effective May 5, 2009, LVS gave Jacobs the title of "Interim President" overseeing its Macau operations. In that role, Jacobs reported directly to Leven in his capacity as COO of LVS. Leven was the operational boss over all of LVS's assets.

12. Leven began negotiating with Jacobs for a more permanent position. Through June and July of 2009, Leven and Jacobs exchanged drafts of what became known as the "Term Sheet" which would become Jacobs' employment agreement.[13] Many of those negotiations occurred between Jacobs and Leven at LVS's headquarters in Nevada.

13. These negotiations also involved the exchange of correspondence and telephone communications into, and out of, Nevada.

14. In emails in late June and July 2009, LVS executives and Jacobs had multiple communications concerning the terms and conditions of his employment.

15. By late July 2009, Jacobs indicated that if they could not come to an agreement as to his full-time position, he needed to make commitments for his family back in Atlanta,

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[13] The "Term Sheet" was an exhibit to LVS's 10Q for the quarter ending March 31, 2010.

Georgia. Jacobs was in and out of Macau on only a temporary basis, and Jacobs indicated that he would not be moving his family unless he and LVS came to an agreement.

16. On or about August 2, 2009, Leven emailed Robert Goldstein ("Goldstein"), copying Charles Forman – one of the members of LVS's compensation committee – explaining that tomorrow would be the "last chance" to try and close out the terms and conditions of Jacobs' employment with Adelson. If they could not do so, Leven indicated that they would have to do a nine-month deal with Jacobs so as to get through a planned initial public offering ("IPO") for the spinoff of LVS's Macau operations.

17. The next day, August 3, 2009, Leven testified Adelson and he expressly approved the "Terms and Conditions" of Jacobs' employment. Although Adelson claims he does not remember doing so, Leven confirmed that Adelson approved those terms and conditions in Nevada pursuant to his role as Chairman and CEO of LVS. Leven negotiated and signed the deal in Nevada pursuant to his role as LVS's COO. Adelson claims that he did not consider the Term Sheet to be binding.

18. Pursuant to the Term Sheet, LVS agreed to employ Jacobs as the "President and CEO Macau, listed company (ListCo)." The subsidiary, which would serve as the vehicle for the IPO, had not yet been determined. LVS agreed to pay Jacobs a base salary of $1.3 Million, with a 50% bonus. It also awarded Jacobs 500,000 options in LVS. Of the 500,000 options, 250,000 options were to vest on January 1, 2010, 125,000 were to vest on January 1, 2011, and 125, 000 were to vest on January 1, 2012. LVS agreed to pay a housing allowance and Jacobs was entitled to participate "in any established plan(s) for senior executives."

19. The Term Sheet incorporated the standard "for cause" termination language of other LVS employment agreements. In the event Jacobs terminated not for cause, the Term Sheet

provided a "1 year severance, accelerated vest [of the options], and the Right to exercise [the options] for 1 year post termination."

20. Leven signed the Term Sheet on or about August 3, 2009, and had his assistant, Patty Murray, email it to Jacobs.

21. Prior to the formation of SCL, the proposed entity was referred to in certain documents as "Listco".

22. SCL is a corporation organized under the law of the Cayman Islands. SCL was formed as a legal entity on or about July 15, 2009.

23. Adelson named himself as Chairman of the Board prior to the identification of other board members. An initial board was formed which dealt solely with governance issues.

24. SCL became the vehicle through which LVS would ultimately spin off its Macau assets as part of the IPO process.

25. SCL went public on the Hong Kong Stock Exchange ("HKSE") through an IPO on November 30, 2009.

26. LVS owns approximately 70% of SCL's stock and includes SCL as part of its consolidated filings with the US Securities and Exchange Commission.

27. SCL is the indirect owner and operator of the majority of LVS's Macau operations.

28. SCL includes the Sands Macau, The Venetian Macau, Four Seasons Macau, and other ancillary operations that support these properties.

29. SCL is a holding company.

30. SCL has no employees.[14]

31. One of SCL's primary assets is VML. VML is the holder of a subconcession authorized by the Macau Government that allows it to operate casinos and gaming areas in Macau.

32. Prior to the Fall of 2009, decisions related to the operations of the Macau entities were made by Adelson and Leven.

33. Neither SCL nor any of its subsidiaries has any bank accounts or owns any property in Nevada.

34. SCL has separate bank accounts from LVS.

35. SCL does not conduct any gaming operations in Nevada, nor does it derive any revenue from operations in Nevada. All of the revenues that SCL annually reports in its public filings derive from operations in Macau.

36. SCL has never owned, controlled, or operated any business in Nevada. SCL has a non-competition agreement with LVS.

37. It was not uncommon for the executives of subsidiaries that LVS controlled to fulfill that role pursuant to an employment agreement with the parent, LVS. When it was determined that Leven would become the interim CEO for SCL, he did so pursuant to an employment agreement with LVS. As interim CEO for SCL, Leven had no employment agreement with SCL and fulfilled that role as an LVS employee.[15]

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[14] Conflicting evidence on this point was presented throughout the evidentiary hearing. Counsel confirmed during closing that SCL had no direct employees and the reference to employees related to VML.

[15] Adelson is now the CEO of SCL and serves in that capacity pursuant to an employment agreement with LVS. Adelson has no separate employment agreement with SCL. The interim

38. In having its leading executives serve in those roles pursuant to employment agreements with LVS and delegating tasks to LVS employees in Nevada, SCL reasonably would foresee that it would be subject to suit in Nevada over any dispute concerning the services of its executives.

39. Leven testified, that upon the closing of the IPO, Jacobs' employment pursuant to the Term Sheet was transferred to SCL and assumed by it. As Leven testified, the obligations under the Term Sheet were assumed by SCL in conjunction with the closing of the IPO. The assignment and assumption of the Term Sheet from LVS to SCL does not appear to have been documented in any formal fashion. However, as Leven acknowledged, SCL and its Board understood that Jacobs was serving as CEO pursuant to the terms and conditions of the Term Sheet that had been negotiated and approved in Nevada with the Nevada parent.

40. Jacobs' duties as SCL's CEO provided under the Term Sheet required frequent trips to Las Vegas, Nevada and involved countless emails and phone calls into the forum. Jacobs frequently conducted internal operations and business with third parties while physically present in Nevada.

41. While SCL had its own Board of Directors, kept minutes of the meetings of its Board and Board Committees, and maintained its own separate and independent corporate records, direction came from LVS.

42. At the time of its IPO, the SCL Board consisted of (1) three Independent Non-Executive Directors (Ian Bruce, Yun Chiang and David Turnbull[16]), all of whom resided in Hong

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COO of SCL is Goldstein. Goldstein acknowledged that he serves as SCL's COO pursuant to his employment agreement with the Nevada parent company, LVS.

[16] During his testimony at the evidentiary hearing, when questioned about board member Turnbull, Adelson stated, "not for long". It is this type of control of SCL, that leads the Court to

Kong; (2) two Executive Directors (Jacobs, who was SCL's Chief Executive Officer and President, and Stephen Weaver ("Weaver"), who was Chief Development Officer), both of whom were based in Macau; and (3) the Chairman and Non-Executive Director (Adelson) and two Non-Executive Directors (Jeffrey Schwartz and Irwin Siegel ("Siegel")), who were also members of the LVS Board and who were based in the United States. Leven served as a Special Adviser to the SCL Board.

43. During the relevant period, all of the in-person SCL Board meetings were held in either Hong Kong or Macau. The Board did not meet in Nevada. While certain board members attended board meetings remotely, the meetings were hosted in Hong Kong.

44. SCL listed Macau in its public filings as its principal place of business and head office. It also had an office in Hong Kong. SCL never described Nevada as its principal place of business and, prior to Jacobs termination, never had an office in Nevada.[17]

45. Prior to Jacobs termination, senior management of SCL: Jacobs, Weaver, the Chief Financial Officer (Toh Hup Hock, also known as Ben Toh), and the General Counsel and Corporate Secretary (Luis Melo) -- were all headquartered in Macau.

46. Although SCL insists that everything changed in terms of corporate control after the closing of the IPO – with Leven going so far as to claim that before the IPO he was the boss, and after the IPO he ceased being the boss – the evidence indicates otherwise.

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believe that the activities of Adelson in Las Vegas as Chairman of SCL are significant for determination of specific jurisdiction.

[17] Leven's business card as Special Adviser to SCL indicated his address was a Las Vegas address. Following Jacobs termination, Leven became interim CEO of SCL. He retained his office location in Las Vegas and all contact information at LVS during the entire duration of his term as Interim CEO.

47. This was not an ordinary parent/subsidiary relationship. On paper, neither Adelson nor Leven were supposed to be serving as "management" of SCL. Adelson's role was that of SCL's Board Chairman. Leven's role was, on paper, supposed to be that of "special advisor" to the SCL Board.

48. Internal emails and communications confirmed that Adelson's and Leven's roles of management largely continued unchanged after the IPO. Even SCL's other Board members internally referred to Leven as constituting SCL's "management." As Leven would confirm in one internal candid email, one of Jacobs' supposed problems is that he actually "thought" he was the CEO of SCL, when in fact, Adelson was filling that role just as he had before the IPO. Other internal communications confirm that Jacobs was criticized for attempting to run SCL independently because for LVS, "it doesn't work that way."

49. As Ron Reese ("Reese") (LVS's VP of public relations) would acknowledge, one of the supposed problems with Jacobs was that he thought he was the real CEO of SCL when in fact there is, and only has been, one CEO of the entire organization, and that is, and always has been, Adelson.

50. After the IPO, Adelson, Leven, and LVS continued to dictate large and small-scale decisions.

51. As internal documents show, even compensation for senior executives, including Jacobs, were ultimately dictated by Adelson.

52. Even though disagreements with Adelson had begun to surface, Jacobs was awarded 2,500,000 options in SCL on May 10, 2010 "in recognition of his contribution and to encourage continuing dedication." These options were granted by SCL under a Share Option Grant as one of the plans to which Jacobs was eligible. Consistent with its ultimate control and

direction, it was up to Leven and Adelson to approve the 2.5 million SCL options for Jacobs in SCL, which they did on May 4, 2010.

53. Jacobs was entitled to participate in any company "plans" that were available for senior executives. This included any stock option plans. If the IPO had not occurred, Jacobs would have participated in the LVS stock option plan. However, Leven explained that since the IPO was successful and Jacobs was overseeing the Macau operations, Section 7 of the Term Sheet was fulfilled by Jacobs' participation in the stock option plan for SCL. According to Leven, Jacobs participated in the SCL option plan because SCL had assumed the obligations to fulfill the terms of Jacobs' employment under the Term Sheet.

54. On or about July 7, 2010, when Jacobs was still SCL's CEO, Toh Hup Hock, in his capacity as SCL's CFO, sent Jacobs a letter from Macau regarding the stock option grant[18] that the Remuneration Committee of the SCL Board made to Jacobs.

55. The Option Terms and Conditions provided to Jacobs stated that the stock option agreement would be governed by Hong Kong law.

56. The stock option award to Jacobs of 2.5 million options in SCL are tied to and intertwined with the terms and conditions of the Term Sheet that the parties negotiated and agreed to in Nevada.

57. As Leven confirmed, the vesting of those 2.5 million options in SCL were expressly accelerated under the terms of the Term Sheet should Adelson and/or his wife lose control of LVS or should Jacobs be terminated without proper cause. SCL reasonably foresaw being subject to suit in Nevada having awarded Jacobs 2.5 million in stock options where the vesting was controlled by the Term Sheet with LVS and that SCL, according to Leven, assumed.

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[18] There is conflicting evidence as to whether Jacobs could elect stock options in LVS rather than in SCL.

58. Prior to the IPO, on November 8, 2009, LVS entered into a Shared Services Agreement with SCL through which LVS agreed to provide certain services and products to SCL.

59. LVS and SCL entered into a Shared Services Agreement pursuant to which each company agreed to provide the other with certain services at competitive rates. The services performed related to compensation and continued employment do not appear to fall within the scope of that agreement.

60. The Shared Services Agreement was signed by Jacobs, and was disclosed in SCL's IPO documents.

61. The services to be provided under the Shared Services Agreement are defined as Scheduled Products and Services. The agreement defines those as:

> . . . any product or service set out in the Schedule hereto the same as may from time to time be amended by written agreement between the Parties and subject to compliance with the requirement of the Listing Rules applicable to any amendment of this Agreement.

62. The Schedule attached to the Shared Services Agreement provided the following types of services were available to be shared (excerpted are relevant portions) and identified the method of compensation for those services:

Service/Product	Provider	Recipient	Pricing	Payment Terms	2009 US$$	2010 US$$	2011 US$$
Certain administrative and logistics services such as legal and regulatory services, back office accounting and handling of telephone calls relating to hotel reservations, tax and internal audit services, limited treasury functions	Members of Parent Group	Members of Listco Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the Parent Group and the hours	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of	4.7 million	5.0 million	8.3 million

and accounting and compliance services.			worked by such employees providing such services to the Listco Group	dispute, within 30 days of resolution of dispute.			
Certain administrative and logistics services such as legal and regulatory services, back office accounting and handling of telephone calls relating to hotel reservations, tax and internal audit services, limited treasury functions and accounting and compliance services.	Members of Listco Group	Members of Parent Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the Listco Group and the hours worked by such employees providing such services to the Parent Group	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute, within 30 days of resolution of dispute.	3.0 million	3.0 million	3.0 million

63. Shared services agreements are a common method by which affiliated companies achieve economies of scale.

64. Here, although SCL asserts that all of the services provided by LVS employees were rendered for SCL pursuant to the Shared Services Agreement, there is no evidence that the parties' observed any formalities,[19] which would permit the Court to determine which, if any, services were provided pursuant to the Shared Services Agreement.[20]

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[19] SCL 00193427, a redacted email dated February 10, 2010, evidences the adoption of a procedure for payment of vendor expenses for certain Parcel 5/6 construction related vendors from Macau. The email anecdotally indicates the invoices would be sent to Macau with a copy to Las Vegas, reviewed in Las Vegas, approved for payment in Las Vegas, and then sent to Macau for payment. This policy was apparently adopted after the threshold for intercompany billings in the SCL IPO was exceeded. SCL00199830.

65. SCL advised HKSE that implementation agreements would be used in conjunction with the Shared Services Agreement.[21]

66. When questioned during the evidentiary hearing about the mechanism for requesting or paying for service under the Shared Services Agreement, Adelson was unable to provide any evidence of the processes used to obtain services under that agreement.[22]

67. The facts and circumstances giving rise to Jacobs' ultimate termination were directed and controlled from Las Vegas. Despite internal praise from the Board members of

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[20] SCL00171443, redacted minutes of VML Compliance Committee dated February 22, 2010, reflect that because of the Shared Services Agreement a tracking system had been established to record the execution of each individual agreement and that individual implementation agreements would have to be drawn up for each service category. The Court has been unable to locate any further references in the evidence admitted at the hearing regarding the actual implementation and utilization of services pursuant to the Shared Services Agreement.

[21] The letter states in pertinent part:

> It is envisaged that from time to time, and as required, an implementation agreement for a particular type of product or service will be entered into between LVS Group and members of the Group under which the LVS Group provides the relevant products or services to the group or *vice versa*. Each implementation agreement shall set out the details of the material terms and conditions which shall include:
> a) the relevant Scheduled Products and Services to be provided;
> * * *
> c) the time(s) at which, or duration during which, the relevant Scheduled Products and Services are to be provided;
> d) the pricing for the Scheduled Products and Services to be provided, determined in accordance with the provisions of the Shared Services Agreement; and,
> e) payment terms (including where applicable, terms providing for deducting or withholding taxes).

SCL00106303.

[22] The Court reviewed the redacted documents contained in Exhibit 887A to determine if there was any support for SCL's position that the Shared Services Agreement was the method by which LVS employees were utilized by SCL rather than the agency analysis performed by the Court.

SCL (except Adelson) for Jacobs, Leven claims that in June of 2009 he had had enough of Jacobs and wanted him fired. Adelson and Leven began undertaking what one email labeled as the "exorcism strategy" to terminate Jacobs. The actions to effectuate Jacobs' termination were carried out from Las Vegas,[23] including the ultimate decision to terminate Jacobs, the creation of fictitious SCL stationary to draft a termination notice, the preparation of press-releases regarding Jacobs' termination, and the handling of legal leg-work to effectuate the termination.

68. According to Adelson and Leven, they were acting on behalf of SCL in Nevada when undertaking these activities, and they were doing so with SCL's knowledge and consent. They coordinated with legal and non-legal personnel – including Gayle Hyman (LVS's general counsel) and Reese – in LVS to carry out the plan to terminate Jacobs. Other LVS personnel were involved and acted in Nevada, including under the Shared Services Agreement between SCL and LVS.

69. Adelson and Leven made the determination to terminate Jacobs subject to approval of the SCL board at the next scheduled meeting.

70. From Nevada, Leven and Adelson informed the SCL Board of Adelson's decision to terminate Jacobs after the decision was already made. An emergency telephone conference was held regarding the termination of Jacobs and to have the SCL Board ratify the decision.

71. Jacobs was not and is not a resident of Nevada. When he served as SCL's CEO, he was headquartered in Macau and lived in Hong Kong.

72. Subsequently, Leven, Kenneth Kay (LVS's CFO), Siegel, Hyman, Daniel Briggs (LVS's VP of investor relations), Reese, Brian Nagel (LVS's chief of security), Patrick Dumont (LVS's VP of corporate strategy), and Rom Hendler (LVS's VP of strategic marketing) – left Las

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[23] This effort was described by Leven as an effort to "put ducks in a row".

Vegas and went to Macau to effectuate Jacobs' termination. Before they even left Las Vegas, Jacobs' fate had been determined.

73. On July 23, 2010, Leven met with Jacobs in Macau. At that meeting, Leven advised Jacobs he was terminated. Jacobs was given the option of resigning, which he refused. Jacobs inquired whether the termination was "for cause" and Leven responded that he was "not sure," but he indicated that the Term Sheet would not be honored.

74. Jacobs was SCL's CEO until he was terminated on or about July 23, 2010.

75. When Jacobs was terminated, he was in Macau.

76. Adelson named Leven Acting CEO and an Executive Director subject to approval of the SCL board at the next scheduled meeting and pending the appointment of a permanent replacement.

77. The SCL Board approved the termination and Leven's interim appointment.

78. The SCL Board appointed two new officers to serve as SCL's President and Chief Operating Officer (Edward M. Tracy) and Executive Vice President and Chief Casino Officer (David R. Sisk); both based in Macau. At the same time, Siegel, was appointed the Chairman of two newly formed committees (the Transitional Advisory Committee and the CEO Search Committee) and spent the majority of his time in Macau to carry out his duties.

79. After Jacobs' termination, Adelson and LVS began crafting a letter outlining Jacobs' supposed offenses for his "for cause" termination. The participants in this endeavor were Adelson himself, Leven and perhaps, Siegel. These actions were again carried out and coordinated in Nevada.

80. A number of the alleged 12 reasons for Jacobs' termination involve actions Jacobs carried out representing SCL while in Nevada.

81. After Jacobs was terminated, Leven replaced Jacobs as CEO of SCL. Leven did not enter into any employment agreement with SCL. He served in that capacity under the employment agreement that he had with LVS. While in Las Vegas, Leven served as the acting SCL CEO from his LVS headquarters in Las Vegas. SCL authorized and approved of Leven serving as its CEO from Las Vegas. As CEO, Leven was responsible for SCL's day-to-day operations.

82. After becoming Acting CEO, Leven, on documents with a Las Vegas Sands Corp. heading, issued an "Approval and Authorization Policy" for the Operations of "Sands China Limited."

83. Here, there is no evidence that the Shared Services Agreement was the basis for the activities of Leven, Adelson, Hyman, Reese, and Foreman.

84. SCL's activities through LVS employees in Nevada are substantial, have been continuous since the IPO, and are systematic.

85. In October 2010, the SCL Board had the same composition, except that the two Executive Directors were Toh Hup Hock, SCL's CFO (who had previously replaced Weaver as an Executive Director) and Leven. Toh Hup Hock resided in Macau; Leven continued to be based in Las Vegas, but traveled to Macau as necessary.

86. Jacobs filed his initial Complaint against SCL and LVS on October 20, 2010.

87. On October 27, 2010, Leven was personally served with a copy of the Summons and Complaint while acting as SCL's CEO and physically present in Nevada.

88. Reese, an LVS employee, began a public relations campaign regarding Jacobs' lawsuit on behalf of LVS and SCL from Nevada.

89. On March 15, 2011, Adelson, through Reese, issued a statement to a reporter for the Wall Street Journal that Jacobs' alleges to be defamatory. The statement is as follows:

> "While I have largely stayed silent on the matter to this point, the recycling of his allegations must be addressed," he said "We have a substantial list of reasons why Steve Jacobs was fired for cause and interestingly he has not refuted a single one of them. Instead, he has attempted to explain his termination by using outright lies and fabrications which seem to have their origins in delusion."

90. Adelson acknowledges that he made this statement on behalf of himself, LVS, and SCL. SCL published a statement to the media from Nevada that gives rise to the claim for defamation.

91. Based upon the evidence, Adelson's statement can be attributed to SCL because it claims that it is responsible for Jacobs' termination. The statement was made and issued in Nevada. If proven defamatory, this would be an additional basis for jurisdiction in Nevada.

92. Any finding of fact stated hereinabove that is more appropriately deemed a conclusion of law shall be so deemed.

III.
CONCLUSIONS OF LAW

93. The Court is faced with allegations of general jurisdiction, specific jurisdiction and transitory jurisdiction over SCL.[24]

A. GENERAL JURISDICTION

94. The Court has to evaluate the contacts by SCL and make determinations as to whether SCL is at home in Nevada for the general jurisdiction analysis. Little guidance has been provided to the Court to assist in the determination of the appropriate factors to consider in determining whether SCL is at home in Nevada.

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[24] The Court has made separate findings and conclusions on each type of jurisdiction alleged by Jacobs to enable the parties to seek a more full appellate review if they choose.

95. General or "all-purpose" jurisdiction gives a court the power "to hear any and all claims against" a defendant "regardless of where the claim arose." Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S.Ct. 2846, 2851 (2011).

96. A court has general jurisdiction over a foreign corporation only if it is "essentially at home" in the forum. *See id.*; 134 S.Ct. at 758 n.11.

97. "'A court may exercise general jurisdiction over a foreign company when its contacts with the forum state are so continuous and systematic as to render [it] essentially at home in the forum State.'" 328 P.3d at 1156-57.

98. "Typically, a corporation is 'at home' only where it is incorporated or has its principal place of business." 328 P.3d at 1158.

99. The Supreme Court in Daimler AG did not rule out that "a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." 134 S. Ct. at 761 n.19.

100. "The test for general jurisdiction, depends on an analysis of the Due Process Clause and its requirement that a foreign corporation's "continuous ***corporate operations*** within a state [be] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 134 S.Ct. at 754.

101. In Daimler AG, the U.S. Supreme Court held that corporations may be sued under a general jurisdiction theory if their affiliations with the forum are so "'continuous and systematic as to render them essentially at home in the forum State.'" 134 S.Ct. at 754.

102. Here, SCL has designated Macau as its principal place of business. All of SCL's holdings are located in Macau. SCL's executive officers, including Jacobs, were based in Macau until July 2010 when Jacobs was terminated.

103. The SCL Board, which included three independent directors who reside in Hong Kong, met in either Macau or Hong Kong.

104. SCL is not incorporated in Nevada and does not hold its board meetings in Nevada.

105. While a significant amount of direction over the activities of SCL comes from its Chairman in Las Vegas, as well as others employed with LVS, for purposes of general jurisdiction these pervasive contacts appear to be irrelevant following Daimler.[25]

106. The Nevada Supreme Court, after Daimler, has indicated that an agency theory of general jurisdiction is still viable. In Viega, the Court cited a California case that found that the agency theory "supports a finding of general jurisdiction" and noted that "the [United States] Supreme Court has recognized that agency *typically* is *more useful* to a specific jurisdiction analysis." 328 P.3d at 1163 n.3 The Court did not indicate that the agency theory of general jurisdiction is no longer available.[26]

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[25] At the time of the Court's original decision denying the motion to dismiss, Daimler had not been decided. This has resulted in a substantial change in the evaluation of jurisdiction over foreign companies. While the Court recognizes that there are pervasive contacts, these contacts alone are insufficient to exercise general jurisdiction over a foreign company.

[26] In trying to reconcile the concepts of alter ego and agency for general jurisdictional inquiries, the Nevada Supreme Court wrote:

> But corporate entities are presumed separate, and thus the mere "existence of a relationship between a parent company and its subsidiaries is not sufficient to establish personal jurisdiction over the on the basis of the subsidiaries minimum contacts with the forum. . . . Unlike with the alter-ego theory, the corporate identity of the parent company

107. SCL made extensive use of agents -- employees of LVS -- in conducting its business. Under Viega, the analysis of the contacts and actual activities of these agents are relevant both for an evaluation of whether general jurisdiction is appropriate and, if not, whether specific jurisdiction over SCL is appropriate.

108. Jacobs' operative Third Amended Complaint asserts causes of action against SCL for Breach of Contract; Aiding and Abetting Tortious Discharge in Violation of Public Policy; Civil Conspiracy related to Tortious Discharge in Violation of Public Policy; and Defamation.[27]

> is preserved under the agency theory; the parent nevertheless" is held for the acts of the [subsidiary] agent" because the subsidiary was acting on the parent's behalf.

328 P.3d at 1157 (internal citations omitted).

[27] The jurisdictional allegations related to SCL in the Third Amended Complaint are:

> 3. Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and is 70% owned by LVSC. Sands China is publicly traded on the Hong Kong Stock Exchange. While Sands China publicly holds itself out as being headquartered in Macau, its true headquarters are in Las Vegas, where all principle decisions are made and direction is given by executives acting for Sands China.
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> * * *
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> 6. Each Defendant is the agent of the other Defendants such that each Defendant is fully liable and responsible for all the acts and omissions of all of the other Defendants as set forth herein.
>
> 7. The Court has personal jurisdiction over the Defendants and the claims set forth herein pursuant to NRS 14.065 on grounds that such jurisdiction is not inconsistent with the Nevada Constitution or United States Constitution.
>
> 8. Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because the material events giving rise to the claims asserted herein occurred in Clark County, Nevada.
>
> * * *
>
> 38. In or about July 2010, Adelson directed executives from LVSC in Las Vegas, Nevada to begin the process of terminating Jacobs. This process which would be referred to as the "exorcism strategy," was planned and carried out from Las Vegas and included (1) the creation of fictitious Sands China letterhead upon which a notice of termination was prepared, (2) preparation of the draft press releases with which to publicly announce the termination, and (3) the handling of all legal-related matters for the termination. Again, all of these events took place in Las Vegas, ostensibly by agents acting for both LVSC and Sands China.
>
> 39. Indeed it was LVSC in-house attorneys, claiming to be acting on behalf of Sands China, who informed the Sands China Board on or about July 21, 2010, about Adelson's decision to

The location of activities related to these allegations is important to the Court's analysis of jurisdiction.

109. LVS operates SCL the same way as it operated its Macau operations before the IPO. Despite the appointment of a Board, any change in the location of ultimate decision-making authority, direction, or control was not material after the IPO.

110. Here, Adelson and LVS assert an extraordinary amount of control over SCL. The parties do not dispute that LVS is subject to general jurisdiction in Nevada, has systematic and

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terminate Jacobs, and directed the Board members to sign the corporate documents necessary to effectuate Jacobs termination. These same attorneys promised to explain the basis for the termination to the Board members during the following week's board meeting (after the termination took place). Predictably, as Adelson is all-controlling, he took action first and then decreed how the Board thereafter reacted.

40. Promptly thereafter, the team Adelson had placed in charge of overseeing the sham termination – Leven, Kenneth Kay (LVSC's CFO), Irwin Siegel (LVSC/Sands China Board member), Gayle Hyman (LVSC's general counsel), Daniel Briggs (LVSC's VP of investor relations), Ron Reese (LVSC's VP of public relations), Brian Nagel (LVSC's chief of security), Patrick Dumont (LVSC's VP of corporate strategy) and Ron Hendler (LVSC's VP of strategic marketing) – left Las Vegas and went to Macau in furtherance of the scheme.

* * *

44. Because Leven had not been able to persuade Jacobs to resign, the next play from the Adelson playbook went into effect – fabricating purported cause for the termination. Once again, this aspect of the plan was also carried out in Las Vegas by executives professing to act for both LVSC and Sands China. Indeed, this time they prepared a false letter in Las Vegas and put it on Venetian Macau, Ltd. Letterhead and identified twelve manufactured "for cause" reasons for Jacobs termination. Transparently, one of the purported reasons is an attempt to mask one of Adelson's personal transgressions: The letter absurdly claimed that Jacobs exceeded his authority and failed to keep the companies' Boards of Directors informed of important business decisions. Not surprisingly, not only are the after-the-fact excuses a fabrication, they would not constitute "cause" for Jacobs termination even if they were true, which they are not.

* * *

71. In an attempt to cover their tracks and distract from their improper activities Adelson, LVSC and Sands China have waged a public relations campaign to smear and spread lies about Jacobs. . . .

The Court has not considered these allegations as true, but weighs the evidence related to these allegations for purposes of this decision.

continuous contacts with Nevada, and is at home in Nevada. Adelson and LVS's control over SCL goes far beyond the ordinary relationship of parent to subsidiary.[28]

111. The Court refuses to adopt a test under which a company that properly obtains available services from an affiliate through a shared services agreement, without further contacts, becomes subject to jurisdiction in the affiliate's home state.

112. Even though Jacobs and others at SCL were permitted to provide recommendations, the decisions — large and small — were ultimately made by Adelson and LVS in Las Vegas.

113. The attitude of Adelson and other LVS executives towards Jacobs' efforts to maintain independent entities could be construed as a "purposeful disregard of the subsidiary's independent corporate existence." Sonora Diamond Corp. v. Superior Court, 83 Cal. App. 4th 523, 542, 99 Cal. Rptr. 2d 824, 838 (2000).

114. SCL's own operations in Nevada through agents (separate and apart from those agreed to under the Shared Services Agreement) are so substantial and of such a nature as to render it essentially at home in Nevada even though it is not incorporated in Nevada and does not have casino operations in Nevada. Jacobs and other SCL executives routinely conduct business in Nevada. All major decisions were made in Nevada on behalf of SCL, including contracts for the purchase of goods and services.

115. The activities of LVS employees – as SCL's agents outside of the Shared Services Agreement - were continuous and significant enough to render SCL "at home" in Nevada.

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[28] Based upon the limited evidence currently before it, the Court is faced with two potential conclusions: either, that SCL is so dominated by LVS and its Chairman that it's independent existence is a sham or alternatively, that the Board of SCL has made a conscious decision to allow its agents in Las Vegas significant control over SCL's operations and governance. Given the presumption of separateness, the Court finds the better course in this situation, based upon the evidence currently before it, is the latter conclusion.

116. Jacobs argues that LVS exercised control over SCL from Las Vegas. While the separate corporate identities of LVS and SCL cannot be ignored, the actions of those on behalf of SCL in Nevada are important to the jurisdictional analysis.

117. The evidence demonstrates that Adelson, in his capacity as SCL's Chairman, and Leven, as Acting CEO, controlled SCL from Las Vegas. Both were in Las Vegas transacting business for SCL with the knowledge and apparent consent of the Board of SCL. While Leven was special advisor and acting CEO, his SCL business cards showed Nevada as his contact location for SCL. The same was true of Mr. Adelson.

118. In Daimler AG, the Court explained that the general jurisdiction test the Due Process Clause requires—which limits all-purpose jurisdiction to the forums where the corporation is "at home"—raises a simple question that can be "resolved expeditiously at the outset of the litigation" without the need for "much in the way of discovery." 134 S.Ct. at 762 n.20. The complicated and intensely fact-specific arguments demonstrate the uniqueness of this case.

119. This is the "exceptional case" where "a corporation's operations in a forum other than its formal place of incorporation or principal place of business [are] so substantial and of such a nature as to render the corporation at home in that State." 134 S.Ct. at 761 n.19. In deciding whether this test is met, the "inquiry does not 'focu[s] solely on the magnitude of the defendant's in-state contacts.'" *Id.* at 762 n.20. "General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide." *Id.*

120. Taken alone SCL's purchases of goods and services from entities headquartered in Nevada, including LVS, for use in Macau do not provide a basis for concluding that SCL was "at home" in Nevada.

121. SCL had the right to control how LVS employees performed the services on SCL's behalf; the Board apparently did not exercise that right to control, but deferred to the Chairman and Special Adviser.

122. The actions LVS employees undertook in Nevada as SCL's agent, when compared to SCL's activities in their entirety, were "so substantial and of such a nature" that SCL should be deemed to be "at home" in Nevada.

123. Based upon the governing law, and all of the evidence presented in the record, the Court finds that based upon the conduct of LVS acting as SCL's agent, SCL is subject to general jurisdiction in Nevada. The evidence is sufficient to support this finding by a preponderance of the evidence without considering the adverse evidentiary inference imposed by the Court's March 6, 2015 Order.

124. The activities of LVS employees – as SCL agents outside of the Shared Services Agreement – were continuous and significant enough to render SCL "at home" in Nevada.

125. A review of Exhibit 887A and the adverse inference imposed by the Court's March 6, 2015 Order, the Court finds that SCL has failed to rebut the inference that each of the documents improperly redacted[29] under the MDPA contradict SCL's denials of personal

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[29] The redactions made to the documents – eliminating all names and other identifying information about identities – casts doubt as to fairness and thoroughness of the entire search, vetting and production process. Because many of the search terms were in fact names, the veracity and completeness of the search cannot be tested against the documents that were flagged for production as SCL has made it impossible for Jacobs to know the identity of any of the names in the redacted documents. Thus, because several of the search terms are in fact names of people, the search terms themselves are redacted. Such a process is ripe for abuse and fails to meet the standards of fairness for discovery in a Nevada court. Because in many instances the actual search terms are redacted, Jacobs cannot himself even run searches against the redacted documents. Adelson himself confirmed that redacted documents are effectively useless in terms of evidentiary value, particularly emails since those contain the identity of the sender, recipient and other names, all of which SCL has redacted and made inaccessible.

jurisdiction and support Jacobs' assertion of personal jurisdiction over SCL.[30] These inferences simply provide additional evidentiary support for the Court's conclusions.

B. SPECIFIC JURISDICTION

126. A court will find a defendant subject to specific jurisdiction where:

> (1) the defendant purposefully avails himself of the privilege of serving the market in the forum or of enjoying the protection of the laws of the forum, or where the defendant purposefully establishes contacts with the forum state and affirmatively directs conduct toward the forum state, and (2) the cause of action arises from that purposeful contact with the forum or conduct targeting the forum.

Arbella Mut. Ins. Co., 122 Nev. 509, 513, 134 P.3d 710, 712-13 (2006).

127. "[A] plaintiff may establish personal jurisdiction over a nonresident defendant "by attributing the contacts of the defendant's agent with the forum to the defendant". 109 Nev. at 694.

128. "Corporate entities are presumed separate. And thus, indicia of mere ownership are not alone sufficient to subject a parent company to jurisdiction based upon its subsidiary's contacts." 328 P.3d at 1158.

129. "[T]he control at issue must not only be of a degree 'more pervasive than . . . . common features' of ownership, '[i]t must veer into management by the exercise of control over the internal affairs of the subsidiary and the determination of how the company will be operated on a day-to-day basis,' such that the parent has 'moved beyond the establishment of general

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[30] Exhibit 887A contains the remaining redacted documents for which replacement copies have not been produced. A review of those documents demonstrates that the activities of SCL and LVS were assisted by use of a Macau shared drive, "the M drive", hosted in Las Vegas. While the degree of redactions prevents the Court from identifying the individuals involved in the discussions, (SCL00182755) the existence of that shared drive is additional evidence of the level of activity in Nevada and control of its agent that SCL could, if it chose, exercise.

policy and direction for the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy." 328 P.3d at 1159.

130. Specific jurisdiction is proper only "where the cause of action arises from the defendant's contacts with the forum." Dogra v. Liles, 129 Nev. Adv. Rep. 100, 314 P.3d 952, 955 (2013) . "Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant 'purposefully avails' himself or herself of the protections of Nevada's laws, or purposefully directs her conduct towards Nevada, and the plaintiff's claim actually arises out from that purposeful conduct." *Id.*

131. Where "separate claims are pled, specific personal jurisdiction must independently exist for each claim and the existence of personal jurisdiction for one claim will not provide the basis for another claim." Wright & Miller, 5B Fed. Prac. & Proc. Civ. § 1351, at 46 n.30. Jacobs has met his burden of showing specific jurisdiction with respect to each of his claims against SCL.

Breach of Contract

132. Jacobs claims that he performed the services of SCL's CEO pursuant to an employment agreement with the parent, LVS. Evidence adduced at the evidentiary hearing appears to support a claim that the Term Sheet was later assigned and assumed by SCL as part of the IPO. The assignment and assumption of a contract from a Nevada company subjects SCL to jurisdiction for a dispute stemming from that contract and the services provided under it. Since Jacobs would be subject to suit in Nevada pursuant to that agreement, SCL is similarly subject to suit in Nevada by having assumed the obligations that flow from that agreement.

133. Newly-formed legal entities are subject to personal jurisdiction in the forum where the entity's promoter enters into contracts, which the legal entity later ratifies and accepts.

134. The fact that the Term Sheet was negotiated and agreed to in Nevada would further subject SCL to personal jurisdiction due to the conduct of SCL's incorporator, LVS.

135. In Burger King Corp. v. Rudzewicz, 471 U.S. 462, 479, 105 S. Ct. 2174, 2185, (1985) the U.S. Supreme Court emphasized the "need for a highly realistic approach that recognizes that a contract is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." 471 U.S. at 479. "It is these factors—prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing—that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum. "*Id.*

136. Here, all of these factors demonstrate that there is specific jurisdiction over Jacobs's breach of contract claim. The negotiations, consequences, terms, and parties' course of dealing arising from the option grant are all primarily connected to Nevada. The facts related to the termination are intimately related to the breach of the option grant.

137. A nonresident company may subject itself to jurisdiction by accepting the benefits of an employment agreement.

138. The use of correspondence and telephone calls to forum-based offices during contract negotiations are examples of the sort of contact that can give rise to jurisdiction.

139. Jacobs has sued SCL for failure to honor the award of options to him, a claim that grows directly out of his services provided to SCL pursuant to the Term Sheet with LVS. SCL purposefully availed itself of the laws of Nevada by accepting the services of Jacobs' pursuant to the Nevada-based Term Sheet. When accepting the benefits that Jacobs was providing pursuant

to a Nevada contract, SCL could reasonably foresee being hailed into a Nevada court should a dispute arise related to terms of his employment under the Nevada contract.

140. The Share Option Agreement was offered to Jacobs for the services he provided to SCL pursuant to the Term Sheet.

141. The Share Option Grant and the Term Sheet are intertwined and interrelated. The Share Option Grant was made in fulfillment of the terms and conditions of the Term Sheet.

142. Adelson, Leven, and other LVS executives participated in the decision to extend the Share Option Grant. This process involved a number of emails and calls to and from Nevada to resolve the terms of the options and SCL's executive stock option plan.

143. Jacobs alleges that the decision to breach the Share Option Grant was made by Adelson and LVS executives from Nevada. Jacobs' breach of contract cause of action arises from this action within the forum.

144. The parties' disputes as to whether Jacobs engaged in certain activities outside of Nevada, and whether he then reported those activities to the Chairman in Nevada – disputes that also go to the merits of the case – affect the basic conclusion that Jacobs claim arose in Nevada.

145. The acts of employees of LVS, as agent of SCL, related to compensation and termination of Jacobs and SCL's assumption of the Nevada negotiated Term Sheet support the conclusion that specific jurisdiction is appropriate over the breach of contract claim.

146. Where the Court has personal jurisdiction over one contract, the Court may exercise jurisdiction over intimately related contracts even though the parties are not identical.

Conspiracy and Aiding and Abetting

147. The jurisdictional analysis for aiding and abetting is similar to the jurisdictional assessment for conspiracy claims.

148. The elements of jurisdiction for either conspiracy or aiding and abetting are:

> (1) a conspiracy . . . existed;
> (2) the defendant was a member of that conspiracy;
> (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state;
> (4) the defendant knew or had reason to know of the act in the forum state or that acts outside the forum state would have an effect in the forum state; and
> (5) the act in, or effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy.

Carsanaro v. Bloodhound Techs., Inc., 65 A.3d 618, 636 (Del. Ch. 2013) .

149. Jacobs has presented sufficient evidence to show jurisdiction over SCL on his conspiracy and aiding and abetting claims.

150. While wearing their SCL "hats," Adelson and Leven formulated the strategy to terminate Jacobs. Many of their own acts, purportedly done on behalf of SCL, were undertaken within Nevada.

151. To carry out the plan, they utilized the services of LVS employees within Nevada to draft press releases, obtain the SCL Board's "approval" after the decision had been made, and handled other legal matters related to the termination so that Jacobs would not discover his looming termination.

152. These were substantial acts in furtherance of Jacobs' firing and would give rise to jurisdiction over SCL had SCL taken these acts within the forum. SCL knew of LVS's acts in the forum to complete Jacobs' termination and assented to them.

153. The acts in Nevada, and the effects felt therein, were directly foreseeable and attributable to the alleged conspiracy.

154. Jacobs' causes of action for conspiracy and aiding and abetting arise directly out of SCL's and its co-conspirators' purposeful contact with the forum and conduct targeting the forum.

155. The evidence has shown that SCL purposefully directed its conduct towards Nevada.

156. The acts of LVS and SCL related to Jacobs alleged wrongful termination support the conclusion that specific jurisdiction is appropriate over the Aiding and Abetting Tortious Discharge in Violation of Public Policy and Civil Conspiracy related to Tortious Discharge in Violation of Public Policy claims.

Defamation

157. A corporation can be liable for the defamatory statements of its executives acting within the scope of their authority.

158. Jacobs has presented sufficient evidence that Adelson's statements are attributable not only to himself, but also SCL.

159. Jacobs' cause of action arises out of Adelson's statement that he made and published in Nevada concerning Jacobs' claims in Nevada.

160. "In judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.'" Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 775 (1984). "The victim of a libel, like the victim of any other tort, may choose to bring suit in any forum with which the defendant has certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* at 780-81. The reputation of a libel victim may suffer harm outside of his or her home state. *Id.* at 777. Defamatory statements hurt the target of the statement and the readers of the statement. *Id.* at 776.

161. Specific jurisdiction over SCL on Jacobs defamation claim hinges on his assertion that Adelson was speaking not only for himself and LVS, but also for SCL, when he made the

allegedly defamatory statement. Adelson's inconsistent testimony on this issue during the evidentiary hearing provides substantial evidentiary support for Jacobs allegations.

162. The fact that Mr. Adelson's statement was published in Nevada through *The Wall Street Journal* is enough to support specific jurisdiction over SCL.

Reasonableness

163. "Whether general or specific, the exercise of personal jurisdiction must also be reasonable." Emeterio v. Clint Hurt and Associates, Inc., 114 Nev. 1031, 1036, 967 P.2d 432, 436 (1998).

164. Once the first two prongs of specific jurisdiction have been established, (purposeful availment/direction and that the cause of action arises from that purposeful contact/targeting the forum) "the forum's exercise of jurisdiction is *presumptively reasonable.* To rebut that presumption, a defendant 'must present a *compelling* case' that the exercise of jurisdiction would, in fact, be unreasonable." Roth v. Garcia Marquez, 942 F.2d 617, 625 (9th Cir. 1991).

165. Courts look at a number of factors to analyze whether exercising jurisdiction would be reasonable, including:

> (1) the burden on the defendant of defending an action in the foreign forum,
> (2) the forum state's interest in adjudicating the dispute,
> (3) the plaintiff's interest in obtaining convenient and effective relief,
> (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and
> (5) the shared interest of the several States in furthering fundamental substantive social policies.

967 P.2d at 436.

166. Application of these factors confirms that it is reasonable to require SCL to litigate this contract dispute in Nevada.

167. SCL will not suffer any burden defending this action in Nevada. The evidence indicates that SCL utilized LVS for substantial activities related to the issues involved in the allegations related to the merits of this matter. SCL's executives routinely travel to Nevada and conduct business in Nevada on a systematic and continuous bases. Continuing contacts with the forum indicate that litigating in Nevada do not constitute a burden. 942 F.2d at 623. "[U]nless such inconvenience is so great as to constitute a deprivation of due process, it will not overcome clear justifications for the exercise of jurisdiction." *Id.*

168. Nevada has an interest in resolving disputes over contracts and torts that center upon Nevada and relate to activities in the forum. Although a non-resident, Jacobs has an interest in obtaining convenient and effective relief. SCL cannot plausibly argue that it would be more convenient for Jacobs to litigate outside of the United States. *See id.* at 624.

169. The interstate – and global – judicial systems' interest in efficient resolution weighs in favor of exercising jurisdiction. This matter has been pending in Nevada courts for almost five years. Judicial economy would be served by continuing this litigation in Nevada. Significant time and judicial resources of the Court and the parties will have been wasted if Jacobs is required to reinstate this litigation in another forum. The social policies implicated by claims of wrongful termination in violation of public policy militate in favor of retaining jurisdiction.

170. SCL has not made a compelling case that exercising jurisdiction over it would be unreasonable.

171. While Nevada civil litigation rules are likely to impose obligations on SCL that are in tension with SCL's obligations under the foreign law of the jurisdiction where it operates,

including its obligations under the MDPA, the free flow of information that occurred between SCL and LVS prior to the litigation ameliorate that concern.

Adverse Inference

172. Without taking into consideration the adverse evidentiary inferences imposed by the Court's March 6, 2015 Order, Jacobs has established specific personal jurisdiction over each of his claims against SCL by a preponderance of the evidence.

173. If the Court were to consider the adverse evidentiary inference imposed by the Court's March 6, 2015 Order, the case for exercising specific jurisdiction is even stronger.

C. TRANSIENT JURISDICTION

174. In Burnham v. Superior Court of California, 495 U.S. 604, 619 (1990), the United States Supreme Court reaffirmed the principle that "jurisdiction based on physical presence alone constitutes due process" and that it is "fair" for a forum to exercise jurisdiction over anyone who is properly served within the state.

175. Nevada has adopted the in-state service rule for non-resident defendants. *See* NRS 14.065(2). The Nevada Supreme Court has held that "[i]t is well-settled that personal jurisdiction may be asserted over an individual who is served with process while present within the forum state." Cariaga v. Eighth Judicial Dist. Court of State, 104 Nev. 544, 762 P.2d 886, 887 (1988). It also noted that "[t]he doctrine of 'minimum contacts' evolved to extend the personal jurisdiction of state courts over non-resident defendants; it was never intended to limit the jurisdiction of state courts over persons found within the borders of the forum state." *Id.*

176. Leven was served with process while in Nevada acting as SCL's CEO and while carrying out SCL's business from the office identified on his SCL business card. Leven was not served with process during a temporary or isolated trip. To the contrary, Leven was served with

process in the state where SCL had duly authorized him to serve as CEO. Accordingly, due process is satisfied and, even if other basis for jurisdiction did not exist, this Court may exercise jurisdiction over SCL on the basis of transient jurisdiction.

177. The Nevada Supreme Court instructed this Court to consider whether there was transient jurisdiction over SCL if it concluded that there was no general jurisdiction. It is undisputed that Jacobs served his complaint on Leven, who was then SCL's Acting CEO, while he was in Nevada.

178. Serving a complaint on a senior officer of a corporation in the forum without more does not confer jurisdiction over the corporation.

179. While the U.S. Supreme Court held in Daimler AG that it violates due process to exercise general jurisdiction over a foreign corporation based solely on the fact that its agent is present and doing business on behalf of the foreign corporation in the forum, the significant business being done on behalf of SCL by Leven with SCL's knowledge and consent supports transient jurisdiction.

180. Any conclusion of law stated hereinabove that is more appropriately deemed a finding of fact shall be so deemed.

IV.

ORDER

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED: Defendant Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party is denied.

Dated this 28th day of May, 2015.

ELIZABETH GONZALEZ
District Court Judge

Certificate of Service

I hereby certify, that on the date filed, this Order was served on the parties identified on Wiznet's e-service list.

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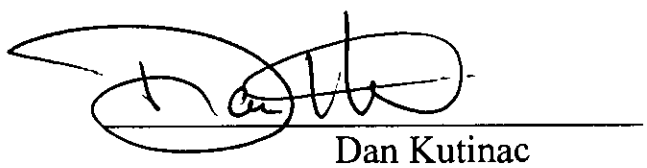

Dan Kutinac

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Jun 22 2015 08:54 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

SANDS CHINA LTD.,
a Cayman Islands corporation,

Petitioner,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number:

District Court Case Number:
A627691-B

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MAY 28, 2015 ORDER

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner Sands China Ltd. ("SCL") is a Cayman Islands corporation whose stock is publicly traded on the Stock Exchange of Hong Kong Limited. Las Vegas Sands Corp. ("LVSC"), a publicly-traded Nevada corporation, owns the majority of Petitioner's stock.

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I. INTRODUCTION

A. The District Court's Jurisdictional Order

This Petition for Mandamus arises from a dispute between two parties having no connection of any kind with Nevada—a plaintiff who resides in Florida and Georgia and a corporate defendant (Sands China Limited or "SCL") that is incorporated in the Cayman Islands and has its principal place of business in Macau. In the proceedings below, the district court held that SCL is subject to both general and specific jurisdiction in the Nevada courts, even though SCL maintains no offices or employees in Nevada and conducts no business or any other operations in the state.

This remarkable ruling culminates a series of events that began four years ago when this Court vacated the district court's initial finding that SCL was subject to general jurisdiction in Nevada and remanded the case for a jurisdictional hearing. Following the remand, the district court directed SCL and its co-defendant (and parent) Las Vegas Sands Corp. ("LVSC") to engage in a massive amount of "jurisdictional" discovery on a scale that is unprecedented in Nevada or any other jurisdiction. The district court also sanctioned SCL not because it refused to produce documents, but because it redacted certain personal data from documents it produced in compliance with the laws of its home jurisdiction. After issuing the sanctions order, the court then vindicated its earlier ruling by again finding jurisdiction over SCL, but, as before, it reached its decision through a series of fundamental errors that deserve correction by this writ.

First, the district court based its finding of general jurisdiction on a discredited "agency" theory holding that SCL's parent (LVSC) operated as SCL's "agent" in Nevada and that the parent's activities could therefore be imputed to SCL. This theory is directly contrary to the U.S. Supreme

Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746, 759-60, 762 n.20 (2014), which established that a foreign corporation cannot be subject to a state court's general jurisdiction based solely on the "contacts" of its in-state subsidiary. In reaching this result, the Supreme Court reversed a lower court decision that relied on the same agency theory adopted by the district court here. *Id.* at 759-60. For this reason alone, the district court's finding of general jurisdiction cannot stand.

Equally flawed is the district court's finding of specific jurisdiction. Under Nevada law, a foreign corporation is subject to specific jurisdiction only if it undertakes some affirmative act in Nevada that relates to the plaintiff's cause of action. Yet, in this case, the district court upheld specific jurisdiction over SCL without finding that SCL engaged in any "affirmative acts" in Nevada relating to Plaintiff's claims. Instead, the district court relied entirely on passive acts, such as "accepting the benefits" of Plaintiff's alleged employment agreement with LVSC. This, too, was reversible error.

Finally, the district court's jurisdictional ruling also relied on its sanctions order which barred SCL from introducing *any* evidence at the jurisdictional hearing. By virtue of this order, SCL could not present any testimony on such critical issues as the nature and extent of SCL's business outside of Nevada—a critical element of the jurisdictional analysis under *Daimler*—or the burdens that SCL will incur if forced to litigate this case in Nevada. The sanctions order also permitted the district court to draw the broad "adverse inference" that all of the redacted documents supported the assertion of personal jurisdiction over SCL, even though the actual *contents* of the documents had no jurisdictional relevance at all.

In imposing these extraordinary sanctions, the district court did *not* dispute that (1) Macau's laws *required* SCL to redact the names and other

personal data; and (2) SCL undertook "extensive efforts" to provide alternative sources for the requested information. Nor did the court dispute that the redacted names had no substantive relevance to any jurisdictional issue in the case. Yet, notwithstanding these critical facts, the district court imposed sanctions so grossly disproportionate to the nature of the alleged violation—and so contrary to the most basic requirements of a fair hearing—as to violate both Nevada Rule of Civil Procedure Rule 37 and Due Process. As a matter of Due Process, this Court should apply special scrutiny to a sanction that effectively imposes personal jurisdiction over a foreign corporation that is not doing business in the United States, has not availed itself of the privileges of American law, and had no reason to foresee litigation in the United States as a consequence of its operations in Macau *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); *Kulko v. Cal. Superior Ct.*, 436 U.S. 84, 97-98 (1978).

One other point should be stressed. As a result of the district court's ruling, SCL will now be forced to submit to the extraordinary costs and burdens of litigating in the United States a case in which it has already spent more than $2.4 million on jurisdictional issues alone. This kind of irreparable harm is precisely why this Court has held that writ review is particularly appropriate in jurisdictional cases, where "no adequate and speedy legal remedy typically exists to correct an invalid exercise of personal jurisdiction." *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1156 (2014) (en banc).

For all of these reasons, the district court's Order should be vacated.

B. This Court's Precedents Support Writ Review.

This court has original jurisdiction "to issue writs of mandamus, certiorari, [and] prohibition" and "also all writs necessary or proper to the complete exercise of [its] jurisdiction." Nev. Const. Art. 6, § 4.

It is well-settled that writ review is an appropriate method for challenging jurisdictional orders because "no adequate and speedy legal remedy typically exists to correct an invalid exercise of personal jurisdiction." *Viega*, 328 P.3d at 1156. It is also well settled that writ review is an appropriate method for challenging an erroneous imposition of sanctions. *City of Sparks v. Second Jud. Dist. Ct.*, 112 Nev. 952, 954, 920 P.2d 1014, 1015 (1996).

Both rationales apply here.

II. ISSUES PRESENTED BY THIS WRIT PETITION

(1) Whether the district court erred in holding that it could exercise general, specific and transient jurisdiction over SCL.

(2) Whether the district court abused its discretion in its sanctions order by (a) holding that SCL's redactions caused "severe prejudice" without determining whether the redacted data was even relevant to the jurisdictional issues before the court; (b) not properly considering the factors that this Court directed it to evaluate in determining what, if any sanctions should be imposed on SCL; and (c) imposing sanctions that were grossly disproportionate to the nature of the alleged violation and precluded SCL from presenting any evidence in the jurisdictional hearing.

III. STATEMENT OF FACTS

A. Plaintiff's Claims

Plaintiff Steven C. Jacobs was formerly the CEO of SCL, which operates gaming, hotel and other business ventures in Macau through its

wholly-owned subsidiary, VML. PA43793, ¶¶ 1-3. SCL's stock is publicly traded on the Hong Kong Stock Exchange. *Id.* LVSC is SCL's majority shareholder. *Id.*, ¶ 1.

Jacobs was terminated as SCL's CEO in July 2010. *Id.*, ¶ 3. Three months later, he filed this lawsuit, claiming that LVSC had wrongfully terminated him and that SCL had breached a contractual obligation by refusing to honor his demand to exercise certain stock options. On December 22, 2014, Plaintiff filed a Third Amended Complaint adding allegations of conspiracy, aiding and abetting, and defamation against SCL.

B. Jurisdictional Facts

Plaintiff is a resident of both Florida and Georgia. Third Am. Compl. ¶ 1. SCL is a corporation formed on July 15, 2009 and organized under the law of the Cayman Islands. PA44832:15-19; PA44833:2-4. SCL is a holding company, and its primary, indirectly-owned subsidiary is VML. PA44832:15-19; PA44838:10-12. VML is the holder of a subconcession authorized by the Macau Government that allows it to operate casinos and gaming areas in Macau. Through VML and its other operating subsidiaries, SCL is a developer, owner and operator of integrated resorts and casinos in Macau. PA44837:14-21. Accordingly, Macau is SCL's principal place of business. PA44837:7-9.

In November 2009, SCL became a publicly-traded corporation, with stock listed on the Hong Kong Stock Exchange. PA44832:22; PA44833:9-13. LVSC owns approximately 70% of SCL's stock, and the remainder is publicly traded. PA44833:14-23.

SCL does not maintain any bank accounts or own any property in Nevada. PA44853:20-25. SCL does not conduct any gaming operations in Nevada, or derive any revenue from operations in Nevada. PA44840:21 -

841:5. SCL has never owned, controlled, or operated any business in Nevada. *Id.* Indeed, under a non-competition agreement with LVSC, SCL cannot conduct any business in Las Vegas. PA44842:19 - 843:19. As a result, the approximately $4 billion in annual revenues that SCL reports in its public filings derive entirely from its operations in Macau. PA44840:11-20.

At all times relevant to this Petition, SCL's senior management lived in Hong Kong or Macau. PA44841:19-25 (Leven). SCL maintained its own corporate records, including minutes of the meetings of its Board of Directors. PA44854:7-14. SCL had its own Board of Directors, which included (1) three Independent Non-Executive Directors, all of whom resided in Hong Kong; (2) two Executive Directors, both of whom were based in Macau; and (3) the Chairman and Non-Executive Director (Mr. Adelson) and two Non-Executive Directors, all of whom were also members of LVSC's Board and based in the U.S. PA47337-38, ¶ 42.

On November 8, 2009, LVSC and SCL entered into a Shared Services Agreement. PA44838:10-12; PA44856:20 – 57:5; PA44108-27. Such agreements are a common method of achieving economies of scale among affiliated companies. PA44842:8-16. Pursuant to the Shared Services Agreement, LVSC provided SCL with a range of services, including construction consultancy services, international marketing services and management services. PA44117.

On July 7, 2010, SCL's CFO sent Plaintiff a letter from Macau concerning a stock option grant the SCL Board was willing to make to Plaintiff, subject to his acceptance, for the work he had done in Macau. PA44128-35; PA44850:15-25; PA44847:19-25. If Plaintiff had accepted the grant (which he never signed), the acceptance would have occurred in

Macau. PA44848:2-14. If the grant had become effective and the options issued, performance would have been in Macau, through the issuance of SCL shares listed on the Hong Kong Stock Exchange. PA44843: 9-13. The Option Terms and Conditions provided that the stock option agreement would be governed by Hong Kong law. PA44135, § 8.3.

Plaintiff was terminated as SCL's President and CEO on July 23, 2010 in Macau. PA47345, ¶ 74. The SCL Board named Michael Leven Acting CEO pending the appointment of a permanent replacement. *Id*. at ¶¶ 76 - 77. Shortly thereafter, the SCL Board appointed two new officers to serve as SCL's President and Executive Vice President, both of whom were based in Macau. PA44866:24-25; PA44868:2-22.

On June 18, 2015, the District Court granted, in part, Plaintiff's motion for leave to file a Fourth Amended Complaint that further expands his claims against SCL by adding it as a party to his breach of contract claims against LVSC. PA47590:5-8.

C. Procedural History

1. This Court Vacates the District Court's Initial Jurisdictional Ruling

In December 2010, SCL moved to dismiss the lack of personal jurisdiction. After the district court denied the motion, SCL sought an extraordinary writ in this Court. PA47329:11-17.

On August 26, 2011, this Court issued its Order Granting the Petition for Mandamus. PA234-37 (Case No. 58294). In its Order, this Court directed the district court "to revisit the issue of personal jurisdiction" over SCL "by holding an evidentiary hearing and issuing findings regarding general and transient jurisdiction," while staying all other aspects of the underlying action. PA236. The Court did not authorize the district court to

make any findings on specific jurisdiction because Plaintiff never raised the issue. *Id.*

2. Plaintiff's Discovery Requests Conflict with Macau's Data Protection Act.

On remand, the district court issued an order allowing Plaintiff to pursue jurisdictional discovery, including the depositions of four high-ranking LVSC executives (Sheldon Adelson, Michael Leven, Robert Goldstein, and Kenneth Kay) and Requests for Production ("RFPs") in 11 broad categories of documents. PA539-44.

At the same time, SCL was engaged in efforts to persuade Macau's Office of Private Data Protection ("OPDP") to permit the transfer to the U.S. of responsive documents containing personal data. PA4396 ¶¶ 10, 12; PA15911-30. In particular, beginning in May 2011, SCL's subsidiary, VML and SCL's General Counsel met with OPDP on more than ten occasions in an effort to secure the agency's approval. PA4396 ¶ 9; PA4143:3-12, PA4114:21-23, PA4115:1-18, PA4143:3-12; PA4396 ¶ 12. However, the agency repeatedly refused to authorize the transfer. *Id.* Indeed, on August 8, 2012, OPDP informed VML that it could not even search data containing personal information for responsive documents. PA15911-30.

3. The District Court's September 14, 2012 Order.

In June 2012, Defendants disclosed to the court that in 2010 LVSC had transferred over 100,000 emails and other ESI for which Plaintiff was the custodian from Macau to the U.S. for document preservation purposes. PA587:7-8. Following this disclosure, the district court *sua sponte* convened a sanctions hearing to determine whether the outside lawyers had violated their duty of candor by not previously revealing the existence of the transferred data. After the hearing, the court issued an order finding that

Defendants had "concealed" the transfer from the court prior to voluntarily disclosing it on June 27, 2012, and barring SCL from raising the MPDPA as an objection to the production of any documents. PA1364 ¶ 30; PA1367 ¶ b.

4. Macau Insists on Strict Compliance with its Data Privacy Act.

Meanwhile, the OPDP continued to reject SCL's requests to transfer documents containing personal data to the U.S. PA15911-30. Accordingly, in October 2012, SCL retained new U.S. counsel, who travelled to Macau to meet with the OPDP in an effort to persuade the agency to reconsider its position. PA4144:13-18; PA1433:9-14. Following that meeting, the OPDP agreed to allow VML to search for responsive documents, so long as Macanese lawyers conducted the review. PA4109:13-22. However, the OPDP continued to regularly inform SCL that it was not to transmit personal data out of Macau without the data subject's consent. PA4115:1-18.

5. The District Court's December 18, 2012 Ruling.

On November 21, 2012, Plaintiff filed a Rule 37 motion seeking sanctions on the ground that SCL had not yet produced responsive documents from Macau. In response, SCL filed a motion for a protective order, explaining that OPDP had authorized the review of documents in Macau but had stated that Macanese lawyers would either have to redact the data or obtain consents. PA1433:9-24. SCL asked the court to allow it to limit its search to documents for which Plaintiff was the custodian, on the ground (among others) that Plaintiff already had obtained from LVSC the documents and deposition testimony relevant to his jurisdictional case.

On December 18, 2012, the district court denied Plaintiff's motion for sanctions, but ordered SCL to immediately produce all documents "relevant to jurisdictional discovery" within only 17 days (including Christmas and New Year's Day). PA1686:12-18. In the wake of this ruling, SCL immediately contacted FTI Consulting ("FTI") to set up a technology processing center in Macau and build a dedicated server to collect, process, and search data. PA4422:3-15, PA4476:16-19. Macanese lawyers then reviewed the documents and redacted all personal data before transferring the documents to the U.S. for production. PA4508:6-17.

In early January, 2013, SCL produced 4,707 documents from Macau consisting of about 27,000 pages, most of which contained personal data redactions. PA15876. SCL also undertook extensive efforts to locate duplicates of the documents produced from Macau in the United States, so those documents could be produced without MPDPA redactions.[1] PA43814 ¶ 93. This additional work increased SCL's costs to approximately $2.4 million. PA4438:11-13.

6. The District Court's March 27, 2013 Ruling

At the district court's suggestion, PA1735:23-24, Plaintiff filed a renewed motion for sanctions on February 8, 2013 claiming, *inter alia*, that SCL had violated the court's earlier orders by producing documents with

[1] In particular, SCL's vendor, FTI, transferred the hash code values of the documents located in Macau (which do not contain personal data) to the United States and searched LVSC's documents for duplicates. PA4428:21-4429:4. FTI also transferred the documents it had collected in the United States for LVSC to Macau and performed 11 separate search iterations in an attempt to locate documents in the LVSC database that were duplicates of the documents that SCL had located in Macau. PA4432:8-19, 4436:2-20. FTI was able to locate thousands of duplicate documents in the U.S., which were subsequently produced without MPDPA redactions in a series of replacement productions. *Id*.

MPDPA redactions. In opposing the motion, SCL argued that it had not violated the court's orders, and cited the extensive steps taken by Defendants to mitigate the effects of the personal data redactions, including locating 2,100 duplicates of the redacted documents in the U.S. and producing them in unredacted form; and creating a "Redaction Log" that identified the entity that employed the individuals whose personal data was redacted. PA1929-46

Nevertheless, on March 27, 2013, the Court issued an order finding that SCL had violated its September 14, 2012 order by redacting the personal data. PA2258:14-18. Although that order did not expressly prohibit redactions (and SCL did not understand the order to prohibit redactions, *see* PA4658:5-22; PA1689:8-11), the court concluded that the redactions constituted a willful violation of the order.

The district court then set a date for a hearing to "determine the degree of willfulness related to those redactions and the prejudice, if any, suffered by Jacobs." PA2258:14-18. The court also ordered SCL to (1) search and produce by April 12, 2013 the documents of the 20 custodians that Plaintiff had identified for *merits* discovery; and (2) create a Relevancy Log identifying all responsive documents that SCL withheld because they were not relevant to the jurisdictional issue. *Id.* Finally, the court precluded Defendants from "redacting or withholding documents based upon the MPDPA." PA2258:19-59:3.

7. Defendants Seek Relief in This Court.

On April 8, 2013, Defendants filed a Writ of Prohibition or Mandamus in this Court. NSC Case No. 62944. On August 7, 2014, this Court denied Defendants' Petition on the ground that its intervention would be premature before the district court decided if sanctions were

warranted. PA2638-39. This Court then set forth the specific factors that the district court was to consider in determining "what sanctions, if any, are appropriate." PA2634-35.

8. SCL Seeks Relief Based on *Daimler*.

In January 2014, the U.S. Supreme Court issued its *Daimler* decision holding that the key issue in determining general jurisdiction is typically "where [the corporation] is incorporated or has its principal place of business.'" *Viega*, 328 P.3d at 1158. On June 26, 2014, SCL filed a motion for summary judgment, arguing that Plaintiff's theories of general jurisdiction were no longer legally viable after *Daimler*, but the district court denied the motion. PA2467-78.

In October 2014, SCL raised *Daimler* again in a motion to reconsider the previously stayed portion of the district court's March 27, 2013 Order requiring SCL to produce unredacted documents from Macau. SCL explained that (1) in light of *Daimler* many if not most of Plaintiff's RFPs were utterly irrelevant; and (2) SCL had secured MPDPA "consents" from the four senior LVSC executives deposed by Plaintiff and that their names had been "unredacted" from the Macau documents. PA2750. SCL also noted that it had asked Plaintiff to consent to have his personal data unredacted, but he refused to waive his rights under the MPDPA. PA2743.

After the district court denied SCL's motion to reconsider, SCL produced the remaining documents from Macau, with personal data redacted except for the data of the four individuals who had given their consent.

Thus, by the time of the jurisdictional hearing, SCL had produced over 17,500 documents—including approximately 9,600 documents containing no MPDPA redactions—in response to jurisdictional discovery.

See PA15876; PA3066-89; PA43505:1-6. In total, Defendants had produced over 41,000 documents consisting of more than 290,000 pages, and submitted four of their executives for deposition on the issue of jurisdiction. PA539. Finally, Plaintiff had in his possession approximately 40 gigabytes of data that he had taken from Macau following his termination. PA43828 ¶ "b."

9. The March 2015 Sanctions Hearing.

At the sanctions hearing, Plaintiff attempted to support his prejudice claim by citing only 27 redacted documents out of the more than 7,900 redacted documents produced by SCL.[2] Plaintiff provided no explanation of how the redacted personal data in those documents (or in any others) could be relevant to the jurisdictional issue.

Through videoconferencing, SCL presented the testimony of its General Counsel and its Chief Financial Officer. PA4106, 15555. The General Counsel testified that he made the decision to redact the personal data because his series of meetings with the OPDP left him with "no choice" but to make the redactions. PA4109:13-22; PA4110:8-18. He stressed that the OPDP had sanctioned VML in April 2013 for the 2010 transfer of data to the United States and noted that the OPDP could impose additional fines for subsequent violations (up to 80,000 Macau dollars per event) and that corporate officers and directors could be subject to imprisonment of up to two years. PA4118:22-4119:2.

[2] *See* PA4711-12, 4713-15, 4716-18, 4719, 4720, 4721-22, 4724-27, 4728-33, 4735-36, 4737, 4738-39, 4740-44, 42850-55, 42853, 42854-55, 42857, 42858, 42860-66, 42868-73, 42877-42877-A, 42878-42879-B, 42880, 42881-83, 42885-93, 42895-96, 42899, and 42901-02.

10. The District Court's March 6, 2015 Sanctions Order.

On March 6, 2015, the district court issued an order finding that SCL had willfully prevented Plaintiff from obtaining access to discoverable information. PA43828, IV(e). Based on this finding, the district court barred SCL from presenting any testimony or evidence at the jurisdictional hearing. *Id*. The court also stated that it would draw a rebuttable adverse inference (which SCL could not rebut through testimony or other evidence) that documents with MPDPA redactions supported Plaintiff's jurisdictional theories. *Id.* Finally, the court ordered SCL to (1) pay a total of $250,000 to various law-related organizations; (2) conduct certain searches of Macau data that had been transferred to the U.S.; and (3) pay Plaintiffs' attorneys fees. *Id.*

On March 23, 2015, SCL filed a Petition for a Writ of Mandamus or Prohibition with this Court. NSC Case No. 67576 Dkt, Pet. Plaintiff opposed the Petition on the ground (*inter alia*) that interlocutory review would "stall the resolution of the jurisdictional question." *Id.*, Resp. Ans. Br., at 22. On April 2, 2015, this Court issued an order staying the required payment of $250,000 and attorney's fees, but otherwise denying SCL's Petition. *Id.*, Apr. 2, 2015 Order.

11. The Court's Amended Jurisdictional Order

On May 28, 2015, the district court issued its amended jurisdictional order following an evidentiary hearing. The court found that SCL was subject to general jurisdiction in Nevada based on the activities of its "agent" LVSC. PA47352-53, ¶¶ 114-17. The court also found that SCL was subject to transient jurisdiction based the service of its then-Acting CEO in Nevada. PA47363-64, ¶¶ 174-79). Finally, the court found that SCL was subject to specific jurisdiction, based on Plaintiff's causes of action for

breach of contract, aiding and abetting, conspiracy and defamation. PA47356-63, ¶¶ 132-73.

IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

The two fundamental issues raised by this Petition are: (1) whether the district court erred in holding that SCL is subject to general, transient and specific jurisdiction (an issue that is subject to *de novo* review, *see Viega*, 328 P.3d at 1156); and (2) whether the district court abused its discretion in imposing sanctions on SCL.

A. The District Court Erred in Holding that SCL is Subject to the General Jurisdiction of the Nevada Courts.

The district court's ruling that SCL is subject to general jurisdiction means that Nevada courts can "hear any and all claims against [SCL]" regardless of where the claims arose. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011).

This ruling must be assessed in light of *Daimler*, where the U.S. Supreme Court held that a corporation is subject to general jurisdiction only if it is "at home" in the forum state, which typically means that the company's formal place of incorporation or its principal place of business is in that state. *Id.* at 760-61; *Viega*, 328 P.3d at 1158. In a footnote, the Court noted that in an "exceptional case" a foreign corporation might be subject to general jurisdiction in a forum other than its formal place of incorporation or principal place of business—but only if its contacts with the forum, when measured against its national and global activities, are "so substantial and of such a nature as to render the corporation 'at home' in that State." *Daimler*, 134 S. Ct. at 761-62 and n.19. The Court stressed that this demanding standard is particularly important in the "transnational context" where "exorbitant exercises of all-purpose jurisdiction" pose "risks to international comity." *Id.* at 761-63.

Here, the district court did not adhere to any of these principles.

1. The District Court Relied on the Discredited "Agency" Theory for General Jurisdiction.

The undisputed evidence in this case showed that Nevada is not SCL's place of incorporation or principal place of business, and the company does not conduct any other "operations" within the state. PA47349, ¶¶ 102-05. Yet, notwithstanding these undisputed facts, the district court held that this was an "exceptional" case in which a foreign corporation could be subject to general jurisdiction in a state other than its formal place of incorporation or principal place of business. PA47353, ¶ 119. The court based this finding on a *discredited* "agency" theory holding that LVSC and its employees acted as SCL's "agents" in Nevada, and that their activities on behalf of SCL were so "continuous and significant" as to "render SCL 'at home' in Nevada." PA47352-53, ¶¶ 114-17; 122.

This ruling cannot be squared with *Daimler*, where the U.S. Supreme Court reversed a Ninth Circuit decision adopting the very same agency theory used by the district court. In *Daimler*, the Ninth Circuit had held that the "contacts" of a California subsidiary could be imputed to its foreign parent because the subsidiary effectively operated as the parent's "agent" within the state. 139 S. Ct. at 759-60. The Ninth Circuit therefore concluded that the foreign parent could be subject to the general jurisdiction of the California courts. *Id.*

In reversing this holding, the Supreme Court noted that the agency theory leads to an impermissibly "sprawling" jurisdictional view because it subjects companies to general jurisdiction "whenever they have an in-state subsidiary or affiliate." *Id.* at 760. The Court added that such "overbreadth" is not remedied by a "separate inquiry" into the level of

"control" exercised by the parent over the subsidiary (contrary to the district court in this case). *Id.* at 760 n.15.

The Court further held that even if the subsidiary's contacts could be imputed to the parent, this alone would not be sufficient to establish general jurisdiction. *Id.* at 760. Rather, the relevant inquiry must determine whether the foreign corporation's in-state "contacts," when compared with its global operations, are so substantial as to make the corporation "essentially at home" in the forum state. *Id.* at 761-62.

In this case, the district court relied on the same agency theory used by the Ninth Circuit (and rejected by the Supreme Court) to conclude that SCL was subject to general jurisdiction. For this reason alone, the district court's finding of general jurisdiction must be set aside.

2. Plaintiff Did Not Prove that LVSC Acted as SCL's "Agent" in Nevada.

Even if the agency theory were still viable after *Daimler*, Plaintiff did not prove that SCL enlisted LVSC to act as its "agent" in Nevada. This Court has long recognized that a parent and its subsidiary are "presumed separate," and the mere existence of a corporate relationship is not sufficient to establish an agency relationship for purposes of jurisdiction. *Viega*, 328 P.3d at 1157-58. Rather, to establish agency between a parent and its subsidiary, a plaintiff must prove (*inter alia*) that the parent controls the subsidiary to such an extent that the subsidiary has no separate corporate interests of its own. *Id.* at 1158-59 (*quoting* cases). In these circumstances, the parent can be said to "control" the subsidiary within the meaning of the legal requirements for agency. *Id.*

In this case, the district court's finding that LVSC acted as SCL's agent in Nevada is wrong on several grounds. For openers, the district court's

opinion turned the requirements of agency upside down by finding that the supposed *agent* (LVSC) exercised an "extraordinary amount of control" over the supposed *principal* (SCL). PA47351-52, ¶ 110. This, of course, is directly contrary to the law of agency which holds that the principal must control the agent, not the other way around. *Viega*, 328 P.3d at 1158.

To circumvent this requirement, the district court held that SCL initially possessed the "legal right" to control LVSC, but later made the "conscious decision" to allow LVSC to control SCL. *Id.*; PA47354, ¶ 121, n28. This remarkable formulation has no basis in fact or law.

First, the court cited no legal authority holding that a subsidiary such as SCL can have a *legal right* to "control" its own parent—thus making the parent an "agent" of the subsidiary. To the contrary, the law has long recognized that, absent an express agreement, the parent is the principal and the subsidiary is the agent in any corporate agency relationship, because the subsidiary is "subordinate to and under the parent's control." *Black's Law Dictionary*, 1565 (9th ed. 2009).

Second, the court cited no evidence supporting its assertion that SCL subsequently made a "conscious decision" to allow its supposed "agent" (LVSC) to control its operations. To the contrary, the evidence at the hearing established that SCL and LVSC provided support services to one another pursuant to a Shared Services Agreement which defined their respective rights and obligations as a matter of contract. PA47341-42, ¶¶ 59-64. Nowhere in that agreement did the parties even suggest, much less state that SCL had the "legal right" to control its parent, or that the parent would otherwise act as SCL's agent in Nevada. PA44108-27.

Furthermore, even if the district court's inverted agency theory had some legal basis, the court failed to find the kind of control necessary for

purposes of personal jurisdiction. In *Viega*, this Court made clear that a mere parent-subsidiary relationship will not give rise to an agency relationship unless the parent exercises such control as to dictate the day-to-day operations of the subsidiary. *Viega*, 328 P.3d at 1160. In this case, the district court relied on factors that "merely show the amount of control typical in a parent-subsidiary relationship and thus are insufficient to demonstrate agency," such as shared professional services, consolidated reporting, approvals of executive hires and "control by means of interlocking directors and officers." *Id.* at 1159.

Finally, even if the requisite agency relationship existed, the district court failed to address whether LVSC's actions as SCL's purported Nevada agent, *when compared to SCL's activities as a whole*, were "so substantial and of such a nature" that SCL should be deemed to be "at home" in Nevada. *Daimler*, 134 S. Ct. at 761 n.19. As noted earlier, an assessment of general jurisdiction cannot focus solely on the foreign corporation's "in-state contacts," but instead must compare such contacts with the company's "worldwide" activities. *Id.* at 762 n.20.[3]

In this case, such a comparison reveals a stark contrast: SCL's holdings in Macau generated more than *$4 billion* in revenue, but LVSC did not generate *any* revenue in Nevada while purportedly acting as SCL's agent. The district court never addressed this stunning contrast, nor did the court ever consider the full extent of SCL's corporate operations outside Nevada. Instead, the court focused solely on LVSC's activities as SCL's supposed agent in Nevada, concluding that such activities *alone* rendered

[3] *See Gucci Am., Inc. v. Li*, 768 F.3d 122, 135 (2d Cir. 2014).

the corporation "at home" in the state. PA47352, ¶ 114. This was plain error.

Accordingly, for each of the above reasons, the district court's finding of general jurisdiction over SCL cannot stand even under the discredited agency theory.

B. The District Court Erred in Holding that It Has Transient Jurisdiction Over SCL.

The district court also held that it could exercise "transient" jurisdiction over SCL because Plaintiff served SCL's then-Acting CEO with process in Nevada. PA47363-64, ¶ 176. In so doing, the court relied on decisions holding that personal jurisdiction can be asserted over an *individual* who is served with process while present in the forum state. *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 628 (1990); *Cariaga v. Eighth Jud. Dist. Ct.*, 104 Nev. 544, 546, 762 P.2d 886, 887-88 (1988).

This rule, however, does not apply to *corporations*. *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1067-69 (9th Cir. 2014); *Wenche Siemer v. LearJet Acquisition Corp.*, 966 F.2d 179, 182 (5th Cir. 1992); *Freeman v. Second Jud. Dist. Ct.*, 116 Nev. 550, 558, 1 P.3d 963, 968 (2000) (en banc). In *Martinez,* the Ninth Circuit set forth the rationale for limiting transient jurisdiction to only "natural" individuals. 764 F.3d at 1068. The court explained that while "natural persons are present in a single, ascertainable place," corporations can be in "many places simultaneously" because they act through their many agents. *Id.* at 1068. *See also Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316-17 (1945). As a result, corporations have "never fit comfortably in a jurisdictional regime based primarily upon 'de facto power' over the defendant's person." *Int'l Shoe*, 326 U.S. at 316.

Consequently, the jurisdictional inquiry as to corporations focuses not on the state's "physical power" over the company, but on the

"minimum contacts" analysis of *International Shoe*. *Freeman*, 116 Nev. at 556, 1 P.3d at 967. This explains why a foreign corporation is not subject to general jurisdiction based solely on the presence of a subsidiary—or any other "agent"—in the forum state. *Daimler*, 134 S. Ct. at 759-63; *Freeman*, 116 Nev. at 558, 1 P.3d at 968. Rather, under *Daimler*, a corporation is typically subject to general jurisdiction only if it is incorporated or headquartered in the forum state. 134 S. Ct. at 759-61.

Thus, as the above cases make clear, the district court's assertion of transient jurisdiction based solely on the service of a corporate agent within the state must be vacated.

C. The District Court Erred in Holding that It has Specific Jurisdiction Over SCL.

The district court also erred in holding that Plaintiff proved specific jurisdiction over SCL. Indeed, the district court did not even have the authority to address this issue. In its August 26, 2011 Order, this Court directed the district court to decide *only* the issues of general and transient jurisdiction, while staying all other aspects of the litigation. PA236**.** The Court made no mention of specific jurisdiction because Plaintiff never raised this theory before the district court and thus waived it. *See, e.g., General Universal Sys. Inc. v. HAL, Inc.*, 500 F.3d 444, 453-54 (5th Cir. 2007). Accordingly, under the mandate rule, this Court's August 25, 2011 mandate operated as a limitation on the power of the trial court by circumscribing the issues that remained open on remand—*i.e.*, a determination of general and transient jurisdiction only. *See*, *e.g.*, *id.*

The district court also committed both legal and factual errors in finding specific jurisdiction over SCL. To establish specific jurisdiction over a non-resident corporation, a plaintiff must prove three predicates: (1) the defendant purposefully availed itself of the protections of Nevada

laws or otherwise directed its conduct toward Nevada; (2) the plaintiff's cause of action arose from the defendant's purposeful conduct in Nevada; and (3) the court's exercise of specific jurisdiction would be reasonable in light of all the facts and circumstances. *Arbella Mut. Ins. Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 509, 513, 134 P.3d 710, 712-13 (2006); *see also Catholic Diocese of Green Bay Inc. v. John Doe 119*, 131 Nev. Adv. Op. 29, at 4-5 (May 28, 2015) (en banc).

In this case, Plaintiff failed to establish any of these predicates.

1. Plaintiff's Breach of Contract Claim Does Not Support Specific Jurisdiction.

The district court held that Plaintiff's breach-of-contract claim provided a basis for specific jurisdiction over SCL in light of the following findings:

1. Plaintiff and *LVSC* negotiated an employment agreement (the "Term Sheet Agreement") in Nevada;

2. SCL thereafter "assumed" LVSC's obligations under the agreement; and

3. LVSC and SCL then breached the agreement.

PA47310-12, ¶¶ 132-46. The court further found that SCL "purposefully availed itself" of Nevada's laws by accepting Plaintiff's services under the employment agreement (PA47357-58, ¶¶ 139), notwithstanding the undisputed fact that Plaintiff's services were rendered *in Macau*, not Nevada.

These findings are fundamentally flawed in several respects. First, Plaintiff failed to allege or prove that SCL was a party to the employment agreement, or that SCL ever "assumed" LVSC's contractual obligations. The district court found that the hearing testimony of a former LVSC executive

"*appears* to support a claim" that SCL ultimately "assumed" the "term sheet" (at least in the sense of paying Plaintiff's compensation). PA47356, ¶132 (emphasis added). But such *post hoc* testimony is not the equivalent of *contemporaneous* evidence showing that SCL affirmatively agreed to assume the legal obligations of another party. *See generally Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 380, 566 P.2d 819, 825 (1977); *U.S. for Use of White v. Thompson & Georgeson, Inc.*, 346 F.2d 865, 869 (9th Cir. 1965). In this case, Plaintiff presented no contemporaneous evidence of any kind reflecting SCL's "assumption" of the employment agreement—no resolutions by the SCL Board of Directors, no formal employment contract implementing the term sheet or naming SCL as a party, and no correspondence or other writings that would establish an assignment of the alleged contract to SCL.

Second, even if Plaintiff could prove that SCL assumed the employment agreement, he presented no evidence showing that his breach of contract claim arose from SCL's "purposeful" conduct *in Nevada*. Among other things, Plaintiff failed to prove that SCL either negotiated any agreement in Nevada or performed any contractual obligations in Nevada. *See Dogra v. Liles*, 129 Nev. Adv. Op. 100, 314 P.3d 952, 955 (2013) (specific jurisdiction is proper only "where the cause of action arises from the defendant's contacts with the forum").

To be sure, in its decision, the district court asserted—with no citation to authority—that a foreign company can subject itself to specific jurisdiction by simply "*accepting the benefits* of an employment agreement." PA47357, ¶ 137 (emphasis added). But this assertion is incorrect. The law is clear that a passive act such as "accepting benefits" cannot satisfy the jurisdictional requirement that the foreign corporation "*affirmatively direct conduct*" in the forum state. *Viega*, 328 P.3d at 1157. This is particularly true

when the contract at issue called for the "benefits" to be accepted *outside the forum* (*i.e.*, in Macau).

Consequently, in a breach of contract case, the determination of "purposeful" conduct focuses on the non-resident corporation's *affirmative* acts such as (1) the extent to which it conducted or solicited any long-term business in the forum state; (2) the extent to which it will perform its contractual duties in the forum state; and (3) its "actual course of dealing" with the opposing party. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76, 479 (1985); *Consulting Eng'rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009).

The absence of the above factors in this case conclusively shows that the district court lacked specific jurisdiction over SCL. SCL did not solicit or conduct any business in Nevada or maintain any offices or employees in the state. In addition, the negotiations of the alleged employment agreement, while purportedly occurring in Nevada, involved only LVSC, and *not* SCL. Indeed, SCL *did not even exist* at the time of the negotiations. PA47334-35, ¶¶ 18-21. Therefore, the negotiations between Plaintiff and LVSC could not and did not constitute a "purposeful availment" of Nevada law *by SCL*.

Nor did the parties' performance of the alleged contract take place in Nevada. Rather, Plaintiff (who is ***not*** a Nevada resident) provided his services to SCL in Macau, where he functioned as SCL's President and CEO in 2009-10. Thus, SCL "accepted the benefits" of Plaintiff's services *in Macau*, and not in Nevada. Consequently, even under the district court's unique "accepting the benefits" theory, the court did not have specific jurisdiction over SCL.[4]

[4] This same analysis precludes the exercise of jurisdiction over Plaintiff's newly added claims in his Fourth Amended Complaint, in which he seeks

For these reasons, the district court clearly erred, as a matter of fact and as a matter of law, in finding that SCL "purposefully availed" itself of Nevada's laws by "accepting" Plaintiff's services in Macau.

2. Plaintiff's Conspiracy and Aiding and Abetting Claims Do Not Support Specific Jurisdiction.

In his Third Amended Complaint, Plaintiff also alleged that SCL conspired with LVSC (or aided and abetted LVSC) in his wrongful termination. PA2756R-S, ¶¶ 84-89; 90-95.

These allegations cannot support specific jurisdiction against SCL for at least two reasons. First, "the cases are unanimous that a bare allegation of a conspiracy between the [non-resident] defendant and a person within the personal jurisdiction of the court"—which is all Plaintiff alleged here—"is not enough" to establish specific jurisdiction over the non-resident defendant. *Chirila v. Conforte*, 47 Fed. App'x 838, 843 (9th Cir. 2002). *See also Chase Bank USA N.A. v. Hess Kennedy Chartered PLC*, 589 F. Supp. 2d 490, 499 (D. Del. 2008); *First Capital Asset Mgmt., Inc.*, 218 F. Supp. 2d 369, 394 (S.D.N.Y 2002); *Olson v. Jenkens & Gilchrist*, 461 F. Supp. 2d 710, 724 (N.D. Ill. 2006).

Second, the district court made no findings showing that SCL "purposefully" availed itself of Nevada or its laws in connection with the alleged conspiracy. Under settled law, a "corporation can purposefully avail itself of a forum by directing its agents or distributors to take action *there*." *Daimler*, 134 S.Ct. at 759 n.13 (emphasis added). Under this rule, the foreign corporation (SCL) must specifically instruct its purported "agent"

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damages from SCL for allegedly breaching the term sheet that he claims SCL "assumed." PA47409.

(LVSC) to engage in forum activity relating to the underlying cause of action.

In this case, Plaintiff presented no evidence (and the district court made no finding) that SCL *directed* LVSC to engage in any Nevada conduct relating to the alleged wrongful termination in Macau. Instead, the court made only a conclusory finding that SCL "knew" of LVSC's acts in Nevada and "assented to them" (PA47358, ¶ 152), which at best is passive activity that this Court recently confirmed cannot satisfy the jurisdictional requirement of "*affirmatively direct[ing] conduct*" *in the forum state*. *Viega*, 328 P.3d at 1157 (emphasis added).

In the absence of such a finding, SCL cannot be deemed to have engaged in a "purposeful availment" of Nevada's laws, and, for this reason as well, the district court erred in holding that the conspiracy and "aiding and abetting" claims could support specific jurisdiction over SCL.

3. Plaintiff's Defamation Claim Does Not Support Specific Jurisdiction Over SCL.

The district court similarly erred in holding that specific jurisdiction could result from Plaintiff's recently filed defamation claim. The court based this ruling on the flawed premise that an individual can commit a single act while simultaneously acting in his personal capacity and as an "agent" for two different corporations. In particular, the district court upheld specific jurisdiction over SCL based on its finding that Mr. Adelson published the allegedly defamatory statement while acting "*not only for himself and LVS, but also for SCL*." PA47360-61, ¶ 161 (emphasis added).

This premise is incorrect. Under standard agency law, an agent has a contractual and fiduciary duty to act on behalf of the principal and to subordinate his own interests to those of the principal. *See generally LeMon*

v. Landers, 81 Nev. 329, 332, 402 P.2d 648, 649 (1965); Restatement (Second) of Agency § 387. Consequently, as a matter of law, if an agent commits an act in his personal capacity—while acting on behalf of his own interests—he cannot also be acting within the scope of his agency on behalf of his principal's interests.

Thus, in *Lego A/S v. Best Lock Constr. Toys, Inc.*, 886 F. Supp. 2d 65, 81 (D. Conn. 2012), the court rejected the defendant's claim that a corporate CEO could be acting both in his personal capacity and as an agent of the company when he made an allegedly defamatory statement. The court stressed that the jury could not possibly allocate damages allegedly caused by the executive "speaking the same words at the same time as [the company's agent] on the one hand and as private individual on the other hand." *Id.* The court concluded that such an exercise would be "nonsensical." *Id.*

The same logic applies here. If Mr. Adelson made the allegedly defamatory statement while acting in his personal interests, he could not possibly be making the same statement at the same time while acting in SCL's interests. For these reasons, then, the defamation claim does not support specific jurisdiction over SCL.

D. The District Court Erred in Finding its Exercise of General and Specific Jurisdiction To Be Reasonable.

As shown above, Nevada has absolutely no judicial or other interest in adjudicating a dispute between a *Florida/Georgia* resident and a *Cayman Islands* corporation headquartered in *Macau*. This is particularly true since the underlying dispute between these non-Nevada residents centers on an "options agreement" that is governed by Hong Kong law and provides for a grant of SCL shares traded on the Hong Kong exchange.

Yet, notwithstanding these undisputed facts, the district court found that its exercise of jurisdiction over SCL would be "reasonable" under the relevant criteria.[5] The court based this conclusion in part on the remarkable assertion that "SCL will *not suffer any burden* defending this action in Nevada" because "SCL's executives routinely travel to Nevada and conduct business in Nevada on a systematic and continuous bases." PA47362, ¶ 167 (emphasis added).

The court cited *no facts* to support this assertion, which is directly contrary to the evidence of record. This litigation has already cost SCL more than $2.4 million in the jurisdictional phase alone (PA4438:11-13), and it will continue to do so, particularly in light of the conflict between the district court's discovery rulings and SCL's obligations under the MPDPA—a conflict that the district court acknowledged. PA47362-63 ¶ 171. Indeed, SCL knows of no other reported case in which a foreign corporation has incurred as a great an expense in jurisdictional litigation as SCL has incurred here.

The district court also found that the interests in the efficient resolution of Plaintiff's claims supported the reasonableness of its jurisdictional holding. But this finding ignores a critical jurisdiction-defeating fact: The litigation of Plaintiff's substantive claims against the primary defendants—LVSC and Mr. Adelson—will be wholly unaffected by the outcome of SCL's jurisdictional challenge. Indeed, even if SCL is

[5] To determine whether the exercise of personal jurisdiction is reasonable, the courts consider a range of factors, including (1) the burden on the defendant; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; and (4) the judicial system's interest in obtaining the most efficient resolution of controversies. *World-Wide Volkswagen*, 444 U.S. at 292; *Emeterio v. Clint Hurt & Assocs., Inc.*, 114 Nev. 1031, 1036-37, 967 P.2d 432, 436 (1998).

dismissed from the Nevada case, Plaintiff will remain free to continue his breach of contract, wrongful termination, conspiracy and defamation claims against LVSC and Mr. Adelson in the district court.

Finally, one other point bears special emphasis: in assessing the reasonableness of the exercise of jurisdiction over a foreign corporation, a court must take into account the "transnational context" of the jurisdictional dispute. *Daimler*, 134 S. Ct. at 762-63. As the U.S. Supreme Court stressed in *Daimler*, an "expansive view of general jurisdiction" poses "risks to international comity" that must be considered in any jurisdictional analysis. *Id.* at 763. In this case, the risks are especially pronounced in light of the "conflict" between the Nevada court's discovery orders and the law of SCL's home jurisdiction. Yet the district court completely ignored these risks, giving no attention at all to the "transnational context" of the dispute.

Thus, this dispute between a foreign corporation and a non-Nevada resident does not implicate any interest of the Nevada courts, and it will impose exorbitant costs on the foreign company. The exercise of jurisdiction is therefore unreasonable, particularly in light of the transnational context of the dispute. These considerations provide an independent reason why the district court's Order should be set aside.

E. The District Court's Sanctions Order Should Be Vacated.

The district court's jurisdictional decision resulted in large part from the sanctions it imposed on SCL for redacting personal data in compliance with Macanese law. Not only did the sanctions bar SCL from presenting any evidence on the most critical jurisdictional issues (as documented in SCL's Offer of Proof (PA46200-222), but they also allowed the court to broadly infer that all of the redacted documents supported a finding of

jurisdiction, even though the documents' contents had no jurisdictional significance at all.[6]

As shown below, the district court's reliance on the Sanctions Order to find jurisdiction over SCL was legal error that warrants correction now for at least three reasons: (1) the judge improperly applied the multi-factored balancing test specified by this Court for determining whether any sanctions should be imposed; (2) the Sanctions Order violated the relevant standards of Rule 37; and (3) the Sanctions Order violated the basic requirements of Due Process.

1. The District Court Improperly Applied the Balancing Test Specified by this Court.

In its August 7, 2014 Order, this Court directed the district court to evaluate the following factors in determining "what sanctions, if any," should be imposed in a case involving an international data privacy statue:

1. the importance of the requested documents to issues in the litigation;
2. the specificity of the discovery requests;
3. whether the information originated in the United States;
4. the availability of alternative means of securing the information; and
5. the extent to which compelled disclosure affects important interests of the United States or Macau.

[6] In its jurisdictional ruling, the court stated that although Plaintiff proved specific jurisdiction without reliance on the inferences, the case for specific jurisdiction was "even stronger" in light of the inferences. PA47363, ¶¶ 172-73.

PA2634-35 (quoting the Restatement (Third) of Foreign Relations Law § 442(1)(c) (1987)).

These factors require a "particularized analysis" that includes a careful balancing of competing interests and an identification of the specific facts supporting each of its conclusions. *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct.*, 482 U.S. 522, 543-44 & n.29 (1987). In this case, the district court failed to conduct the particularized analysis mandated by this Court and erroneously applied each of the five factors it was directed to consider.

a. The Redacted Personal Data Was Not "Important" to the Jurisdictional Issue.

The first factor cited by this Court—the "importance" of the redacted information—requires an assessment of two issues: (1) whether the evidence sought is "cumulative of existing evidence," *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1475 (9th Cir. 1992); and (2) whether the evidence is otherwise "essential" to Plaintiff's case. *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 193 (E.D.N.Y. 2010).

In its Sanctions Order, the district court cited no facts showing that the redacted personal data was "essential" to Plaintiff's ability to prove his jurisdictional claims. The court did not identify a single jurisdictional issue as to which the redacted data could even be relevant. *See* PA43819 ¶ 118. Instead, the court relied entirely on conclusory assertions drawn from Plaintiff's proposed findings that were likewise unsupported by specific facts.[7] *See id.* Nor did the court make *any* finding showing that the

[7] For example, the court asserted that the personal redactions "effectively destroyed the evidentiary value" of the redacted documents, but it provided no explanation—and cited no examples—to support the claim. PA43816 ¶ 102, 43817 ¶ 108, 43821 ¶ 127.

redacted data was not cumulative to the enormous volume of jurisdictional discovery produced by Defendants.

The failure of the district court to make these essential findings is not surprising in light of three characteristics of the redacted documents: (1) the redactions do not obscure the central meaning of the documents (with only rare exceptions); (2) even if the redactions do obscure the meaning, an unredacted copy provided by LVSC is often available;[8] and (3) in most, if not all, of the redacted documents, the contents reflect SCL personnel discussing mundane topics, such as the logistics of Board meetings in Macau.

Not surprisingly, therefore, at the sanctions hearing, Plaintiff presented *no evidence* showing that the redacted data was relevant to any jurisdictional issue. Indeed, Plaintiff introduced *only 27 documents* (out of total SCL production of more than 7,900 redacted documents) which he claimed were either "unintelligible" or otherwise not usable. *See*, *e.g.*, PA4711-44; 42850-55; 42877-96. Yet even as to these documents, Plaintiff could make no showing of prejudice, either because LVSC provided

[8] *Compare* PA4738-39 (Pl.'s Ex. 77) *with* PA42904-06 (SCL's Ex. 370); PA4719 (Pl.'s Ex. 28) *with* PA42908 (SCL's 372); PA4721-22 (Pl.'s Ex. 38) *with* PA42909-10 (SCL's 373); PA4735-36 (Pl.'s Ex. 62) *with* PA42911-12 (SCL's 374); PA42850-51 (SCL's Ex. 355) *with* PA42852 (355A); PA42854-55 (SCL's Ex. 357) *with* PA42856 (357A); PA42860-66 (SCL's Ex. 360) *with* PA42867 (360A); PA42868-73 (SCL's Ex. 361) *with* PA42874-42876-D (361A); PA42881-83 (SCL's Ex. 365) *with* PA42884-42884-B (365A); PA42885-93 (SCL's Ex. 366) *with* PA42894-42894-H (366A); PA42895-96 (SCL's Ex. 367) *with* PA42897-42898-A (367A); PA42899 (SCL's Ex. 368) *with* PA42900 (368A); and PA42901-02 (SCL's Ex. 369) *with* PA42903-42903-A (369A). These documents are also demonstrated side-by-side in SCL's closing argument presentation at PA43612-43617, PA43625, 43628-37, 43659-77, and 43744-89.

unredacted copies of the documents or the contents of the documents were irrelevant.[9]

The absence of prejudice becomes clear by simply comparing one of the 27 supposedly "prejudicial" documents cited by Plaintiff and the unredacted version provided by Defendants, which shows that the redactions do not obscure the meaning of the document, and the redacted names have no evidentiary value at all:

[9] In the case of 15 of the 27 exhibits, LVSC provided unredacted copies of the same documents, while four other exhibits pre-date SCL's corporate existence and the remaining nine exhibits have irrelevant content, such as venues for lunch and a list of gaming equipment purchase orders. *See*, *e.g.*, PA43645-46, 4737.

REDACTED

Retention of Persona Law Firm

From:
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To:
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Cc:
"Personal Redaction @lasvegassands.com>, "Personal Redaction @venetian.com.mo>

Date:
Thu, 02 Sep 2010 11:50:45 +0800

Attachments:
Written_Resolution_Appointment_Macao_Counsel.txt (2.68 kB)

Dear Board of Directors,

Please find attached a written resolution authorizing the Company to enter into an exclusive agreement with Personal *Law Firm for the provision of legal services in Macao.*

In consideration for the legal services provided, the Company will pay approximately US$1.3 million per year until terminated by either party providing 60 days written notice.

The authorization guidelines currently being discussed by the Board require the Company to seek Board approval for contracts exceeding US$1 million. I would therefore be grateful if you could review the attached resolution and sign where applicable. I apologise for the short notice, however as we wish to sign this Agreement tomorrow, I would appreciate a signed copy being scanned and emailed to me cc Personal *@venetina.com.mo or by fax to* Personal

Please send the original to:

Personal Redaction

Should you have any questions, please do not hesitate to contact me.

Personal Redaction

UNREDACTED

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Cc: "Hyman, Gayle" <gayle.hyman@lasvegassands.com>, "Tracy, Edward" <edward.tracy@venetian.com.mo>

Date: Thu, 02 Sep 2010 03:50:45 +0000

Attachments: Written_Resolution_Appointment_Macao_Counsel.txt (2.68 kB)

Dear Board of Directors,

Please find attached a written resolution authorizing the Company to enter into an exclusive agreement with Leonel Alves' Law Firm for the provision of legal services in Macao.

In consideration for the legal services provided, the Company will pay approximately US$1.3 million per year until terminated by either party providing 60 days written notice.

The authorization guidelines currently being discussed by the Board require the Company to seek Board approval for contracts exceeding US$1 million. I would therefore be grateful if you could review the attached resolution and sign where applicable. I apologise for the short notice, however as we wish to sign this Agreement tomorrow, I would appreciate a signed copy being scanned and emailed to me cc anne.salt@venetina.com.mo or by fax to +853 2888 33 81

Please send the original to:

The Venetian Macao Resort Hotel
Legal Department
Executive Offices - L2
Estrada da Baía de N. Senhora da Esperança, s/n
Taipa
Macau
(Attn: Ms. Anne Salt)

Should you have any questions, please do not hesitate to contact me.

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Not surprisingly, therefore, in its jurisdictional Order, the district court repeatedly cited and relied on redacted documents because the unredacted *contents* of the documents were perfectly intelligible. (*See*, *e.g.*, PA47296, ¶¶ 64-65 and nn.18 & 19 (redacted email shows the procedure for paying the expenses of vendors; redacted minutes show a tracking system used in the implementation of the Shared Services Agreement)). In none of the cited documents did the redacted names have any evidentiary significance which could prejudice Plaintiff in any way.

Furthermore, even if the redacted names and addresses had some marginal relevance, such information was plainly cumulative to the more than 24,000 unredacted documents that LVSC produced in response to the same discovery requests—a production that *Plaintiff never claimed was inadequate*. This production included (among many other documents) the minutes and other records of SCL board meetings; the travel records of LVSC executives; and the contracts, agreements and other documents relating to the relationship between LVSC and SCL. PA3473-3889. LVSC also submitted for deposition the four LVSC executives who allegedly "directed" SCL's affairs from Las Vegas.

In addition, as the district court acknowledged, SCL undertook "extensive efforts" to locate and produce unredacted copies of the Macau documents in the U.S. (PA43814 ¶ 93), and provided "Redaction Log" that identified the employer of each individual whose name SCL had redacted in the Macau documents. PA4225-4387, 4750-5262. Finally, SCL obtained "consents" from the four key LVSC executives to "unredact" their names from any documents originating in Macau—thus ensuring that the names of the executives who allegedly controlled SCL from Nevada were

unredacted in *all* of the responsive documents produced by Defendants. PA43815 ¶ 95; PA3890-93.

In total, LVSC produced more than 24,000 responsive documents, and SCL produced more than 17,500 responsive documents, with approximately 7,900 of those documents containing redactions. PA43814-815 ¶¶ 92-96. This enormous volume of discovery provided details on virtually every aspect of the SCL-LVSC relationship that could be remotely relevant to Plaintiff's jurisdictional claim. In light of this massive production, the redacted personal data was plainly cumulative to evidence Plaintiff had already received from Defendants.

b. The Jurisdictional Discovery Was Broad and Extraordinarily Burdensome.

This Court also directed the district court to evaluate the "specificity" of the requested discovery. This direction to the district court reflects the principle that "[g]eneralized searches for information" should be discouraged if a foreign law prohibits the disclosure of the information. *Richmark*, 959 F.2d at 1475.

Nevertheless, the district court permitted Plaintiff to issue 24 RFPs PA539, several of which had nothing to do with any jurisdictional issue,[10] and to take the depositions of the four most senior LVSC executives. PA540 ¶¶ 1-4.

In response to these requests, LVSC produced approximately 24,000 documents, and SCL produced close to 5,700 documents. PA15876,

[10] For example, Plaintiff sought all documents relating to SCL's initial public offering, the financing analyses for various SCL projects in Macau, and SCL's contacts with Nevada vendors for goods to be used *in Macau*, even though none of this information was relevant to the jurisdictional analysis. *See Daimler*, 134 S. Ct. at 756-57.

3066-3347, 3473-3889. The SCL documents included approximately 4,700 documents with personal data redacted. As to those documents, SCL undertook "extensive efforts" to locate more than 2,100 copies of the Macau documents in the United States, which it then produced in unredacted form. PA43814-815 ¶ 93-94.

The district court thereafter *sua sponte* issued a second order directing SCL to substantially increase its document production by searching the records of 13 additional individuals whom Plaintiff had previously identified as *merits* custodians, all without any showing of jurisdictional relevance. PA2257-60. The court also ordered SCL to log *all documents* that it retrieved through these additional searches (but withheld on relevance grounds), so that the court could then review the withheld documents and consider whether additional sanctions should be imposed. PA2258:26-2259:1.

In compliance with this unprecedented order, SCL produced more than 4,000 additional documents that were located outside Macau and more than 7,000 documents that were located in Macau. PA15876, PA3348. In the case of the Macau documents, SCL redacted personal data from the documents in compliance with the MPDPA, and produced a 37,000 page "Relevance Log" as required by the district court's order. PA5263-15465, 15951-42828.

In total, Defendants spent more than $4 million and produced more than 40,000 documents in compliance with the district court's jurisdictional discovery orders. PA15876, PA3066-3889; PA4438:5-14. Such grossly overbroad and oppressively burdensome orders for jurisdictional discovery are unprecedented in Nevada law. Indeed, we have found no case in *any* jurisdiction in which a court imposed discovery obligations of

comparable breadth and burden on a foreign corporation for the sole purpose of jurisdictional discovery.[11]

The sweeping breadth of these requests—and the magnitude of the resulting costs and burdens on SCL—provide additional reasons why the district court's Sanctions Order should be vacated.

c. None of the Redacted Documents Originated in the U.S.

The third factor cited by this Court focuses on whether the requested documents (and the individuals required to produce them) reside in a foreign country. *Richmark*, 959 F.2d at 1475. If so, this factor weighs against sanctions because such individuals "are subject to the law of that country in the ordinary course of business." *Id.*

In this case, the documents produced by SCL were documents that originated in Macau and could be found only in Macau. The district court did not dispute this fact, but insisted that it "does not militate against sanctions or their importance to jurisdictional issues." PA34820 ¶ 120. Yet the court provided no explanation for this conclusion, or for its decision to effectively ignore this factor.

[11] The discovery orders in this case therefore contrast sharply with the discovery orders in cases upholding the imposition of sanctions. In each of those cases, the courts dealt with requests for narrowly-defined categories of documents that were indisputably "crucial" to the litigation. For example, in *Richmark,* the plaintiff requested information about the defendant's "current assets" to facilitate the enforcement of a judgment, 959 F.2d at 1475, while in *Linde* the plaintiffs requested information about specific bank accounts to prove a link between the defendant and terrorist groups. 269 F.R.D. at 193.

d. Plaintiff Had Alternative Sources for the "Information Sought."

This Court's fourth factor centers on the availability of alternative sources of the requested information. This factor is especially critical because "there is little or no reason to require a party to violate foreign law" if "substantially equivalent" means are available to obtain the relevant information. *Richmark*, 959 F.2d at 1475. In such a case, the relevant inquiry centers on whether the "*information sought*"—as opposed to the actual documents—can be obtained from another source. *Id.*

Here, Plaintiff plainly had alternative means for obtaining the "information sought," including (1) the 24,000 unredacted documents produced by LVSC; (2) the depositions of LVSC's four most senior executives; (3) the unredacted copies of the Macau documents that Defendants located in the U.S.; and (4) the 40 gigabytes of data plaintiff had taken from Macau. PA43814 ¶ 93; PA43828"b." This production provided Plaintiff with all the evidence relevant to his jurisdictional claims. Yet, in its four-sentence paragraph addressing the "alternative sources" factor, the district court did not even mention any of this evidence. PA43821 ¶ 127.

For these reasons as well, the Sanctions Order should be vacated.

e. The District Court Failed to Properly Balance National Interests.

This Court's fifth factor requires an evaluation of whether compelled disclosure would "affect important substantive policies or interests" of either the U.S. or Macau, giving due respect to the "special problems" of foreign companies faced with conflicting obligations. *Richmark*, 959 F.2d at 1476; *see also Aerospatiale*, 482 U.S. at 546 (1987).

Here, the district court gave no weight to Macau's interest in enforcing the MPDPA, finding instead a "lack of a true Macanese interest in this personal data," without discussion or consideration of Macau's interest in personal data privacy. PA43822 ¶¶ 130, 134. The court reached this result even though it contradicted other findings the court made in its Sanctions Order, including the following:

1. the OPDP informed SCL that "under no circumstances" could SCL transfer personal data from Macau to Nevada without either the consent of the subject or the agency's approval (PA43800 ¶ 42);

2. the OPDP repeatedly rejected the suggestion that the U.S. legal system provided sufficient protection for the confidentiality of the data to permit a transfer (PA43800 ¶ 43); and

3. the OPDP was "furious" when it learned that in 2010 LVSC had transferred Plaintiff's data from Macau to Las Vegas without first obtaining the OPDP's consent (PA43801 ¶ 44).

Thus, the court's own findings refute its assertion that Macau did not have a "true interest" in this issue.

The district court also erred in finding that the U.S. has an "*overwhelming* interest" in compelling the disclosure of the redacted personal data in this case. PA43822 ¶ 133 (emphasis added). To support that finding, the district court relied exclusively on highly generalized statements that apply to every case in this country, but did not make any finding—or provide any analysis—showing how the redacted personal data *in this case* implicated any specific U.S. interest, overwhelming or otherwise.

Thus, the district court committed multiple legal and factual errors in applying this Court's five-factored sanctions analysis. For these reasons, the Sanctions Order should be vacated.

2. The District Court's Sanctions Order Violates Rule 37 Standards.

The district court's Sanctions Order also violated the Rule 37 standards governing the imposition of sanctions. Under these standards, a court should consider the prejudice suffered by the party seeking disclosure, the non-disclosing party's "degree of willfulness," and the extent to which possible sanctions are tailored to fit the violation. *E.g.*, *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990). These factors provide three additional reasons why the district court's order must be vacated.

a. No Evidence Supports the District Court's Finding of Prejudice.

The courts have repeatedly recognized that sanctions are not appropriate in cases where the alleged violation did not prejudice the opposing party. *See*, *e.g.*, *Gallagher v. Magner,* 619 F.3d 823, 844 (8th Cir. 2010). In this case, as shown above, the district court made no finding that the redacted personal data had any substantive importance for Plaintiff's jurisdictional case. Instead, the court based its prejudice finding primarily on the assertion that the redactions caused unspecified "delays" and the "permanent loss of evidence." PA43812-813 ¶¶ 86, 89-90.

This finding is contrary to the evidence showing that many factors contributed to the delays in the jurisdictional hearing, including (as the sanctions order expressly noted) the district court's rulings on various

privilege issues. PA43826 ¶ 153.[12] As a result, the order did not identify any specific period of delay that resulted from the "redaction" issue.

Accordingly, the record contains no support for the district court's finding that the "redaction" issue caused "delays" that prejudiced Plaintiff.

b. The Evidence Shows that SCL Did Not Act with an Intent to Prevent Access to Discovery.

Under Nevada law, a court can impose sanctions on a party only if it engages in *willful noncompliance* with a discovery order. NRCP 37(b)(2). In assessing willfulness, a court must consider whether circumstances beyond the non-complying party's control "contributed to the non-compliance." *Societe Internationale Pour Participations Industrielles et Commericales, S.A. v. Rogers*, 357 U.S. 197, 211 (1958); *LeGrande v. Adecco*, 233 F.R.D. 253, 257 (N.D.N.Y. 2005).

Here, the district court found that SCL acted with an intent to prevent Plaintiff from obtaining discoverable information (PA43827 ¶ 154a), but nowhere in its Order did the court cite *any* facts to support this critical finding. Nor did the court explain how this conclusion could be reconciled with the undisputed testimony provided by SCL's General Counsel showing that the OPDP *required* SCL to redact the personal data. In that testimony—which the district court nowhere challenged in its Order—the General Counsel explained that based on a series of meetings with the OPDP, he concluded that he had "no choice" but to comply with

[12] On October 1, 2013, this Court granted a stay while it decided Defendants' Petition (Case No. 63444) challenging the district court's privilege rulings. After this Court granted Defendants' Petition on August 7, 2014, the district court required an additional four months to complete its review of Defendants' privilege designations. As a result, the resolution of the privilege issues alone delayed the jurisdictional hearing for more than 14 months.

the "very strict approach" taken by the government agency. PA4110:8-20; 4115:12-18; 4583:1-16; 4602:25-4603:3. These unchallenged facts establish that the OPDP's communications—which were obviously a factor beyond SCL's control—"contributed" to SCL's decision to redact the documents.

The district court's "intent" finding also ignored the extraordinary lengths to which SCL went in an effort to accommodate the MPDPA with the court's discovery orders. If SCL's goal was to conceal evidence by redacting personal data from the Macau documents, it would not have (1) dispatched its U.S. lawyers to Macau to try to persuade the OPDP to permit the production of the unredacted documents; (2) undertaken "extensive efforts" to search in the U.S. for unredacted copies of the Macau documents (a step that even the district court "applauded" (PA43814-815, ¶¶ 93, 97 n.15)); or (3) obtained the consents of the LVSC executives to "unredact" their names in the Macau documents. PA43826-27 ¶ 154a.

The district court also ignored the compelling fact that SCL had absolutely no motive to participate in an alleged scheme to prevent Plaintiff from obtaining evidence by redacting personal data having no evidentiary value. SCL would not have undertaken the enormously costly project of redacting the data from thousands of documents—or incurred the substantial risk of a sanctions finding in this proceeding—if it were not compelled to do so by Macanese law.

Finally, the district court's statement that the "discovery abuses and use of the MDPA *appear to be driven by the client*" warrants special comment. PA43825 ¶ 148 (emphasis added). The district court cited absolutely no evidence to support this exceptionally unfair statement, nor could it do so—the statement is categorically false. Indeed, the court could not possibly have had any factual basis for its belief that the "client" drove the

alleged "discovery abuses" because Defendants did not waive their attorney-client privileges in either the first or second sanctions hearings—and the court disclaimed drawing any impermissible inference from Defendants' reliance on the attorney-client privilege.[13]

Whatever its basis, the fact that the district court unmistakably holds this false and misleading belief, and has acted on it to punish SCL, is yet another manifestation of bias that continues to prevent Defendants from receiving fair and impartial treatment in this forum. As discussed below, this reality, together with a long and unbroken pattern of unreasonable and grossly burdensome orders, compels Defendants to ask this Court to reassign this case.

c. The District Court's Sanctions Were Not Tailored to Fit the Alleged Violation.

This Court has recognized that "due process require[s] that discovery sanctions be just and that sanctions *relate to the specific conduct at issue*." *GNLV Corp. v. Serv. Control Corp.*, 11 Nev. 866, 870, 900 P.2d 323, 325 (1995) (emphasis added); *see also City of Sparks*, 112 Nev. at 955, 920 P.2d at 1016.

The district court, however, made no effort to tailor its Draconian sanctions to the nature of the alleged violation. At no point did the court explain why its exceptionally harsh sanction of precluding SCL from presenting any evidence was necessary to "restore the evidentiary balance" purportedly upset by SCL's decision to redact irrelevant personal data to comply with Macau law. Nor could the district court provide a rational explanation since the redacted data had ***no evidentiary value at all***.

[13] No adverse inferences can be drawn from a party's decision not to waive the privileges and work product protection afforded by Nevada law, under NRS 49.095 and Nevada Rule of Civil Procedure 26(b)(3).

Furthermore, even if the redactions had some relevance, a tailored remedy would have been to adversely infer that the redacted names are those of whatever individuals Plaintiff designated as part of his effort to establish personal jurisdiction. *See In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 386-87 (9th Cir. 2010). Instead, the district court imposed *both* preclusion *and* adverse inference sanctions that are grossly disproportionate to the nature of the alleged violation.

SCL has found only two cases in which the courts imposed sanctions of comparable severity on foreign corporations, and both cases involve facts that are not remotely comparable to the facts here. In *Ins. Corp of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982)—a case that did not involve an international privacy statute—the U.S. Supreme Court upheld the striking of a foreign company's jurisdictional defense after the company repeatedly refused to produce jurisdictional evidence. *Id.* Because the evidence was critical to the jurisdictional defense, the companies' refusal to produce the evidence warranted a finding that their jurisdictional defense lacked merit. *Id*. at 709.

Similarly, in *Linde v. Arab Bank, PLC*, the district court sanctioned a foreign bank by precluding it from contesting certain issues at trial after it refused to comply with orders to produce documents that were "essential" to the plaintiffs' ability to prove "not only that defendant provided financial services to terrorists, but also that it did so knowingly and purposefully." 269 F.R.D. at 203.

By contrast, in this case, SCL did not engage in a wholesale refusal to produce entire documents, much less documents that were "critical" to its jurisdictional defense. Rather, SCL, obeying the law of its home jurisdiction, made limited redactions of personal data having no

evidentiary value in the litigation. SCL then undertook "extensive efforts" to find alternative sources for the redacted data in ways that even the district court "applaud[ed]." PA43814-15, ¶¶ 93, 97 n.15).

Accordingly, the facts of *Insurance Corp.* and *Linde* underscore the district court's failure in this case to tailor the sanctions it imposed to fit the alleged violation.

3. The District Court's Order Violates Due Process.

The U.S. Supreme Court has recognized that a sanctions order can violate Due Process in at least two circumstances. The first occurs when the non-compliant party's refusal to produce documents does not support a presumption that the party's claim lacks merit. *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 351 (1909). This situation arises when the court's order requires the production of irrelevant or immaterial documents. *Linde*, 706 F.3d at 116; *see also Insurance Corp.*, 456 U.S. at 705. This principle applies here because, as shown above, the redacted data was not relevant to the jurisdictional issue.

Second, a sanctions order can violate Due Process if the failure to comply was "due to inability and not to willfulness, bad faith, or any fault of petitioner." *Societe Int'l Pour Participations Industrielles Et Commercialses, S. A. v. Rogers*, 357 U.S. 197, 212 (1958). This holding reflects the rule that a party cannot be penalized "for a failure to do that which it may not have been in its power to do" and that "any reasonable showing of an inability to comply" would have been sufficient. *Hammond Packing Co.*, 212 U.S. at 347; *see also Rogers*, 357 U.S. at 209, 212.

This principle also applies here. SCL's decision to redact the documents resulted not from bad faith, but from the requirements of Macanese law. This, indeed, is the only rational explanation for SCL's

numerous attempts to accommodate the conflicting demands of the OPDP and the district court by (among other things) producing unredacted copies of the documents found in the U.S. and obtaining waivers from the LVSC executives.

Consequently, the district court's order imposing preclusion, adverse influence and other sanctions on SCL violates Due Process and must be vacated.

F. The Case Should Be Reassigned.

The district court's punitive and grossly unjust sanctions order is the most recent in a long history of rulings, comments and findings that create an "objectively reasonable basis for questioning" the court's impartiality, and its ability to effectively manage this litigation. *In re IBM Corp*, 45 F.3d 641, 644 (2d Cir. 1995).

This record reflects in part an apparent bias that the district court holds against Defendants. The mere fact that the district court believes (with no factual basis whatsoever) that Defendants—and, in particular, the *clients*—decided to "conceal evidence" and "abuse" discovery demonstrates that the court cannot serve in this case as a "neutral, impartial administrator of justice." *United States v. Torkington*, 874 F.2d 1441, 1447 (11th Cir. 1989); *see also* PA43570:5-8 (announcing in the middle of closing arguments that "I'm trying to get information so that I can make a better decision [about sanctions], rather than a worse decision, because none of them are going to be good."); PA43983:7-12; PA44104 ¶ 5 (pre-judging SCL's motion to dismiss 7th Claim, which had yet to be heard); PA2942:9-19 (responding "This is bullshit" to SCL's inability to provide an earlier date on which she could set the evidentiary hearing on sanctions without

risking their ability to prepare); SCR CJC Canon 2.2 (impartiality); SCR CJC Canon 2.3, Comment 2 (judge shall not exhibit bias by epithets, slurs, etc.).

This animus has, at a minimum, created the appearance of a court that has pre-judged every major issue against Defendants, including, of course, the Draconian sanctions order. In its August 7, 2014 Order, this Court directed the district court to determine "what sanctions, *if any*, are appropriate." PA2637. Yet, on remand—one week after the Court's Order—the district court announced that it had *already decided* to impose sanctions, and it would conduct the hearing merely to determine what specific sanctions it would impose on SCL. The Court stated "There's going to be a sanction because I already had a hearing, and I made a determination that there *is* a sanction". PA2669:10-13 (emphasis added).

Even apart from its apparent bias and hostility toward Defendants, the district court issued orders that are so unreasonable and burdensome as to call into question its ability to effectively manage this litigation. For example, the extraordinary burden of requiring SCL to create a detailed log of *irrelevant* documents so that the court could determine whether to impose additional sanctions is unprecedented. It served no purpose other than to exponentially increase SCL's costs in these proceedings—all before the district court has even determined that it has jurisdiction over the company. Equally if not more burdensome was the court's *sua sponte* decision in March 2013 to ***double*** SCL's discovery obligations without any showing that the additional discovery had any jurisdictional relevance.

These arbitrary and unreasonably punishing decisions are so lacking in moderation and fundamental fairness as to require a new judge to

preserve the appearance of a neutral forum. Defendants therefore request this Court to reassign this case on remand.[14]

V. CONCLUSION

Petitioners respectfully request that this Court grant the Petition and enter an order vacating the district court's sanctions and jurisdictional orders and directing the district court to dismiss Plaintiff's complaint against SCL.

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[14] This Court has previously reassigned cases on remand in appropriate circumstances. *See, e.g.*, *FCH1 LLC v. Rodriguez*, 130 Nev. Adv. Op. 46, 335 P.3d 183, 190 (2014); *Echeverria v. State*, 119 Nev. 41, 44, 62 P.3d 743, 745-46 (2003); *Boulder City, Nev. v. Cinnamon Hill Assocs.*, 110 Nev. 238, 250, 871 P.2d 320, 327 (1994).

CERTIFICATE OF COMPLIANCE

1. I hereby certify that I have read this **PETITION FOR PROHIBITION OR MANDAMUS RE MAY 28, 2015 ORDER**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

2. I also certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Palatino 14 point font.

3. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found.

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(*pro hac vice in process*)
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Attorneys for Petitioner
Sands China Ltd.

VERIFICATION

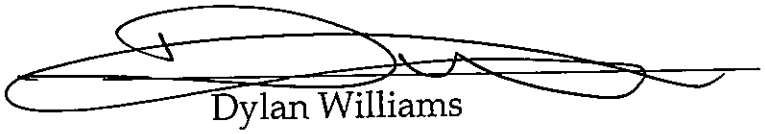
1. I, Dylan Williams, declare:

2. I am the interim Co-General Counsel at Sands China Ltd., the Petitioner herein;

3. I verify that I have read the foregoing **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE THE MAY 28, 2015 ORDER**; that the same is true my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury of the laws of the United States and the State of Nevada, that the foregoing is true and correct.

This declaration was executed on the 19th day of June, 2015 in Hong Kong S.A.R.



Dylan Williams

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE THE MAY 28, 2015 ORDER** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY
Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

Respondent

VIA ELECTRONIC AND U.S. MAIL
James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
400 South 7th Street
Las Vegas, NV 89101

Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 19th day of June, 2015.

By: /s/ PATRICIA FERRUGIA