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IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS, LTD., A Nevada
corporation,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK AND THE
HONORABLE ELIZABETH
GONZALEZ, DISTRICT JUDGE,
DEPT. XI,

Respondent,

and

KAZUO OKADA, UNIVERSAL
ENTERTAINMENT CORP., and
ARUZE USA, INC.,

Real Parties in Interest.

Electronically Filed
Sep 25 2015 04:00 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No.: 68439

**EMERGENCY MOTION UNDER
NRAP 27(e) FOR STAY OF ORDER
GRANTING MOTION TO COMPEL
PENDING WRIT PURSUANT TO
NRAP 8**

**(RULING REQUESTED BEFORE
OCTOBER 2, 2015)**

I. INTRODUCTION

Petitioner Wynn Resorts, Limited ("Wynn Resorts") moves this Court for a stay pending disposition of its Petition for Writ of Prohibition or Alternatively, Mandamus (the "Petition"), in light of the District Court's lifting of its earlier stay order. The District Court initially stayed its June 22, 2015 order (the "Order"), which is the subject of Wynn Resorts' Petition filed on July 20, 2015. The stay was ordered to remain in place until September 1, 2015 – the date that this Court held oral argument en banc on Defendant Kazuo Okada's petition related to the location and length of his deposition. The District Court specifically articulated that the September 1, 2015 date was chosen because this Court may provide guidance on Wynn Resorts' Petition during that argument. The District Court also expressly stated that Wynn Resorts could then move to extend the stay. As this Court may recall, Wynn Resorts' Petition was not discussed during the argument, therefore Wynn Resorts moved the District Court for an extension of the stay. The District Court granted a temporary stay – until October 2, 2015 – absent further stay from this Court. Accordingly, in accordance with the NRAP 27(e) certificate of counsel attached hereto, Wynn Resorts seeks a ruling before October 2, 2015.

On its face, the Order is a blanket discovery order compelling Wynn Resorts to search through what will certainly be hundreds of thousands if not millions of pages of documents that bear no relevancy to the underlying action, and produce documents responsive to the requests, which have no connection much less relevancy to the dispute. The District Court made no actual findings of relevance or even proportionality. Instead, it summarily compelled compliance with some 78 requests for production of documents, which are in addition to more than **800 other requests** issued by the Real Parties in Interest (the "Okada Parties") (Pet. at pp. 8-9.). Because this Court's precedent has long precluded such blanket discovery orders, and blanket discovery orders is one of the two expressly stated

1 reasons for entertaining writ relief on discovery matters,¹ this Court should issue a
2 stay to ensure that Wynn Resorts does not suffer irreparable harm as a result of the
3 District Court's ruling.

4 **II. PERTINENT FACTS AND PROCEDURAL HISTORY**

5 **A. The District Court's Blanket Discovery Order.**

6 Wynn Resorts' pending Petition chronicles the basis for this motion. In a
7 nutshell, after developing suspicions over the conduct of one of its former directors
8 and indirect stockholders, Kazuo Okada, Wynn Resorts' Board engaged former
9 federal judge and Director of the FBI, Louis Freeh ("Director Freeh"), to conduct an
10 investigation. (Pet. at 4-7.) Based upon that investigation and its findings of
11 serious improprieties (including payments to foreign government officials) by the
12 Okada Parties, the Wynn Resorts Board exercised its express rights under the
13 Articles of Incorporation to redeem the shares controlled by the Okada Parties and
14 launched this litigation. (Pet. at 2-3.)

15 After various unsuccessful procedural maneuvers, the Okada Parties have
16 sought to avoid the matters that are at issue in this litigation through a
17 scorched-earth campaign of deflection by purporting to question every transaction
18 Wynn Resorts has engaged in since before its actual formation in 2002.
19 (Pet. at 9-10.) The Okada Parties' approach confirms what happens in today's
20 litigation – and why parties and the public decry its duration and expense – when
21 ill-motivated litigants are not restrained and required to engage in reasonable
22
23

24 ¹ Discovery is not generally an area subject to this Court's writ relief. Okada's
25 writ petition, for example, challenged the District Court's order related to the length
26 and scope of his deposition. This is not an area generally subjected to writ relief,
27 without more. However, the Order that Wynn Resorts' challenges via the instant
28 Petition falls squarely into one of the two bases articulated in this Court's precedent
for granting writ relief on discovery issues: blanket discovery orders. Wynn Resorts'
Petition is not a strategy to delay, but rather is well-grounded in long-standing
Nevada law to protect litigants from the irreparable harm associated with blanket
discovery orders issued without regard to relevancy or proportionality.

1 discovery. Since the Okada Parties are longer affiliated with Wynn Resorts, they
2 will endeavor to inflict as much damage upon the Company as possible.²

3 It is not surprising that discovery is extensive in complex business litigation.
4 But, the Okada Parties' tactics are a textbook example of what happens when the
5 necessary limitations on discovery are ignored. To date, they have served
6 918 separate requests for production of documents to Wynn Resorts and the other
7 Wynn Parties.³ Specifically, they served 326 separate discovery requests to
8 Wynn Resorts alone, and between 59 and 61 individual requests to each of the
9 director defendants. As required and in the spirit of discovery, Wynn Resorts has
10 responded or committed to respond to the lion's share of these discovery requests.
11 However, as set forth in Wynn Resorts' Petition, it objected to 78 of these requests
12 because they are patently irrelevant, seek information nowhere near calculated to
13 lead to the discovery of admissible evidence, and also seek matters protected by
14 both Nevada and Macau gaming statutes. (Pet. at 16-28.)

15 As Wynn Resorts' Petition details, the District Court summarily granted the
16 Okada Parties' Motion to Compel on all 78 of these overbroad requests.
17 (Pet. at 9-10; 13-14.) It made no finding of relevancy, proportionality, nor even
18 imposed upon the Okada Parties to make such a showing. *Id.* Indeed, the
19 Okada Parties conceded that they could make no such showing, confirming that the
20 best they could do to justify these requests is speculate that "maybe" or "possibly"
21 these discovery requests could yield information to permit the Okada Parties to
22 argue that perhaps the Wynn Resorts' Board was motivated to undertake the
23 redemption because of something (that something never being explained or
24

25 ² After all, as the Okada Parties are no longer shareholders and their
26 redemption price has already been determined, their goal is to damage the Company
and all of its actual shareholders, including claiming that discovery is warranted for
virtually every transaction the Company has engaged in.

27 ³ The other Wynn Parties include Counter-Defendants Linda Chen, Russell
28 Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr,
Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman.

1 articulated) other than the investigation conducted by Director Freeh. (Pet. at 15.)
2 Respectfully, if Nevada law authorizes discovery pertaining to hundreds of
3 thousands of potentially responsive documents based upon nothing but self-serving
4 speculation and "what ifs," then Nevada cannot credibly claim that it is a reasonable
5 or desirable forum for business litigation.

6 **B. The District Court Initially Stayed Its Order.**

7 In the face of the District Court's Order, Wynn filed its Petition. It also
8 sought a stay from the District Court. The District Court granted that stay request,
9 at least temporarily. (Order Granting Wynn Resorts, Ltd.'s Mot. to Stay Pending
10 Pet. for Writ of Prohibition on an Order Shortening Time, Aug. 14, 2015, Ex. 1.) It
11 noted that this Court was already considering a pending writ petition regarding a
12 discovery issue in this action, and recognizing the potential of Wynn Resorts'
13 arguments to this Court in the Petition, ruled it would stay its Order "until the
14 earlier of further order of [the District] court or [the] oral argument scheduled in
15 *Okada v. The Eighth Judicial District Court*, Case No. 68310 . . . scheduled on
16 September 1, 2015." (*Id.*)

17 As scheduled, this Court heard argument on the other writ petition in this
18 action – the Okada Parties' writ petition on the length and location of Okada's
19 deposition – on September 1, 2015. However, as the Court should recall, no
20 discussion ensued at oral argument about the issues raised by Wynn Resorts in its
21 Petition. As this Court also knows, it already denied the Okada Parties' writ
22 petition. (Order Den. Pet. for Writ of Prohibition or Mandamus & Vacating Stay,
23 Sept. 9, 2015, Ex. 2.)

24 Because the subject matter remains unaddressed and Wynn Resorts' Petition
25 has not yet been resolved, Wynn Resorts filed a motion to extend the
26 District Court's previously-granted stay. (Wynn Resorts, Limited's Mot. to Extend
27 Stay Pending Petition for Writ of Prohibition on an Order Shortening Time,
28 Sept. 15, 2015, Ex. 3.) The District Court ultimately denied that request, in part.

(See Order Denying Wynn Resorts, Limited's Mot. to Extend Stay Pending Pet. for Writ of Prohibition on an Order Shortening Time, Sept. 21, 2015, Ex. 4.) Instead, it permitted an additional stay of two weeks until October 2, 2015, but required Wynn Resorts to seek any further relief from this Court. (*Id.*)

III. ARGUMENT

In accordance with NRAP 8, Wynn Resorts now moves this Court for additional relief as directed by the District Court. In deciding whether to enter a stay, this Court considers: (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer irreparable injury if the stay is denied; (3) whether the real party in interest will suffer irreparable harm if a stay is granted; and (4) whether petitioner is likely to prevail on the merits of the writ petition. NRAP 8(c). No single factor is dispositive and, "if one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). Here, each factor weighs in favor of a further stay.

A. Wynn Resorts' Petition is Meritorious.

Wynn Resorts agrees "discovery matters typically are addressed to the district court's sound discretion." *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 13, 319 P.3d 618, 621 (2014). However, this Court has found two circumstances where its intervention is proper: "when (1) the trial court issues blanket discovery orders without regard to relevance, or [when] (2) a discovery order requires disclosure of privileged information." *Id.*; see also *Valley Health Sys., LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. Adv. Op. 15, 252 P.3d 676, 679 (2011). In such circumstances, "[e]xtraordinary relief is a proper remedy to prevent improper discovery." *Schlatter v. Eighth Jud. Dist. Ct.*, 93 Nev. 189, 193, 561 P.2d 1342, 1344 (1977) (citation omitted).

The reason that such extraordinary relief is appropriate in these circumstances is because "[t]he disclosure of irrelevant matter is irretrievable once

made [and Wynn Resorts] would effectively be deprived of any remedy from [the District Court's] erroneous ruling if [it] was required to disclose the information and then contest the validity of the order on direct appeal." *Id.* at 193, 561 P.2d at 1344.

In this instance and as addressed in Wynn Resorts' Petition, the District Court granted the Okada Parties' motion to compel and ordered Wynn Resorts to produce responsive documents to the 78 irrelevant requests. (Order Granting the Aruze Parties' Mot. to Compel Suppl. Resps. to Their 2d and 3d Set of Reqs. for Produc. of Documents to Wynn Resorts, Ltd., June 22, 2015, Ex. 5.) Although Wynn Resorts provided detailed objections to each of these sweeping requests, the District Court granted the motion based on little more than the Okada Parties' speculative assertions that "maybe" there are other reasons that prompted the Board to redeem the shares controlled by the Okada Parties, other than what Director Freeh had uncovered. (Pet. at 15-16.)

But of course, if such unbridled speculation were a sufficient basis for discovery requests, then discovery would be limitless, which is something neither this nor any other court has approved. *See Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) ("[R]equested information is not relevant to 'subject matter involved' in the pending action if the inquiry is based on the party's mere suspicion or speculation."); *Bristol v. Trudon*, No. 3:13-CV 911 JBA, 2014 WL 1390808, at *4 (D. Conn. Apr. 9, 2014) ("The law is well-established that discovery requests that are based on pure speculation and conjecture are not permissible") (internal quotations omitted). Moreover, the District Court's Order fails to account for the confidentiality and privacy concerns invoked by both domestic and international gaming laws. (Pet. at 19-26.)

Wynn Resorts' Petition confirms a reasonable likelihood of success on the merits and warrants a stay pending this Court's consideration. The District Court's Order constitutes one for carte blanche discovery that is untethered to the concepts of relevancy or proportionality. Regardless of the significant financial resources of

1 these litigants, when Defendants/Counterclaimant insist that they need to issue
2 nearly 1,000 different requests for production of documents, they have shown their
3 true stripes.

4 **B. Wynn Resorts Will Suffer Irreparable Harm and the Object of the**
5 **Writ Petition is Defeated Absent a Stay.**

6 "Although irreparable or serious harm remains part of the stay analysis, this
7 factor will not generally play a significant role in the decision whether to issue a
8 stay." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39. Nonetheless, this
9 Court holds that the forced disclosure of irrelevant documents constitutes
10 irreparable harm because the disclosure is irretrievable once made. *See Schlatter*,
11 93 Nev. at 193, 561 P.2d at 1344. Following production, a party is effectively
12 deprived of any remedy as one cannot unring the bell.

13 Here, the harm to Wynn Resorts is undeniable: once it is forced to search for
14 and produce the irrelevant and otherwise protected information, the damage will be
15 done. Wynn Resorts will have no recourse for redress if it is forced to comply
16 because this harm is not one that this Court can remedy by way of an appeal after
17 the fact.

18 **C. The Okada Parties Suffer No Irreparable Harm by a Stay.**

19 Conversely, staying such a blanket discovery order does not unfairly
20 prejudice the Okada Parties who are seeking to abuse the discovery process. Even
21 the Okada Parties could not formulate a cognizable argument as to why they were
22 entitled to the requested discovery. Again, when challenged by Wynn Resorts, the
23 best they could do was speculate that "maybe" there are some documents that would
24 somehow suggest that the Board's redemption was motivated by something other
25 than the Okada Parties' wrongdoing as outlined by Director Freeh. (Pet. at 15-16.)

26 If that is a sufficient basis for requiring review and production of endless
27 irrelevant and non-discoverable documentation across different countries – and is
28 not something meriting this Court's review by way of a stay – then Nevada truly has

no actual limitations upon the scope of discovery or any requirement of proportionality. Respectfully, the Okada Parties cannot seriously suggest that they are deprived of substantive information while this Court reviews the matter, when Wynn Resorts' Petition pertains to only 78 of the nearly 800 requests propounded by the Okada Parties.

IV. CONCLUSION

This Court should stay the District Court's Order pending resolution of Wynn Resorts' Petition. Wynn Resorts has shown a reasonable likelihood of success, and that it will suffer the irreparable harm of reviewing and producing droves of irrelevant and/or otherwise confidential and protected documents. The object of the Petition cannot be undone after the fact. A stay is warranted.

DATED this 25th day of September, 2015.

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NRAP 27(e) CERTIFICATION OF COUNSEL

Todd L. Bice, declares as follows:

1. I am one of the attorneys representing Petitioner Wynn Resorts, Limited ("Wynn Resorts") on its Petition for Writ of Prohibition or Alternatively, Mandamus (the "Petition") denoted as Case No. 68439 and currently pending before this Court.

2. I make this certification in support of Wynn Resorts' Emergency Motion under NRAP 27(e) for Stay of Order Granting Motion to Compel Pending Writ Pursuant to NRAP 8. As set forth in the motion, Wynn Resorts filed its Petition concerning the District Court's June 22, 2015 Order (the "Order") on July 20, 2015, because it constitutes a blanket discovery order.

3. Initially, the District Court entered a temporary stay of the Order which remained in place until September 1, 2015, the date of oral argument on Defendant Kazuo Okada's Petition relating to the location and length of his deposition.

4. Thereafter, Wynn Resorts sought to extend the stay as its Petition remains pending before this Court. Through its Order filed on September 21, 2015, the District Court denied Wynn Resorts' request to extend the stay, in part. It granted only a further temporary stay – until October 2, 2015 – absent further action from this Court. Accordingly, Wynn Resorts now moves this Court for a stay pending disposition of its Petition.

5. Pursuant to NRAP 27(e), relief is needed in less than 14 days – by October 2, 2015 – in the face of the District Court's ruling.

6. The telephone numbers and office address of the attorneys for the parties are:

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*Attorneys for Real Parties in Interest Kazuo Okada;
Universal Entertainment Corp.; Aruze USA, Inc.*

7. I have notified the clerk of this Court as well as opposing counsel the filing of this motion. Opposing counsel was notified of our intent based upon the District Court's instructions at the hearing as well as by electronic mail on the date of the filing of this motion. Opposing counsel has been served with a copy of this motion.

DATED this 25th day of September, 2015.

/s/ Todd L. Bice
TODD L. BICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 25th day of September, 2015, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY OF ORDER GRANTING MOTION TO COMPEL PENDING WRIT PURSUANT TO NRAP 8** to the following:

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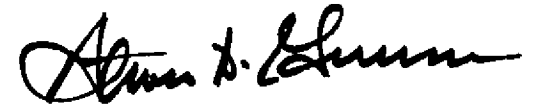
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EXHIBIT 1



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DISTRICT COURT

CLARK COUNTY, NEVADA

**WYNN RESORTS, LIMITED, a Nevada
Corporation,**

Plaintiff,

vs.

**KAZUO OKADA, an individual, ARUZE
USA, INC., a Nevada corporation, and
UNIVERSAL ENTERTAINMENT CORP., a
Japanese corporation,**

Defendants.

AND RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

**ORDER GRANTING WYNN RESORTS,
LIMITED'S MOTION TO STAY
PENDING PETITION FOR WRIT OF
PROHIBITION ON AN ORDER
SHORTENING TIME**

Hearing Date: July 8, 2015

Hearing Time: 8:30 a.m.

PISANELLI BICE PLLC
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1 Plaintiff Wynn Resorts, Limited's Motion to Stay Pending Petition for Writ of Prohibition
2 on an Order Shortening Time (the "Motion to Stay"), filed on July 1, 2015, came before this Court
3 for hearing on July 8, 2015. James J. Pisanelli, Esq. and Debra L. Spinelli, Esq., of
4 PISANELLI BICE PLLC, appeared on behalf of Plaintiff/Counterdefendant
5 Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani,
6 Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra,
7 D. Boone Wayson, and Allan Zeman (the "Wynn Parties"). J. Colby Williams, Esq., of
8 CAMPBELL & WILLIAMS, appeared on behalf of Counterdefendant/Cross-defendant Stephen A.
9 Wynn ("Mr. Wynn"). William R. Urga, Esq., of JOLLEY URGa WOODBURY & LITTLE, appeared
10 on behalf of Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn ("Ms. Wynn").
11 And, J. Stephen Peek, Esq. and Robert J. Cassity, Esq., of HOLLAND & HART, LLP, and Adam
12 Miller, Esq., of BUCKLEY SANDLER LLP, appeared on behalf of Defendant Kazuo Okada and
13 Defendants/Counterclaimants/Counter-defendants Aruze USA, Inc. ("Aruze USA") and Universal
14 Entertainment Corp. ("Universal") (the "Okada Parties").

15 The Court having considered the Motion to Stay, the opposition filed by the Okada
16 Parties, as well as the arguments of counsel presented at the hearing, and good cause appearing
17 therefor,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Wynn Resorts,
19 Limited's Motion to Stay is GRANTED.

20 IT IS FURTHER ORDERED that the stay shall remain in place until the earlier of further
21 order of the court or oral argument scheduled in *Okada v. The Eighth Judicial District Court*,
22 Case No. 68310, pending before the Nevada Supreme Court presently scheduled on September 1,
23 2015.

24 DATED this 14th day of August, 2015.

25
26 
27 THE HONORABLE ELIZABETH GONZALEZ
28 EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

DATED this 12th day of August, 2015.

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Approved as to form and substance by:

DATED this 12th day of August, 2015.

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DATED this 11th day of August, 2015.

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Attorneys for Kazuo Okada, Aruze USA, Inc., and Universal Entertainment Corp.

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

KAZUO OKADA,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,

and

WYNN RESORTS LIMITED, A
NEVADA CORPORATION; ELAINE
WYNN; AND STEPHEN WYNN,
Real Parties in Interest.

No. 68310

FILED

SEP 09 2015

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

***ORDER DENYING PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS AND VACATING STAY***

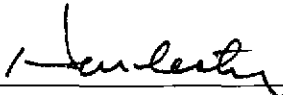
This is an original petition for a writ of prohibition or mandamus challenging a district court order denying a motion for a protective order.¹ Having considered the parties' arguments in this matter, we conclude that the district court did not exceed its jurisdiction or arbitrarily or capriciously exercise its discretion in denying petitioner's motion for a protective order. NRS 34.160; NRS 34.320; *Club Vista Fin. Servs., L.L.C., v. Eighth Judicial Dist. Court*, 128 Nev., Adv. Op. 21, 276


¹The Honorable James E. Wilson, Jr., District Judge in the First Judicial District Court, and the Honorable Steve L. Dobrescu, District Judge in the Seventh Judicial District Court, were designated by the Governor to sit in place of the Honorable Ron Parraguirre, Justice, and the Honorable Kristina Pickering, Justice, who voluntarily recused themselves from participation in the decision of this matter. Nev. Const. art. 6, § 4.

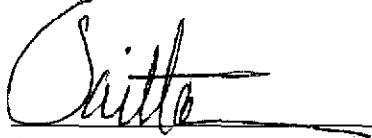
P.3d 246, 249 (2012); *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Consequently, we conclude that our extraordinary intervention is unwarranted, and we deny petitioner's request for writ relief.

As this matter warranted our expedited consideration and decision, this order is being entered for the purposes of providing the parties immediate resolution. Accordingly, we vacate the stay imposed by our July 1, 2015, order. But because this writ petition raises important legal issues in need of clarification, an opinion in this matter will be forthcoming.

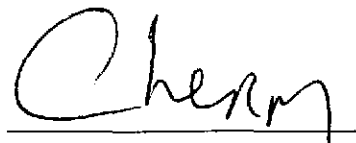
It is so ORDERED.²

, C.J.
Hardesty


, J.
Douglas

, J.
Saitta

, D.J.
Wilson

, J.
Cherry

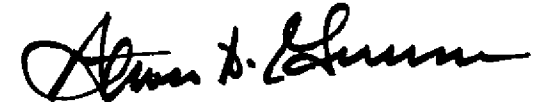
, J.
Gibbons

, D.J.
Dobrescu

²The clerk of this court is directed to stay issuance of the notice in lieu of remittitur pending our disposition of this matter by published opinion. NRAP 41(a).

cc: Hon. Elizabeth Goff Gonzalez, District Judge
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Wachtell, Lipton, Rosen & Katz
Pisanelli Bice, PLLC
Campbell & Williams
Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLC/
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EXHIBIT 3



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John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,

17 Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 WYNN RESORTS, LIMITED, a Nevada
Corporation,

21 Plaintiff,

22 vs.

23 KAZUO OKADA, an individual, ARUZE
USA, INC., a Nevada corporation, and
24 UNIVERSAL ENTERTAINMENT CORP., a
Japanese corporation,

25 Defendants.

26
27 AND RELATED CLAIMS
28

Case No.: A-12-656710-B

Dept. No.: ~~XI~~ XXIX

**WYNN RESORTS, LIMITED'S
MOTION TO EXTEND STAY
PENDING PETITION FOR WRIT
OF PROHIBITION ON AN
ORDER SHORTENING TIME**

Hearing Date:

Hearing Time:

Wynn Resorts seeks an extension of this Court's stay of its August 14, 2015 order, which granted the Okada Parties' motion to compel Wynn Resorts to produce documents in response to an additional 78 document production requests, on top of the more than 200 requests for which Wynn Resorts is responding. This Court granted a stay until the September 1, 2015 oral argument before the Nevada Supreme Court on the Okada Parties' separate writ petition concerning Mr. Okada's deposition, suggesting that perhaps the Supreme Court's hearing would give guidance. Although the Supreme Court has since held oral argument (and denied the Okada Parties' requested relief), the Supreme Court's discussion related only to its intervention into deposition logistics – an area not usually subject to extraordinary relief. As this Court knows, Wynn Resorts' writ petition concerns what it maintains is a blanket discovery order, which is one of the two areas subject to writ review and relief under established precedent.

The Nevada Supreme Court has yet to issue any orders related to Wynn Resorts' writ petition. However, because the object of the writ petition would be defeated if the stay does not continue until the Nevada Supreme Court addresses the petition, Wynn Resorts requests that this Court extend its stay pending further action on it by the Nevada Supreme Court.

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

DATED this 14th day of September, 2015.

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ORDER SHORTENING TIME

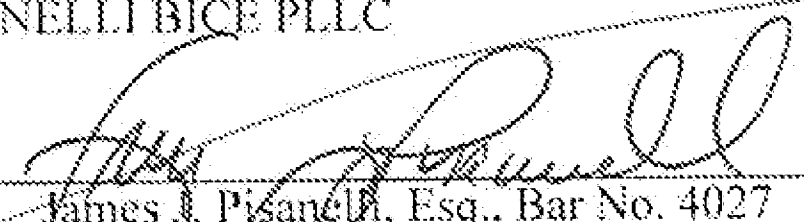
Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 18 day of Sept, 2015, at 9 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this WYNN RESORTS, LIMITED'S MOTION TO EXTEND STAY PENDING PETITION FOR WRIT OF PROHIBITION ON AN ORDER SHORTENING TIME on for hearing.

DATED: _____


DISTRICT COURT JUDGE

Respectfully submitted by:

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and Allan Zeman

DECLARATION OF DEBRA L. SPINELLI, ESQ

I, DEBRA L. SPINELLI, Esq., being first duly sworn, hereby declare as follows:

1. I am one of the attorneys representing Plaintiff Wynn Resorts, Limited ("Wynn Resorts") in above-entitled action. I make this Declaration in support of Wynn Resorts' Motion to Stay Pending Writ of Prohibition on an Order Shortening time. ("Wynn Resorts' Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. On April 28, 2015, the Okada Parties filed a Motion to Compel Supplemental Responses to their Second and Third Set of Requests for Production of Documents to Wynn Resorts (the "Motion"). Wynn Resorts opposed the Okada Parties' Motion noting, among other things, that eighty out of more than three hundred requests for production of documents (the number has since risen substantially) did not seek documents reasonably calculated to lead to the discovery of admissible evidence and were not based on any factual predicate but rather just ideas or theories devoid of fact.

3. Over Wynn Resorts' objections, this Court granted the Okada Parties' Motion on June 4, 2015. The Court entered its written Order on June 22, 2015. Notice of Entry of the Order was filed on June 24, 2015.

4. The Court previously granted Wynn Resorts a stay of the Order until September 1, 2015, the date on which the Nevada Supreme Court was to hear oral argument on Defendant Kazuo Okada's writ petition challenging the location and length of his deposition, *Okada v. The Eighth Judicial District Court*, Case No. 68310.

5. The Nevada Supreme Court heard oral argument on Okada's writ petition (and denied the requested relief) but, to date, the Supreme Court has not issued any orders related to Wynn Resorts' writ petition.

6. Despite being in front of the Supreme Court on a discovery issue (one not generally entertained via writ relief), the Supreme Court made no mention of the issue raised in Wynn Resorts' petition – that of a blanket discovery order (one of two areas where writ relief for discovery issues is permitted).

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTUAL BACKGROUND

A. The Court Enters its Blanket Discovery Order

On April 28, 2015, the Okada Parties filed a Motion to Compel Supplemental Responses to their Second and Third Set of Requests for Production of Documents to Wynn Resorts (the "Motion"). The Court granted the Okada Parties' Motion and overruled all of Wynn Resorts' objections to approximately eighty separate requests for production of documents on June 4, 2015. Wynn Resorts maintains that such an order constitutes a blanket discovery order that compels the disclosure of irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence, and that is also considered confidential under both the gaming laws of Nevada and Macau.

B. Wynn Resorts Seeks a Stay

On July 1, 2015, Wynn Resorts filed a Motion to Stay Pending Petition for Writ of Prohibition on an Order Shortening Time related to this Court's order compelling Wynn Resorts to produce documents. (Wynn Resorts, Ltd.'s Mot. to Stay Pending Pet. for Writ of Prohibition on an Order Shortening Time, July 1, 2015, on file.) Acknowledging that the Nevada Supreme Court already had a writ pending regarding a discovery issue in this action, and recognizing (though perhaps not agreeing with) the legitimacy of Wynn Resorts' argument to the Supreme Court related to the motion to compel, this Court granted Wynn Resorts requested stay "until the earlier of further order of court or oral argument scheduled in *Okada v. The Eighth Judicial District Court*, Case No. 68310 . . . scheduled on September 1, 2015." (Order Granting Wynn Resorts, Ltd.'s Mot. to Stay Pending Pet. for Writ of Prohibition on an Order Shortening Time, Aug. 14, 2015, on file.)

Wynn Resorts promptly filed its petition for writ of prohibition or alternatively, mandamus. (Pet. for Writ of Prohibition or Alternatively, Mandamus, July 20, 2015, Ex. 1.) To date, the Nevada Supreme Court has not issued an order or scheduled any argument concerning Wynn Resort's writ petition. (Docket, Ex. 2.) However, the Nevada Supreme Court did hear argument on the Okada Parties' writ petition related to the length and location of his deposition on

1 September 1, 2015 as scheduled. During the argument, there was no discussion related to the
2 issues that Wynn Resorts presents in its pending writ petition. One week after the argument, the
3 Supreme Court denied Okada's petition and stated that extraordinary relief was not warranted.
4 (Order Den. Pet. for Writ of Prohibition or Mandamus & Vacating Stay, Sept. 9, 2015, Ex. 3.) But
5 the issue of a blanket discovery order, which is very much subject to writ relief, as the law in
6 Nevada so clearly states, is still unaddressed. Thus, Wynn Resorts seeks to extend this Court's
7 stay pending resolution of its writ petition.

8 **II. ARGUMENT**

9 A party must first move in the district court for a stay of an order before seeking a stay
10 from the Nevada Supreme Court pending resolution of a writ petition. NRAP 8(a)(1); *see also*
11 *Hansen v. Eighth Jud. Dist. Court ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986
12 (2000). When considering a stay, courts weigh a number of factors: (1) whether the object of the
13 writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer irreparable
14 injury if the stay is denied; (3) whether the real party in interest will suffer irreparable harm if a
15 stay is granted; and (4) whether petitioner is likely to prevail on the merits of the writ petition.
16 NRAP 8(c). No single factor is dispositive and, "if one or two factors are especially strong, they
17 may counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251,
18 89 P.3d 36, 38 (2004).

19 **A. Wynn Resorts is Likely to Prevail on the Merits of Its Writ Petition.**

20 It is well recognized that "discovery matters typically are addressed to the district court's
21 sound discretion." *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 13, 319 P.3d 618,
22 621 (2014). Nevertheless, the Nevada Supreme Court will intervene "in discovery matters when
23 (1) the trial court issues blanket discovery orders without regard to relevance, or (2) a discovery
24 order requires disclosure of privileged information." *Id.*; *see also Valley Health Sys., LLC v.*
25 *Eighth Judicial Dist. Ct.*, 127 Nev. Adv. Op. 15, 252 P.3d 676, 679 (2011) ("In general, there
26 have been two main situations where this court has issued a writ to prevent improper discovery:
27 blanket discovery orders with no regard to relevance, and discovery orders compelling disclosure
28 of privileged information."). "[E]xtraordinary relief is a proper remedy to prevent improper

1 discovery." *Schlatter v. Eighth Jud. Dist. Ct.*, 93 Nev. 189, 193, 561 P.2d 1342, 1344 (1977)
2 (citation omitted). And, an extraordinary writ will issue where a court allows carte blanche
3 discovery without regard for relevancy. *Id.* at 192, 561 P.2d at 1343-44.¹ "[T]he disclosure of
4 irrelevant matter is irretrievable once made [and Wynn Resorts] would effectively be deprived of
5 any remedy from [this Court's] erroneous ruling if [it] was required to disclose the information
6 and then contest the validity of the order on direct appeal." *Id.* at 193, 561 P.2d at 1344.

7 Here, the Court granted the Okada Parties' motion to compel in its entirety, and ordered
8 the Wynn Parties to "produce all non-privileged documents responsive to the Aruze Parties'
9 Requests No. 82, 86, 89, 90, 93, 114, 118-120, 122-149, 152, 166-167, 205-206, 215, 230-234,
10 235, 236, 238, 239, 240-242, 249-250, 259-266, 269-278, 283, 289, and 294." (Order Granting
11 the Aruze Parties' Mot. to Compel Suppl. Resps. to Their 2d and 3d Set of Reqs. for Produc. of
12 Documents to Wynn Resorts, Ltd., June 22, 2015, on file.) Despite Wynn Resorts' detailed
13 objections to each of these requests, the Court ordered Wynn Resorts to produce documents
14 responsive to all of these requests based on little more than the Okada Parties' claims of "pretext."
15 Respectfully, Wynn Resorts maintains that such relief – untethered to the facts and claims at issue
16 – constitutes a prohibited blanket discovery order.

17 Indeed, the Okada Parties admit that this fishing expedition is based on a little more than a
18 self-serving and speculative "theory." (Aruze Parties' Opp'n to Wynn Resorts Ltd.'s Mot. to Stay
19 Pending Petition for Writ of Prohibition on an Order Shortening Time, 6:21-24.) The
20 Okada Parties' unsubstantiated theory is not relevant to the subject matter of this action nor is it
21 reasonably calculated to lead to the discovery of admissible evidence. *See Micro Motion, Inc. v.*
22 *Kane Steel Co.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) ("[R]equested information is not relevant to
23 'subject matter involved' in the pending action if the inquiry is based on the party's mere suspicion
24 or speculation."); *Davis v. Leal*, 43 F. Supp. 2d 1102, 1112 (E.D. Cal. 1999) ("Unreasonable
25 extensions of theories in the complaint, not supported by any reasonable interpretation of the law,
26 cannot stand as a basis for discovery."); *Bristol v. Trudon*, No. 3:13-CV 911 JBA, 2014

27
28 ¹ Disagreed with on other grounds by *Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev. 345,
350, 891 P.2d 1180, 1183 (1995).

1 WL 1390808, at *4 (D. Conn. Apr. 9, 2014) ("The law is well-established that discovery requests
2 that are based on pure speculation and conjecture are not permissible") (internal quotations
3 omitted); *Mackelprang v. Fid. Nat. Title Agency of Nev., Inc.*, No. 2:06-CV-00788-JCM, 2007
4 WL 119149, at *2 (D. Nev. Jan. 9, 2007) (denying a motion to compel discovery where defendant
5 was engaged in a fishing expedition based on "nothing more than suspicion or speculation as to
6 what information might be contained in the" information sought.) Discovery based on mere
7 speculation is not sufficient to satisfy the requirements that discovery be "reasonably calculated to
8 lead to the discovery of admissible evidence." And, while "[m]uch of discovery is a fishing
9 expedition of sorts, [the rules of civil procedure] allow the Courts to determine the pond, the type
10 of lure, and how long the parties can leave their lines in the water." *Myers v. Prudential Ins. Co.*
11 *of Am.*, 581 F. Supp. 2d 904, 913 (E.D. Tenn. 2008).

12 In addition the lack of relevancy, the blanket discovery order also fails to consider the
13 confidentiality and privacy concerns invoked by the gaming laws of both Nevada and Macau.
14 Pursuant to the gaming statutes of this state, certain information requested, provided, and/or
15 otherwise obtained by the Nevada Gaming Control Board, the Commission, and its agents is
16 confidential and privileged. NRS 463.120. Respectfully, this Court's order does not take into
17 consideration these protections and orders Wynn Resorts to produce documents that are
18 considered confidential and private by these statutes. (*See, e.g.*, Request No. 215 requesting "[a]ll
19 Documents concerning Communications between WRL and the NCGB, the FBI, DOJ, and/or the
20 Philippine Department of Justice concerning Mr. Okada, Universal, and/or Aruze USA and its
21 affiliates.") Similarly, Macau law extends protections to certain information regarding the
22 provided by the gaming concessionaires. Macau Law 16/2001, Art. 16. As a result, documents
23 related to the bidding process for a gaming concession, the tender, and the concession are
24 confidential and third parties are prohibited from accessing or consulting these documents. Yet,
25 the Okada Parties requested and this Court ordered Wynn Resorts to produce documents related
26 to Wynn Macau (a third party).

27 In light of the foregoing issues, which only generally address the concerns raised by the
28 blanket discovery order, Wynn Resorts has shown a reasonable likelihood of success on the

merits of its writ petition to merit a stay while the Supreme Court considers the petition. *See Hansen*, 116 Nev. at 659, 6 P.3d at 987) ("[A] movant does not always have to show a probability of success on the merits, the movant must 'present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.'" (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981))).

B. Wynn Resorts Will Suffer Irreparable Harm and the Object of the Writ Petition Will be Defeated if a Stay is Denied.

The next two factors can be considered together and also weigh in favor of granting the stay. "Although irreparable or serious harm remains part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a stay." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39. Nonetheless, Nevada law provides that the forced disclosure of irrelevant documents constitutes irreparable harm because the disclosure is irretrievable once made. *Schlatter*, 93 Nev. at 193, 561 P.2d at 1344. Following production, a party is effectively deprived of any remedy from the court's ruling. *Id.* Indeed, once the "cat is out of the bag" it is impossible to return it.

Here, Wynn Resorts filed a petition for writ of prohibition or alternatively, mandamus, seeking relief from the obligation to respond to the objectionable requests. As discussed above, the Okada Parties' discovery requests lack any relevancy, are not likely to lead to the discovery of admissible evidence, and seek information considered private and confidential by both Nevada and Macau gaming laws. Wynn Resorts (and non-party Wynn Macau) will suffer irreparable harm if required to review and produce all of the irrelevant documents that the Okada Parties compelled just because the Okada Parties want to see what Wynn Resorts might have. Wynn Resorts will not be able to remedy the irreparable harm caused by the compelled wholesale production of an enormous amount of irrelevant and confidential hard and electronic documents across two continents.

C. The Okada Parties Will Not Suffer Any Harm if a Stay is Granted.

This matter is not set for trial until February 2017 and discovery is set to close August 1, 2016. While Wynn Resorts' writ is pending, all other discovery can continue. Wynn Resorts has

1 continued to make rolling productions of discoverable and relevant information in response to the
2 hundreds of other requests for production that the Okada Parties served, as well as productions
3 required under NRCP 16.1, and will continue to do so. Because the information sought by the
4 objectionable requests is unrelated to the actual subject matter at issue here, the Okada Parties
5 cannot legitimately claim prejudice from extending the stay to allow the Supreme Court to
6 consider Wynn Resorts' petition.

7 **III. CONCLUSION**

8 Based on the foregoing, a stay should be extended pending Wynn Resorts' petition for a
9 writ of prohibition or mandamus to the Nevada Supreme Court. The relevant factors weigh in
10 favor of a further stay. Specifically, Wynn Resorts has shown a reasonable likelihood of success,
11 and it will suffer the irreparable harm of reviewing and producing droves of irrelevant and/or
12 otherwise confidential and protected documents, at an exorbitant and non-proportional cost,
13 absent a stay. Additionally, the object of the writ petition will be defeated. With the limited stay
14 Wynn Resorts seeks, remaining discovery can proceed and as a result, the Okada Parties will not
15 suffer any irreparable harm from a further stay. Thus, Wynn Resorts respectfully requests that
16 this Court grant Wynn Resorts' Motion in its entirety.

17 DATED this 14th day of September, 2015.

18 PISANELLI BICE PLLC

19 By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 14th day of September, 2015, I caused to be electronically served through the Court's filing system true and correct copies of the foregoing **WYNN RESORTS, LIMITED'S MOTION TO EXTEND STAY PENDING PETITION FOR WRIT OF PROHIBITION ON AN ORDER SHORTENING TIME** to the following:

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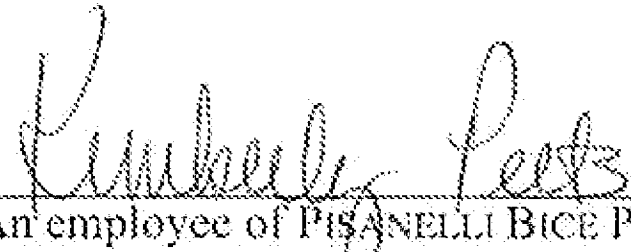

An employee of PISANELLI BICE PLLC

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

WYNN RESORTS, LIMITED,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE
HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. XI,

Respondent,

and

KAZUO OKADA; UNIVERSAL ENTERTAINMENT CORP.
AND ARUZE USA, INC.,

Real Parties in Interest.

**PETITION FOR WRIT OF PROHIBITION OR
ALTERNATIVELY, MANDAMUS**

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the foregoing are persons or entities as described in NRAP 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 Wynn Resorts, Limited is a publicly-traded Nevada corporation, headquartered in Las Vegas, Nevada.

DATED this 17th day of July, 2015.

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ROUTING STATEMENT

The Nevada Supreme Court should retain this writ proceeding because it stems from a case "originating in Business Court." NRAP 17(a)(10); NRAP 17(e). Additionally, this Court should retain this matter because another writ proceeding involving the same case is presently pending before it: Case No. 68310.

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1 **I. OVERVIEW AND RELIEF SOUGHT**

2 Wynn Resorts, Limited ("Wynn Resorts" or the "Company") petitions this
3 Court under NRAP 21 and NRS Chapter 34 for a writ of prohibition or,
4 alternatively, mandamus against the District Court's June 22, 2015 order (the
5 "Order") for the very reasons this Court holds that writ relief is available to restrain
6 overbroad discovery orders: The Order compels Wynn Resorts, under the threat of
7 future sanction, to produce "any and all" documents for 78 distinct and sweeping
8 document requests, untethered to any concept of relevancy to the matters at hand. It
9 is the definition of a naked blanket discovery order.

10 As if that were not enough, the District Court's Order further transcends this
11 Court's precedents by compelling the production of documents that both the gaming
12 laws of Nevada and Macau declare to be confidential. Not only does the District
13 Court's Order trample these explicit policy directives – of both Nevada and of a
14 foreign sovereign – it does so without the slightest of findings or rationale. Indeed,
15 there is no indication that the district court gave any heed to these policy directives.
16 Respectfully, the judicial branch's control over discovery in litigation
17 notwithstanding, courts should not run roughshod over explicit public policy and
18 regulatory restrictions, particularly absent any evidentiary showing of relevancy or
19 need.

20 The essence of the District Court's approach here – that these are large,
21 well-heeled litigants with ample resources to comply with unbounded discovery –
22 ignores this Court's teachings and only undermines the legitimate interest of
23 litigants and the judicial process. No litigant should be held to have committed
24 itself to unbounded and irrelevant discovery for the sake of having exercised its
25 constitutional right to seek redress in Nevada's courts. Because that is what the
26 District Court's blanket Order does here, Wynn Resorts seeks a writ to set aside that
27 Order.

1 **II. ISSUE PRESENTED**

2 Does a district court's order compelling broad discovery without regard to
3 relevancy or proportionality and compelling the production of documents deemed
4 protected by law warrant this Court's review by writ of prohibition or, alternatively,
5 mandamus?

6 **III. FACTS RELEVANT TO UNDERSTANDING THIS PETITION**

7 **A. Wynn Resorts' Articles of Incorporation Provide for Redemption**
8 **of Shares.**

9 The genesis of the underlying litigation derive from provisions of Wynn
10 Resorts' Articles of Incorporation ("Articles" or "Articles of Incorporation") known
11 and agreed to by all stockholders, particularly Real Parties in Interest
12 Aruze USA, Inc. ("Aruze"), its principal, Kazuo Okada ("Okada"), and parent,
13 Universal Entertainment Corp. (collectively the "Okada Parties"). (Vol. IV PA
14 752-63.) Pursuant to those Articles, the Wynn Resorts Board of Directors, on
15 February 18, 2012, redeemed all of the outstanding shares then held by Aruze.
16 (Vol. III PA 700, Vol. IV PA 752-63.) The Board did so because it learned of
17 serious misconduct by Okada and entities he controls, including Aruze, involving
18 improper payments to Philippine gaming officials with regulatory authority over an
19 Okada-sponsored casino development project in that country. (Vol. III PA 697-
20 701, 704-750.)

21 As authorized by Article VII of the Articles, the Board redeemed Aruze's
22 shares in exchange for a promissory note. (Vol. III PA 700-01, Vol. IV PA 752-63,
23 765-68.) Article VII empowers the Wynn Resorts Board to redeem the shares of
24 any stockholder who the Board deems, in its sole discretion, to be an "Unsuitable
25 Person" as the Articles define, most relevantly where the Board determines that
26 continued ownership would jeopardize Wynn Resorts' existing gaming licenses or
27 opportunities for additional licenses. (Vol. III PA 700, Vol. IV 758-62.)

28

1 Upon Wynn Resorts' formation, stockholders – including the Okada Parties –
2 agreed that the Company's Board shall have the power to redeem any shares held by
3 any "Unsuitable Person" or its affiliates. (Vol. IV PA 760.) Each of the shares held
4 by Aruze was emblazoned with a notice of Wynn Resorts' redemption rights upon
5 their initial issuance. (Vol. IV PA 782, 950-51.) And as Section 2 of Article VII
6 provides, in relevant part:

7 Finding of Unsuitability. (a) The Securities Owned or
8 Controlled by an Unsuitable Person or an Affiliate of an
9 Unsuitable Person shall be subject to redemption by the
10 Corporation, out of funds legally available therefor, by
11 action of the board of directors, to the extent required by
12 the Gaming Authority making the determination of
13 unsuitability or to the extent deemed necessary or
14 advisable by the board of directors

15 (Vol. IV PA 759.) "Unsuitable Person" is further defined as:

16 [A] Person who (i) is determined by a Gaming Authority
17 to be unsuitable to Own or Control any Securities or
18 unsuitable to be connected or affiliated with a Person
19 engaged in Gaming Activities in a Gaming Jurisdiction,
20 or (ii) causes the Corporation or any Affiliated Company
21 to lose or to be threatened with the loss of any Gaming
22 License, or (iii) in the sole discretion of the board of
23 directors of the Corporation, is deemed likely to
24 jeopardize the Corporation's or any Affiliated Company's
25 application for, receipt of approval for, right to the use of,
26 or entitlement to, any Gaming License.

27 (Vol. IV PA 760.)¹ Thus, any stockholder who in the Board's "sole discretion" is
28 "deemed likely to jeopardize" the Company's existing gaming licenses or the
Company's ability to secure additional licenses in the future qualifies as an
"Unsuitable Person." (*Id.*)

Wynn Resorts' Articles of Incorporation not only empower the Board to
redeem the shares but also authorize the Board to determine the "Redemption Price"

¹ The Articles of Incorporation define the term "Gaming Licenses" to include
"all licenses, permits, approvals, authorizations, registrations, findings of suitability,
franchises, concessions and entitlements issued by a Gaming Authority necessary
for or relating to the conduct of Gaming Activities." (Vol. IV PA 758.)

1 to be paid. (Vol. IV PA 759, Vol. II PA 701.) Article VII provides that unless a
2 gaming regulator mandates a particular price be paid, the price should be an
3 "amount determined by the board of directors to be the fair value of the Securities
4 to be redeemed." (Vol. IV PA 759.) In paying this "Redemption Price," the Wynn
5 Resorts Board has the discretion to compensate the unsuitable stockholder with
6 either cash or a ten-year promissory note with a prescribed interest rate of 2% per
7 year (or some combination of the two). (*Id.*)

8 Simply put, Wynn Resorts' Articles of Incorporation reflect Nevada's
9 fundamental and paramount public interest in gaming: The "probity" of gaming
10 licensees and their associates. (Vol. III PA 547-49.) And, *all* Wynn Resorts
11 stockholders – no matter the size of their holdings or perceived self-importance –
12 are subject to these requirements.

13 **B. Wynn Resorts Uncovers Improprieties by the Okada Parties.**

14 Since sometime in 2007 or 2008, Okada has been engaged in promoting and
15 financing a projected casino resort in the Philippines. (Vol. III PA 695.) At a
16 meeting of the Wynn Resorts Board held on November 1, 2011, former Nevada
17 Governor Robert Miller, the Chairman of Wynn Resorts' Compliance Committee,
18 discussed the results of two independent investigations into Okada's activities in the
19 Philippines. (Vol. III PA 697.) These investigations stemmed from concerns about
20 the general compliance environment in the Philippines, a country where corruption
21 is perceived to be widespread, and the risk that Okada's entities' activities there
22 would create compliance-related problems for Wynn Resorts. (Vol. III PA 695-97.)

23 Governor Miller reported to the Wynn Resorts Board that the evidence
24 uncovered prior to November 1, 2011 raised questions about Okada's suitability.
25 (Vol. III PA 697.) Governor Miller advised the Board that, in light of the
26 then-existing findings, the Compliance Committee intended to retain former
27 federal judge and Director of the Federal Bureau of Investigation Louis Freeh
28 ("Director Freeh") of Freeh Sporkin & Sullivan, LLP, to investigate Okada's

1 activities. (*Id.*) Following Governor Miller's presentation, the Wynn Resorts Board
2 ratified the Compliance Committee's decision to retain Director Freeh. (Vol. III
3 PA 697-98.)

4 The investigation spanned the next three and a half months. (Vol. III
5 PA 698.) Initially, Okada refused to even be interviewed, but ultimately relented
6 and made himself available for a day, on February 15, 2012, as Director Freeh's
7 investigation was concluding. (*Id.*) Shortly thereafter, Director Freeh presented
8 the investigation's conclusions at a special meeting of the Wynn Resorts Board,
9 along with a 47-page written report detailing the findings (the "Freeh Report").
10 (Vol. III PA 698, 704-50.)

11 Director Freeh first described the scope of his investigation, reported on
12 impressions of the personal interview of Okada, and answered questions from the
13 directors. (Vol. III PA 698-699.) As reflected in the Freeh Report, he advised the
14 Board that Okada had not presented any exculpatory evidence – that is, evidence
15 that would tend to contradict the findings – and that Okada's broad denials of any
16 personal involvement were not credible in light of the evidence uncovered.
17 (Vol. III PA 698, 750.)

18 Following the presentation, the Board adjourned for two hours to give the
19 directors an opportunity to analyze the Freeh Report. (Vol. III PA 699.) The Freeh
20 Report detailed findings that were incompatible with any legitimate business
21 operator, much less for a Nevada gaming licensee:

- 22 • "Mr. Okada, his associates and companies appear to have engaged in a
23 longstanding practice of making payments and gifts to his two (2) chief
24 gaming regulators at the Philippines Amusement and Gaming
Corporation," as well as their families and associates, in substantial
amounts. (Vol. III PA 704.)
- 25 • "In one such instance in September 2010, Mr. Okada . . . paid the
26 expenses for a luxury stay at [the] Wynn Macau by [PAGCOR]
Chairman Naguiat," his family, and "other senior PAGCOR officials . .
27 . . . Mr. Okada and his staff intentionally attempted to disguise this
particular visit by Chairman Naguiat by keeping his identity 'Incognito'
28 and attempting to get Wynn Resorts to pay for the excessive costs of
the chief regulator's stay, fearing an investigation." (Vol. III PA 705.)

- 1 • "[D]espite being advised by fellow Wynn Resorts Board members and
2 Wynn Resorts counsel that payments and gifts to foreign government
3 officials are strictly prohibited" – including under the Wynn Resorts
4 Code of Business Conduct and Ethics – "Mr. Okada has insisted that
5 there is nothing wrong with this practice in Asian countries." (Vol. III
6 PA 713.)
- 7 • "Mr. Okada has stated his personal rejection of Wynn Resorts
8 anti-bribery rules and regulations, as well as legal prohibitions against
9 making such payments to government officials, to fellow
10 Wynn Resorts Board members." (*Id.*)
- 11 • Mr. Okada has "refus[ed] to receive Wynn Resorts requisite FCPA
12 training provided to other Directors" and "fail[ed] to sign an
13 acknowledgement of understanding of Wynn Resorts Code of
14 Conduct." (Vol. III PA 705.)

15 The Board engaged in an extensive discussion of Director Freeh's
16 presentation and the Freeh Report. (Vol. III PA 700.) During the course of its
17 deliberations, the Board also considered advice from two highly-experienced
18 attorneys in the applicable Nevada gaming statutes and regulations, Jeffrey Silver
19 and David Arrajj. (*Id.*) At the conclusion of these discussions, and in light of the
20 findings in the Freeh Report, Director Freeh's presentation, and the advice of expert
21 gaming counsel, the Wynn Resorts Board (excluding Okada) unanimously
22 determined – pursuant to the Company's Articles – that the Okada Parties were
23 "Unsuitable Persons" whose continued affiliation with Wynn Resorts was "likely to
24 jeopardize" the Company's existing and potential future gaming licenses. (Vol. III
25 PA 700, 770.) Thus, the Board redeemed Aruze's shares.

26 Again, under the terms of Article VII, the redemption price could be paid
27 wholly in cash, or with a ten-year promissory note bearing an annual interest rate of
28 two percent, or by some combination of these two options. (Vol. III PA 700,
Vol. IV PA 759.) The Board discussed with the Company's then-chief financial
officer the effect on the Company's financial condition and flexibility under each of
the alternatives. (Vol. III PA 700-01.) The Wynn Resorts Board also considered its
duties to the Company's remaining stockholders in determining the method of
payment. (Vol. III PA 701.) Based on all of these considerations, the Wynn

1 Resorts Board (other than Okada) unanimously determined to pay the full amount
2 of the redemption price by issuing a promissory note. (Vol. III PA 700-01, Vol. IV
3 PA 765-68.)²

4 **C. Wynn Resorts Reports the Unsuitability Determination and Sues**
5 **to Enforce its Legal Rights.**

6 That same day, Wynn Resorts informed the Nevada State Gaming Control
7 Board as to its finding that Okada, Aruze, and Universal were "Unsuitable Persons"
8 and that it had redeemed Aruze's shares pursuant to Article VII of the Articles of
9 Incorporation. (Vol. III PA 701.) Wynn Resorts also informed the Gaming
10 Control Board as to the issuance of the promissory note for the redeemed shares.³
11 Wynn Resorts also acted promptly in pursuing legal relief against the Okada
12 Parties, filing this action on February 19, 2012, and asserting claims for declaratory
13 relief, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty.
14 (Vol. I PA 1-21.)

15 In response, the Okada Parties sought to delay this matter with procedural
16 maneuvering in the form of an improper removal to federal court that resulted in a
17 remand and a sanctions award against the Okada Parties. (Vol. I PA 70-76,
18 192-95.) The Okada Parties also sought to distract from the unsuitability
19 determination and redemption, and filed a 107-page answer and counterclaim,
20

21 ² Article VII required the Wynn Resorts Board to determine the "fair value" of
22 Aruze's shares in setting the redemption price. (Vol. III PA 700, Vol. IV PA 759.)
23 The Board received advice from an outside financial advisor, Moelis & Company,
24 which presented the Board with a written report containing an analysis of a fair
25 valuation range for Aruze's shares, taking into consideration provisions in a
26 stockholders agreement that prohibited Aruze from transferring its shares without
the consent of Mr. Wynn and Ms. Wynn, as well as the overall size of Aruze's block
of shares. (Vol. III PA 700-01.) Following its review of the Moelis analysis, the
Board (other than Okada) unanimously determined to apply a blended 30%
discount to the public trading price of the Company's shares. (*Id.*)

27 ³ At no point has the Gaming Control Board disputed the Wynn Resorts
28 Board's authority to redeem the shares of any stockholder the Board deems
unsuitable, or the manner of payment for the redemption. (Vol. III PA 701.)

1 asserting the proverbial kitchen sink affirmative defenses, and twenty claims against
2 the Company, its-then directors, as well as the Company's General Counsel. (Vol. I
3 PA 77-191.)

4 The Okada Parties also sought a preliminary injunction from the District
5 Court, asking it to, among other things, reverse the share redemption. (Vols. I-III
6 PA 196-511.) The District Court denied the Okada Parties' request, finding that the
7 business judgment rule applied to the Board's decision and concluding that Wynn
8 Resorts had the reasonable likelihood of success. (Vol. V PA 1083-88.)

9 The case was also delayed when the United States Department of Justice
10 intervened and asked the District Court for a stay due to its pending criminal
11 investigation of the Okada Parties. (Vol. VI PA 1401-11.) That stay lasted
12 approximately twelve months, and was ultimately lifted by the District Court
13 despite the United States' request for a further extension as its investigation is
14 ongoing. (Vol. VI-VII PA 1496-1504, Vol. IV PA 1505-13.)

15 Ever since, the Okada Parties' approach in discovery and to this litigation in
16 general has become transparent and predictable: Needing to distract from the
17 dispositive point – the Board's exercise of its business judgment in determining that
18 the facts presented to it about the Okada Parties' activities (and Okada's refusal to
19 provide any exculpatory evidence) jeopardized existing and future licensing – the
20 Okada Parties seek to focus on anything and everything else, beginning with events
21 preceding the 2002 creation of Wynn Resorts, and continuing through nearly every
22 transaction and business relationship, and every contemplated transaction and
23 business relationship since. (Vol. V PA 1089-1124 (1st), Vol. II PA 1514-59 (2d),
24 Vol. XVII PA 1560-86 (3d), VIII PA 1893-1907 (4th).)

25 **D. The District Court Orders Wynn Resorts to Respond to Every**
26 **Discovery Request at Issue, Despite the Lack of Any Relevance.**

27 The Okada Parties give new meaning to the phrase "scorched earth" tactics.
28 To date, they have served over 900 different requests for production of documents

1 to either Wynn Resorts or its individual Board members. Some 326 of these
2 requests have been directed to the Company alone.⁴ (Vol. V PA 1089-1124 (1st),
3 Vol. II PA 1514-59 (2d), Vol. XVII PA 1560-86 (3d), VIII PA 1893-1907 (4th).)
4 Consistent with its obligations and recognizing that the rules of discovery are broad,
5 Wynn Resorts has agreed and is committed to responding to 192 of those requests
6 in rolling productions as approved by the District Court. (Vol. VI PA 1277-1374
7 (1st), Vols. VII-VIII PA 1628-1796 (2d), Vol. XI 1797-1872 (3d).)⁵

8 But 78 of those requests – the subject of the District Court's Order – are
9 breathtaking in their overbreadth and irrelevance. Indeed, these are just *some* of the
10 matters swept up by the Okada Parties' unbounded requests at issue:

- 11 (1) Any and "all documents" related to the non-party Wynn Resorts
12 (Macau) S.A.'s ("WRM") acquisition of a Macau gaming license in
13 2002;
- 14 (2) Any and "all documents" related to Wynn Resorts' efforts to obtain a
15 land concession in Cotai (a subsidiary's second Macau location);
- 16 (3) Any and "all documents" related to Wynn Resorts' sale of the Macau
17 gaming sub-concession to a third party more than nine years ago;
- 18 (4) Any and "all documents" related to government investigations with
19 respect to Wynn Resorts and non-party Wynn Macau, Limited's
20 activities⁶;

21
22 ⁴ The other 500-plus requests are directed to each of the director defendants.
23 Vol. VIII PA 2698-2731 (Chen), Vol. VIII PA 2732-2765 (Goldsmith), Vol. VIII
24 PA 2766-99 (Irani), Vol. VIII PA 2800-33 (Miller), Vol. VIII-IX PA 2834-2867
25 (Moran), Vol. IX PA 2868-2901 (Schorr), Vol. IX PA 2902-35 (Shoemaker), Vol.
IX PA 2936-70 (Sinatra), Vol. IX PA 2971-3004 (Wayson), Vol. IX PA 3005-38
(Zeman). This number does not even include the 117 requests propounded by the
Okada Parties on Mr. Wynn, who is separately represented. (Vol. IX PA 3039-93.)

26 ⁵ The stipulated deadline to respond to the Fourth Set of Requests is
forthcoming.

27 ⁶ Wynn Macau, Limited ("Wynn Macau") is a publicly traded company, listed
28

- 1 (5) Any and "all documents" related to government investigations into the
- 2 Okada Parties' activities;
- 3 (6) Any and "all documents" related to suitability and licensing issues at
- 4 Wynn Resorts, regardless of any connection to Okada, as well as
- 5 documents concerning investigations and regulatory findings;
- 6 (7) Any and "all documents" related to the Wynn Resorts Board and
- 7 committee meetings, including all Board materials and minutes, from
- 8 2002 to the present, regardless of time or topic;⁷
- 9 (8) Any and "all documents" related to the relationship between Okada
- 10 and Stephen A. Wynn dating back to before 2002; and
- 11 (9) Any and "all documents" related to any of Mr. Wynn's past business
- 12 relationships (potential, contemplated, successful, or unsuccessful)
- 13 regardless of with whom or when.

14 (Vol. II PA 1514-59 (2d), Vol. XVII PA 1560-86 (3d).)

15 Yet it is not just the facial overbreadth of the individual requests that
16 confirms their impropriety: the requests are also patently irrelevant. In challenging
17 Wynn Resorts' objections, the Okada Parties admitted it was not until Wynn Resorts
18 began looking into Okada's activities that he self-servingly developed his purported
19 "suspicions" of Wynn Resorts' conduct arose. (*E.g.*, Vol. XVII PA 3846.)

20 The best justification the Okada Parties could muster in support of their
21 limitless requests was the fantastical assertion that there "could" have been some
22 improprieties by Wynn Resorts on any of these far-ranging subjects. (*E.g.*, Vol. XI

23 on the Hong Kong Stock Exchange. Okada was a board member of Wynn Macau
24 from the time of its listing on the Hong Kong Stock Exchange in Fall 2009 until
25 his February 24, 2012 removal.

26 ⁷ Prior to filing their underlying motion to compel, the Okada Parties
27 withdrew their request for all "notes" related to all Board meetings from 2002 to
28 the present, subject to renewing their request in the future. (Vol. XI PA 1927
n.22.) Needless to say, this minor modification did not address Wynn Resorts'
concerns or objections.

1 PA 1920, Vol. XVII PA 3846.) They make that claim despite the fact that Okada
2 was a board member of both Wynn Resorts and Wynn Macau throughout this entire
3 time period and never many any such assertions. Now, however, the Okada Parties
4 contend it is sufficient to speculate – because they are desperate for a diversion –
5 that it "may be" that individual directors would want to keep secret any purported
6 past improprieties such that years later they engaged in a "pretext" to get rid of the
7 Okada Parties to prevent them from "blowing the whistle" on the same. (Vol. XI
8 PA 1916-17.)

9 This is beyond nonsense. The forced redemption of Aruze's shares would
10 certainly not discourage him from making specious allegations. It would only
11 encourage him to make specious allegations to distract from his own misconduct,
12 which (not coincidentally) is precisely what he has done. Besides, a right to
13 discovery is not triggered by merely proffering wildly self-serving speculation that
14 "maybe" there is something somewhere on any topic that would prompt the Board
15 of Directors to unanimously deem the Okada Parties unsuitable *other than* the facts
16 uncovered by Director Freeh.

17 But what is even more astonishing is that this guess-work argument actually
18 prevailed. The District Court summarily ordered Wynn Resorts to respond to all
19 78 requests to which it had objected, without any distinction, analysis, or restraint.
20 (Vol. X PA 3949-59). By definition, the District Court issued a blanket discovery
21 directive without regard to how the actual requests relate to the subject matter of the
22 action, if they even do, and importantly, without any factual showing that there is a
23 basis for the inquiry in the first place. Thus, Wynn Resorts petitions this Court.

24 **IV. REASONS WHY THE REQUESTED WRIT SHOULD ISSUE**

25 **A. The District Court's Blanket Discovery Order Warrants** 26 **Extraordinary Writ Relief.**

27 Wynn Resorts does not dispute the proper scope of discovery and that it is
28 rightly broad. Discovery is proper for information that is "*reasonably calculated* to

1 lead to the discovery of admissible evidence." NRCP 26(B)(1) (emphasis added);
2 *Harrison v. Falcon Prods., Inc.*, 103 Nev. 558, 560, 746 P.2d 642, 642 (1987). But
3 the requirement that discovery requests be reasonable and calculated must have
4 meaning. Discovery is not without limits. *Schlatter v. Eighth Jud. Dist. Ct.*,
5 93 Nev. 189, 192, 561 P.2d 1342, 1343 (1977). And that is why this Court has
6 recognized and exercised its discretionary authority for the issuance of
7 extraordinary writs to review and limit discovery orders that transcend what the law
8 permits. *E.g., Valley Health Sys., LLC v. Eighth Jud. Dist. Ct.*, 127 Nev. Adv.
9 Op. 15, 252 P.3d 676, 678–79 (2011) (citing *Wardleigh v. Sixth Jud. Dist. Ct.*,
10 111 Nev. 345, 350–51, 891 P.2d 1180, 1183 (1995)).

11 As this Court has said in the context of discovery rulings, if "the District
12 Court acts without or in excess of its jurisdiction, a writ of prohibition may issue to
13 curb the extra jurisdictional act." *Las Vegas Sands v. Eighth Jud. Dist. Ct.*,
14 130 Nev. Adv. Op. 13, 319 P.3d 618, 621 (2014); *see also Schlatter*, 93 Nev. at
15 192, 561 P.2d at 1343 (issuing writ on discovery order); *Vanguard Piping v. Eighth*
16 *Jud. Dist. Ct.*, 129 Nev. Adv. Op. 63, 309 P.3d 1017, 1019 (2013).

17 This Court has emphasized its discretion to act when a district court's
18 discovery order: (1) requires the disclosure of privileged information; or
19 (2) constitutes a "blanket discovery order[] without regard to relevance." *Las Vegas*
20 *Sands*, 319 P.3d at 621; *Vanguard Piping*, 309 P.3d 1017 (citing *Valley Health Sys.*,
21 252 P.3d at 678-79). In such instances, there is no "just, speedy and adequate
22 remedy in the ordinary course of the law," and thus, without writ review, "the order
23 could result in irreparable prejudice." NRS. 34.170; *Vanguard*, 309 P.3d at 1019.
24 For a blanket discovery order, writ relief is appropriate because "the disclosure of
25 irrelevant matter is irretrievable once made, [thus the petitioner] would effectively
26 be deprived of any remedy from [the District Court's] erroneous ruling if she was
27 required to disclose the information and then contest the validity of the order on
28 direct appeal." *Schlatter*, 93 Nev. at 193, 561 P.2d at 1344.

1 When writ review reveals that a discovery order exceeds the jurisdiction of
2 the district court, a writ of prohibition is the "appropriate" remedy to "prevent" the
3 "improper discovery." *Rock Bay, LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv.
4 Op. 21, 298 P.3d 441, 444 (2013); *Valley Health Sys.*, 252 P.3d at 678 n.5;
5 *Wardleigh*, 111 Nev. at 350, 891 P.2d at 1183; *see also Vanguard*, 309 P.3d at 1019
6 (holding prohibition is the better choice over mandamus). *See generally*
7 NRS 34.320 ("[Writs of prohibition] arrest[] the proceedings of any tribunal,
8 corporation, board or person exercising judicial functions, when such proceedings
9 are without or in excess of the jurisdiction of such tribunal, corporation, board or
10 person.").

11 Additionally, a writ petition raising a discovery issue is appropriate when "an
12 important issue of law needs clarification and public policy is served by this court's
13 invocation of its original jurisdiction." *Aspen Fin. Servs., Inc. v. Eighth Jud.*
14 *Dist. Ct.*, 129 Nev. Adv. Op. 93, 313 P.3d 875, 878 (2013). This includes, but is
15 not limited to, an "opportunity to define the precise parameters of [a] privilege . . .
16 ." or some other protection from disclosure. *Id*; *Diaz v. Eighth Jud. Dist. Ct.*,
17 116 Nev. 88, 93, 993 P.2d 50, 54 (2000) (considering writ petition for a discovery
18 issue that "implicate[d] a matter of public importance:" whether a journalist waives
19 the news shield statute protections with respect to the contents of a published
20 article).

21 **B. The District Court's Blanket Discovery Order Gives No Regard to**
22 **Relevance.**

23 The 78 boundless requests are the very definition of blanket discovery; they
24 are not reasonably calculated to lead to discoverable information concerning claims
25 and defenses at issue. Indeed, all this Court needs to do is take the Okada Parties at
26 their own word. They concede that they have no actual facts upon which to base
27 these requests. (*E.g.*, Vol. XI PA 1920 ("could have raised questions"), 1921 ("may
28

1 have feared").) Thus, they proffer rank speculation as their only means of
2 rationalization.

3 Unremarkably, this Court and others recognize that wishful thinking does not
4 satisfy the requirement that discovery be "reasonably calculated." *See, e.g., Matter*
5 *of Halverson*, 123 Nev. 493, 517, 169 P.3d 1161, 1177 (2007) (recognizing that
6 even in the criminal context, this Court has "refused to authorize so-called 'fishing
7 expeditions.'"); *see also E.I. du Pont De Nemours & Co. v. Phillips Petroleum Co.*,
8 24 F.R.D. 416, 423 (D. Del. 1959) ("I can see nothing to support this part of the
9 request *except a hope that the defendant might find something* which will help its
10 case. . . . I realize that 'fishing expedition' is no longer a ground of objection to
11 discovery. But, on the other hand, unless the Court requires the moving party to
12 show that there is *something more than a mere possibility* that relevant evidence
13 exists, the only appropriate order would be one requiring the party to turn over
14 every scrap of paper in its files as well as the contents of its waste baskets.")
15 (emphasis added).

16 Nor is conjuncture sufficient. *See Micro Motion, Inc. v. Kane Steel Co.*,
17 894 F.2d 1318, 1326, 1328 (Fed. Cir. 1990) ("[R]equested information is not
18 relevant to 'subject matter involved' in the pending action if the inquiry is based on
19 the party's mere suspicion or speculation. Micro Motion here is unmoored and
20 trolling A litigant may not engage in merely speculative inquiries in the guise
21 of relevant discovery.")⁸; *Bristol v. Trudon*, No. 3:13-CV 911 JBA, 2014
22 WL 1390808, at *4 (D. Conn. Apr. 9, 2014) ("The law is well-established that
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25 ⁸ To the District Court, the Okada Parties cited *Micro Motion* for the
26 proposition that "discovery is allowed to flesh out a pattern of acts *already known*
27 *to a party* relating to an issue *necessarily* in the case." (Vol. XVII PA 3841.)
28 Since the Okada Parties' requests are admittedly based on "suspicion" alone
(Vol. XVII PA 3840), they fail to meet the standard even they recite.

1 discovery requests that are based on pure speculation and conjecture are not
2 permissible") (internal quotations omitted).

3 Salacious speculation is all the Okada Parties can muster. Indeed, they are
4 careful never to represent that, as a Board member, Okada *actually* raised concerns
5 about any of the transactions about which he now seeks "all documents." Coyly
6 avoiding representations where Okada would be exposed, the best the Okada Parties
7 do is hypothesize that perhaps he "*could have* raised questions" (Vol. XI PA 1920.)
8 Of course, as a Board member of both Wynn Resorts and non-party Wynn Macau,
9 Okada had a fiduciary duty to pose any questions *at the time* if he had a legitimate
10 point. But now that his own misconduct has been exposed, Okada is determined to
11 smear the very Board members with whom he voted and to impose an incalculable
12 burden on Wynn Resorts through a multitude of foundationless discovery requests
13 that wishfully "*may*" reveal some hypothetical wrongdoing, while never articulating
14 what.

15 The Okada Parties truly outdo themselves when they bluster that
16 Wynn Resorts was out to prevent Okada "from blowing the whistle on the
17 Wynn Parties' potentially corrupt activities in Macau." (Vol. XI PA 1916-17.) But
18 of course, they never identify what these purported activities are or how Wynn
19 Resorts was somehow concerned about what manufactured whistle Okada would
20 blow. Indeed, the only thing the Okada Parties are blowing is smoke. Their
21 argument is circular. Nonsensically, they suggest that the Wynn Resorts Board
22 members were concerned about Okada "blowing the whistle" on some supposed
23 wrongdoing that even Okada presently says he cannot identify.

24 That Okada is desperate to distract from his conduct in the Philippines is
25 more than apparent. And, contrary to the Okada Parties' hopes and wants, wild
26 hyperbole is not a "factual predicate" to support any "suspicion" much less his
27
28

1 desired fishing expedition into matters that have nothing to do with this business
2 judgment case. *Matter of Halverson*, 123 Nev. at 517, 169 P.3d at 1177.⁹

3 The Tenth Circuit addressed similarly reckless rhetoric in *Koch v. Koch*
4 *Industries, Inc.*, 203 F.3d 1202 (10th Cir. 2000). There, the plaintiffs argued that
5 their "extraordinarily expansive discovery requests" related to "two broad,
6 non-specific allegations contained in their Second Amended Complaint." *Id.* at
7 1238. The Tenth Circuit aptly held that "[w]hen a plaintiff first pleads its
8 allegations in entirely indefinite terms, without in fact knowing of any specific
9 wrongdoing by the defendant, and then bases massive discovery requests upon
10 those nebulous allegations, in the hope of finding particular evidence of
11 wrongdoing, that plaintiff abuses the judicial process." *Id.* The appellate court
12 applauded the district court for "appropriately recogniz[ing] that the likely benefit
13 of this attempted fishing expedition was speculative at best." *Id.* (noting also that
14 the "massive amount of documents requested, first weeding out privileged and
15 confidential records, would impose a serious burden and expense . . . [that] far
16 outweighed their likely benefit").

17 As the Eighth Circuit has likewise noted: "[w]hile the standard of relevance
18 in the context of discovery is broader than in the context of admissibility . . . , this
19 often intoned legal tenet should not be misapplied so as to allow fishing expeditions
20 in discovery. Some threshold showing of relevance must be made before parties are
21 required to open wide the doors of discovery and to produce a variety of
22 information which does not reasonably bear upon the issues in the case." *Hofer v.*
23 *Mack Trucks, Inc.*, 981 F.2d 377, 380 (8th Cir. 1992). This well-stated principle is

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26 ⁹ It is charitable to even characterize the Okada Parties' position as speculation
27 as even they do not actually assert this conclusion. Rather, they launch the
28 discovery campaign on the concept of "what if" there are bad acts that support their
naked theory of pretext.

1 on all fours with this Court's requirement as to the necessity for a factual predicate
2 as held in *Matter of Halverson*, 123 Nev. at 517, 169 P.3d at 1177.

3 The requests' lack of legitimacy is underscored by the District Court's failure
4 to identify the purported relevancy for any of the disputed requests. *See Clark v.*
5 *Second Jud. Dist. Court*, 101 Nev. 58, 64, 692 P.2d 512, 516 (1985)
6 ("The district court exceeded its jurisdiction under our ruling in *Schlatter* in
7 ordering the production of the decedent's entire tax returns *without specifying the*
8 *items requested and the relevancy thereof.*") (emphasis added). Blanket discovery
9 orders without addressing the relevancy of the actual request (especially such
10 overly broad requests that essentially seek all of the records of two different
11 publicly traded gaming companies – one of which is not even a party to this case) or
12 detailing how the request can lead to the discovery of admissible evidence,
13 constitutes error. *Id.*

14 In short, the Okada Parties failed to establish any factual predicate remotely
15 establishing their burden of demonstrating the purported relevance for any of the 78
16 requests to the claims at issue. And, while "[m]uch of discovery is a fishing
17 expedition of sorts, [the rules of civil procedure] allow the Courts to determine the
18 pond, the type of lure, and how long the parties can leave their lines in the water."
19 *Myers v. Prudential Ins. Co. of Am.*, 581 F. Supp. 2d 904, 913 (E.D. Tenn. 2008).
20 Here, the District Court's blanket discovery order disregards these obligations.
21 It instead allows for carte blanche discovery of "all documents" sought for each and
22 all of the 78 requests despite the Okada Parties' inability to articulate a factual
23 predicate for a single one of them. This is an improper discovery order under any
24 standard.

25 **C. This Blanket Discovery Order Also Disregards Serious Policy and**
26 **Privacy Concerns as it Relates to Nevada Gaming Licensees.**

27 The impropriety of such a blanket discovery order is particularly acute here,
28 considering that the ordered production includes sweeping categories of documents

1 that companies like Wynn Resorts are required to maintain and share with
2 government regulators, solely due to their status as a gaming licensee.

3 As the Nevada Legislature makes clear, "[t]he gaming industry is vitally
4 important to the economy of the State and the general welfare of its inhabitants."
5 NRS 463.0129(a). And, a gaming license in Nevada is not a right; but rather a
6 privilege. NRS 463.0129(d). With that privilege comes heightened responsibilities
7 owed to the public and to the State of Nevada. Indeed, Nevada gaming licensees
8 are "strictly regulated" to, among other things, "ensure that gaming is free from
9 criminal and corruptive elements" and to maintain "[p]ublic confidence and trust."
10 NRS 463.0129(b)-(c). Like other licensees, Wynn Resorts is charged by law to
11 strictly comply with the gaming regulations to which it is subject. This includes,
12 among other things, an open door relationship with state regulators, creating and
13 implementing a self-policing policy, and taking any and all other steps necessary to
14 be compliant with the gaming regulations.

15 The Nevada Legislature enacted NRS 463.140, which outlines the broad
16 power and duties of the Gaming Control Board and the Nevada Gaming
17 Commission. Stated bluntly, the state gaming regulators are afforded
18 unprecedented access to the licensee's business, records, and information.
19 Regulators can inspect all gaming premises, "summarily seize and remove. . .
20 documents or records," and "demand access to and inspect, examine, photocopy and
21 audit all papers, books and records" of any licensee. NRS 463.140(2)(a), (c), (d),
22 (e). Of course, the regulators also can issue subpoenas or compel the attendance
23 and testimony of witnesses. NRS 463.140(5). Because the licensee must do as
24 asked or instructed by the regulators, the more common scenario is that the
25 regulators ask, and the licensee provides any and all requested information.

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1 **1. *The District Court's blanket discovery order ignores the***
2 ***statutory presumption of confidentiality.***

3 Because of the aforementioned open door and the "can't say no" policy
4 between the regulators and licensees, the Nevada Legislature afforded statutory
5 protections to licensees, in NRS 463.120, among others. The main statutory
6 provision provides:

7 4. Except as otherwise provided in this section,
8 all information and data:

9 a) *Required by the Board or Commission to be*
10 *furnished to it* under chapters 462 to 466,
11 inclusive, of NRS or any regulations adopted
 pursuant thereto or which may be otherwise
 obtained relative to the finances, earnings or
 revenue of any applicant or licensee;

12 (b) *Pertaining to an applicant's or natural*
13 *person's criminal record, antecedents and*
14 *background* which have been furnished to or
 obtained by the Board or Commission from any
 source;

15 (c) *Provided to the members, agents or employees*
16 *of the Board or Commission by a governmental*
17 *agency or an informer or on the assurance that*
 the information will be held in confidence and
 treated as confidential;

18 (d) *Obtained by the Board from* a manufacturer,
19 distributor or *operator*, or from an operator of an
20 inter-casino linked system, relating to the
 manufacturing of gaming devices or the operation
 of an inter-casino linked system; or

21 (e) Prepared or *obtained by an agent* or employee
22 of the Board or Commission *pursuant to an audit,*
 investigation, determination or hearing,

23 are *confidential* and may be revealed in whole or
24 in part only in the course of the necessary administration
25 of this chapter or upon the lawful order of a court of
26 competent jurisdiction. . . . Notwithstanding any other
 provision of state law, such information may not be
 otherwise revealed without specific authorization by the
 Board or Commission.

27 5. Notwithstanding any other provision of state
28 law, any and *all information and data* prepared or
 obtained by an agent or employee of the Board or

Commission relating to an application for *a license, a finding of suitability or any approval* that is required pursuant to the provisions of chapters 462 to 466, inclusive, of NRS or any regulations adopted pursuant thereto, are *confidential and absolutely privileged* and may be revealed in whole or in part only in the course of the necessary administration of such provisions and with specific authorization and waiver of the privilege by the Board or Commission

NRS 463.120 (emphasis added).

These confidentiality and privilege protections go hand in glove with the open relationship between the regulators and gaming licensees, and recognize Nevada's strong interest in maintaining confidential investigations related to its licensees. *See, e.g., In re Smith*, 397 B.R. 124, 126 (Bankr. D. Nev. 2008). But the District Court's blanket discovery order below tramples these regulatory concerns.

And, the Okada Parties make no secret of their desire to circumvent these regulatory requirements so as to learn what the gaming authorities know about them. They propounded broad requests seeking, among other things, "All Documents" between Wynn Resorts and the Nevada Gaming Control Board (as well as other governmental entities) about Okada, Universal, Aruze, or "their affiliates":

REQUEST FOR PRODUCTION NO. 215:

All Documents concerning Communications between WRL and the NGCB, the FBI, DOJ, and/or the Philippine Department of Justice concerning Mr. Okada, Universal, and/or Aruze USA and their affiliates.

(Vol. VIII PA 1767.)

Wynn Resorts objected to Request No. 215, citing NRS 463.120, among other things. (*Id.*) Of course, Wynn Resorts does not dispute that these "confidential" documents by and between Wynn Resorts and Gaming may be compelled "upon the lawful order of a court of competent jurisdiction." NRS 463.120(4). But, the law obviously requires the "court of competent

1 jurisdiction" to do more than issue a blanket discovery granting the motion, as the
2 District Court did here.¹⁰

3 "Where a court of competent jurisdiction is authorized to order discovery of
4 confidential records, the court must balance the public interest in avoiding harm
5 from disclosure against the benefits of providing relevant evidence in civil
6 litigation" *In re Smith*, 397 B.R. at 129 (discussing compelling documents that
7 are "confidential" pursuant to NRS 463.120) (quoting *Laxalt v. McClatchy*,
8 109 F.R.D. 632, 635 (D. Nev.1986) (*Laxalt I*) (discussing compelling confidential
9 records in general)). In considering NRS 463.120 and the necessary analysis to
10 compel "presumptively confidential records," the Nevada federal bankruptcy court
11 in *In re Smith* looked to a Nevada federal district court decision and to the
12 Ninth Circuit's four-part test:

13 Initially, the relevance of the evidence must be taken into
14 account. Further, the availability of other evidence and
15 the government's role in the litigation must be
16 considered. Finally, the court noted that the extent to
which disclosure would hinder frank and independent
discussion regarding the agencies contemplated decisions
and policies would factor into the court's decision.

17 *In re Smith*, 397 B.R. at 130 (citing *Laxalt v. McClatchy*, 116 F.R.D. 455, 459
18 (D. Nev. 1986) (*Laxalt II*) (citing *Fed. Trade Com'n v. Warner Commc'ns, Inc.*,
19 742 F.2d 1156, 1161 (9th Cir. 1984)). Nevada's federal district court expressly
20 noted that sister courts with similar review processes "believe when a claim of
21

22 ¹⁰ While Wynn Resorts recognizes that the District Court Order compels Wynn
23 Resorts and not the Gaming authorities to produce these confidential records,
24 the confidentiality and the purposes for the statutory protection are not eliminated.
25 Nevertheless, it bears noting that the Nevada Legislature expressly stated that "[t]he
26 Commission and the Board may refuse to reveal, in any court or administrative
27 proceeding except a proceeding brought by the State of Nevada, the identity of an
28 informant, or the information obtained from the informant, or both the identity and
the information." NRS 463.144. While the Okada Parties seek to circumvent the
Gaming Control Board by issuing a Rule 34 request in the instant litigation, the
gaming authorities should still be able to invoke their separate statutory right to
refuse to reveal any information that they may have received from Wynn Resorts.

1 privilege, confidentiality or irrelevance is raised the court has a duty to conduct an
2 *in camera* inspection to separate and permit discovery of only the relevant
3 documents, thereby protecting against unnecessary and damaging disclosure of
4 irrelevant confidential material." *Id.* (quoting *Berst v. Chipman*, 653 P.2d 107, 113
5 (Kan. 1982).)

6 Yet, the District Court here gave no consideration to these policies either at
7 the hearing or in the Order. (Vol. X PA 3949-59, Vols. IX-X PA 3861-3948.)
8 Indeed, the purpose of the statutory protections afforded gaming licensees, the
9 powers and duties of the gaming authorities, and, most generally, the overall policy
10 behind the statutory framework designed to regulate the gaming industry – while
11 also balancing the public policy that recognizes its unmatched contribution to
12 Nevada – are not addressed or even mentioned by the District Court's blanket
13 discovery order. (*Id.*)

14 **2. *The District Court's blanket discovery Order ignores that***
15 ***Macau gaming licensees are statutorily mandated to keep their***
tender and concession-related records confidential.

16 Similarly, the government of Macau has enacted a statutory framework that
17 regulates its gaming concessionaires and their affiliates. Macanese law also
18 provides for confidentiality of documents and data related to the regulatory entities'
19 role, duties, and authority. Specifically, Macanese Law 16/2001 establishes the
20 legal framework for the operation of games of chance in casinos. Article 16 of Law
21 16/2001 (unofficially) translates as follows:

22 The bidding processes, the documents and data included
23 therein, as well as all documents and data relating to the
24 tender, are confidential and access to or consultation of
25 such documents by third parties is prohibited, and for this
26 purpose the provisions of article 63 to 67 and 93 to 98 of
the *Codigo de Procedimento Administrativo* ("Code of
Administrative Proceedings"), approved by Decree-Law
no. 57/99/M of October 11 are not applicable.

27 Macau Law 16/2001, Art. 16.
28

1 Pursuant to this law, documents related to the bidding process, tender, and
2 concession are confidential, and third parties are prohibited from access to or
3 consultation of those documents. This law is buttressed by the language of the
4 concession agreement itself. Clause 92 of the concession agreement provides
5 additional confidentiality protections to concessionaires beyond the bidding and
6 tender process. The clause breaks down into three parts, which (unofficially)
7 translate as follows:

- 8 1. The documents produced by the Government or by the concessionaire,
9 in keeping with the conditions of law or the present concession
10 contract, have a confidential character, and can only be made available
11 to third parties with the authorization of the other Party.
- 12 2. The Government and the concessionaire take all the necessary steps to
13 ensure that, respectively, the workers of the Public Administration of
14 the Macau Special Administrative Region, and the workers of the
15 concessionaire are bound by the duty of secrecy.
- 16 3. The Government and the concessionaire undertake to enforce the duty
17 of secrecy on other persons who have had or who might have access to
18 confidential documents, namely through consulting services and other
19 contracts.

20 (Vol. XVI PA 3526-27.)

21 Similar to the Nevada Legislature empowering the Nevada gaming regulatory
22 authorities to enact gaming regulations, the Macanese gaming regulatory arm, the
23 Direcção de Inspeção e Coordenação de Jogos ("DICJ"), enacted what it calls
24 instructions. Article 8 of DICJ's Instruction 1/2014 provides for the confidentiality
25 of personal information gathered by gaming concessionaires and
26 sub-concessionaires.¹¹ Article 8 of DICJ Instruction 1/2014 (unofficially) translates
27 as follows:

28 Without prejudice to the legal framework for the
protection of personal data set forth in Law 8/2005, the

¹¹ This instruction is specific to the Macau gaming concessionaires and sub-concessionaires, and is distinct from the Macau Personal Data Privacy Act which this Court addressed in *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331, P.3d 876 (2014).

1 personal data collected by the gaming concessionaires
2 and sub-concessionaires is subject to the confidentiality
3 regimen set out in the legal framework governing the
4 concession of the exploration of games of chance in a
5 casino which includes law 16/2001, Administrative
6 Regulation 6/2002 as revised and re-published by
7 Administrative Regulation 27/2009, Law 5/2004, and
8 Law 10/2012, as well as the respective gaming
9 concession and sub-concession agreements, with any
10 transfer of personal data being prohibited without the
11 prior authorization of the competent public entities.

12 DICJ Instruction 1/2014, Article 8.

13 But again, the District Court gave no consideration of these restrictions. The
14 point Wynn Resorts makes here is that the District Court failed to consider gaming
15 policy and the duties of a licensee (or concessionaire under Macau law) when it
16 issued its blanket discovery Order that compels a licensee/concessionaire to
17 produce statutorily protected documents without any relevancy analysis to the
18 issues in dispute.

19 Specifically, the Okada Parties propounded six requests seeking documents
20 related to Wynn Resorts' affiliate, non-party WRM's, bidding and tender process.
21 (Vol. VII 1641 (Req. No. 89), 1665 (Req. No. 114), 1676 (Req. No. 123), 1677
22 (Req. No. 124), 1679-80 (Req. No. 126), Vol. XI PA 1805 (Req. No. 249).)
23 Of course, if non-party WRM violates Law 16/2001, it will be subject to sanctions
24 in Macau. Law 16/2001 was passed by the legislative council of Macau and signed
25 into effect by the Chief Executive. The regime for handling infractions is set out in
26 Article 43 of Law 16/2001 and contemplates both administrative proceedings
27 (fines) and possible criminal proceedings (sub-section (3)). The Okada Parties
28 failed to assert any factual basis to connect WRM's bidding and tender process to
this case, and failed to provide a factual predicate for any purported wrongdoing by
this non-party. Yet, the blanket discovery Order sweeps this third party into the
mix, compels the production of records that are statutorily protected by a foreign
sovereign and which may result in sanctions against foreign, non-party WRM,
without providing any analysis or discussion.

1 In addition, the Okada Parties propounded *52 individual requests* desperately
2 seeking to gather documents related to Wynn Resorts' efforts to obtain a concession
3 for land (akin to a lease) in the part of Macau called the Cotai Strip. (Vol. VII
4 PA 1665 (Req. No. 114), 1669 (Req. No. 118), 1672 (Req. No. 120), 1674
5 (Req. No. 122), 1678 (Req. No. 125), 1650-1709 (Req. Nos. 127-149), 1711
6 (Req. No. 152), 1726 (Req. No. 166), 1727 (Req. No. 167), Vol. XVIII PA 1759
7 205, 1760 206, Vol. XV PA 1805 (Req. No. 249), 1806-07 (Req. No. 250), 1817-26
8 (Req. Nos. 259-266), 1829-39 (Req. Nos. 269-277).) The Okada Parties would like
9 to argue that Wynn Resorts did something wrong or improper in the process to
10 obtain that land concession for a new casino development. But, there is no factual
11 predicate to connect the land concession to the subject matter at issue in this action.
12 And, there is no factual predicate to support the notion that there was any
13 wrongdoing in the first instance. The process by which Wynn Resorts obtained the
14 land concession commenced in 2005, took place over several years, and was fully
15 disclosed in multiple Wynn Resorts public SEC filings, (*E.g.*, Vol. XVI PA 3573-
16 75, 3576-78, 3579, 3606-07), and from the time it listed on the Hong Kong Stock
17 Exchange in 2009, multiple Wynn Macau public Hong Kong Stock Exchange
18 filings. (*E.g.*, Vol. XVI PA 3583-84, 3606-07.) Moreover, Okada was a Wynn
19 Resorts and Wynn Macau director when WRM and an affiliate accepted the land
20 concession in September 2011, and there was no argument or evidence offered that
21 he ever questioned the transaction at any step during the process. (*See* Vol. XVII
22 PA 3831-34.)

23 Similarly, the Okada Parties now want to scrutinize Wynn Resorts' 2006 sale
24 of its Macau gaming sub-concession to a third party, Publishing &
25 Broadcasting, Ltd., propounding *seven more requests* demanding records related to
26 the sub-concession and the sale process. (Vol. VII PA 1665 (Req. No. 114), 1669
27 (Req. No. 118), 1671 (Req. No. 119), 1672 (Req. No. 120), 1674 (Req. No. 122),
28 1678 (Req. No. 125), Vol. XI PA 1839 Req. No. 278.) The Okada Parties argue

1 that they want to know why and how Wynn Resorts was able to get a third party to
2 pay \$900 Million for the sub-concession, which is one of only six licenses to legally
3 operate gaming establishments in Macau. (E.g., Vol. XVI PA 3583.) The inquiry
4 is silly, and the answer can be provided by basic microeconomics. However, for the
5 instant debate about the impropriety of the blanket discovery Order, the sale of the
6 sub-concession relates to no issue in this litigation. (Vol. VI PA 1375-1400, 1401-
7 1412-95.)

8 And, there is no factual predicate upon which to base an argument of
9 wrongdoing through the sale of the valuable sub-concession. Of course, the
10 sub-concession process was disclosed in the Company's public filings. And, once
11 again, Okada was a director of Wynn Resorts during the relevant time period and
12 never inquired into or questioned the transaction (a transaction that benefitted the
13 Wynn Resorts stockholders, including Aruze, and which the Okada Parties have
14 never disputed, much less offered any evidence to the contrary). (Vol. XIV
15 PA 3104.)

16 None of these requests were considered individually, nor were the gaming
17 related policies, laws, and obligations that are expressly implicated by the requests.
18 Instead, they were swept up into the District Court's blanket discovery Order. The
19 District Court exceeded its jurisdiction by entering the improper blanket order
20 without regard to any of the above-stated issues, most importantly, whether any of
21 them are relevant to this case or whether there is a factual predicate for the Okada
22 Parties' speculative arguments made in support thereof.

23 3. *The District Court's blanket discovery Order ignores that*
24 *Nevada gaming licensees are statutorily mandated to create*
25 *and implement a compliance program, and report its results to*
26 *the gaming regulators.*

26 Such a blanket discovery order is particularly problematic vis-à-vis
27 Nevada's highly regulated gaming industry, since gaming regulators require
28 licensees to maintain extensive records on transactions and people with whom the

1 licensee does business. Tellingly, the Okada Parties do not seek discovery as to
2 Wynn Resorts' knowledge about transactions or matters involving the Okada
3 Parties. No, as the Okada Parties themselves described their requests, they seek
4 (i) all "documents regarding *any* suitability investigations conducted by the
5 Compliance Committee [of the Wynn Resorts board], or suitability concerns raised
6 by regulatory authorities," (Vol. XI PA 1926 n.19 (identifying Request Nos. 230-
7 234, 240-242, and 289)), and (ii) all documents regarding "specific persons who
8 should have raised suitability concerns," (*id.* at n.20 (identifying Request Nos.
9 230-234, 289) (emphasis added).)

10 While some of these requests impinge upon the same confidentiality
11 provisions discussed above, some also seek the same type of documents related to
12 this Nevada gaming licensee's licensing process in other jurisdictions (which would
13 have similar if not the same purpose as the Nevada policy discussed above).
14 Examples are:

15 **REQUEST FOR PRODUCTION NO. 230:**

16 All Documents concerning the loss or potential
17 loss or revocation of gaming licenses held by WRL or
any Counterdefendant from any state or local gaming
regulatory body in the United States.

18 **REQUEST FOR PRODUCTION NO. 231:**

19 All Documents concerning any determination of
20 unsuitability of WRL or any Counterdefendant by any
gaming regulatory body not located in the United States.

21 **REQUEST FOR PRODUCTION NO. 232:**

22 All Documents concerning any potential or
23 threatened determination of unsuitability of WRL or any
Counterdefendant by any gaming regulatory body not
located in the United States.

24 **REQUEST FOR PRODUCTION NO. 233:**

25 All Documents concerning the loss or revocation
26 of gaming licenses held by WRL or any
Counterdefendant from any gaming regulatory body not
located in the United States.

27 (Vol. VIII PA 1783-86.)
28

REQUEST FOR PRODUCTION NO. 240:

All Documents concerning any Investigation conducted by WRL's Gaming Compliance Committee pursuant to the requirement (referred to in Paragraph 14 of the Second Amended Complaint) that it "investigate senior officers, directors, and key employees to protect WRL from becoming associated from [sic] any unsuitable persons."

REQUEST FOR PRODUCTION NO. 241:

Documents sufficient to identify all subjects of Investigations conducted by WRL's Gaming Compliance Committee related to the Committee's requirement (referred to in paragraph 14 of the Second Amended Complaint) that it "investigate senior officers, directors, and key employees to protect WRL from becoming associated from [sic] any unsuitable persons."

REQUEST FOR PRODUCTION NO. 242:

All Documents concerning any Investigation conducted by WRL's Gaming Compliance Committee concerning the potential determination of Stephen A. Wynn as an unsuitable party by any gaming regulatory body.

(Vol. VIII PA 1792-95.)

REQUEST FOR PRODUCTION NO. 289:

All Documents Concerning any consideration or decision whether or not to seek a finding from any Gaming Authority of the suitability of any of the following: Stephen A. Wynn, any member of the WRL Board (except Mr. Okada), any counterdefendant, or WRL.

(Vol. XI PA 1849-50.) Trying to rationalize these requests, the Okada Parties resort to claiming that Wynn Resorts' commitment to compliance and the protection of its gaming licenses "is a sham because WRL routinely associated with potentially unsuitable persons without any investigation by the Compliance Committee." (Vol. XI PA 1926.)¹²

But of course, Okada made no such noise when he served on the Board. His current hyperbole is as specious as it is desperate. All Nevada gaming licensees,

¹² Wynn Resorts agreed from the time of its original objections and responses to produce some documents in response to the requests in this category – namely, documents that relate to the compliance fallout from the Okada Parties' misconduct and therefore documents that relate to the subject matter of this action. (Vol. VIII PA 1782-87 (Responses to Req. Nos. 230-34).)

1 including Wynn Resorts, are obligated to police themselves through a
2 statutorily-mandated compliance committee and compliance program. The Okada
3 Parties present no evidence of any supposed "sham" regarding Wynn Resorts'
4 compliance obligations. Rather, the actions the Wynn Resorts Board took *were*
5 *required* to fulfill the Company's obligations under Nevada's gaming regulations.

6 As previously explained to the District Court, Nevada law affirmatively
7 requires licensees and registrants to take independent and proactive steps toward
8 ridding themselves of unsuitable persons before gaming regulators have to do it for
9 them. Indeed, for this reason, other public companies have "unsuitable person" and
10 redemption provisions in their organizational documents that are essentially
11 identical to the provisions in Article VII of the Wynn Resorts Articles of
12 Incorporation. (Vol. III PA 549-50.)

13 In addition, the Gaming Commission and Gaming Control Board, exercising
14 authority under Gaming Commission Regulation 5.045, requires Wynn Resorts to
15 maintain and follow a "Compliance Program" that is reviewed and approved by the
16 Commission and the Control Board. (Vol. III PA 547-49.) That program
17 specifically states that its purpose is to mitigate the "dangers of unsuitable
18 associations and compliance with regulatory requirements," and it defines an
19 "Unsuitable Person" as anyone "that the Company determines is unqualified as a
20 business associate of the Company or its Affiliates based on, without limitation, that
21 Person's antecedents, associations, financial practices, financial condition, or
22 business probity." (Vol. III PA 585, 588.)

23 The Compliance Program affirmatively requires the Company's Compliance
24 Committee to *investigate* all senior executives, directors, and key employees, "in
25 order to protect the Company from becoming associated with an Unsuitable
26 Person." (Vol. III PA 592.) The program also requires the Company to report to
27 Nevada gaming authorities to keep them "advised of the Company's compliance
28 efforts in Nevada and other jurisdictions." (Vol. III PA 585.) In particular, the

1 Compliance Program requires that "any known acts of wrongdoing" by any
2 executive or director that are reported to the Wynn Resorts Board must also be
3 reported to the Chairman of the Nevada State Gaming Control Board within ten
4 business days of the report to the Board. (Vol. III PA 595.)

5 Thus, under the Nevada gaming regulations, Wynn Resorts has an affirmative
6 obligation to self-police. The documents it is required to generate and provide to
7 the Gaming authorities in this respect are highly confidential, highly sensitive, and
8 – most notably – have absolutely nothing to do with the Okada Parties' claims.
9 Again, the Okada Parties have not provided a single factual predicate for this
10 invasive fishing expedition. The fact that there may exist thousands of documents
11 as a result of Wynn Resorts' compliance with Nevada law – to maintain the
12 privilege of being a gaming licensee – does not, without a factual predicate, grant
13 its litigation adversaries access to those documents. The District Court erred in
14 entering a blanket ruling that would compel the production of confidential and
15 sensitive documents that a gaming licensee is required to prepare and maintain
16 about those with whom a licensee does business.

17 4. *The District Court's Blanket Discovery Order ignores the lack*
18 *of relevancy of the financial information in the compelled*
documents.

19 Likewise, the information gathered for applications, investigations, suitability
20 inquiries, and compliance programs is highly sensitive, personal and financial
21 information. The District Court's blanket discovery Order compels the production
22 of personal financial information of Wynn Resorts' Board members, as well as any
23 other third party who may be swept up in the net of the Compliance Committee's
24 procedures and investigations. (Compare Vol. X PA 3949-59, with Vols. VII-VIII
25 PA 1628-1796, and Vol. XI PA 1797-1872.) There is no basis to allow the Okada
26 Parties access to the financial records of these Board members and third parties, yet
27 the blanket discovery order does just that. On this point alone, the District Court's
28 Order constitutes error pursuant to this Court's decision in *Schlatter* and its progeny.

1 In *Schlatter*, this Court recognized that when a litigant puts her income at
2 issue, and there is a showing that the financial information is not otherwise
3 obtainable, then "a court may require disclosure of matter contained in tax records
4 which is relevant to this issue." 93 Nev. at 192, 561 P.2d at 1343. However,
5 respecting the privacy of the party whose financial records were ordered produced
6 (rather than just third parties), this Court was quick to note that the District Court's
7 "order went beyond this and permitted carte blanche discovery of all information
8 contained in these materials without regard to relevancy." *Id.*, 561 P.2d at 1343-44.
9 Noting that the "discovery rules provide no basis for such an invasion," this Court
10 issued a writ, holding that the district court exceeded its jurisdiction by ordering
11 disclosure of information neither relevant to the tendered issues nor leading to
12 discovery of admissible evidence." *Id.*, 561 P.2d at 1344.

13 Here, the effect of the District Court's blanket discovery order is to compel
14 Wynn Resorts to produce, among many, many other things, personal financial
15 information of the Board member defendants (whose business judgment as a
16 director is their only act at issue) as well as hundreds or thousands of individuals
17 who have been swept into the Company's self-policing compliance investigations
18 and procedures required of a gaming licensee. This blanket Order, of course, was
19 entered without regard to subject matter much less to whether the information in the
20 materials sought would be relevant to the subject matter at issue. It is not.

21 **D. The District Court's Blanket Discovery Order Allows Unfettered**
22 **Discovery to a Competitor.**

23 The District Court's blanket discovery Order further ignores the unfettered
24 discovery allowed to a competitor, who already has shown a disregard for the
25 protective order in place in this action.¹³ Where a competitor seeks broad access to
26

27 ¹³ Specifically, and despite Wynn Resorts' best efforts, the Okada Parties have
28 given documents deemed confidential under the Protective Order to third parties,

1 a company's records, a writ of mandamus properly issues where a "protective order
2 does not adequately safeguard the confidentiality of the" records. *Ex parte Miltope*
3 *Corp.*, 823 So.2d 640, 645 (Ala. 2001).

4 In *Miltope*, the defendant, who worked for Miltope's competitor, demanded
5 discovery of "all documents which relate, refer to or reflect meetings of Miltope's
6 Board of Directors, division reviews or the equivalent between October 28, 1998
7 and the present, including, but not limited to all meeting minutes, notes and
8 materials presented during such meetings[.]" *Id.* at 642. The trial court ordered
9 Miltope to produce the documents but entered a protective order limiting the uses
10 and dissemination of the documents. *Id.* The Alabama Supreme Court determined
11 that the minutes of the board constituted a trade secret as they were used in
12 business; embodied in a compilation not publicly known; could not be readily
13 ascertained from public knowledge; were secreted from the public; and had
14 economic value. *Id.* at 644. Thus, even with the protective order in place, the court
15 concluded that the trial court abused its discretion in compelling Miltope to produce
16 the minutes of its board of directors. *Id.* at 645.

17 Similarly here, the Okada Parties asked for and the District Court ordered
18 production of "all documents, presentations, reports, notes, and minutes Concerning
19 each meeting of the WRL Board from 2002 to the present" with oft-repeated
20 assurances that there would be no public dissemination given the protective order in
21

22
23 and the information has appeared in news articles, among other things. (Vol. VIII
24 PA 1884 n.7; Vol. VII PA 1599-1600; *see also* Vol. V PA 1126-1127.) The Okada
25 Parties' assurances regarding protecting highly confidential or sensitive
26 information are near meaningless under these circumstances, especially when
27 given to an adversary who has publicly stated his desire and intent to "beat" Wynn
28 Resorts. (Vol. V PA 1130.)

1 place. (Vol. XI PA 1843; Vol. XVII PA 3855 n.13.)¹⁴ However, the protective
2 order is insufficient to protect the disclosure of Wynn Resorts' confidential,
3 proprietary, and non-public information from the Okada Parties, which are
4 admittedly developing their own gaming operation and are a Wynn Resorts
5 competitor. The Okada Parties' cries of "maybe" finding something to recast as
6 supposed "pretext" are insufficient to overcome the irreparable harm that Wynn
7 Resorts suffers if forced to disclose all of its Board of Directors packets from its
8 inception.

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26 ¹⁴ The Okada Parties proposed withdrawing "notes" from this Request. See
27 *supra* note 7.

28

1 V. CONCLUSION

2 The District Court's unbounded order of production for 78 different discovery
3 requests is the definition of blanket discovery Order. The District Court made no
4 relevancy analysis whatsoever. That is hardly remarkable considering that the party
5 propounding these overbroad requests – the Okada Parties – could themselves not
6 articulate any actual factual predicate for the requests. Thus, all they could proffer
7 self-serving speculation couched in the tell-all terms of "maybe", "could have" or
8 "possibly." None of that provides a basis for discovery, let alone the scorched earth
9 approach advanced by the Okada Parties. That they are in need of a deflection for
10 the facts considered by Wynn Resorts' Board of Directors in redeeming the shares –
11 facts that cannot be attacked because this is a matter that falls within the Board's
12 business judgment – only highlights the impropriety of these requests and the Order
13 compelling Wynn Resorts to produce. This is on top of the impropriety of an order
14 requiring the production of confidential and protected information, including that of
15 unrelated third-parties. Thus, this Court should enter a writ setting aside the District
16 Court's blanket discovery Order.

17 DATED this 17th day of July, 2015.

18 PISANELLI BICE PLLC

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

23 Attorneys for Petitioner Wynn Resorts, Limited

24

25

26

27

28

VERIFICATION

I, Todd L. Bice, declare as follows:

1. I am one of the attorneys for Wynn Resorts, Ltd., the Petitioner.

2. I verify that I have read and compared the foregoing PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS and that the same is true to my own knowledge, except for those matters stated on information and belief, and as those matters, I believe them to be true.

3. I, as legal counsel, am verifying the petition because the question presented is a legal issue as to the proper scope of a discovery order under this Court's precedence which is a matter for legal counsel.

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

This declaration is execution on 17th day of July, 2015 in Las Vegas, Nevada.

By: /s/ Todd L. Bice
Todd L. Bice, Esq., Bar No. 4534

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 Office Word 2007 in size 14 font in double-spaced Times New Roman.

I further certify that I have read this brief and that it 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 or more and 10,659 words.

Finally, I hereby certify that 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 NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. 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.

DATED this 17th day of July, 2015.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
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Attorneys for Petitioner Wynn Resorts, Limited

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 17th day of July 2015, I electronically filed and served a true and correct copy of the above and foregoing **PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** properly addressed to the following:

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EXHIBIT 2

Cases

Case Search

Participant Search

Disclaimer: The information and documents available here should not be relied upon as an official record of action.

Only filed documents can be viewed. Some documents received in a case may not be available for viewing.

Some documents originating from a lower court, including records and appendices, may not be available for viewing.

For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600.

Case Information: 68439

Short Caption:	WYNN RESORTS, LTD. VS. DIST. CT. (OKADA)	Classification:	Original Proceeding - Civil - Mandamus/Prohibition
Lower Court Case(s):	Clark Co. - Eighth Judicial District - A656710	Related Case(s):	61966, 68310
Disqualifications:		Case Status:	Petition Filed
Replacement:		Panel Assigned:	Panel
To SP/Judge:		SP Status:	
Oral Argument:		Oral Argument Location:	
Submission Date:		How Submitted:	

- Party Information

Role	Party Name	Represented By
Petitioner	Wynn Resorts Limited	Todd L. Bice (Pisanelli Bice, PLLC) James J. Pisanelli (Pisanelli Bice, PLLC) Paul K. Rowe (Wachtell, Lipton, Rosen & Katz) Robert L. Shapiro (Glaser Weil Fink Jacobs Howard Achen & Shapiro, LLC/Los Angeles) Debra L. Spinelli (Pisanelli Bice, PLLC) Bradley R. Wilson (Wachtell, Lipton, Rosen & Katz)
Real Party in Interest	Aruze USA, Inc.	Brian G. Anderson (Holland & Hart LLP/Las Vegas) Robert J. Cassity (Holland & Hart LLP/Las Vegas) Benjamin B. Klubes (BuckleySandler LLP) David S. Krakoff (BuckleySandler LLP) Bryce K Kunitomo (Holland & Hart LLP/Las Vegas) J. Stephen Peek (Holland & Hart LLP/Las Vegas) Joseph J. Reilly (BuckleySandler LLP)
Real Party in Interest	Kazuo Okada	Brian G. Anderson (Holland & Hart LLP/Las Vegas) Robert J. Cassity (Holland & Hart LLP/Las Vegas) Benjamin B. Klubes (BuckleySandler LLP) David S. Krakoff (BuckleySandler LLP) Bryce K Kunitomo (Holland & Hart LLP/Las Vegas) J. Stephen Peek (Holland & Hart LLP/Las Vegas) Joseph J. Reilly (BuckleySandler LLP)
Real Party in Interest	Universal Entertainment Corporation	Brian G. Anderson (Holland & Hart LLP/Las Vegas) Robert J. Cassity (Holland & Hart LLP/Las Vegas)

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Bryce K Kunimoto (Holland & Hart LLP/Las Vegas)
J. Stephen Peek (Holland & Hart LLP/Las Vegas)
Joseph J. Reilly (BuckleySandler LLP)

Respondent Elizabeth Goff Gonzalez

Respondent The Eighth Judicial District Court of the
State of Nevada, in and for the County of
Clark

Docket Entries

Date	Type	Description	Pending?	Document
07/20/2015	Filing Fee	Filing fee paid, E-Payment \$250.00 from Todd L. Bice.		
07/20/2015	Petition/Writ	Filed Petition For Writ Of Prohibition Or Alternatively, Mandamus.	Y	15-21803
07/20/2015	Motion	Filed Wynn Resorts Limited's Motion To File Volumes 11-17 Of Its Appendix Under Seal.	Y	15-21806
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 1.		15-21808
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 2.		15-21809
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 3.		15-21810
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 4.		15-21811
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 5.		15-21812
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 6.		15-21813
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 7.		15-21816
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 8.		15-21817
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 9.		15-21818
07/20/2015	Appendix	Filed Appendix to Petition for Writ - Volume 10.		15-21819
07/20/2015	Notice/Incoming	Filed Errata To Wynn Resorts Limited's Motion To File Volumes 11-17 Of Its Appendix Under Seal.		15-21835
07/21/2015	Appendix	Received Appendix to Petition for Writ Volumes 11-17 (SEALED). (FILED UNDER SEAL PER ORDER 9/1/15).		
09/01/2015	Order/Procedural	Filed Order. The clerk of this court shall file volumes 11-17 of petitioner's appendix under seal.		15-26440
09/01/2015	Appendix	Filed Appendix to Petition for Writ, Volumes 11-17 (SEALED). (FILED UNDER SEAL PER ORDER 9/1/15).		

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

KAZUO OKADA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE

ELIZABETH GOFF GONZALEZ,

DISTRICT JUDGE,

Respondents,

and

WYNN RESORTS LIMITED, A

NEVADA CORPORATION; ELAINE

WYNN; AND STEPHEN WYNN,

Real Parties in Interest.

No. 68310

FILED

SEP 09 2015

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

*ORDER DENYING PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS AND VACATING STAY*

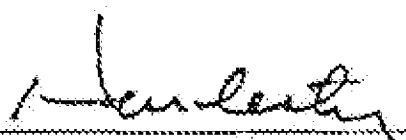
This is an original petition for a writ of prohibition or mandamus challenging a district court order denying a motion for a protective order.¹ Having considered the parties' arguments in this matter, we conclude that the district court did not exceed its jurisdiction or arbitrarily or capriciously exercise its discretion in denying petitioner's motion for a protective order. NRS 34.160; NRS 34.320; *Club Vista Fin. Servs., L.L.C., v. Eighth Judicial Dist. Court*, 128 Nev., Adv. Op. 21, 276

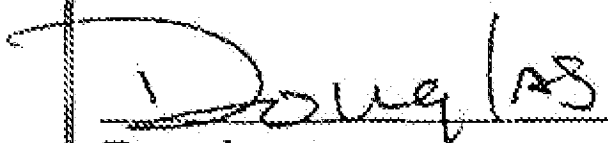
¹The Honorable James E. Wilson, Jr., District Judge in the First Judicial District Court, and the Honorable Steve L. Dobrescu, District Judge in the Seventh Judicial District Court, were designated by the Governor to sit in place of the Honorable Ron Parraguirre, Justice, and the Honorable Kristina Pickering, Justice, who voluntarily recused themselves from participation in the decision of this matter. Nev. Const. art. 6, § 4.


P.3d 246, 249 (2012); *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Consequently, we conclude that our extraordinary intervention is unwarranted, and we deny petitioner's request for writ relief.

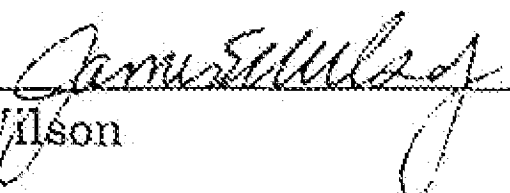
As this matter warranted our expedited consideration and decision, this order is being entered for the purposes of providing the parties immediate resolution. Accordingly, we vacate the stay imposed by our July 1, 2015, order. But because this writ petition raises important legal issues in need of clarification, an opinion in this matter will be forthcoming.

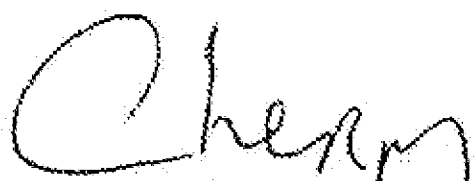
It is so ORDERED.²



Hardesty, C.J.

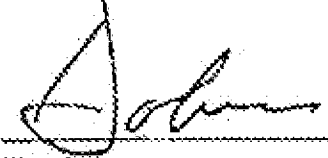

Douglas, J.


Saitta, J.


Wilson, D.J.


Cherry, J.

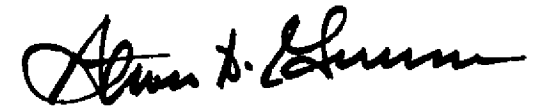

Gibbons, J.


Dobrescu, D.J.

²The clerk of this court is directed to stay issuance of the notice in lieu of remittitur pending our disposition of this matter by published opinion. NRAP 41(a).

cc: Hon. Elizabeth Goff Gonzalez, District Judge
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Holland & Hart LLP/Las Vegas
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EXHIBIT 4



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Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual, ARUZE
USA, INC., a Nevada corporation, and
UNIVERSAL ENTERTAINMENT CORP., a
Japanese corporation,

Defendants.

AND RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

**ORDER DENYING WYNN RESORTS,
LIMITED'S MOTION TO EXTEND
STAY PENDING PETITION FOR WRIT
OF PROHIBITION ON AN
ORDER SHORTENING TIME**

Hearing Date: September 18, 2015

Hearing Time: 8:30 a.m.

1 Plaintiff Wynn Resorts, Limited's Motion to Extend Stay Pending Petition for Writ of
2 Prohibition on an Order Shortening Time (the "Motion to Extend Stay"), filed on September 15,
3 2015, came before this Court for hearing on September 18, 2015. James J. Pisanelli, Esq. and
4 M. Magali Calderon, Esq., of PISANELLI BICE PLLC, appeared on behalf of
5 Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell
6 Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
7 Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (the "Wynn Parties"). J. Colby
8 Williams, Esq., of CAMPBELL & WILLIAMS, appeared on behalf of Counterdefendant/
9 Cross-defendant Stephen A. Wynn ("Mr. Wynn"). William R. Urga, Esq., of JOLLEY URG
10 WOODBURY & LITTLE, appeared on behalf of Counterdefendant/Counterclaimant/Cross-claimant
11 Elaine P. Wynn ("Ms. Wynn"). And, J. Stephen Peek, Esq. and Robert J. Cassity, Esq., of
12 HOLLAND & HART, LLP, appeared on behalf of Defendant Kazuo Okada and
13 Defendants/Counterclaimants/Counter-defendants Aruze USA, Inc. ("Aruze USA") and
14 Universal Entertainment Corp. ("Universal") (the "Okada Parties").

15 The Court having considered the Motion to Extend Stay, the opposition filed by the
16 Okada Parties, as well as the arguments of counsel presented at the hearing, and good cause
17 appearing therefor,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
19 Wynn Resorts, Limited's Motion to Extend Stay is DENIED.

20 IT IS FURTHER ORDERED that the stay previously entered by this Court of its June 22,
21 2015 Order shall remain in place until October 2, 2015 while Wynn Resorts, Limited seeks a
22 continued stay from the Nevada Supreme Court pending resolution of Wynn Resorts, Limited's
23 writ petition.

24 DATED: 18 Sept 2015

25
26 
27 THE HONORABLE ELIZABETH GONZALEZ
28 EIGHTH JUDICIAL DISTRICT COURT

1 Respectfully submitted by:

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24 *Attorneys for Stephen A. Wynn*

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DATED this ____ day of September, 2015.

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EXHIBIT 5



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DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,

v.

KAZUO OKADA, an individual, ARUZE USA,
INC., a Nevada corporation, and UNIVERSAL
ENTERTAINMENT CORP., a Japanese
corporation,

Defendants.

AND ALL RELATED CLAIMS.

CASE NO.: A-12-656710-B
DEPT. NO.: XI

**ORDER GRANTING THE ARUZE
PARTIES' MOTION TO COMPEL
SUPPLEMENTAL RESPONSES TO
THEIR SECOND AND THIRD SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO WYNN RESORTS,
LIMITED**

Electronic Filing Case

Hearing Date: June 4, 2015
Hearing Time: 8:30 a.m.

1 The Aruze Parties' Motion to Compel Supplemental Responses to Their Second and
2 Third Set of Requests for Production of Documents to Wynn Resorts, Limited (the "Motion"),
3 filed on April 28, 2015, came before this Court for hearing on June 4, 2015 at 8:30 a.m. James J.
4 Pisanelli, Esq. and Debra L. Spinelli, Esq. of Pisanelli Bice PLLC and Robert L. Shapiro, Esq. of
5 Glaser Weil Fink Howard Avchen & Shapiro, LLP appeared on behalf of
6 Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell
7 Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
8 Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (the "Wynn Parties"). Donald J.
9 Campbell, Esq. and J. Colby Williams, Esq., of Campbell & Williams, appeared on behalf of
10 Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). William R. Urga, Esq., of
11 Jolley Urga Woodbury & Little, and Jeffrey Wu, Esq. of Munger, Tolles & Olson LLP appeared
12 on behalf of Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn ("Ms. Wynn").
13 J. Stephen Peek, Esq. and Robert J. Cassity, Esq. of Holland & Hart LLP, and David S. Krakoff,
14 Esq. and Adam Miller, Esq. of BuckleySandler LLP, appeared on behalf of Defendant Kazuo
15 Okada and Defendant/Counterclaimant/Counter-defendant Aruze USA, Inc. ("Aruze USA") and
16 Defendant/Counterclaimant Universal Entertainment Corp. ("Universal") (the "Aruze Parties").

17 The Court, having considered the Motion, the Opposition filed by the Wynn Parties, and
18 the Reply filed by the Aruze Parties, as well as the arguments of counsel presented at the hearing,
19 and good cause appearing,

20 IT IS HEREBY ORDERED that the Aruze Parties' Motion is GRANTED as follows:

21 The Wynn Parties shall produce all non-privileged documents responsive to the Aruze
22 Parties' Requests No. 82, 86, 89, 90, 93, 114, 118-120, 122-149, 152, 166-167, 205-206, 215,

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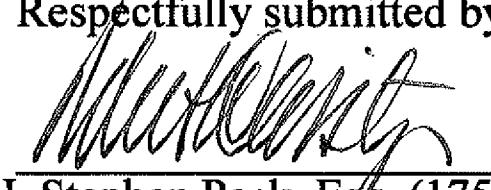
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230-234, 235, 236, 238, 239, 240-242, 249-250, 259-266, 269-278, 283, 289, and 294.

DATED this 19th day of June, 2015.


THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

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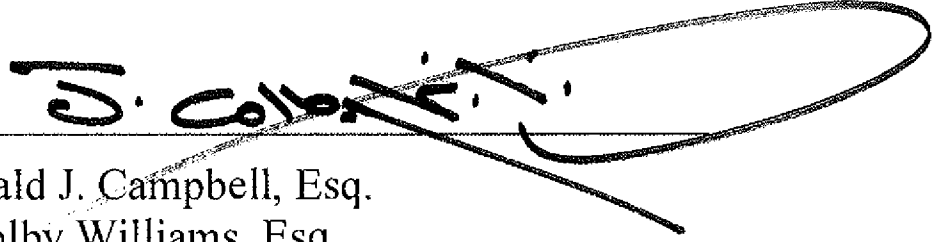
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