

# EXHIBIT B

# EXHIBIT B

FILED UNDER SEAL

# EXHIBIT A

# EXHIBIT A

FILED UNDER SEAL

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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 GOFF GONZALEZ,  
DISTRICT JUDGE, DEPT. 11,

Respondents,

and

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

Real Parties in Interest.

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Supreme Court No. 70452

Dist. Court Case No. A-12-656710-B

**MOTION TO STRIKE FOOTNOTE  
8 IN PETITIONER'S REPLY  
BRIEF and TO PUBLICLY  
ADMONISH OR SANCTION  
WYNN RESORTS FOR  
PRESENTING A FALSE  
STATEMENT OF MATERIAL  
FACT TO THE COURT**

**AND**

**REQUEST TO FILE EXHIBITS A  
AND B HERETO UNDER SEAL**

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Defendants/ Counterclaimants  
Universal Entertainment Corp. and  
Aruze USA, Inc.*

Pursuant to N.R.A.P. Rules 27 and 28, Real Parties in Interest Defendant Kazuo Okada and Defendants/Counterclaimants Universal Entertainment Corp. and Aruze USA, Inc. (collectively referred to as the "Aruze Parties") move this Court to strike the egregiously false statements contained in footnote 8, page 19, of Wynn Resorts, Limited's ("Wynn") Reply.

This motion is based on the papers before the Court, the points and authorities below, and any oral argument the Court may allow.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

In its reply brief, Wynn presents this false inflammatory footnote that accuses the Aruze Parties of fabricating material facts to aid them in this writ proceeding:

The Okada parties purport to quote a District Court finding that the information at issue "[redacted]" (Answer at 11, 17), but the District Court made no such finding. The quoted language is ***made up*** from whole cloth; it ***cannot be found*** on the cited pages of the Okada [Aruze] Parties' Appendix or anywhere else in the record.

Wynn Reply Brief at 19 n. 8 (emphasis added). The language Wynn accuses the Aruze Parties of "[making] up from whole cloth" in fact appears on the cited pages of the Appendix ***thirteen*** times. See Ex. A and B hereto.<sup>1</sup>

Footnote 8 is sanctionably false.

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<sup>1</sup> RAPP 295 and 318 (among other pages) are excerpts from the District Court's document-by-document privilege rulings following *in camera* review. The documents were received from the District Court in such a way that they were

N.R.A.P. 28(e) requires that "every assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume . . . where the matter relied on is to be found." In the Aruze Parties' Answering brief, they properly documented the assertion that the district court held that "[REDACTED] [REDACTED]" by citing to Vol. II RAPP 295 and Vol. II RAPP 318, where the district court wrote those very words in 13 separate line items that reflect its rulings following a document-by-document *in camera* review. Ans. Br. at 11, 17. Wynn's false representation to the Court violates Rule 28(e). *See* Exs. A and B.

The misrepresentation also violates N.R.A.P. 28.2(a)(1)-(2), which says every brief filed with this Court must include a certificate of counsel representing that he or she has read the brief, and "to the best of the attorney's knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose, such as to harass. . . ." False

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difficult to read when printed on letter-sized paper. Thus, an electronic copy of these pages was submitted with the Appendix in support of the Aruze Parties' Answering Brief. The document-by-document rulings are legible in the electronic copy and can be "zoomed" for close examination. Exhibits A and B hereto are enlarged copies of a portion of RAPP 295 (Ex. A) and 318 (Ex. B). Because these pages were marked highly confidential, the Aruze Parties sought and obtained leave to file them under seal when submitting the Appendix pursuant to Nevada SCR, Part VII, 3.4. For the same reasons as outlined in the Motion for Leave to Seal filed on August 12, 2016 (Docket 70452 Document 2016-25099), the Aruze Parties respectfully ask that Exhibits A and B to this Motion also be filed under seal.

statements of material fact made, as they were here, to impugn an adversary or its counsel serve no legitimate purpose in this or any other case or Court and should be sanctioned. *Fink v. Gomez*, 239 F.3d 989, 994 (9th Cir. 2001) (court may sanction counsel for reckless misstatements of law and fact under its inherent power); *DCD Programs v. Leighton*, 846 F.2d 526, 528 (9th Cir. 1988) (imposing sanctions on attorney for misrepresenting facts, which went to "the heart of the appeal").

The Court has the inherent power to sanction parties and their counsel for willfully misleading the Court. *Young v. Ninth Judicial Dist. Court*, 107 Nev. 642, 818 P.2d 844, 846-47 (1991) (recognizing court's inherent power to impose sanctions to protect dignity of proceedings); *Fink*, 239 F.3d at 991 (same). The Court should exercise that power to sanction here. Footnote 8 should be stricken and Wynn should either be publicly admonished or otherwise sanctioned for its appellate misconduct.<sup>2</sup>

## CONCLUSION

Based on the foregoing, the Aruze Parties respectfully ask that Footnote 8 in the Wynn Reply brief be stricken; and that Wynn be either

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<sup>2</sup> For purposes of judicial efficiency, the Aruze Parties respectfully request that the Court consider consolidating decision on this motion with the petition underlying the motion and the petition in *Wynn Resorts, Limited v. Eighth Judicial District Court* (Pet. No. 70050), which arises out of the same underlying litigation.



publicly admonished or otherwise sanctioned for its false representations for the benefit of the bar and bench.

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## CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Morris Law Group, that in accordance therewith, I caused a copy of **MOTION TO STRIKE FOOTNOTE 8 IN PETITIONER'S REPLY BRIEF** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY ON September 7, 2016

Judge Elizabeth Gonzalez  
Eighth Judicial District Court of  
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Regional Justice Center  
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VIA ELECTRONIC AND U.S. MAIL ON September 7, 2016

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DATED this 7<sup>th</sup> day of September, 2016

By: /s/ PATRICIA FERRUGIA