

1 District Court made no such actual finding and emphasized that
2 it did not want its "draft" of the rulings attached to the Order
3 because it did not make a "document-by-document ruling." (Vol.
4 II App_339). Indeed, the District Court acknowledged that it had
5 misapprehended certain facts based upon what it characterized as
6 a "in-process review" and that "if you were going to use it for
7 purposes of the Supreme Court discussion I would go back and
8 revise those entries that were sent to you earlier." (*Id.*)

7 Accordingly, Wynn Resorts moves to amend Footnote 8 of its Reply brief. Wynn
8 Resorts agrees that it misapprehended the Okada Parties' reference.

9 But in that regard, since the Okada Parties have highlighted that they were
10 quoting the District Court's "draft" review, Wynn Resorts must move to strike those
11 improperly included portions of the Okada Parties' Appendix, specifically pages
12 RAPP 295-315 & 318-339. During the hearing on the motion underlying the instant
13 writ petition, the District Court emphasized that those logs – which it included only
14 as Court's exhibits – were not part of its Order and were not to be attached:

15 THE COURT: Now, please do not attach the draft of the rulings I have
16 made on the attorney-client privilege log, because I made a
17 determination *on categories* based on my review, *rather than* on a
18 document-by-document ruling.

19 MR. PEEK: And - -

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

21 MR. PEEK: I do, Your Honor. And I'll try to capture it as best I can
22 *without referring to that*, because - - but to say that you have made a
23 review - -

24 THE COURT: I have. And they're marked as Court's exhibits, and
25 they're part of a - - but they're an in-process review, because there are a
26 couple of if you were going to use it for purposes of the Supreme Court
27 discussion I would go back and revise those entries that were sent to
28 you earlier.

(Vol. II App_339) (emphasis added).

1 Now that Wynn Resorts appreciates the context in which the Okada Parties are
2 attempting to use these notations in the draft logs, it requests that the logs be stricken
3 from the record. As the District Court itself noted, it simply wanted this Court to
4 know it had conducted a review of a sampling of documents. It expressly noted that
5 if those were to be used for purposes of arguments to this Court, "I would go back
6 and revise those entries..." (*Id.*) Therefore, Wynn Resorts objects to the Okada
7 Parties' attempt to characterize those draft logs as "rulings," which the District Court
8 emphasized was not the case.

9 DATED this 30th day of September, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 30th day of September, 2016, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **RESPONSE TO 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 COUNTERMOTION TO STRIKE PORTIONS OF VOLUME 2 OF APPENDIX TO REAL PARTIES' ANSWER TO PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** properly addressed to the following:

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