

11:57:33 13 Mr. Albregts's benefit, I'm not attempting to ask him to
11:57:40 14 change his testimony, I just want to understand and be clear
11:57:43 15 with regard to what he believes are his signatures and what
11:57:48 16 he believes are not his signatures with regard to the
11:57:51 17 documents that have been produced.

11:57:53 18 MR. ALBREGTS: I understand.

11:57:55 19 BY MR. SEMENZA:

11:57:56 20 Q. Okay. So with regard to the credit application.

11:58:06 21 A. Which is this one.

11:58:07 22 Q. Hold on and I'll find the right one. Wynn 33. You
11:58:32 23 are not disputing on Wynn 33 that you signed this document,
11:58:35 24 correct?

11:58:39 25 A. This is my signature.

41

♀

11:58:44 1 Q. Okay. Turning to Wynn 46. Again --

11:59:00 2 MR. ALBREGTS: Wait for a question.

11:59:03 3 BY MR. SEMENZA:

11:59:03 4 Q. With regard to Wynn 46, the first page, you would
11:59:08 5 agree with me that that is your signature?

11:59:10 6 A. Yes.

11:59:11 7 Q. With regard to Wynn 47 you would agree with me that

WYNNLASVEGASmr.barberaFINALdep
11:59:17 8 this is your signature?

11:59:19 9 A. Yes, but this is not my writing.

11:59:24 10 THE INTERPRETER: My own addition, we are
11:59:28 11 pointing at the date now.

11:59:30 12 Q. So it's your signature on Wynn 47, but you did not
11:59:34 13 hand write in the date?

11:59:36 14 A. That's correct.

11:59:37 15 Q. Okay, thank you. Going back to Wynn 2.

11:59:46 16 MR. ALBREGTS: I messed up, hold on, give me
11:59:48 17 a moment. I'm missing a part.

12:00:13 18 BY MR. SEMENZA:

12:00:14 19 Q. So with regard to Wynn 2 is it your testimony this
12:00:17 20 is or is not your signature?

12:00:23 21 A. I already answered this one.

12:00:25 22 Q. And what was your answer?

12:00:27 23 A. No.

12:00:32 24 MR. ALBREGTS: I missed an objection there.

12:00:33 25 Asked and answered.

42

♀

12:00:38 1 BY MR. SEMENZA:

12:00:39 2 Q. Again, so I'm clear and Jeff can object, is the

12:00:43 3 issue with regard to the signature that it does not look
12:00:48 4 like your signature, or is it your position that this is
12:00:56 5 a forgery?

12:01:01 6 A. I don't know whether this has been forged. But one
12:01:04 7 thing is certain, that this is not my signature.

12:01:11 8 Q. Meaning that you did not sign this document?

12:01:17 9 A. It's not my signature.

12:01:21 10 Q. And again I think the problem we're having as far as
12:01:24 11 the distinction between whether it looks like your signature
12:01:28 12 or whether you actually signed it.

12:01:36 13 A. Once again, this is not my signature. My signature
12:01:40 14 is this one.

12:01:47 15 THE INTERPRETER: My addition, we're referring to
12:01:49 16 47.

12:01:50 17 A. This is not my signature.

12:01:57 18 THE INTERPRETER: My addition, we're referring to
12:01:59 19 Wynn 2.

12:02:04 20 BY MR. SEMENZA:

12:02:05 21 Q. Let's turn to Wynn 4.

12:02:17 22 A. Even more in this case, this not my signature.

12:02:20 23 Q. Okay.

12:02:25 24 MR. ALBREGTS: I think the preface "even more"
12:02:32 25 exonerates me here, LJ. I apologize.

12:05:41 17 A. So all the more, meaning this is even less my
12:05:45 18 signature, so the same again.

12:05:46 19 Q. Okay. And, just so the record is clear, your
12:05:49 20 testimony with regard to Wynn 23 is that you did not sign
12:05:55 21 this document?

12:05:57 22 A. No, it's not my signature.

12:06:01 23 Q. Turning to Wynn 25.

12:06:07 24 A. No.

12:06:08 25 Q. So, with regard to Wynn 25, it is your testimony
45

♀

12:06:11 1 here today that you did not sign the document?

12:06:16 2 A. I did not.

12:06:18 3 Q. Let's turn to Wynn 28. With regard to Wynn 28, is
12:06:33 4 it your testimony that you didn't sign this document?

12:06:37 5 A. No, no I didn't. This is not my signature.

12:06:44 6 Q. Turning to Wynn 30.

12:06:52 7 MR. ALBREGTS: How does that translate?

12:06:54 8 BY MR. SEMENZA:

12:06:55 9 Q. There was lots of gesturing.

12:06:58 10 With regard to Wynn 30 is it your testimony that you
12:07:02 11 did not sign this document?

WYNNLASVEGASmr.barberaFINALdep
12:07:06 12 A. Absolutely not, this is not my signature.
12:07:11 13 Q. I think that's all of the markers.
12:07:13 14 MR. ALBREGTS: I think so.
12:07:15 15 BY MR. SEMENZA:
12:07:17 16 A. This is my signature.
12:07:18 17 THE INTERPRETER: My own addition, we're pointing
12:07:20 18 to Wynn 33.
12:07:24 19 BY MR. SEMENZA:
12:07:24 20 Q. Okay. Let me have you turn -- well, let me ask you
12:07:33 21 this. Do you recall completing credit line increase
12:07:38 22 requests during your trip to Wynn in March of 2008?
12:07:48 23 A. I don't recall, I don't recall.
12:07:50 24 Q. Okay. Let me have you turn to Wynn 35. With regard
12:08:05 25 to Wynn 35, have you seen this document before?

46

♀

12:08:11 1 A. I don't recall it, but the signature -- I think the
12:08:15 2 signature is my own.
12:08:17 3 Q. So with regard to Wynn 35, the signature is yours?
12:08:24 4 A. This was 04/02, so they increased this to 600,000,
12:08:34 5 when my first transfer arrived.
12:08:42 6 Q. Okay. So this credit line increase was in response

12:08:46 7 to your USD 600,000 wire that came in?

12:08:53 8 A. This was the response to the first 400 which came

12:08:56 9 in.

12:08:56 10 Q. Okay.

12:09:00 11 A. Because it stated the 2nd, the 2nd of the 4th.

12:09:04 12 Q. Okay. And this is your signature that appears on

12:09:11 13 the document?

12:09:12 14 A. Yes.

12:09:13 15 Q. And did you read the document before you signed it?

12:09:18 16 A. No.

12:09:18 17 Q. What do you understand you were doing when you

12:09:22 18 signed this document?

12:09:25 19 A. I understood it was an increase of the -- in the

12:09:29 20 amount of the credit line.

12:09:31 21 Q. And the reason you had to complete the credit line

12:09:34 22 increase was because you had taken out the maximum

12:09:40 23 permitted?

12:09:43 24 A. That's correct.

12:09:45 25 Q. So in order to obtain more credit you had to sign

47

♀

12:09:48 1 this document?

12:09:52 2 A. I believe so.

12:09:53 3 Q. Do you recall whether Mr. Pariente was present with

12:09:56 4 you when you signed this document?

12:10:02 5 A. I think so, but I don't recall. I think so but

12:10:07 6 I don't recall.

12:10:08 7 Q. Let me have you turn to -- well, let me -- with

12:10:13 8 regard to Wynn 35, did you ever ask anyone to translate the

12:10:17 9 document?

12:10:20 10 A. No.

12:10:21 11 Q. Did you ever ask anyone to read it to you in

12:10:24 12 Italian?

12:10:25 13 A. No.

12:10:27 14 Q. Can you turn to Wynn 36, please. Does this appear

12:10:36 15 to contain your signature on Wynn 36?

12:10:41 16 A. Yes.

12:10:44 17 Q. Again, is this a credit line increase request?

12:10:50 18 A. Yes.

12:10:51 19 Q. And -- okay.

12:10:57 20 This was a credit line increase from USD 500,000 to

12:11:00 21 USD 600,000, is that correct?

12:11:07 22 A. This is -- this predates the one we saw earlier.

12:11:12 23 Q. Yes. You don't have any reason to dispute that this

12:11:15 24 credit line increase request was signed on March 31 of 2008?

12:11:27 25 A. Yes, that's correct.

♀
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12:11:30 1 Q. Okay. Let me have you turn to Wynn 37. Does Wynn

12:11:42 2 37 contain your signature?

12:11:47 3 A. Yes, this is my signature.

12:11:51 4 Q. And this purports to be a credit line increase

12:11:54 5 request?

12:11:58 6 A. (Indicated assent.)

12:11:58 7 Q. And you signed this document in order to raise your

12:12:01 8 credit limit from 400,000 to USD 500,000?

12:12:08 9 A. I think so, yes, yes.

12:12:10 10 Q. And you don't have any reason to dispute that this

12:12:13 11 credit line increase was obtained on March 31 of 2008?

12:12:20 12 A. No.

12:12:21 13 Q. Again, with regard to this credit line increase

12:12:25 14 request, did you ask anyone to translate it for you?

12:12:31 15 A. No, I understood that I was signing for this reason,

12:12:39 16 and these are the things which I signed, I did sign these

12:12:42 17 things, this was in order to increase the credit line and so

12:12:45 18 much so that --

12:12:47 19 Q. How did you come to the understanding that you

12:12:52 20 needed to sign this in order to increase your credit limit

12:12:55 21 when you do not speak nor read English?

12:13:02 22 A. They asked me to sign, as you can see, there's

12:13:04 23 a little cross by the signature meaning I was asked to sign,

12:13:07 24 and it was very clear the numbers, it says 600 and

12:13:10 25 1 million.

49

♀

12:13:11 1 Q. Okay. And you were looking at Wynn 38, right?

12:13:17 2 A. Yes.

12:13:18 3 Q. So with regard to Wynn 38, does this contain your

12:13:25 4 signature?

12:13:29 5 A. Yes.

12:13:30 6 MR. ALBREGTS: The question before was did they

12:13:35 7 tell him what he was signing when he signed this document?

12:13:41 8 A. Increase in credit, they said to me. In order to

12:13:44 9 obtain this increase we are now at 1 million. This is

12:13:48 10 because my transfer had arrived in the meantime, my 600,000

12:13:52 11 transfer had arrived in the meantime.

12:13:55 12 MR. ALBREGTS: Thank you for your indulgence.

12:13:59 13 BY MR. SEMENZA:

12:13:59 14 Q. So your position is that -- well, you don't have any

12:14:03 15 reason to dispute that this --

12:14:16 16

A. (In English): Sorry, sorry.

12:14:16 17

Q. It's okay.

12:14:17 18

(Phone ringing.)

12:14:29 19

Q. With regard to Wynn 38 you don't dispute that this

12:14:32 20

credit line increase request was obtained

12:14:34 21

on April 4 -- April 3 of 2008, do you?

12:14:44 22

A. Yes, I -- I don't dispute this and I left on the

12:14:47 23

4th. So, yes.

12:14:54 24

Q. Is it your testimony that the wire transfer of the

12:15:01 25

USD 600,000 had not arrived when you signed this document?

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♀

12:15:12 1

A. I believe it had arrived due to a time zone

12:15:17 2

difference. They gave me this extra increase because the

12:15:21 3

transfer had arrived.

12:15:23 4

Q. Okay.

12:15:29 5

A. CRO, this is a banking number. CRO.

12:15:38 6

THE INTERPRETER: I can check that acronym if you

12:15:40 7

wish.

12:15:40 8

BY MR. SEMENZA:

12:15:41 9

Q. It's okay.

12:15:42 10

And, Mr. La Barbera, with regard to this document,

15:43:02 21 consequences of not paying debts?

15:43:05 22 A. No.

15:43:45 23 Q. Now, basically what we've heard from you today is
15:43:52 24 that you recognize the signature on your credit application
15:43:58 25 and your credit agreement, but you don't recognize your

121

♀

15:44:04 1 signature on the markers themselves.

15:44:11 2 A. They are not my signatures.

15:44:12 3 Q. Now, the way you and I communicated prior to today
15:44:16 4 was through Mr. Miotti, correct?

15:44:20 5 A. Yes.

15:44:21 6 Q. He is present in the room now?

15:44:24 7 A. Yes.

15:44:24 8 Q. He's your Italian lawyer?

15:44:27 9 A. Yes.

15:44:28 10 Q. And, in these request for admissions, Mr. Semenza
15:44:35 11 asked you to admit or deny certain things. And, among the
15:44:42 12 things he asked you to admit or deny, was whether you had
15:44:46 13 signed the credit instrument, the credit agreement and the
15:44:51 14 credit application. Okay? And, in response to the request
15:44:57 15 regarding your signature on the markers, we responded "it

15:45:05 16 appears to be this defendant's signature". Why?

15:45:15 17 A. Because I had not carefully looked at these
15:45:19 18 documents as I did today, and I had not examined the
15:45:25 19 signature with care. It might be that they just put it
15:45:31 20 under my nose when I was full of liquor and they just said
15:45:38 21 sign and I signed. After eight years I've no recollection
15:45:41 22 of it --

15:45:43 23 Q. And --

15:45:44 24 A. -- I was drunk.

15:45:45 25 Q. And, as I understand it, even though you don't
122

♀

15:45:48 1 recall signing the markers -- which means, if you didn't
15:45:54 2 sign them, somebody else must have signed them -- you are
15:45:59 3 still not willing to say that the markers were forged.

15:46:06 4 A. I cannot say this and I do not say this, I'm just
15:46:09 5 saying that it's not my signature.

15:46:11 6 Q. Because he didn't see anybody else sign them.

15:46:15 7 A. No, I did not.

15:46:17 8 Q. That's why he won't say that?

15:46:20 9 A. That's correct.

15:46:21 10 Q. To be clear: that's why you won't say they're

15:46:25 11 forged?

15:46:27 12 A. That's correct.

15:46:27 13 Q. As I understand it, you won't say something like
15:46:29 14 that unless you know for certain?

15:46:34 15 A. Of course.

15:46:35 16 Q. But you believe the signature on the markers is not
15:46:37 17 your signature?

15:46:39 18 MR. SEMENZA: Jeff, I just want to say that you
15:46:42 19 can't lead him.

15:46:44 20 MR. ALBREGTS: Okay, I'll stop, on that line of
15:46:50 21 questioning. Just, it was for the sake of economy, I don't
15:46:57 22 know if that was exactly leading anyway, based on what you
15:46:59 23 did earlier.

15:47:00 24 MR. SEMENZA: Well, I can lead him.

15:47:02 25 MR. ALBREGTS: Of course. I mean the foundation
123

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15:47:03 1 you established very well throughout the day, sir. You
15:47:07 2 interrupted my train of thought. Hold on a second.
15:47:18 3 (Pause.) Well, I'll wrap it up.

15:47:36 4 Q. Would you have gambled on credit if you knew you
15:47:39 5 could be arrested?

16:03:01 1 CERTIFICATE OF DEPONENT

16:03:01 2

16:03:01 3 I, MARIO LA BARBERA, hereby certify that I have read the
16:03:01 foregoing pages, numbered 1 through 129, of my deposition of
16:03:01 4 testimony taken in these proceedings on Thursday, June 11,
16:03:01 2015 and, with the exception of the changes listed on the
16:03:01 5 next page and/or corrections, if any, find them to be a true
16:03:01 and accurate transcription thereof.
16:03:01 6

16:03:01 7

16:03:01 8

16:03:01 9

16:03:01 10 Signed:

16:03:01 11 Name: MARIO LA BARBERA

16:03:01 12 Date:

16:03:01 13

16:03:01 14

16:03:01 15

16:03:01 16

16:03:01 17

16:03:01 18

16:03:01 19

16:03:01 20

16:03:01 21

16:03:01 22

16:03:01 23

24

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16:03:01 1 CERTIFICATE OF COURT REPORTER

16:03:01 2

16:03:01 3 I, GEORGIA GOULD, an Accredited Real-time Reporter, hereby

16:03:01 4 certify that the testimony of the witness MARIO LA BARBERA

16:03:01 5 in the foregoing transcript, numbered pages 1 through 129,

16:03:01 6 taken on this 11th day of June, 2015 was recorded by me in

16:03:01 7 machine shorthand and was thereafter transcribed by me; and

16:03:01 8 that the foregoing transcript is a true and accurate

16:03:01 9 verbatim record of the said testimony.

16:03:01 10

16:03:01 11

16:03:01 12 I further certify that I am not a relative, employee,

16:03:01 13 counsel or financially involved with any of the parties to

16:03:01 14 the within cause, nor am I an employee or relative of any

16:03:01 15 counsel for the parties, nor am I in any way interested in

16:03:01 16 the outcome of the within cause.

16:03:01 17

16:03:01 18

WYNNLASVEGASmr.barberaFINALdep

16:03:01 19 Signed:

16:03:01 20 Name: GEORGIA GOULD

16:03:01 21 Date:

16:03:01 22

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24

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131

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16:03:01 1 ERRATA SHEET

16:03:01 2 Case Name: Wynn Las Vegas

16:03:01 Witness Name: MARIO LA BARBERA

16:03:01 3 Date: 06/11/2015

Page/Line	From	To
5 ____/____	_____	_____
6 ____/____	_____	_____
7 ____/____	_____	_____
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9 ____/____	_____	_____
10 ____/____	_____	_____
11 ____/____	_____	_____
12 ____/____	_____	_____
13 ____/____	_____	_____

WYNNLASVEGASmr.barberaFINALdep

16:03:01	14	____/____	_____	_____
16:03:01	15	____/____	_____	_____
16:03:01	16	____/____	_____	_____
16:03:01	17	____/____	_____	_____
16:03:01	18	____/____	_____	_____
16:03:01	19	____/____	_____	_____
16:03:01	20	____/____	_____	_____
16:03:01	21	Subscribed and sworn to before		
16:03:01	22	me this 11th day of June, 2015.		
16:03:01	23	_____		
16:03:01	24	MARIO LA BARBERA		
	25			

132

♀
†

CERTIFICATE OF COURT REPORTER

16:03:01 1
16:03:01 2
16:03:01 3 I, GEORGIA GOULD, an Accredited Real-time Reporter, hereby
16:03:01 4 certify that the testimony of the witness MARIO LA BARBERA
16:03:01 5 in the foregoing transcript, numbered pages 1 through 129,
16:03:01 6 taken on this 11th day of June, 2015 was recorded by me in
16:03:01 7 machine shorthand and was thereafter transcribed by me; and
16:03:01 8 that the foregoing transcript is a true and accurate
16:03:01 9 verbatim record of the said testimony.

16:03:01 10
16:03:01 11
16:03:01 12 I further certify that I am not a relative, employee,
16:03:01 13 counsel or financially involved with any of the parties to
16:03:01 14 the within cause, nor am I an employee or relative of any
16:03:01 15 counsel for the parties, nor am I in any way interested in
16:03:01 16 the outcome of the within cause.

16:03:01 17

16:03:01 18

16:03:01 19 Signed: ......

16:03:01 20 Name: GEORGIA GOULD

16:03:01 21 Date:17/06/15.....

16:03:01 22

23

24

25

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d/b/a Wynn Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN LAS VEGAS, LLC, dba
WYNN LAS VEGAS,

Plaintiff,

vs.

MARIO LA BARBERA

Defendant.

Case No.: A-14-695025-C

Dept. No.: XXVIII

**PLAINTIFF'S THIRD SUPPLEMENTAL
DISCLOSURES PURSUANT TO NEV. R.
CIV. P. 16.1**

Pursuant to Nev. R. Civ. P. 16.1, Plaintiff Wynn Las Vegas, LLC d/b/a Wynn Las Vegas
("Plaintiff"), hereby submits the following third supplemental disclosures (**NEW IN BOLD**):

A. WITNESSES

1. Person Most Knowledgeable of Wynn Las Vegas, LLC d/b/a Wynn Las Vegas
c/o Lawrence J. Semenza, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

The Person Most Knowledgeable of Wynn Las Vegas, LLC d/b/a Wynn Las Vegas is
expected to testify regarding his or her knowledge of the facts and circumstances of this case.

///

///

- 1 2. Barbara Conway
2 c/o Lawrence J. Semenza, III, P.C.
3 10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145

4 Ms. Conway is expected to testify regarding her knowledge of the facts and
5 circumstances of this case.

- 6 3. Mario La Barbera
7 c/o Jeffrey R. Albregts, Esq.
8 HOLLEY, DRIGGS, WALCH, PUZEY & THOMPSON
 400 South Fourth Street, Third Floor
 Las Vegas, Nevada 89101

9 Mr. La Barbera is the Defendant and is expected to testify regarding his knowledge of the
10 facts and circumstances of this case.

- 11 4. Sandra Mele
12 c/o Lawrence J. Semenza, III, P.C.
13 10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145

14 Ms. Mele is expected to testify regarding her knowledge of the facts and
15 circumstances of this case.

- 16 5. Michael Gros
17 c/o Lawrence J. Semenza, III
18 LAWRENCE J. SEMENZA, III, P.C.
19 10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145

20 Mr. Gros is a Casino Service Team Lead (CSTL) for Wynn Las Vegas, LLC and is
21 expected to testify regarding his knowledge of the facts of this case.

- 22 6. Scott S. Chang
23 c/o Lawrence J. Semenza, III
24 LAWRENCE J. SEMENZA, III, P.C.
 10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145

25 Mr. Chang is a Casino Service Team Lead (CSTL) for Wynn Las Vegas, LLC and is
26 expected to testify regarding his knowledge of the facts of this case.

- 27 7. Wail Nafei
28 c/o Lawrence J. Semenza, III
 LAWRENCE J. SEMENZA, III, P.C.
 10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

Mr. Nafei is an Assistant Manager - TG Ops for Wynn Las Vegas, LLC and is expected to testify regarding his knowledge of the facts of this case.

8. Zuleima B. Shute
c/o Lawrence J. Semenza, III
LAWRENCE J. SEMENZA, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

Ms. Shute is a Casino Pit Administrator for Wynn Las Vegas, LLC and is expected to testify regarding her knowledge of the facts of this case.

9. Alverna Duca
102 Anderson Court #C
Cary, NC 27511
Phone: (702) 561-1601

Ms. Duca was previously a Pit Administrator for Wynn Las Vegas, LLC and is expected to testify regarding her knowledge of the facts of this case.

B. DOCUMENTS

Plaintiff is producing the following Bates numbered documents:

1. Documents Bates numbered WYNN-00001 - WYNN-00047;
2. August 10, 2012 E-mail string, Bates numbered WYNN-00048 - WYNN-00052;
3. Wynn Las Vegas, LLC Collection Notes, Bates numbered WYNN-00053 - WYNN-00055;
4. June 18, 2008, E-mail re bank information, Bates numbered WYNN-00056;
5. District Attorney Packet, Bates numbered WYNN-00057 - WYNN-00117;
6. Wynn Las Vegas Hotel Folis, Bates numbered WYNN-00118 - WYNN-00122;
7. Comps Report, Bates numbered WYNN-00123 - WYNN-00124;
8. Marker History, Bates numbered WYNN-00125 - WYNN-00127;
9. Player Report, Bates numbered WYNN-00128 - WYNN-00131;
10. November 30, 2010 E-mail re settlement negotiations, Bates numbered WYNN-00132 - WYNN-00133;

11. June 15, 2015 Letter from Wynn Las Vegas re gaming activities, Bates numbered WYNN-00134;

12. Player Audit Trail, Bates numbered WYNN-00135 – WYNN-00137;

13. Desk Issue Markers, Bates numbered WYNN-00138 – WYNN-00149; and

14. Desk Issue Marker, Bates numbered WYNN-00150.

C. DAMAGES

Plaintiff seeks damages in the amount of \$1,000,000.00, interest, costs and attorneys' fees.

D. INSURANCE AGREEMENTS

Not applicable.

Plaintiff reserves the right to supplement this list of witnesses and documents to add additional documents and names of persons who may have relevant information, including expert witnesses, if subsequent information and investigation so warrant. Plaintiff also reserves the right to call any witness or use any document identified by the Defendant.

DATED this 10th day of February, 2016.

LAWRENCE J. SEMENZA, III, P.C.



Lawrence J. Semenza, III, Esq., Bar No. 7174
Christopher D. Kircher, Esq., Bar No. 11176
Jarrod L. Rickard, Esq., Bar No. 10203
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Las Vegas, Nevada 89145

Attorneys for Plaintiff Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas

LAWRENCE J. SEMENZA, III, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 835-6803

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I hereby certify that I am an employee with Lawrence J. Semenza, III, P.C., and that on the 10th day of February, 2016, I sent via Wiznet's online filing system, a true copy of the foregoing **PLAINTIFF'S THIRD SUPPLEMENTAL DISCLOSURES PURSUANT TO NEV. R. CIV. P. 16.1** to the following:

JEFFREY R. ALBREGTS, ESQ.
HOLLEY, DRIGGS, WALCH, PUZEY & THOMPSON
jalbregts@nevadafirm.com
hstroup@nevadafirm.com
kalbregts@nevadafirm.com

Attorney for Defendant

/s/ Olivia A. Kelly

An Employee of Lawrence J. Semenza, III, P.C.

DESK ISSUE RECORD

Marker #: 70601126

MARIO LA BARBERA

3580678

11-SR-01

04/01/2008 15:24

GDS

\$120,000

Signature Check

Pit Clerk Sig/ID

DESK PAYMENT RECORD:

Amt Paid Cash

Amt Paid Chips

Redemption #

Posted by Pit Clerk Sig/ID

PAYMENT STUB

Marker #: 70601126

MARIO LA BARBERA

3580678

11-SR-01

04/01/2008 15:24

GDS

\$120,000

Floor Supervisor Sig/ID

Box or Dealer Sig/ID

Amt Paid Cash

Amt Paid Chips

New Marker #

Alverna Duce

MARIO LA BARBERA

VIA MORRELLO HOLEO

ITALY

SANTA FLAVIA, 90017

Italy

3580678

Check #: 70601126

04/01/2008 15:24

\$120,000

Payable in United States Dollars

Pay to Order Of: Wynn Las Vegas

One Hundred Twenty Thousand and No/100

Signature

NON-NEGOTIABLE

SUPP
NEIL B. DURRANT, ESQ.
Nevada Bar No. 7324
C. ROBERT PETERSON, ESQ.
Nevada Bar No. 11680
JASON G. MARTINEZ, ESQ.
Nevada Bar No. 13375
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ndurrant@weildrage.com
bpeterson@weildrage.com
jmartinez@weildrage.com
Attorneys for Plaintiff/Counter-defendant,
KAL-MOR-USA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

KAL-MOR-USA, LLC, a Nevada Limited
Liability Company,

Plaintiff,

vs.

BANK OF NEW YORK MELLON, a National
Association; BAC HOME LOANS
SERVICING, LP; a foreign limited partnership;
COUNTRYWIDE BANK, NA, a National
Association; and RICK FERRELL, an
individual; Does I through X and ROE
Corporations I through X,

Defendants.

BANK OF NEW YORK MELLON, N.A.; BAC
HOME LOANS SERVICING, LP;
COUNTRYWIDE BANK, N.A.,

Counter-claimants,

vs.

KAL-MOR-USA, LLC,

Counter-defendant.

Case No.: A-14-704728-C

Dept. No.: XX

**PLAINTIFF'S FIRST SUPPLEMENTAL
NRCP 16.1 LIST OF WITNESSES AND
DOCUMENTS**

1 **OBJ**
JEFFREY R. ALBREGTS, ESQ.
2 Nevada Bar No. 0066
E-mail: jalbregts@nevadafirm.com
3 KRISTA N. ALBREGTS, ESQ.
Nevada Bar No. 13301
4 E-mail: kalbregts@nevadafirm.com
HOLLEY, DRIGGS, WALCH, FINE,
5 WRAY, PUZEY & THOMPSON
400 South Fourth Street, Third Floor
6 Las Vegas, Nevada 89101
Telephone: 702/791-0308
7 Facsimile: 702/791-1912
Attorneys for Defendant

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CLERK OF THE COURT

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 WYNN LAS VEGAS, LLC
d/b/a WYNN LAS VEGAS,
11
12 Plaintiff,

13 v.

14 MARIO LA BARBERA,
15 Defendant.


Case No.: A-14-695025-C
Dept. No.: XXVIII

**DEFENDANT'S OBJECTION TO
PLAINTIFF WYNN'S THIRD
SUPPLEMENTAL DISCLOSURES AND
PRETRIAL DISCLOSURES PURSUANT
TO NRCP 16.1**

16 Defendant Mario La Barbera hereby objects, pursuant to NRCP 16.1, to Plaintiff Wynn's
17 untimely Third Supplemental Disclosures electronically served on him on February 10, 2016 (a
18 copy of which is attached hereto as Exhibit A), as well as to Plaintiff Wynn's Pretrial
19 Disclosures filed herein on February 12, 2016 (with respect to its untimely disclosed witnesses in
20 its Third Supplement).

21
22 Dated this 17th day of February, 2016.

23 **HOLLEY, DRIGGS, WALSH, FINE,
24 WRAY PUZEY & THOMPSON**

25
26 
JEFFREY R. ALBREGTS, ESQ.
Nevada Bar No. 0066
27 KRISTA N. ALBREGTS, ESQ.
Nevada Bar No. 13301
28 *Attorneys for Defendant*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to NRCP 5(b) and NEFCR 9, that I am an employee of Holley Driggs Walch Puzey & Thompson, and that on the 17th day of February, 2016, I caused to be sent through electronic transmission via Wiznet's online system, a true and correct copy of the foregoing **DEFENDANT'S OBJECTION TO PLAINTIFF WYNN'S THIRD SUPPLEMENTAL DISCLOSURES AND PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1**, addressed to:

Lawrence J. Semenza, III, Esq.
Christopher D. Kircher, Esq.
10161 Park Run Drive
Suite 150
Las Vegas, NV 89145
Attorneys for Plaintiff


An employee of Holley, Driggs, Walch,
Puzey & Thompson

1 **OML**

2 **JEFFREY R. ALBREGTS, ESQ.**

3 Nevada Bar No. 0066

4 E-mail: jalbregts@nevadafirm.com

5 **KRISTA N. ALBREGTS, ESQ.**

6 Nevada Bar No. 13301

7 E-mail: kalbregts@nevadafirm.com

8 **HOLLEY, DRIGGS, WALCH,**

9 **PUZEY & THOMPSON**

10 400 South Fourth Street, Third Floor

11 Las Vegas, Nevada 89101

12 Telephone: 702/791-0308

13 Facsimile: 702/791-1912

14 *Attorneys for Defendant*

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CLERK OF THE COURT

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **WYNN LAS VEGAS, LLC d/b/a WYNN LAS**
18 **VEGAS, a Nevada Limited Liability Company,**

19 Plaintiff,

20 v.

21 **MARIO LABARBERA, an individual,**

22 Defendant.

Case No.: A-14-695025-C

Dept. No.: XXVIII

**DEFENDANT LABARBERA'S
OPPOSITION TO PENDING MOTIONS
IN LIMINE:**

**[#1] TO EXCLUDE ANY EVIDENCE OR
ARGUMENT REGARDING
DEFENDANT'S ALLEGED GAMBLING
ADDICTION;**

**[#2] TO EXCLUDE ANY EVIDENCE OR
ARGUMENT REGARDING
DEFENDANT'S ALLEGED
INTOXICATION; AND**

**[#3] TO EXCLUDE ANY EVIDENCE OR
ARGUMENT REGARDING ANY
ALLEGED FORGERY**

Date of hearing: March 1, 2016

Time of hearing: 10:00 A.M.

23
24 Defendant Mario LaBarbera hereby opposes Plaintiff Wynn's pending Motions In Limine
25 to be heard at the above-referenced date and time, misstyped as "Defendant's (sic) Motion In
26 Limine [#1] To Exclude Any Evidence or Argument Regarding Defendant's Alleged Gambling
27 Addiction; [#2] To Exclude Any Evidence or Argument Regarding Defendant's Alleged
28

1 Intoxication; and [#3] To Exclude Any Evidence or Argument Regarding Any Alleged Forgery.”
2 For reasons of economy and the convenience of this Court, Defendant LaBarbera hereby
3 collectively opposes all three of Plaintiff’s pending Motions In Limine. Furthermore, Defendant
4 LaBarbera hereby respectfully requests that he be allowed to testify by video conference at trial
5 (and *vis-à-vis* a certified interpreter) because he cannot attend trial personally as a consequence
6 of the outstanding bench warrant for his arrest that Plaintiff Wynn caused to be issued by the
7 Clark County District Attorney’s Office (Exhibit “A” hereto).
8

9 DATED this 19th day of February, 2016.

10 **HOLLEY, DRIGGS, WALSH**
11 **PUZEY & THOMPSON**

12
13
14 **JEFFREY R. ALBRECHTS, ESQ., NO. 0066.**
15 **KRISTA N. ALBRECHTS, ESQ., NO. 13301**
16 *Attorneys for Defendant*
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POINTS AND AUTHORITIES

I. UNDISPUTED FACTS

Like a despotic regime with a corresponding legal system, Plaintiff Wynn's pending Motions In Limine raise the question of why have a trial here at all other than for show? With all due respect, the Wynn's Motions In Limine effectively request this Court to allow the jury to enter summary judgment in its favor – after the “show” of course – already having been previously denied summary judgment by this Honorable Court. Disconcertingly for any fair minded person (but not the Wynn), Mr. LaBarbera cannot even personally attend his own trial in his own defense because of the bench warrant it caused to be issued for his arrest here *vis-à-vis* its complaint to the Bad Check Unit of the Clark County District Attorney's Office. In other words, Mr. LaBarbera can only testify in his own behalf at this trial *vis-à-vis* video conference (and a certified interpreter). ¹

Incredibly, the Wynn does not dispute the following facts, it simply asks this Court to suppress them here in order to deny Mr. LaBarbera of having any chance of a fair trial before a jury:

1. Mr. LaBarbera's native language is Italian and he does not read, write or speak English whatsoever.

2. Correspondingly, the Wynn never provided a translator or interpreter for Mr. LaBarbera including when he allegedly executed the Credit Application and Markers at issue in this case. Instead, the Wynn employed an individual named Alex Pariente who spoke Italian and recruited Mr. LaBarbera to gamble at its casino here. Mendaciously, the Wynn has failed and refused to produce Mr. Pariente to testify in this case, in particular to rebut the sworn testimony of Mr. LaBarbera, which is therefore undisputed and why the Wynn seeks to suppress most of it here at trial.

3. The Wynn did not timely disclose one single witness having personal knowledge of Mr. LaBarbera's alleged execution of the Credit Application or Markers it seeks to enforce at trial by jury in this case. In fact, the Wynn did not name any such witnesses until last week.

¹ The District Attorney's Office can confirm for this Court, as it has confirmed for this writer, that Mr. LaBarbera would more than likely be arrested at his port of entry into the United States pursuant to that outstanding bench warrant. Attached hereto as Exhibit A is a printout from the Justice Court Calendar confirming issuance of that bench warrant.

4. Mr. LaBarbera has been certified in his native country of Italy as having a gambling sickness or addiction of which the Wynn was no doubt aware *vis-à-vis* Alex Pariente, the host it expressly employed to recruit Mr. LaBarbera to gamble at its casino here. In fact, Mr. LaBarbera lost 1 million dollars to the Wynn right before he allegedly executed another 1 million dollars in Markers that the Wynn seeks to enforce against him here, \$900,000 of which were on the same day (i.e., April 3, 2008).

5. Mr. LaBarbera does not recognize or recall executing any of the Markers alleged by the Wynn here because he was acutely intoxicated while gambling at the Wynn. In fact, it is undisputed that Mr. LaBarbera was plied with alcohol by the Wynn the entire time he gambled in its casino.

6. The Wynn cannot authenticate as genuine the Markers it alleges Mr. LaBarbera executed here although Mr. LaBarbera was not willing to testify under oath at his deposition that they were in fact "forged." Be that as it may, Mr. LaBarbera also does not even recognize his supposed signature on them, denying that they are, in fact, his.

So, what does the Wynn do when faced with such undisputed facts? It tries to prevent such facts from ever getting to the jury and then untimely discloses witnesses two months before trial (and 8 months after the discovery cutoff) who supposedly have personal knowledge (or some other knowledge) of Mr. LaBarbera's alleged execution of the Markers it seeks to enforce in this case.² With all due respect, no constitutionally elected judge in this state should be a party to such practices, procedures and/or strategy, particularly when the Wynn argues that these Markers are, indeed "negotiable checks and/or credit instruments." As the evidence or lack thereof at trial will show, this is hardly the case here, meaning the Wynn does not treat its own Markers as negotiable checks or credit instruments other than to enforce them against their alleged makers.

II.

**OPPOSITION TO MOTION IN LIMINE [#1] TO EXCLUDE
ANY EVIDENCE OR ARGUMENT REGARDING DEFENDANT'S
ALLEGED GAMBLING ADDICTION**

Make no mistake about it, and it will take a courageous judge here to recognize as much.

² Attached hereto as Exhibit “B” is the Stipulation prepared and executed by the Wynn last October (2015) further confirming that discovery was closed or “completed” in this case.

1 the Wynn uses NRS 463.368(6) as both a sword and a shield. The Wynn actively recruits
2 gamblers whom it knows have a gambling addiction or sickness like Mr. LaBarbera. This was
3 precisely why Mr. Pariente recruited Mr. LaBarbera to gamble at the Wynn's casino here and is
4 then not available to testify at trial, a calculated strategy on the part of the Wynn here. No
5 rational person (or one in their right mind) loses a million dollars gambling at a casino – meaning
6 cash out of his bank account right away – and then executes another million dollars worth of
7 markers to continue gambling unless they have a sickness or addiction as Mr. LaBarbera does.
8 Having taken Mr. LaBarbera for a million dollars cash, the Wynn now seeks to enforce a million
9 dollars in Markers he allegedly executed shortly thereafter (again, \$900,000 worth on the same
10 day), and then bar him from testifying to his gambling sickness or addiction by virtue of NRS
11 463.368(6).

12 Clearly, the Wynn has unclean hands here and should be equitably estopped from using
13 this statute as both a sword and a shield to cover its own nefarious practices. Mr. LaBarbera was
14 preyed upon by the Wynn *vis-à-vis* Alex Pariente, and Mr. LaBarbera's deposition testimony
15 clearly evidences as much. In fact, Mr. LaBarbera (with some profanity) told the Wynn's
16 attorney at his deposition that "*You kill the gambler,*" meaning he does not have anything left to
17 even gamble another day. The doctrine of unclean hands "bars relief to a party who has engaged
18 in improper conduct in the matter in which that party is seeking relief." *Truck Ins. Exchange v.*
19 *Palmer J. Swanson Co., Inc.*, 124 Nev. 629, 637-8, 189 P.3d 656 (2008). Furthermore,
20 "equitable estoppel functions to prevent the assertion of legal rights that in equity and good
21 conscience should not be available due to a party's conduct." *In re Harrison Living Trust*, 121
22 Nev. 217, 223, 112 P.3d 1058 (2005).

23 For these reasons, Mr. LaBarbera should be allowed to testify to his gambling sickness or
24 addiction at trial and which he strongly feels the Wynn took advantage of even if he did indeed
25 execute the Markers it seeks to enforce against him here.

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III.

**OPPOSITION TO MOTION IN LIMINE [#2] TO EXCLUDE ANY
EVIDENCE OR ARGUMENT REGARDING DEFENDANT'S
ALLEGED INTOXICATION**

Some context here should be meaningful to this Honorable Court because counsel for these parties have previously traveled down this road before a jury in December, 2015, in the case of *Wynn v. Tofani* (Case No. A-12-671221).³ There, the jury entered a verdict in favor of the Wynn for \$450,000 of the \$800,000 in Markers it sought to enforce against Mr. Tofani (basically throwing out a \$350,000 Marker executed by Mr. Tofani at 4:27 AM after some 12 hours of gambling at its casino). Significantly, like Mr. LaBarbera here, Mr. Tofani did not read, write or speak English, was recruited and hosted by Alex Pariente to gamble at the Wynn's casino, and he did not recall executing the Markers the Wynn sought to enforce against him because he was acutely intoxicated from the copious drinks provided to him by the Wynn. In other words, juries get this stuff if given the opportunity to hear and decide it, something to which the Wynn's pending Motions In Limine are dedicated to preventing from happening here in this case.

In a nutshell, because of their acute English incomprehension and intoxication, the affirmative contract defenses of Mr. LaBarbera here (like Mr. Tofani) are grounded in and/or based on the "Unilateral Mistake Rule" and "Competency". In fact, these are the (very) jury instructions that will be requested by Mr. LaBarbera at trial (as they were requested in Mr. Tofani's case), true and correct copies of which are collectively attached hereto as Exhibit C. The "Unilateral Mistake Rule" was adopted in Nevada in *Homesavers, Inc. v. United Security Co.*, 103 Nev. 357, 741 P.2d 1355 (1987), where our Supreme Court held, as follows:

"We adopt the unilateral mistake rule found in the Restatement: Where a mistake of one party at the time of a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not

³ In that case, Judge Togliatti granted the Wynn's Motion for Summary Judgment prior to trial (by jury) thereby barring his affirmative defense of gambling sickness or addiction pursuant to NRS 463.368(6).

1 bear the risk of the mistake under the rule stated in section 154 and, the other
2 party had reason to know of the mistake or his fault caused the mistake.
3 Restatement (Second) of Contracts, Section 153 (1981). In the instant case,
the doctrine of unilateral mistake requires reversal.”

4 *Id.* at 358-359. As is evident from Exhibit C attached hereto, this is the precise basis for the
5 “Unilateral Mistake Rule” jury instruction that Mr. LaBarbera will offer here for this jury trial, as
6 offered by his counsel at Mr. Tofani’s jury trial. Obviously, like Mr. Tofani at his trial, Mr.
7 LaBarbera’s acute intoxication and English incomprehension at the time he allegedly executed
8 the Markers the Wynn seeks to enforce against him here is plainly relevant to this issue, like the
9 jury instruction regarding their “competency” to execute those Markers, too.

10
11 Furthermore, the Wynn’s pending Motion In Limine [#2] simply seeks to obfuscate this
12 issue before this Court by not recognizing it in this context, meaning that Mr. LaBarbera’s
13 affirmative defenses of “unilateral mistake” and “competency” are also based on his acute
14 English incomprehension in addition to his intoxication at the time the Markers were allegedly
15 executed. As the Wynn is the party here who purposefully intoxicated Mr. LaBarbera here (like
16 Mr. Tofani), it should correspondingly be barred by the “unclean hands” doctrine from being
17 granted any relief on its Motion In Limine [#2] on this issue. Finally, Nevada also recognizes
18 affirmative defenses based on intoxication although that of intoxication only itself “requires clear
19 and satisfactory evidence (at least for) a party seeking an annulment for want of understanding
20 due to intoxication.” See *Irving v. Irving*, 122 Nev. 494, 134 P.3d 718 (2006).

21 In summary, the Wynn is simply seeking to gut and undermine Mr. LaBarbera’s
22 affirmative contractual defenses of “unilateral mistake” and “competency,” presumably because
23 of the jury verdict entered in Mr. Tofani’s trial. In this case, by the Wynn’s own records, Mr.
24 LaBarbera executed some \$1 million in Markers on April 3, 2008. Mr. LaBarbera testified that
25 he does not recognize his signature on those Markers and he does not recall ever executing them
26 because he was intoxicated from all of the free drinks constantly brought to him by the Wynn’s
27 casino staff. To exclude any reference of as much by him or his counsel at trial before a jury
28 would be to simply rig this case in favor of the Wynn as this fact is a critical element in not only

1 the fact pattern of this case and Mr. Tofani's case, but of their defenses at trial, too.

2 IV.

3 **OPPOSITION TO MOTION IN LIMINE [#3] TO EXCLUDE ANY**
4 **EVIDENCE OR ARGUMENT REGARDING ANY ALLEGED FORGERY**

5 With all due respect, this Motion In Limine [#3] is clearly a red herring intended to
6 disguise the Wynn's failure to timely disclose witnesses with sufficient personal knowledge to
7 authenticate as genuine the Markers allegedly executed by Mr. LaBarbera because he does not
8 recognize his signature on them, nor does he recall ever signing them. Much to the credit of Mr.
9 LaBarbera, and as noted by the Wynn in its Motion in Limine [#3], Mr. LaBarbera refused to
10 testify under oath that those Markers were forged by someone else. Again, Mr. LaBarbera does
11 not recognize his signature on the Markers, nor does he recall signing them as alleged here by the
12 Wynn, because he was intoxicated at that time with the substantial help of the Wynn. In short, as
13 Wynn's counsel well knows, Mr. LaBarbera has never alleged or asserted that the Markers in
14 question were forged, raising the question here of why the Wynn even filed this Motion In
15 Limine in the first place (other than to prevent him and his counsel from using that word at trial)?

16 Again, the reason became readily apparent last week when the Wynn untimely disclosed
17 numerous witnesses who are supposedly going to testify now to the authenticity and genuineness
18 of the Markers executed by Mr. LaBarbera. These witnesses were disclosed more than eight
19 months after the discovery cutoff and some two months before trial (see Exhibit B). Mr.
20 LaBarbera has objected to these disclosures for these reasons, a true and correct copy of which is
21 attached hereto as Exhibit D. Although, the Wynn may be free to argue the credibility of Mr.
22 LaBarbera at trial with respect to his responses to its Requests for Admissions and his
23 corresponding deposition testimony regarding his recollection of executing these Markers, the
24 Wynn clearly should not be allowed to mendaciously file a motion in limine purportedly
25 intended to prevent Mr. LaBarbera and his counsel from using the word "forgery" when it is
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1 actually a cover for the Wynn's untimely disclosure of supposed percipient witnesses who can
2 authenticate the Markers in question as genuine. For goodness sakes, it is and was the Wynn's
3 burden to produce as part of its Initial Disclosures (pursuant to NRCP 16.1) authentic and
4 genuine Markers on which this case is constructed. It did not do so and it certainly should not be
5 allowed to do so some two months prior to trial (as there are also other inconsistencies with these
6 Markers). Mr. LaBarbera is simply entitled to argue to this jury at this stage in this case that the
7 authenticity and genuineness of the Markers the Wynn seeks to assert against him here is, at best,
8 questionable. Whether the jury concludes that the Markers were forged is up to them, and asking
9 this Court to prevent this writer and Mr. LaBarbera from using that word will have very little
10 effect or import on as much. Thus, this Motion in Limine [#3] by the Wynn should be denied in
11 its entirety, too.
12

13
14 V.

15 **MR. LABARBERA SHOULD BE PERMITTED TO TESTIFY AT TRIAL**
16 **VIS-À-VIS VIDEO CONFERENCE AND A CERTIFIED INTERPRETER.**

17 Respectfully, as purely a matter of fairness and due process, meaning notice and
18 opportunity to be heard meaningfully, Mr. LaBarbera should be entitled to testify at this jury trial
19 *vis-à-vis* video conference and a certified interpreter because he cannot attend trial personally as
20 a consequence of the outstanding bench warrant issued for his arrest by the Clark County District
21 Attorney's Office at the request of the Wynn (Exhibit A). Generally, leveraging criminal
22 proceedings to gain an advantage in parallel civil proceedings is considered unethical, at least
23 under ABA Guidelines. Incredibly, this is part and parcel of the Wynn's calculated strategy
24 here, i.e., prevent Mr. LaBarbera from personally testifying in his own defense at trial while
25 seeking to exclude anything that may help him prevail there. Again, this Court should not be a
26 party to such strategy on the part of the Wynn and Mr. LaBarbera should simply be allowed to
27 testify at trial in his own defense *vis-à-vis* video conference and a certified interpreter.
28

1 The mechanics of as much are not difficult. A specific date and time can be set during
2 the week of trial for Mr. LaBarbera to testify from Italy *vis-à-vis* video conference and a certified
3 interpreter there to translate questions and answers from Italian to English and English to Italian.
4 There is no prejudice to the Wynn because it conducted Mr. LaBarbera's deposition in Rome.
5 For these reasons, Mr. LaBarbera respectfully requests this accommodation at trial from this
6 Honorable Court.
7

8 VI.

9 CONCLUSION

10 For these reasons, Defendant LaBarbera respectfully requests that this Court deny
11 Plaintiff Wynn's Motions In Limine [#1], [#2] and [#3] in their entirety, and allow him to testify
12 by video conference from Italy at trial.

13 DATED this 19th day of February, 2016.

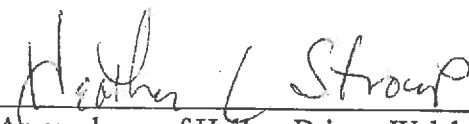
14 **HOLLEY, DRIGGS, WALSH**
15 **PUZEY & THOMPSON**

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18 **JEFFREY R. ALBREGTS, ESQ., NO. 0066.**
19 **KRISTA N. ALBREGTS, ESQ., NO. 13301**
20 *Attorneys for Defendant*
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1
2 **CERTIFICATE OF SERVICE**

3 I HEREBY CERTIFY that pursuant to NRCP 5(b) and NEFCR 9, that I am an employee
4 of Holley Driggs Walch Puzey & Thompson, and that on the 19th day of February, 2016, I
5 caused to be sent through electronic transmission via Wiznet's online system, a true and correct
6 copy of the foregoing **DEFENDANT LABARBERA'S OPPOSITION TO PLAINTIFF**
7 **WYNN'S MOTIONS IN LIMINE [#1], [#2] AND [#3]** addressed to:

8 Lawrence J. Semenza, III, Esq.
9 Christopher D. Kircher, Esq.
10 10161 Park Run Drive
11 Suite 150
12 Las Vegas, NV 89145
13 *Attorneys for Plaintiff*

14 
15 _____
16 An employee of Holley, Driggs, Walch,
17 Puzey & Thompson
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EXHIBIT A

(Justice Court Website Confirming Issuance of Bench Warrant)

Clark County: (<http://www.clarkcountynv.gov>)/ Justice Courts (<http://www.clarkcountynv.gov/justicecourt>)/ Court Calendar Search (<http://www.clarkcountynv.gov/justicecourt/Pages/courtcalendarssearch.aspx>)**Justice Courts : Calendar Search**

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[Print Case Details](#)
[View Case History](#)
[View Case Status](#)
[View Case Documents](#)

REGISTER OF ACTIONS

CASE No. 09F04930X

State of Nevada vs Labarbera, Mario

Case Type: Felony
 Date Filed: 03/18/2009
 Location: C Department 4

PARTY INFORMATION

Defendant: Labarbera, Mario Also Known
 As La Barbora, Mario

Lead Attorney

State of
 Nevada

CHARGE INFORMATION

Charges: Labarbera, Mario
 1. NON SUFFICIENT FUNDS/CHECKS

Statute
 205.100

Level
 Felony

Date
 03/18/2009

EVENTS & ORDERS OF THE COURT**OTHER EVENTS AND HEARINGS**

03/09/2009 DISCLAIMER

*This case has been converted from the Las Vegas Justice Court Legacy Case Management System to the Odyssey
 Sentence and Financial data will be verified at the next scheduled hearing before the Court.*

03/10/2009 ARREST WARRANT REQUEST

ARREST WARRANT REQUEST

03/18/2009 TRANSFERRED TO JC

TRANSFERRED TO JC

03/18/2009 CTRACK Track Assignment JC04-

03/19/2009 RECEIVED FROM DA

RECEIVED FROM DA

03/19/2009 Criminal Complaint

03/19/2009 Request For Arrest Warrant

03/19/2009 Declaration of Warrant Summons (Affidavit)

03/24/2009 ARREST WARRANT ISSUED (Judicial Officer: Salagosa, Melissa)

Quick Look-up

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EXHIBIT B

**(Stipulation And Order To Extend Dispositive
Motion Deadline and Trial Date)**

ORIGINAL

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10/07/2015 10:17:38 AM



CLERK OF THE COURT

1 **SAO**

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3 Email: ljs@semenzalew.com

4 Christopher D. Kircher, Esq., Bar No. 11176

5 Email: odk@semenzalew.com

6 **LAWRENCE J. SEMENZA, III, P.C.**

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11 Attorneys for Plaintiff Wynn Las Vegas, LLC

12 d/b/a Wynn Las Vegas

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **WYNN LAS VEGAS, LLC d/b/a WYNN**
16 **LAS VEGAS, a Nevada limited liability**
17 **company,**

18 **Plaintiff,**

19 **v.**

20 **MARIO LA BARBERA, an individual,**

21 **Defendant.**

Case No. A-14-695025-C
Dept. No. XXVIII

**STIPULATION AND ORDER TO
EXTEND DISPOSITIVE MOTION
DEADLINE AND TRIAL DATE**

(Second Request)

22 Pursuant to E.D.C.R. 2.35, Plaintiff Wynn Las Vegas LLC d/b/a Wynn Las Vegas
23 ("Plaintiff") and Defendant Mario La Barbera ("Defendant") (together, the "Parties"), by and
24 through their undersigned counsel, hereby stipulate and agree to the following:

25 **A. CURRENT DISPOSITIVE MOTIONS DEADLINE:** September 8, 2015.

26 **B. CURRENT TRIAL DATE:** November 16, 2015.

27 **C. DISCOVERY COMPLETED:**

28 Discovery is closed. The parties have participated in written discovery, exchanged documents and Plaintiff took Defendant's deposition in Rome, Italy on June 11, 2015. Plaintiff is currently waiting for Defendant to supplement written discovery responses as previously

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1 ordered by this Court. It is anticipated that both parties will want to use the information
2 contained in the supplemental responses in moving and/or opposing summary judgment.

3 **D. REASONS TO EXTEND DISPOSITIVE MOTION DEADLINES AND TRIAL**
4 **DATE:**

5 First, Defendant is a resident of Italy and that has contributed to the delay in receiving the
6 supplemental written discovery responses as ordered by the Court. Defendant's undersigned
7 counsel has encountered delays in gathering some information and documents ordered by the
8 Court from his client. The parties anticipate that this should provide Defendant sufficient time to
9 comply with the Court's order.

10 Second, counsel for Plaintiff and Defendant have significant caseloads and it has been
11 agreed that the dispositive motion deadline should be extended to provide sufficient time to file
12 dispositive motions as necessary. Further, Plaintiff's counsel has trial beginning on Tuesday,
13 September 8, 2015, which is anticipated to last approximately seven court days. This contributed
14 to Plaintiff requesting to extend the deadlines.

15 Third, counsel for Plaintiff and Defendant have amicably agreed to the continuance for
16 the above reasons.

17 Based on the above, good cause exists to grant the requested extensions. The parties seek
18 to have the dispositive motion deadline extended up to and including November 9, 2015. Since
19 the current trial date is November 16, 2015, the parties are seeking a trial continuance to the
20 Court's next available trial stack on or after February 15, 2016. The parties hope this amount of
21 time will reduce the need to seek another extension of time from the Court in the future.
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E. PROPOSED SCHEDULE

As set forth above, the parties hereby stipulated and agree that the current deadlines be amended and that the following new dates be adopted:

1. Final date to file dispositive motions: November 9, 2015.
2. Pretrial Conference: To be reset by court reflecting a trial date on or after February 15, 2016.
3. Calendar Call: To be reset by Court reflecting a trial date on or after February 15, 2016.
4. Trial Date: Next Stack on or after February 15, 2016.

DATED this 24th day of Sept, 2015.

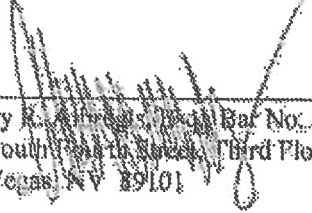
LAWRENCE J. SEMENZA, III, P.C.


Lawrence J. Semenza, III, Esq., Bar No. 7174
10161 Park Run Drive, Suite 130
Las Vegas, Nevada 89145

Attorneys for Plaintiff Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas

DATED this 27 day of Sept, 2015.

COTTON, DRIGGS, WALCH, HOLLEY,
WOLOSON & THOMPSON


Jeffrey R. Cotton, Esq., Bar No. 0066
400 South Flamingo Avenue, Third Floor
Las Vegas, NV 89101

Attorney for Defendant Mario La Barbera

///

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A695023
WYNN v. BARBER

ORDER

IT IS SO ORDERED that the discovery and trial deadlines are extended in accordance with this Stipulation and Order as follows:

1. Final date to file dispositive motions: November 9, 2015.

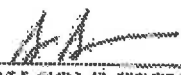
3. Pre-Trial Conference: To be reset by Court

4. Calendar call: To be reset by Court

5. Trial: To be reset by Court *in accordance with this stipulation and at the request of the parties.*

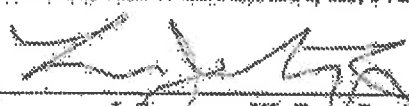
The Court will not issue a separate amended scheduling order. The Court will issue an amended order setting jury trial.

Dated this 1 day of October, 2015.


DISCOVERY COMMISSIONER

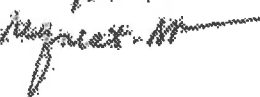
Respectfully Submitted:

LAWRENCE J. SEMENZA, III, P.C.


Lawrence J. Semenza, III, Esq., Bar No. 7174
Christopher D. Kircher, Esq., Bar No. 11176
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Attorneys for Plaintiff Wynn Las Vegas, LLC
d/b/a Wynn Las Vegas

TRIAL DATE TO BE SET
ON OR AFTER 2-16-16

per the parties' request.


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EXHIBIT C
(Jury Instructions re: Unilateral Mistake Rule
And Competency)

INSTRUCTION NO.

UNILATERAL MISTAKE RULE

The "Unilateral Mistake Rule" provides that where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performance that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake under the rule, and the other party had reason to know of the mistake or his fault caused the mistake.

Source and Authority:

Home Savers, Inc., v. United Sec. Co., 103 Nev. 357, 358-9, 741 P.2d 1355, 1357 (1987)

INSTRUCTION NO.

CONTRACTS INSTRUCTION 13CN.21:

DEFENSES: COMPETENCY

A contract is not valid, binding and enforceable if the party against whom enforcement is sought was not competent to enter into the contract when the contract was made. The mental incapacity that affects the validity of a contract must be determined from the testimony and other evidence relevant to the surrounding circumstances when the transaction occurred, without regard to any previous or subsequent incompetency of the party.

Source: Nevada Jury Instruction 13 CN.21 (2011)

Authority:

Roberts v. Gattshall, 91 Nev. 605, 608-09, P.2d 1067, 1069 (1975);

Heward v. Sutton, 75 Nev. 452, 455, 345 P.2d 772, 774 (1959);


Seeley v. Goodwin, 39 Nev. 315, 325-26, 156 P. 934, 937 (1916).

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EXHIBIT D
(Defendant's Objection To Plaintiff Wynn's Third Supplemental Disclosures and Pretrial Disclosures)

1 **OBJ**
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9 WRAY, PUZEY & THOMPSON
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13 Facsimile: 702/791-1912
14 *Attorneys for Defendant*

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

10 WYNN LAS VEGAS, LLC
11 d/b/a WYNN LAS VEGAS,

Plaintiff,

v.

13 MARIO LA BARBERA,

Defendant.

Case No.: A-14-695025-C
Dept. No.: XXVIII

**DEFENDANT'S OBJECTION TO
PLAINTIFF WYNN'S THIRD
SUPPLEMENTAL DISCLOSURES AND
PRETRIAL DISCLOSURES PURSUANT
TO NRCP 16.1**

16 Defendant Mario La Barbera hereby objects, pursuant to NRCP 16.1, to Plaintiff Wynn's
17 untimely Third Supplemental Disclosures electronically served on him on February 10, 2016 (a
18 copy of which is attached hereto as Exhibit A), as well as to Plaintiff Wynn's Pretrial
19 Disclosures filed herein on February 12, 2016 (with respect to its untimely disclosed witnesses in
20 its Third Supplement).

22 Dated this 17th day of February, 2016.

HOLLEY, DRIGGS, WALSH, FINE,
WRAY PUZEY & THOMPSON

26 JEFFREY R. ALBREGTS, ESQ.
27 Nevada Bar No. 0066
KRISTA N. ALBREGTS, ESQ.
28 Nevada Bar No. 13301
Attorneys for Defendant

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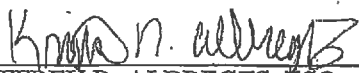
OBJECTIONS

As the record in this case clearly reflects, the discovery cutoff herein expired last year, well before Plaintiff Wynn's Third Supplemental Disclosures of certain witnesses pursuant to NRCp 16.1 (Exhibit A). In particular, witnesses 4-9, to wit: Sandra Mele, Michael Gros, Scott S. Chang, Wail Nafei, Zuleima Shute and Alverna Duca. In turn, these witnesses are listed in Plaintiff Wynn's Pretrial Disclosures filed herein on February 12, 2016. All of these witnesses should be barred from testifying at trial, pursuant to NRCp 16.1 (3)(C), because they were not timely disclosed in this case by Plaintiff Wynn, allowing Defendant La Barbera sufficient time to depose them or conduct any other discovery regarding their testimony at trial.

Furthermore, Plaintiff Wynn has also untimely disclosed one additional document in its Third Supplemental Disclosures; specifically, No. 14 entitled "Desk Issue Marker, Bates numbered WYNN-00150," which should also be excluded from trial as it was also not timely disclosed to Defendant LaBarbera.

Dated this 17th day of February, 2016.

**HOLLEY, DRIGGS, WALCH,
PUZEY & THOMPSON**




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Nevada Bar No. 0066
KRISTA N. ALBREGTS, ESQ.
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400 South Fourth Street, Third Floor
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to NRCP 5(b) and NEFCR 9, that I am an employee of Holley Driggs Walch Puzey & Thompson, and that on the 17th day of February, 2016, I caused to be sent through electronic transmission via Wiznet's online system, a true and correct copy of the foregoing **DEFENDANT'S OBJECTION TO PLAINTIFF WYNN'S THIRD SUPPLEMENTAL DISCLOSURES AND PRETRIAL DISCLOSURES PURSUANT TO NRCP 16.1**, addressed to:

Lawrence J. Semenza, III, Esq.
Christopher D. Kircher, Esq.
10161 Park Run Drive
Suite 150
Las Vegas, NV 89145
Attorneys for Plaintiff


An employee of Holley, Driggs, Walch,
Puzey & Thompson

In The
SUPREME COURT
For The
STATE OF NEVADA

Electronically Filed
Nov 13 2017 11:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

MARIO LABARBERA

Appellant.

v.

WYNN LAS VEGAS, LLC, D/B/A WYNN LAS VEGAS,

Respondent.

*Appeal from Judgment on Jury Verdict,
Eighth Judicial District Court, State of Nevada, County of Clark
District Court Case No. A-14-695025-C – Hon. Ronald J. Israel*

**APPELLANT'S APPENDIX
VOLUME I (Part 4 of 4), Pages 143 to 195**

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