

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED .

Plaintiff .

vs. .

KAZUO OKADA, et al. .

Defendants .

.

CASE NO. A-656710

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

STATUS CHECK AND HEARING ON MOTIONS

THURSDAY, AUGUST 11, 2016

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
LAURA CHESTER, ESQ.
WILLIAM R. URGAS, ESQ.
DAVID MALLEY, ESQ.
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DAN R. POLSENBERG, ESQ.
DONALD JUDE CAMPBELL, ESQ.
COLBY WILLIAMS, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 11, 2016, 9:29 A.M.

2 (Court was called to order)

3 THE COURT: And I want to start with Mr. Peek's
4 motion. I do.

5 Did you guys get my order last night? I'm sorry for
6 the confusion. I thought that we had returned a version of
7 the order to Mr. Urga for filing before Laura left. I learned
8 yesterday when Dan made inquiries of Mr. Malley and Mr. Urga
9 that didn't happen. So I revised what I believe were the same
10 revisions I'd previously made on the order and had Dulce file
11 it in open court and Dan email it all to you last night. And
12 Ms. Spinelli says she's doing the notice of entry.

13 So I'm on Mr. Peek's motion.

14 MR. POLSENBERG: Your Honor, we have something we
15 wanted to bring out first under the 41(e) issue. And I
16 apologize.

17 THE COURT: It's okay, Mr. Polsenberg. How are you
18 today?

19 MR. POLSENBERG: Very well, thank you, Your Honor.

20 THE COURT: Good.

21 MR. PISANELLI: Before we get to that, because Mr.
22 Polsenberg is speaking, I have to be respectful of my clients'
23 rights. We received -- while he sat in the audience last time
24 we received a notice of appearance into this case yesterday.
25 Mr. Polsenberg and his firm have been involved in representing

1 our clients' rights some years back. I don't know the details
2 of it. It may be nothing, but I don't want my silence of his
3 appearances to be used or interpreted as a waiver if there is
4 in fact a conflict. So we would reserve our rights in that
5 regard and don't object to him going forward so long as we
6 have an understanding that there is no waiver of any potential
7 conflict.

8 MR. CAMPBELL: We join in that representation, Your
9 Honor.

10 THE COURT: Okay. Sure. So if you guys decide you
11 have a conflict, you're going to file another motion or raise
12 it to Mr. Polsenberg, and he'll deal with his committee on
13 whether he thinks he has a conflict, and then I'll either have
14 a motion or I won't, and then I might do something like I'm
15 doing now with the Quinn Emanuel firm.

16 Good morning again, Mr. Polsenberg

17 MR. POLSENBERG: Thank you, Your Honor.

18 THE COURT: You wanted to say something on 41(e),
19 one of my favorite rules that is less than clear when you read
20 the decisional law from the Nevada Supreme Court.

21 MR. POLSENBERG: And that's why we're raising this.

22 THE COURT: But it's better than the offer of
23 judgment rules.

24 MR. POLSENBERG: Thank you, Your Honor.

25 THE COURT: Since you wrote them.

1 MR. POLSENBERG: Yes, I did. Thank you.

2 What we're trying to decide is whether you're asking
3 us to stipulate to what the law is or stipulate to what we
4 will agree will constitute the start of trial.

5 THE COURT: Two things. Mr. Waite in the CityCenter
6 case came up with a definition for "start of trial."

7 MR. POLSENBERG: Right.

8 THE COURT: Because, as you know, in different
9 decisions it's been defined differently by the Nevada Supreme
10 Court. So part of what I need is I need a definition of what
11 you all agree will be the controlling definition for what
12 "start of trial" is.

13 MR. POLSENBERG: We're not agreeing on what we think
14 the Supreme Court is saying, it's just what we will agree --

15 THE COURT: What you agree to. I don't care.
16 Because once you agree, it doesn't matter what the Supreme
17 Court says. So --

18 MR. POLSENBERG: Good enough.

19 MR. PEEK: And that was my issue, Your Honor,
20 because I thought I was agreeing what the law was.

21 THE COURT: Oh, no.

22 MR. PEEK: That's where we had a disagreement.

23 MR. POLSENBERG: And I thought we could agree --

24 THE COURT: None of us would be able to agree what
25 the law was.

1 MR. POLSENBURG: Since it's a stipulation, I thought
2 we could agree to anything we wanted.

3 MR. URGAS: So we're really close, then. Hopefully
4 we'll have it done in a day or so.

5 THE COURT: But then I need the second part, which
6 is you need to tell me what you believe are the periods of
7 stay that apply in this case so some day I can do math.
8 Because my job as a District Court Judge since the Meduka
9 decision is that I have to do math and make sure I try your
10 case within the five unless you stipulate to extend it
11 further.

12 MR. PEEK: Your Honor, we've reached that. We've
13 resolved that issue.

14 THE COURT: Lovely.

15 MR. PEEK: But one issue was when is a case brought
16 to trial.

17 THE COURT: Mr. Waite suggested in the CityCenter
18 case --

19 MR. POLSENBURG: We're not going to do what he did,
20 okay.

21 THE COURT: It was a great decision, because it made
22 my life so easy.

23 MR. POLSENBURG: Right.

24 MR. PISANELLI: So, Your Honor, nothing --
25 I'm sorry, Dan.

1 -- nothing in this case is ever that simple. So
2 what we intend to file is a stipulation of a minimal time
3 period of tolling that we can agree to but that will not
4 necessarily override what the actual math will be.

5 MR. POLSENBERG: Right.

6 THE COURT: I don't really care. As long as you
7 reach a stipulation, I'm going to go with your stipulation.
8 And I'm not going to make the decision, because if I'm wrong,
9 then you're screwed. That's what the Meduka case says.

10 MR. PISANELLI: We totally get that point, and
11 that's the point of our exercise. We understand that.

12 THE COURT: So I am going to use the most
13 conservative date, which is five years-plus from the day you
14 filed, unless you reach an agreement as to a certain number of
15 days that extend that period. And if you reach that certain
16 number of days that extend that period, I will give you a
17 trial date where I believe I can get the trial commenced
18 within that period of time, depending upon what your
19 definition of "start of trial" is.

20 MR. PISANELLI: Got it.

21 THE COURT: Sorry. It shouldn't be this
22 complicated, but --

23 MR. POLSENBERG: Well, once you've resolve the
24 question I raised we're there.

25 THE COURT: Well, there's no way any of you can

1 stipulate to what the law is, because it differs.

2 MR. POLSENBERG: Right. But we can stipulate to the
3 conditions of the waiver of the 41(e) provisions.

4 THE COURT: You can stipulate to the conditions that
5 govern yourself.

6 MR. POLSENBERG: Right.

7 MR. PISANELLI: That's right.

8 THE COURT: Not to what the Supreme Court may or may
9 not do if they were ever presented with this issue, which is
10 what appellate lawyers get paid to do. All right.

11 MR. POLSENBERG: Sometimes get paid to make sure
12 they don't get presented with the issue.

13 THE COURT: Okay. Sometimes that's true, too.

14 I really would like to start with Mr. Peek's motion,
15 because I think it deals with the overriding issues for all of
16 the other issues that are on my calendar this morning.

17 MS. SPINELLI: What about my motion to strike --

18 THE COURT: Your motion is denied.

19 MS. SPINELLI: That's what I thought.

20 THE COURT: Otherwise I would have said -- otherwise
21 we would have started with your motion to strike.

22 MS. SPINELLI: Fine, Your Honor.

23 THE COURT: All right. I don't think the -- while
24 the protective order deals with discovery, the motion to
25 modify the protective order itself is not a discovery motion.

1 Okay.

2 MR. PEEK: Thank you, Your Honor. With that I will
3 go ahead and try to be as brief as I can be.

4 Your Honor, Wynn Resorts is using and has been using
5 the protective order in what we characterize as an abusive and
6 unfair manner to the detriment of our client. Our client has
7 not had the opportunity to discuss with us that testimony or
8 those documents that have been designated by Wynn as highly
9 confidential. So those problems of not being able to
10 communicate with our client, work with our client to defend
11 him adequately and accurately are even exacerbated now by this
12 months-long stay. And I say it will be a months-long stay. I
13 just heard the Court set a trial for September 6th, and I was
14 hoping they'd be able to get to the evidentiary hearings. And
15 I say hearings because I now understand them to be plural. So
16 I know that this is going to drag on.

17 THE COURT: Do you really think they're going to go?
18 I already tried that case once for three weeks. Don't you
19 think they would have figured out what's going to happen
20 again?

21 MR. PEEK: I thought you were sending that message
22 very clearly, Your Honor, but I don't know whether it was
23 heard.

24 THE COURT: Mr. Pisanelli was in that case when I
25 was on the injunctive relief stage.

1 MR. PEEK: Well -- so we finally -- we had a chance
2 to question the key players under oath, the members of the
3 board of directors, Louis Freeh, Steve Wynn, but we can't tell
4 our client what these people said about him, what they said
5 about him both in board meetings, what they said about him
6 outside of board meetings. We can't, Your Honor, tell him
7 what they have said about him so we could be able to get from
8 him what his view would be. And you can't just say, well, he
9 has a view, but he has to be able to help us defend him by
10 saying to us, well, what Mr. Miller said is not correct, what
11 Louis Freeh said is not correct. Because he doesn't know
12 Louis Freeh said or what Mr. Miller said or what other members
13 of the board of directors said. So every line of -- almost
14 every line of testimony from these depositions of the board
15 members and of Mr. Wynn and Ms. Sinatra, Louis Freeh has been
16 designated highly confidential, because the transcripts were
17 just received at or about the time the stay went into effect,
18 and so because of the stay it seems to have stopped
19 everything, including resolution of the confidentiality
20 designations by Wynn.

21 So we need and would like to have our motion resolve
22 the issue of what we can tell our client, when we can tell our
23 client, and whether or not the Court will resolve some of
24 these confidentiality designations before the stay expires so
25 that we can prepare him for that time when the stay has

1 expired and we're ready to go and move this case towards
2 trial.

3 They sued him, and now they want to keep the
4 information that they used away from him. They don't want him
5 to know about it, they don't want us to tell him about it,
6 they don't want us to -- allow us to discuss it. So we can't,
7 Your Honor, meeting our obligations under the canons to defend
8 him.

9 You have the power to decide this motion. You've
10 already said you're going to decide this motion because it's
11 not a discovery motion. So I will not really address that
12 motion. They say now in their opposition that they're too
13 busy dealing with the disqualification motion to have to deal
14 with confidentiality designations, as well. I'm sorry, Your
15 Honor. When you sign onto a case you take the obligation that
16 that case has, which includes these confidentiality
17 designations. They're the ones that want to maintain them.
18 Then they ought to be able to defend them. You can't say,
19 well, I'm too busy, because they can't be too busy to deny us
20 the opportunity to defend our client.

21 They say it would also jeopardize the parties'
22 agreement regarding 41(e). We don't know where that goes, but
23 we'll figure that out, I guess. See if whether they'll sign
24 the stipulation that has been circulated and everybody has
25 approved.

1 They complain that Elaine Wynn will not be able to
2 participate in the process without Quinn Emanuel; but that's
3 not quite right, either, because Elaine Wynn isn't going to be
4 dealing with our designations, because we're trying to get the
5 designations removed so we can discuss it with our client.
6 They have their own issues. I'll let them address their own
7 issues. And she has other lawyers. She has Jolley Urga, and
8 they can deal with those issues. And they now have Mr.
9 Polsenberg, as well, to help resolve all of those issues.

10 So I guess that deals at least with the procedure of
11 trying at least to get these designations heard by the Court
12 quickly. But that's really not the root of the problem. The
13 root of the problem is that Wynn Resorts, as we identified in
14 our motion, is designating every single document and piece of
15 testimony relating to its board of directors as highly
16 confidential. It doesn't matter what the substance of the
17 evidence is, how long a meeting was, who was there, it's all
18 designated the same. And they admit, as they say in their
19 opposition on page 8, that all board activity encompasses
20 extremely sensitive non-public business information which if
21 disclosed would create a substantial risk of injury to Wynn
22 Resorts. How would it create a substantial risk of injury for
23 us to disclose it to our client? That's really the issue.
24 It's the highly confidential portions that they designate,
25 Your Honor, not just the confidential; because we're able to

1 discuss confidential designations with our client.

2 As we know, they designated testimony about things
3 Mr. Okada allegedly said in board meetings years ago about his
4 own business projects in the Philippines, projects that Wynn
5 Resorts itself has publicly repudiated. So that testimony is
6 even being deemed highly confidential when they're discussing
7 in his presence matters related to his projects.

8 They're designating testimony about the meeting at
9 which Mr. Okada was redeemed. That's the February 18th, 2012,
10 meeting. So we can't even know what the basis was that these
11 board members identify as why they redeemed and voted in favor
12 to redeem his stock, what Louis Freeh told them, what they
13 knew, what information they had, what the basis of their
14 decision was. We can't even discuss that with our client, yet
15 that itself can't be deemed so extremely -- and I use the word
16 "extremely" because that's what the SPO says, how that is such
17 extremely sensitive information that the disclosure to our
18 client could injure Wynn Resorts years later, when in fact we
19 know they redeemed, we know that they issued public
20 information or public statements about the redemption, we know
21 that they filed statements with the SEC. So that information,
22 Your Honor, has to be able to be discussed with our client so
23 we can at least discuss with him how to defend himself once
24 the stay is lifted.

25 They say there's no harm to Okada because if he was

1 at the meeting he knows what happened. But certainly he's
2 going to have a view of it, and he would like to be able to
3 know what others' view of those meetings were. He would like
4 to know what it is others may have said at these meetings and
5 what is in dispute as to what he said versus what others have
6 said occurred at that meeting. He ought to be able to find
7 out what the director claims he said, not what he actually
8 said or what he says they said or what he says he would have
9 testified to at those board of directors meeting. He should
10 be able to offer his side of the story and know a others' side
11 of the story is so he can make those intelligent choices to
12 help his lawyers prepare him, as well as prepare a defense of
13 the litigation and how to direct the litigation. It's just a
14 matter of fairness, Your Honor.

15 With respect to the remaining issue about the
16 procedure for challenging Elaine Wynn put in a joinder. We
17 actually agree with the joinder that they put in, which really
18 -- I think what they say is -- use it or lose it I think
19 really was kind of their approach. And you don't want to have
20 it in 15 days, because that may be too short. So we actually
21 agree with the Elaine Wynn joinder in the procedural.

22 So that's -- you know, it's just a matter of
23 fairness. It's a matter of being able to defend our client.
24 It's a matter of being able to meet our obligations under the
25 canons to be able to defend our client, and the designations

1 of highly confidential and the abusiveness that we've seen so
2 far just doesn't allow us to do that.

3 Your Honor, I have some comments that'll come up
4 later on the new motion that Elaine Wynn filed and they now
5 wish to have sealed. So there is at least a motion to seal.

6 THE COURT: I'm not there yet. I'm only on your
7 motion.

8 MR. PEEK: Yeah. No, I know. But I just want to
9 say I do have comments on that, Your Honor.

10 THE COURT: But you have used lots of your time.

11 MR. PEEK: What's that? I have used lots, or --

12 THE COURT: For your brief thing Dan was going to
13 set a minute, since you said brief. And I told, no, he had to
14 give you 10.

15 MR. PEEK: Thank you, Your Honor. I'm done.

16 THE COURT: Okay. Thank you.

17 Ms. Spinelli.

18 MS. SPINELLI: I think there's a joinder.

19 THE COURT: Did someone from Elaine Wynn's side want
20 to say something given the joinder?

21 MR. ZELLER: Nothing in addition to what is in our
22 papers.

23 THE COURT: Thank you.

24 Now you're up, Ms. Spinelli.

25 MS. SPINELLI: Thanks, Your Honor. I just want -- I

1 want to be told that I have one minute.

2 THE COURT: So before you start, which means the
3 timer isn't started, I'm looking on page 13 of the motion.
4 Page 13 of the motion says, "With regard to four members of
5 the board, D. Boone Wayson, Robert Miller, Ray Irani, and
6 Russell Goldsmith, WRL downgraded without argument an
7 astounding 4,361 lines or 34 percent of the testimony they had
8 initially designated as highly confidential and for which it
9 responded to deposition challenges." Is that true?

10 MS. SPINELLI: Well, I certainly don't know about
11 the addition of the lines, but what we did for those --

12 THE COURT: That's a third.

13 MS. SPINELLI: I'm sorry?

14 THE COURT: That's a third of --

15 MS. SPINELLI: What we did --

16 THE COURT: Wait. Let me finish.

17 MS. SPINELLI: It is a third.

18 THE COURT: That's a third of the parts that were
19 designated as highly confidential, which upon review without
20 motion practice you downgraded.

21 MS. SPINELLI: Without motion practice to those
22 depositions we did. In the interim we --

23 THE COURT: So doesn't that seem like maybe there's
24 an overdesignation and overuse of highly confidential to you?

25 MS. SPINELLI: Initially, Your Honor, yes. And

1 we've conceded that in the meet and confer process --

2 THE COURT: So why are you still doing it?

3 MS. SPINELLI: -- and motion practice with Your
4 Honor. We received guidance from Your Honor on the motion
5 related to Dr. Irani, and we moved -- at the beginning we had
6 an order from Your Honor saying that the minutes to the
7 February 2012 meeting were remaining highly confidential and
8 the protective order was violated by the Okada parties. And
9 so we were following that order, because the questions in the
10 depositions, Your Honor, will read from a highly confidential
11 document. In the minutes it says, "The parties have all
12 agreed in writing." And they say, do you agree with that, or,
13 what's your response to that. So if they're quoting a highly
14 confidential document, which was affirmed by Your Honor, we
15 redacted that or made it highly confidential. If they ask a
16 question independent of that, asking about someone's
17 independent thoughts, we have gone back after the meet and
18 confer process and downgraded them still to confidential. But
19 if they're talking about the deliberative process that wasn't
20 in a public document, we've gone back and changed them. They
21 said, this is a public document, it is in something that we
22 published with the SEC.

23 THE COURT: My concern isn't that you go back and
24 change it. That's not my concern. My concern is the initial
25 designation.

1 MS. SPINELLI: We've addressed that, Your Honor.
2 And if you -- they showed you one example of one letter.
3 Well, when I receive them back I've been going back and
4 redoing them myself, Your Honor, to choose which is just a
5 deliberative -- I'm looking at the deliberative process, as
6 opposed to this is all of the board. And we had -- and I know
7 this may not be an excuse [unintelligible], Your Honor, but
8 we've had depositions every day for four months. And you get
9 all the transcripts at one time and we're designating them
10 quickly, and then they challenge them and we go back and redo
11 them all, Your Honor. And we have done -- this meet and
12 confer process which they want to eliminate has actually been
13 really successful in this front. And we've de-designated a
14 great deal.

15 THE COURT: No, I'm not going to eliminate the meet
16 and confer process. I got that part. But I am concerned that
17 there may be an overuse of the highly confidential
18 designation. I'm not concerned about the confidential
19 designation. This doesn't relate to that. I'm concerned
20 about the highly confidential designation. And so I'm trying
21 to figure out a way that is fair that isn't four months long.

22 MS. SPINELLI: Understood. And, Your Honor, I
23 understand that position. And it's our position that we'd
24 actually addressed that and remedied it in subsequent
25 correspondence and meet and confers.

1 Now, the example -- their exhibit, Exhibit B, which
2 gives page and lines and says that there's all of these no
3 responses from Wynn Resorts, last week or two weeks ago during
4 the stay they challenged our designations, and they've
5 addressed other issues of confidentiality. Because there's a
6 stay which applies to all parties, we haven't responded to
7 those. So that -- the appearancewise if we're going to use
8 percentages and the like, that is -- I just wanted to make
9 sure that Your Honor knows what that is. Because we were
10 responding to all of them.

11 And I also think that there are more efficient ways
12 to deal with the repeated issues, Your Honor, that have not
13 been addressed by the Okada parties, which is we have always
14 held our position that the deliberative process during the
15 board meetings, which is our nerve center which is not public
16 to the world, is protected and highly confidentiality. We've
17 said that in documents that we've produced since the beginning
18 of this case, it's been challenged since the beginning of this
19 case. And rather than go page by page, line by line, and in
20 the meet and confers we talked about this, bring a motion that
21 talks about the subject matter that you're challenging, some
22 examples that we can talk about, and then have the Judge
23 resolve them. But neither party, of course, is going to stand
24 down on the primary issues that our board meeting minutes,
25 which Mr. Okada is not involved in any longer and Ms. Wynn is

1 not involved in any longer should be subject to them, two
2 parties, with all due respect, who have had trouble following
3 the protective order on a number of issues. We are going to
4 be extremely protective of our board meeting minutes, Your
5 Honor. And so if that seems a little bit aggressive at the
6 outset, we have we believe remedied the concern in the page
7 and lines on those initial depositions.

8 THE COURT: Okay.

9 MS. SPINELLI: Do I get to start my 10 minutes now?

10 THE COURT: Yes.

11 MS. SPINELLI: Okay. I'll be very quick, because I
12 think I just --

13 THE COURT: You haven't turned the timer on yet? So
14 turn it on now, because she was answering my question.

15 MS. SPINELLI: Excellent. Thank you.

16 I do think, Your Honor, that even if the motion to
17 modify, as Your Honor said, isn't discovery, certainly the
18 relief they're asking for is, which is to de-designate also
19 and to allow the discovery process of challenging depo
20 designations to proceed, we think that violates the stay. And
21 that for even -- they say there's no unfair prejudice to the
22 Wynn parties. We believe that there is. The stay applies to
23 all parties. I understand that the Okada parties might have
24 some extra time on their hands at this point in time, but with
25 the protocol that Your Honor just implemented yesterday we

1 have more than two hard drives of documents that our team has
2 to look into. And I understand that we all sign on to cases
3 and we're all busy, but everybody also knows that there's a
4 lot of stuff to do at least for the people still involved in
5 what's going on in this case now.

6 There is no prejudice if there's a level playing
7 field. Allowing the Okada parties to continue their discovery
8 efforts when everyone else is busy doing other things, not for
9 any fault of Wynn Resorts, I might add, I think is unfair and
10 unduly prejudicial to my clients.

11 I also think that we do have an issue, a very large
12 issue with Ms. Wynn's joinder. It was her counsel who spoke
13 to this Court and said that there is -- if there's a discovery
14 stay and there is work that needs to be done, Ms. Wynn is
15 allowed to choose her own counsel and her lead counsel is
16 Quinn and without they would say that any stay is a full
17 discovery stay, which apparently maybe they don't agree with
18 anymore. But we still maintain that a tainted -- potentially
19 tainted counsel should not participate in discovery when they
20 have access to or potentially access to our privileged and
21 confidential information.

22 I also think, Your Honor, that the relief that
23 they're asking for for the time frame is insane. All of these
24 depositions --

25 THE COURT: Insane?

1 MS. SPINELLI: Insane.

2 THE COURT: That's a legal term.

3 MS. SPINELLI: Probably never said in oral argument;
4 right? A legal term.

5 -- because the 30-day window for some -- our team is
6 doing depositions for every single day is absolutely
7 necessary. If they want to shorten their window, they can
8 feel free to do it, especially now that they have little --
9 that they don't have as much to do right now. But to shorten
10 Wynn Resorts' timetable in the protective order to designate
11 is something that we reject. Shorten all you want for your
12 own. I don't think that they should have our time trigger for
13 when they decide to move. I know that Mr. Peek said that he
14 agreed with the joinder of Ms. Wynn, but Ms. Wynn asked for an
15 unlimited time to object, which I don't think is consistent
16 with the stated objections of the Okada parties.

17 And, Your Honor, we ask that if there is going to be
18 any relief from the protective order that the relief start
19 after the stay.

20 THE COURT: Okay. So stay with me for a minute.
21 The process currently in the protective order is unworkable.
22 Do you have a suggestion sort of short of that that has been
23 recommended by the Okada parties on page 17 of their brief,
24 understanding there will be a meet and confer element in there
25 somewhere?

1 MS. SPINELLI: I think the 30 days actually is
2 workable considering the number of depositions and the parties
3 who's designating those depositions. And we are talking about
4 300-page depositions and getting them every day. So I think
5 that the first one should remain the same. If they -- if the
6 challengers want to shorten their time limit, just like we
7 said, Your Honor, I'm fine with them shortening it to 15 days.
8 It doesn't really affect me. And then the 15 days to respond,
9 what we were doing was re-reviewing those designations and
10 making changes. So if they want that to be done in 15 days or
11 10 days, we're fine with that, and the 10 days to file the
12 motion stay together.

13 I do think that the better idea, Your Honor, is what
14 I've said in multiple meet and confers, which is let's talk
15 about categories of testimony and get them resolved and the
16 motion in the end should be should the categories be resolved
17 one way or the other. And if there's specific pages and lines
18 that they think are separate from those categories, then we
19 can put that in the motion. And then that ruling, Your Honor,
20 will affect most other designations to come even in documents.

21 THE COURT: Okay.

22 MS. SPINELLI: That's my suggestion.

23 THE COURT: Anything else you want to suggest, then?

24 MS. SPINELLI: No.

25 THE COURT: Okay.

1 MS. SPINELLI: Thank you.

2 THE COURT: Mr. Campbell, did you want to weigh in
3 on this, or are you okay?

4 MR. CAMPBELL: No, Your Honor, we don't.

5 THE COURT: I'm back to Mr. Peek.

6 MR. PEEK: Your Honor, nothing that Ms. Spinelli
7 said I think changes -- changes the dynamics here. Saying
8 you're too busy to do it, that's not a good defense when
9 you've got -- you know, you've got, what is it, Glaser Weil,
10 Wattel, Pisanelli Bice, Campbell Williams. I mean, they have
11 a whole of lawyers on their side. Gibson Dunn we know from
12 the document standpoint. So they've got adequate resources to
13 be able to meet their obligations. They're the ones that
14 brought the issue with respect to Quinn Emanuel, knowing that
15 it might cause them to work harder than they had already been
16 working. So I don't think that's a reason.

17 I think our time frames are workable. I agree with
18 Ms. Spinelli that there has to be -- at some point there has
19 to be some deadline. And on the use or lose it front, when
20 we're dealing with really what we have perceived to be the
21 abusive nature of the designations, that presents a problem to
22 us. That's why we're trying to shorten it.

23 The other part of it is, Your Honor, we want to be
24 able to begin to address these issues to the Court. We don't
25 see this as covered within the stay. So we certainly would

1 like to begin the process of, as Ms. Spinelli said, maybe
2 getting some guidance from the Court on categories. This
3 notion that everything's going to be made public, we have a
4 confidentially designation. Confidentiality designation
5 doesn't allow us to make it public, so I don't know why they
6 have that problem with de-designating from highly to
7 confidential so that we can share it with our client. That's
8 really what we want to do. We want to be able to talk to our
9 client. Thank you.

10 THE COURT: Okay. The protective order is modified
11 as follows. The period of 30 days to designate testimony
12 after receiving the final transcript is shortened to 20 days.
13 The time the challenge designations is shortened from 60 days
14 to 20 days. And in then after the challenge is received there
15 is a 10-day period to have a meet and confer regarding the
16 challenge. And if it is unresolved after that, then you may
17 file a motion 10 days after the meet and confer.

18 MR. PEEK: Your Honor --

19 THE COURT: I am very concerned about the overuse of
20 highly confidential. So --

21 MR. PEEK: Your Honor, the question really is going
22 to come back to is may we do this during this period of the
23 stay.

24 THE COURT: Well, the problem I have with that, just
25 so we're clear, is if I do that, then I don't have Elaine

1 Wynn's counsel in the case. So if somebody --

2 MR. PEEK: You have Jolley Urga -- you have Jolley
3 Urga in the case, Your Honor.

4 THE COURT: And I have Mr. Polsenberg. If somebody
5 wants to ask me to sever or separate out Ms. Wynn, then I'll
6 have that discussion with you, and then I can move forward on
7 other issues. But as I currently stand Ms. Wynn is a party
8 and I've got to let her people be involved. And right now
9 I've got a stay because of some issues.

10 MR. PEEK: I understand, Your Honor. And we're not
11 prepared to -- a severance doesn't work in this case. She is
12 a defendant to our claims. So it doesn't work.

13 THE COURT: Right.

14 MR. PEEK: So that's not a good solution.

15 THE COURT: I know. Do you have a good solution?

16 MR. PEEK: Your Honor, I don't -- from the
17 standpoint of my requesting Okada -- the Aruze parties
18 requesting relief to de-designate from highly confidential to
19 confidential so that we can use that to help our client and
20 help us defend our clients doesn't affect Elaine Wynn. So I
21 don't see --

22 THE COURT: It doesn't affect her to the extent you
23 are challenging a designation. It doesn't affect her to the
24 extent you are having a meet and confer. But if you are able
25 to agree at the meet and confer and I have motion practice, it

1 does affect her. So if you want me to say, yes, you have to
2 designate those confidential areas, I will say, yes, you've
3 got to do it during the stay period. If you want to say that
4 the challenge period is still there, I'll say, yes, you still
5 do the challenge period during the stay. If you want me to
6 say you've got to do meet and converse, sure. But when we get
7 to the motion --

8 MR. PEEK: So that -- so where they have -- yeah.

9 THE COURT: -- when you get to the motion is where I
10 have the concerns, because as long as she's still a party to
11 the case, I've got to let her lawyers be involved in the
12 motion practice. And I'm not sure how much of a hammer you
13 have if you can't file the motion at the meet and confer.

14 MR. PEEK: Well, that's the problem, Your Honor, is
15 that I don't really have -- so the relief that I've asked and
16 the basis upon which I'm asking for the relief, which is to be
17 able to begin to defend my client, begin to be able to discuss
18 with my client the testimony that has gone before, the
19 documents that have been used in the depositions where they
20 have been designated, all of that is lost. I don't have that
21 ability, Your Honor, during this period of time of the stay.
22 And what I'm concerned about is that we're going to -- I don't
23 know when you're going to have your evidentiary hearing on the
24 two issues, and I don't know when those will get resolved. I
25 know the Court will probably resolve them at the conclusion of

1 that hearing. I know that there will more than likely be
2 appellate practice, writ practice.

3 THE COURT: Really?

4 MR. PEEK: Yes, Your Honor, really. There will be.
5 We know we have counsel, appellate counsel here. So he's here
6 for a very good reason.

7 THE COURT: I heard him say he was here to make sure
8 things got straightened out here so they didn't have to go to
9 Carson City.

10 MR. PEEK: Well, I hope Dan is here to straighten
11 things out, Your Honor. We certainly --

12 THE COURT: Mr. Urga, how are you today?

13 MR. URGa: I am fine, Your Honor.

14 THE COURT: I saw you raise your hand.

15 MR. URGa: Well, I might be able to resolve the
16 potential issue that's been raised. What if we suggest that
17 they go ahead and do what they want to do and have a right to
18 have a motion. We will agree that we won't be involved in
19 that motion, because we're still in the other issue, have the
20 other issue. But then we would have a right to come back if
21 we finally have all of these other issues resolved and bring
22 the highly confidential/confidential --

23 MS. SPINELLI: And so there is the unfair prejudice
24 to Wynn Resorts. You have to hear the motion -- oppose the
25 motion, have two meet and confers, have all these letters

1 twice.

2 MR. PISANELLI: And the result doesn't work. I
3 mean, what if --

4 THE COURT: Guys, can we just stop. I already
5 ruled.

6 MR. URGAS: Okay.

7 THE COURT: So I've ordered the protective order
8 modified. Who's the person doing the written modification?

9 MR. PEEK: We'll prepare and run it by Ms. Spinelli
10 and Mr. Pisanelli.

11 THE COURT: So I have a question. The motion
12 related to the protective order was submitted in a redacted
13 form to the Clerk's Office. Is there a motion that was filed
14 with that?

15 MR. PEEK: My motion, Your Honor?

16 THE COURT: Yours. Yours, Mr. Peek.

17 MR. PEEK: I move to --

18 THE COURT: I'm looking at Ms. Chester, not at you.

19 MR. PEEK: I know. Thank you, Your Honor. That's
20 why I asked her to come.

21 MS. CHESTER: Your Honor, I believe there was a
22 motion to redact the motion to modify. Fairly confident. But
23 if we're not sure, I can double check.

24 THE COURT: That's part of the problem in this case.
25 In Jacobs-Sands I finally got them on the track while every

1 time we had a motion to seal it was on an OST at the same time
2 as the hearing so I could make sure they were all taken care
3 of. I'm still working to get that process on in this case.

4 MS. CHESTER: Understood.

5 THE COURT: I can't tell from what I looked at last
6 night if there was a motion to seal that was actually filed
7 related to this.

8 MR. PEEK: I'm quite confident there was, Your
9 Honor, but it wasn't --

10 MS. CHESTER: I'm very confident, but I will double
11 check today, Your Honor, and --

12 THE COURT: Is there any objection to me ordering
13 the redactions as provided in the version on August 1st, 2016,
14 filed 4:45?

15 MS. SPINELLI: No, Your Honor.

16 THE COURT: Okay. So the motion to redact the
17 defendants' motion to modify the protective order to leave it
18 as filed on August 1st, 2016, at 4:56 is granted if you can
19 ever figure out where that is in the system. I did look at
20 the unredacted copy. Does anybody think I need to maintain
21 that copy?

22 MS. CHESTER: I don't think so.

23 MR. PEEK: Your Honor, with respect to the issue of
24 motion practice on designations would you at least allow us to
25 file a -- if we so -- if we believe it's appropriate, a motion

1 to modify the stay to allow us to --

2 THE COURT: Absolutely, Mr. Peek.

3 MR. PEEK: Okay. I mean, we may -- we may find some
4 reason why we think the motion to modify -- that gives the
5 Wynn parties the ability to come and oppose it instead of just
6 standing here and doing it on the fly today. But I want to at
7 least not be prohibited from doing that.

8 THE COURT: Okay. Anything else you want to tell
9 me?

10 MR. PEEK: No. I just have the issue, Your Honor,
11 on this other motion that Wynn --

12 THE COURT: Yeah. I'm going there next.

13 MR. PEEK: -- that Elaine Wynn filed. And I don't
14 know if it's --

15 THE COURT: So is there any more on the motion to
16 modify the protective order as [unintelligible] special
17 exceptions?

18 Okay. Now I'm on Mr. Pisanelli's motion, which I
19 also have a similar motion from your side, Mr. Urga, related
20 to the Dodd-Frank and Sarbanes-Oxley, which sort of crosses
21 over the issues related to Ernst & Young. Would you like to
22 speak?

23 MR. PISANELLI: So I'm just a little confused. Do
24 you want to talk about our motion for leave to produce
25 documents to Ernst & Young?

1 THE COURT: Yes, that's what I want to do. But you
2 understand the issues raised in Ms. Wynn's motion for
3 protective order related to the Sarbanes-Oxley are sort of
4 cross-over issues?

5 MR. PEEK: I wouldn't know that, Your Honor.

6 THE COURT: Do you want to leave so you don't have
7 to listen?

8 MR. PEEK: No. I do want to hear these issues, Your
9 Honor.

10 THE COURT: I don't blame you.

11 MR. PISANELLI: Your Honor, before I begin can I get
12 some guidance from you on what we're doing with time here
13 today.

14 THE COURT: Dan's not turning the timer on.

15 MR. PISANELLI: All right. I will remain brief
16 nonetheless.

17 On the motion for leave our position is pretty
18 simple. I stood before you recently and I said -- I assured
19 you that I was going to do two things. One, I was going to be
20 completely transparent with Ernst & Young so as to enable them
21 to fulfill their professional responsibilities and so as to
22 expose the fallaciousness of what Ms. Wynn and her team have
23 been doing by way of these surreptitious and false allegations
24 to them and to our compliance committee. Second thing I
25 assured you is that I was going to comply with your orders, I

1 wasn't going to violate them and then come back later and ask
2 for forgiveness. And so that's what this motion is.

3 Ernst & Young, it's not a secret, they're fulfilling
4 their professional responsibilities. They'd like to see some
5 deposition testimony that has been designated either
6 confidential or highly confidential. And so we brought this
7 issue to your attention for permission to do that and for a
8 ruling from Your Honor that by doing that we will not have
9 waived any rights we otherwise would have had under the order
10 of this Court that you just debated and modified.

11 Now, Quinn Emanuel comes in for Ms. Wynn and oppose
12 our motion. Not a surprise. I would suggest they have to
13 oppose it; because, if they don't, that would be a concession
14 that what they did was contemptuous of Your Honor's orders.
15 So it didn't come as a surprise to anyone on my team that they
16 tried to take this position that our motion is somehow ill
17 founded.

18 What they said was two things. One, we didn't need
19 permission, could have done it anyway, and secondly that we're
20 trying to hamper Ernst & Young's work. So they're wrong on
21 both counts. First of all, simply because we designated them
22 is not the end of the analysis under the order, right. We're
23 talking about deposition testimony developed in this case.
24 That is not the same as a document we have that we reserve the
25 rights under the confidentiality order to do with as we

1 please. We have evidence developed for all parties here, and
2 so we did not make ourselves the judge, jury, and executioner
3 and say, we're taking it, we're going to do what we want.

4 Secondly, we're doing the exact opposite of what
5 they suggest in connection with Ernst & Young. We are being
6 completely transparent and helping Ernst & Young do their job
7 by giving them what they want. It is not Ernst & Young, Your
8 Honor, that is our concern by way of waiver of the
9 confidentiality; it is Elaine Wynn and Quinn Emanuel. We're
10 not worried what Ernst & Young is going to do, we're worried
11 that once we give our highly confidential and confidential
12 information to Ernst & Young that Elaine Wynn and Quinn
13 Emanuel will then go back to their press release press and
14 start cranking out whatever they want like they've done in the
15 past and say, wait, no longer confidential or highly
16 confidential, you disclosed it to some third party without
17 Court permission, you waived your rights, it's now free and we
18 can do whatever we want with it. That's the reason for this
19 motion, to make sure that Ernst & Young gets what they need,
20 to make sure that Elaine Wynn and Quinn Emanuel don't run
21 afoul of our cooperation with our auditors. That's it.

22 THE COURT: Thanks.

23 MR. POLSENBERG: Your Honor, I agree with you that
24 these -- that this motion does interrelate with the Sarbanes-
25 Oxley issue. I disagree with Mr. Pisanelli that we opposed

1 his motion. Because what we're really saying is in essence
2 that we don't think that anybody needs an order to disclose
3 things to Ernst & Young. Ernst & Young is the auditor for
4 Wynn Resorts. So I think they're free to turn things over.
5 And it's obvious in our motion coming up that we think that
6 we're free, as well, to turn things over to Ernst & Young.

7 THE COURT: So how do you deal with the protective
8 order, Mr. Polsenberg?

9 MR. POLSENBERG: On this? I'd say that we don't
10 treat them as third parties, because they're the auditors.

11 THE COURT: So you think there would then be
12 designation of a party representative?

13 MR. POLSENBERG: Well, perhaps I'm wording it
14 differently.

15 THE COURT: Uh-huh.

16 MR. POLSENBERG: It's just what they're saying is
17 that we would come in and say, look, they've made disclosures
18 to third parties. I don't think those are third parties. And
19 there is an agency relationship with the auditors.

20 THE COURT: Clearly. But they're independent
21 auditors, and that in a publicly traded company is a very
22 important issue that they're independent.

23 MR. POLSENBERG: True.

24 THE COURT: Anything else you want to tell me?

25 MR. POLSENBERG: Not in their motion.

1 THE COURT: Okay.

2 MR. PISANELLI: Your Honor, we have in the
3 confidentiality order a list of parties that are entitled to
4 it.

5 THE COURT: I know.

6 MR. PISANELLI: And of course the auditors are not
7 there, and of course everyone in the room knows that Elaine
8 Wynn would say that anyone can give things to her, because
9 that gets her out of her contempt motion. So it sounds that
10 the most important thing we heard from Counsel is that they do
11 not oppose it, that Your Honor's order giving us permission to
12 do it and the maintenance of all protections and
13 responsibilities under the confidentiality order will remain
14 unaffected by your order seems to be stipulated to, and we
15 will address Ms. Wynn's sanction motion when the time comes.

16 THE COURT: Okay. So, while I do not believe that
17 all portions of the depositions that have been selected to be
18 provided to Ernst & Young are entitled to highly confidential
19 protection, your request to provide them the information is
20 granted.

21 MR. PEEK: May I also be allowed now to see it,
22 since it's being de-designated --

23 THE COURT: Absolutely.

24 MR. PEEK: -- from highly to confidential?

25 MR. PISANELLI: Nothing's been de-designated.

1 THE COURT: I have concern --

2 MR. PEEK: Or they're going to give them highly
3 confidential. Excuse me.

4 THE COURT: If you're giving them highly
5 confidential information that you're going to maintain highly
6 confidential, I need to see it and approve it. Otherwise Mr.
7 Peek gets a copy of everything you give them. Because I have
8 serious concerns about your overdesignation using highly
9 confidential information.

10 MR. PISANELLI: But, Your Honor, isn't that a --

11 THE COURT: No, Mr. Pisanelli, it's not.

12 MR. PISANELLI: I haven't even asked you the
13 question yet. I'm trying to make my record here. You said no
14 before I said isn't.

15 So the question is isn't --

16 THE COURT: Remember how Ms. [unintelligible] said,
17 Judge, can we just have a do over of the whole three-week
18 trial and, you know -- so sometimes asking gets you in more
19 trouble.

20 MR. PISANELLI: I'm trying to stay out of trouble.
21 And I am serving two masters here in a special auditors'
22 request on the one hand and your rules.

23 THE COURT: You have to comply with them.

24 MR. PISANELLI: That's right. And so my only point
25 here is whether Mr. Peek complains fairly or unfairly that the

1 highly confidential has been overused and whether Your Honor,
2 rightly, wrongly, somewhere in between, says that we've been
3 overusing it, that's an issue for a designation-by-designation
4 motion.

5 THE COURT: Sure. So you're going to send stuff to
6 Ernst & Young; right?

7 MR. PISANELLI: Yes.

8 THE COURT: Okay. For anything you contend is
9 highly confidential that you're sending to Ernst & Young I
10 want to look at it and make a decision as to whether it's
11 highly confidential or confidential. If you're willing to
12 just give it to me to look at and make the decision, I'll look
13 at it if you want a motion. And you need to file a motion to
14 preserve the highly confidential designation of that material,
15 because I am concerned about the overdesignation of highly
16 confidential information.

17 MR. PISANELLI: Okay. So, in other words, just give
18 it to you --

19 THE COURT: I'm shifting the burden on this issue.

20 MR. PISANELLI: To us. Got it.

21 THE COURT: To you.

22 MR. PISANELLI: Yeah. I get it. So I can either
23 just give it to you and we'll take a ruling with no
24 advocacy --

25 THE COURT: Yes, on any side.

1 MR. PISANELLI: -- or I can give it to you in
2 advance of telling you why we did it?

3 THE COURT: Correct.

4 MR. PISANELLI: Got it. Okay.

5 THE COURT: And I do understand the personnel issues
6 and why those may be highly confidential. But there's some
7 timing issues that go to that, too.

8 MR. PISANELLI: All right. From a timing
9 prospective with Ernst & Young we can give them anything
10 confidential, but you want to see anything highly confidential
11 before it goes to them for purposes of determining whether
12 there's a waiver by giving it to them?

13 THE COURT: No.

14 MR. PISANELLI: Then I'm lost on why we're doing
15 that process at all.

16 THE COURT: Anything you are giving to Ernst & Young
17 I'm going to assume is being treated as confidential unless
18 you get my leave for it to be highly confidential regardless
19 of your designation.

20 MR. PISANELLI: In other words, I don't have
21 permission to give them highly confidential unless I de-
22 designate in advance.

23 THE COURT: Correct.

24 MR. PISANELLI: Okay. I understand.

25 THE COURT: And the reason is because if you're

1 giving it to the internal auditors --

2 MR. PISANELLI: Yeah.

3 THE COURT: -- it's probably not highly
4 confidential.

5 MR. PISANELLI: Well --

6 MR. POLSENBERG: They get everything.

7 THE COURT: They get everything and they get to
8 reveal it to anybody in the world they want.

9 MR. PISANELLI: They can, but that doesn't mean they
10 do.

11 THE COURT: That's part of their job as an
12 independent auditor.

13 MR. PISANELLI: But it doesn't mean that they do.

14 THE COURT: I understand it doesn't mean they do.
15 But as part of their job as an independent auditor they get to
16 reveal it to anybody in the world they want.

17 MR. PISANELLI: Right. On the other hand, they can
18 take our highly confidential information which is [inaudible]
19 even under your analysis highly confidential and determine
20 that these are totally meritless allegations --

21 THE COURT: Absolutely.

22 MR. PISANELLI: -- close their investigation, and it
23 never leaves our company.

24 THE COURT: Absolutely. But because they are
25 independent auditors with separate duties than anybody else in

1 this room, they get to decide if they're going to use that
2 regardless of how you designate it in any way, shape, or form.
3 And since you're making that designation to them, if there is
4 something you contend is highly confidential that you're going
5 to give to Ernst & Young and you're going to assume they're
6 going to protect because it's a totally meritless claim Ms.
7 Wynn made, I'm going to look at it and say whether you get to
8 give that protection.

9 MR. PISANELLI: I understand.

10 THE COURT: I'm not giving Ernst & Young direction
11 as to whether they have to treat it highly confidential. They
12 can reveal it to whoever they want to based upon their duties
13 as independent auditors.

14 MR. PISANELLI: I get that. I understand. Okay.

15 THE COURT: But I have concerns about your overuse
16 of the highly confidential designation for depositions. You
17 want me to say it about five more times today, or did you get
18 the message yet?

19 MR. PISANELLI: I think what you're going to find is
20 exactly what Ms. Spinelli said, is that this is a categorical
21 thing and we will be able to resolve a lot of them by
22 category. In other words, this was inside the deliberative
23 process of a board meeting, period. It's a category of a lot
24 of the things. And if you say yes, a lot of them will stay in
25 there. If you say no, a lot of them will be de-designated to

1 confidential. That's what we meant by categorical.

2 MS. SPINELLI: Your Honor, just -- the deposition --
3 a lot of the depositions that Ernst & Young asked for for
4 testimony were depositions that were automatically deemed
5 highly confidential because the 30 days hadn't passed to
6 designate them. So they're highly confidential in our motion
7 because they didn't go through this process. And I understand
8 if it's --

9 THE COURT: So you haven't done any review yet.

10 MS. SPINELLI: Right. For some of them, not all of
11 them. Because there were a lot of depositions in that 30-day
12 window before the stay, including all of Steve Wynn, all of
13 Kim Sinatra, all of Matt Maddox. And that's why they look
14 like it's a categorical highly confidential. We didn't get to
15 that designation process.

16 THE COURT: So you're saying I shouldn't be nearly
17 as frustrated with you as I am.

18 MS. SPINELLI: That's what I'm saying, Your Honor.
19 Thank you for putting that on the record.

20 MR. PEEK: Your Honor, you should be.

21 THE COURT: My frustration in parties depends on
22 who's trying to take advantage of all of us today. Nobody
23 here is trying to take advantage. We're in a process that's
24 very, very complex.

25 Mr. Polsenberg, why are you still standing up?

1 MR. POLSENBERG: I like to watch.

2 THE COURT: Okay. So now we're going to the motion
3 for protective order.

4 MR. POLSENBERG: Yeah. Here's what I suggest we do
5 on that. Since we filed one brief two days ago and a brief
6 last night, I -- what I had suggested when we were here last
7 time to Mr. Pisanelli was that we come up with categories that
8 are going to be brought up in Elaine Wynn's deposition instead
9 of actually having to go through the deposition and address
10 all the privilege issues to you on a briefing schedule. We've
11 kind of accelerated parts of that. I'd like to do a reply
12 brief. They may want to have more time to redo their
13 opposition brief. But I think we've come at this -- it's a
14 big issue, and I think Mr. Peek said I'm probably going to
15 take it up if I lose, and whoever loses there could take it up
16 to the U.S. Supreme Court. So I think we should properly
17 present the issues. So what I'm saying is if we can get --
18 without having to do that deposition, and this is something I
19 had suggested last time we were here --

20 THE COURT: Now, see, you're not here all the time
21 like the rest of these guys are.

22 MR. POLSENBERG: Yes.

23 THE COURT: They know my answer to that question is
24 always no. I would rather have you do the deposition,
25 preserve on the record the specific questions with the

1 specific objections and the specific privilege directions, and
2 then rule. They all know that, because every time they ask
3 this question that you're asking I say the same answer.

4 MR. POLSENBERG: Judge, that's insane.

5 MS. SPINELLI: I never said that. You said --

6 MR. PEEK: To quote the legal scholar, Ms. Spinelli.

7 MR. POLSENBERG: Because you know --

8 THE COURT: Do you guys know I was his best man?

9 MR. POLSENBERG: Yeah. We can tell how that
10 marriage worked out.

11 MR. PEEK: Are you blaming it on the Judge?

12 MR. POLSENBERG: No, I'm not.

13 THE COURT: Justice Becker performed the ceremony,
14 so he can blame it on her.

15 MR. POLSENBERG: Yeah. Lots of blame to spread
16 around. I get most of it.

17 THE COURT: Okay. All right, Dan. Anything else
18 now that I made you blush?

19 MR. POLSENBERG: I know. You're blushing, too.

20 But I think we -- you know, if they just write out
21 the questions --

22 THE COURT: No.

23 MR. POLSENBERG: Why go through this objecting and
24 instructing? Because you know we're going to raise the
25 privilege issue. I mean, that's --

1 THE COURT: No, I don't know that. I know that
2 you're saying it today, but that doesn't mean it's actually
3 going to be what happens.

4 MR. POLSENBERG: Well --

5 THE COURT: So the depositions are scheduled for
6 August 15th. I've given you a limited time frame for the
7 deposition. I understand there are issues on Sarbanes-Oxley
8 and Gaming Control that you have concerns about.

9 MR. POLSENBERG: Right.

10 THE COURT: Would you like me to talk about those
11 particular issues today?

12 MR. POLSENBERG: I'd rather finish presenting the
13 record on that and fully brief that.

14 THE COURT: My preference is always that we do the
15 deposition, we have the instructions, and then we have the
16 full briefing; because that way we have the concrete question
17 with the concrete direction on a question-by-question basis
18 that the Nevada Supreme Court can then address if it chooses
19 to.

20 MR. POLSENBERG: But, see, I think this is going to
21 be categorical, as well. And I was intrigued by Mr.
22 Pisanelli's presentation that way, because that's the way we
23 did the privilege issues in the endoscopy cases. You could
24 just make these categorical rulings and you've already handled
25 a whole group of questions within each one.

1 THE COURT: Sometimes. And sometimes there's cross-
2 over where they aren't really applied to those categories.
3 And that's part of my problem with that process. And while I
4 am happy to do category rulings at a time when it is briefed,
5 I haven't had that luck in this case.

6 MR. POLSENBERG: Fair enough. So if you want to go
7 ahead with the depo, and then we'll have to have a briefing
8 schedule after that.

9 THE COURT: Uh-huh.

10 MR. POLSENBERG: I suppose at that point they would
11 go first, I would go second, they'd get a reply, and I'd still
12 get a reply on this one. Yeah. Or we could still make it --
13 we could either do another protective order motion, we could
14 do it as part of this protective order. I can't imagine we
15 can do it as part of this, because we haven't covered the
16 questions that they're going to raise. But if you could give
17 us a briefing schedule and a hearing date, I actually thought
18 that we would probably need that hearing date on privilege and
19 related issues before we did the depo.

20 So what you're saying is do the depo, hearing, do
21 the depo with any questions that are remaining?

22 THE COURT: No. Do the depo, make instructions if
23 necessary, motion practice, ruling, you guys take a writ.
24 Because if there's a privilege issue, you're going to take a
25 writ. They're going to take -- they take every issue that

1 comes up on attorney-client and other privileges. I mean,
2 they won't take a lot of other stuff, but anything that deals
3 with attorney-client and other privileges they seem to take
4 and have a period of time we wait for a decision.

5 MR. POLSENBERG: All right.

6 THE COURT: Because at least this way I get the
7 deposition taken on the factual issues to which there would be
8 no objection, and I have an arguable chance to do an
9 evidentiary hearing some day. You understand? It's a
10 different philosophy. You don't have to agree with it. But I
11 have a plan to try and get this case done some day.

12 MR. POLSENBERG: I hear that, Judge.

13 THE COURT: Okay. What else do you guys want to
14 say?

15 MR. PEEK: Your Honor, I do want to be heard,
16 because there are at least two motions directed at their
17 motion for protective order regarding Wynn Resorts' violations
18 of Dodd-Frank and Sarbanes-Oxley. And now as I'm listening to
19 the argument I'm getting the sense that the motion for
20 protective order is directed at Elaine Wynn's deposition to
21 take place on Monday, which I am attending. And I understand
22 that the Court is denying that motion. But my problem is
23 really not that. My problem is I wasn't served with this
24 motion, and I think I'm entitled to be served with this
25 motion. I'm entitled to see what it is --

1 THE COURT: Well, let me read it and see if I agree
2 with you. I'm going to read it again real quick.

3 MR. PEEK: Because you're going to -- because
4 they're asking you to seal it from me, as well. I understand
5 sealing it from the general public is one thing. But from my
6 party, when a party has similar issues related to the conduct
7 of the board, the conduct of Mr. Wynn? This is important
8 issue to Mr. Okada and Aruze USA, its shareholder. And it
9 certainly goes, Your Honor, to our counterclaims which discuss
10 and which allege misconduct on the part of this board and
11 certainly the lack of independence of the board. And this
12 motion I think also goes to the lack of independence.

13 THE COURT: Okay.

14 MR. PEEK: So I don't like this process where I
15 don't even get to see --

16 THE COURT: I don't like this process, either, and
17 I'm trying to get it done as fast as I can.

18 MR. PEEK: Because I'm going to be at that
19 deposition.

20 THE COURT: Okay. So, Mr. Bice --

21 MR. BICE: Yes, Your Honor.

22 THE COURT: -- do you think Elaine Wynn's motion for
23 protective order needs to be kept from Mr. Okada's counsel
24 and, if so, why?

25 MR. BICE: I'm going to look at Ms. Spinelli.

1 THE COURT: I know that wasn't a question you had on
2 your agenda.

3 MR. BICE: Because I just hadn't even given it a
4 thought.

5 THE COURT: I know. That's why I'm asking. Because
6 we've put in place this very cumbersome process because of the
7 position we are in related to the motion to disqualify the
8 Quinn Emanuel firm.

9 MR. PISANELLI: So, Your Honor, here's the difficult
10 position we're put in. We have a person who is a defendant
11 against the Okada claims who has her own responsibilities that
12 will flow from the time that she was on that board.

13 THE COURT: She claims she didn't have any
14 responsibilities. Did you read the brief?

15 MR. PISANELLI: That's a debate for another day.
16 But she does. And so in order to advocate her position I am
17 speaking for her in a little respect here, so Mr. Polsenberg
18 can correct me at any moment. But in order to preserve those
19 responsibilities to the company and defend herself against
20 both our positions and Mr. Okada's she has to walk a pretty
21 fine line, as well. So I understood her position and the
22 lawyers' position to be we are sealing this and having a
23 debate, really a three-party debate, Wynn -- Ms. Wynn, Wynn
24 the company, and Your Honor as the third party only so that
25 she can resolve these issues without also at that same moment

1 violating her duties and responsibilities to preserve
2 confidentiality on our behalf. That's why I did not think
3 that their position --

4 THE COURT: She says she doesn't have any duties.
5 That's what this whole motion is about.

6 MR. BICE: We understand that's part of the motion
7 [inaudible].

8 MR. PISANELLI: But she also understands that we
9 claim she does.

10 (Off-record colloquy - Mr. Campbell and Mr. Pisanelli)

11 MR. PISANELLI: I will repeat what Mr. Campbell just
12 told me, because I --

13 MR. CAMPBELL: Your Honor, I'll say it make it
14 clear.

15 THE COURT: Come on, Mr. Campbell.

16 MR. CAMPBELL: My understanding, Your Honor, is that
17 -- is that Ms. Wynn has independently acknowledged through
18 some sort of a written record that she will cooperate and will
19 do nothing that in any way inures to the benefit of the
20 opposing party or in any way affects our defense in any way.
21 Now, I don't --

22 THE COURT: And you want --

23 MR. CAMPBELL: Your Honor.

24 THE COURT: Keep going. I'm sorry. I'm sorry, Mr.
25 Campbell.

1 MR. CAMPBELL: I appreciate that.

2 THE COURT: Keep going. Keep going.

3 MR. CAMPBELL: So, Your Honor, I believe that that
4 exists. I think that she has that independent obligation. I
5 have not seen that document, but I believe it exists. That's
6 the only thing I'm bringing up right now.

7 THE COURT: And are you referring to the documents
8 she executed at the time she was a board member, or a document
9 that she executed in conjunction with the litigation as part
10 of a joint defense agreement?

11 MR. CAMPBELL: I believe that this preceded her
12 failure to be renominated and continue on the board.

13 THE COURT: But was it in conjunction with --

14 MR. CAMPBELL: I don't know, Your Honor.

15 THE COURT: Okay.

16 MR. CAMPBELL: I'm just -- I'm bringing that to the
17 attention of everyone here because I believe that there is
18 such a document that does exist. I believe that irrespective
19 of whether she's on the board or isn't on the board she's
20 nevertheless still in this case as a defendant and can affect
21 the substantial rights of the board and its members, including
22 Mr. Wynn.

23 THE COURT: Absolutely.

24 MR. PEEK: I need to know --

25 THE COURT: But that's -- hold on. So that's the

1 issue. Because she in this motion, and I'm going to just say
2 the broad brush, is claiming, I'm a whistleblower, I can do
3 anything I want and talk to anybody I want and do whatever I
4 want and you can't keep me from doing it. That summarizes
5 this inch and a half.

6 MR. CAMPBELL: And I understand that, and I think
7 that we're going to present arguments that are going to
8 demonstrate that that is completely flaccid without any
9 support in the law whatsoever. So we can deal with that maybe
10 after you make the decision, you hear our arguments in that
11 regard; because they are completely and totally erroneous
12 without support in the law.

13 THE COURT: So your position, Mr. Campbell, is that
14 because of the obligations Ms. Wynn has she can't even seek
15 publicly in a motion such as this the relief she is requesting
16 because it violates her duties and therefore I can't I give it
17 to Mr. Okada's counsel?

18 MR. CAMPBELL: Your Honor, I think that's sort of a
19 Rubik's Cube question that you're asking me to work through
20 right now without the benefit of your rulings with respect to
21 SOX and the DF motion. So maybe it's best we move on to that.
22 Then we can address any of the particulars.

23 THE COURT: No. I want -- wait. I want to address
24 before Mr. Bice starts whether Mr. Peek gets to see a copy of
25 this motion. That's what I want to address. Because this is

1 not necessarily related to disqualify. It's a motion for
2 protective order related to a deposition related to the motion
3 to disqualify, but the conduct that is occurring here is not
4 necessarily related to the motion to disqualify. We've had
5 other times where other executives and board members of
6 companies have claimed they were whistleblowers, and we've had
7 factual inquiries in those cases, and you might have been
8 counsel for the plaintiff on that side of the room in that
9 case. And you deal with those issues. The question here is,
10 given what's raised here where she claims she's a
11 whistleblower and is entitled to protect whatever she said to
12 those folks, why can't I give it to Mr. Okada.

13 MR. CAMPBELL: Because I think that -- I think at
14 this point, Your Honor, you have to decide whether or not she
15 is a whistleblower. That's -- and that's in large dependent
16 upon what the law is with respect to her standing in that
17 regard. So --

18 THE COURT: And it's also --

19 MR. CAMPBELL: -- you have to decide that question
20 first.

21 THE COURT: And it also in large part deals with the
22 factual issues related to her position at the time that she
23 made the disclosures and whether there was any potential of
24 retaliatory activity against her.

25 MR. CAMPBELL: That's correct.

1 THE COURT: And what you are telling me and the
2 reason I asked about the joint defense agreement, because that
3 could potentially give me another retaliatory avenue which I
4 had not considered --

5 Don't laugh at me, Mr. Bice. I've got this -- I've
6 got all this crap --

7 MR. BICE: Oh, no, no. I'm making a note to myself.

8 MR. PEEK: He's making a note to argue --

9 MR. BICE: I'm making a note to myself.

10 THE COURT: So it's more complex than do I get
11 Sarbanes-Oxley protection as a whistleblower. It's not a
12 motion issue, it's a factual issue.

13 MR. CAMPBELL: No, Your Honor. My suggestion to the
14 Court is a very, very simple one, and that is this, is that if
15 in fact she is a defendant on the same side of our case, she
16 is -- she is in my view, Your Honor, not permitted to at the
17 one time go ahead and disclose information that is highly
18 confidential or in other ways is protected in and of itself
19 simply because she's now suing Mr. Wynn on the other side with
20 respect to what are essentially, you know, personnel -- a
21 personal action against him, which rightfully belongs down in
22 the courts of the Family Court Division. That's my point in
23 all of this.

24 THE COURT: Okay. I understand that point.

25 MR. CAMPBELL: Okay.

1 THE COURT: And that's not -- my issue is --

2 MR. CAMPBELL: They're separate and --

3 THE COURT: -- way more basic.

4 MR. CAMPBELL: They're separate and distinct.

5 That's the point I'm trying to make.

6 THE COURT: And I recognize to the extent there's a
7 resolution in the Family Division I won't interfere with that,
8 and we'll only try issues that are aren't resolved by the
9 Family Division.

10 So my issue is much more basic today. I have in my
11 hand a motion that Elaine Wynn made, and, as we had previously
12 agreed, she did not serve it on Mr. Peek because it dealt with
13 the disqualification issues, because it deals with the
14 deposition I've ordered to be taken pursuant to those issues
15 and the contempt issue that is related to that.

16 My question to Mr. Bice is simple. Because of the
17 information in this document is there a reason that Wynn
18 Resorts believes that the motion for protective order cannot
19 be given to Mr. Okada's counsel.

20 MR. CAMPBELL: And that's one that he can answer on
21 that basis with that clarification.

22 MR. BICE: And I think that the answer to you
23 question as of right now is yes.

24 THE COURT: Why?

25 MR. BICE: Because I need to confer with my --

1 because she has attached a number of exhibits to that motion
2 that I do not believe are publicly available and would not be
3 available to Mr. Okada. That's my only observation, Your
4 Honor. I need to think that through a little bit and be given
5 an -- certainly there are a number of the exhibits that are
6 not.

7 THE COURT: So Exhibit 3 you served on Mr. Peek;
8 right?

9 MR. BICE: I'm sorry. Exhibits 1 and 2 were not.
10 Exhibit 3 certainly --

11 THE COURT: Exhibit 3, 4, 5 maybe not.

12 MR. BICE: I don't think we -- Your Honor, I'm just
13 double checking that we did.

14 MR. POLSENBERG: If I might --

15 MR. BICE: We did. So the answer to your question
16 is we did not serve those, Exhibit Number 3 on Mr. -- oh, no.
17 We did. Yes. I apologize, Your Honor. 3, 4. 5 no, 6 no, 7,
18 8, 9, 10, 11, 12 --

19 THE COURT: And then 7, 8, 9, 10, those aren't your
20 documents.

21 MR. BICE: Correct. Those are all just public
22 filings. 14.

23 THE COURT: And then we're down to Mr. Wynn's depo
24 that they were present at.

25 MR. BICE: So I think it's the letters, Your Honor,

1 that -- and again, you know, my only observation on that, Your
2 Honor, is I'd like an opportunity to confer with our folks
3 about this, because I don't even remember how much of the
4 correspondence is quoted in the brief that Ms. Wynn filed.
5 I'd have to look at that. I certainly have no problem doing
6 that quickly and then addressing that with the Court if we
7 can't work that out amongst ourselves.

8 THE COURT: Okay. We're going to take a short break
9 while you address that issue before I proceed any further.

10 MR. BICE: Okay.

11 (Court recessed at 10:36 a.m., until 10:50 a.m.)

12 THE COURT: All right. Team Wynn, did you have a
13 chance to consult on the limited issue of whether the motion
14 for protective order filed by Elaine Wynn can be given to Mr.
15 Okada's counsel?

16 MR. PISANELLI: We have. And let me explain our
17 position to you, please.

18 THE COURT: Perfect.

19 MR. PISANELLI: So I think it's important to keep in
20 mind what started this whole thing and what brought us here.
21 In the middle of a deposition Elaine Wynn's counsel pulls out
22 a privileged email, slides it across the table to start asking
23 questions in front of Okada and everybody else without regard
24 to our rights. Everything unravels from that moment. And so
25 now we know, contrary to what she and her counsel presented to

1 you, she has left this company mid litigation, went in and
2 took we don't know how many documents that were not hers to
3 take, and, more importantly, we don't know of that body of
4 information she took how many of those documents are
5 privileged that now she and her lawyers are in possession of.

6 With that context we now sit and have the motion
7 from her where she is alleging things about this company that
8 she learned and obtained while she was inside of our
9 privilege. We do not know how much of this motion, if any,
10 admittedly, comes from that improper evidentiary base, the
11 improper evidentiary base of course being the privileged
12 information her and her lawyers are in possession of. And so
13 we now have to take really from the dark a position of
14 protecting our rights as we move forward to make sure that we
15 don't accidentally allow something to go in the hands of our
16 opponent that has at its core our privilege. We don't know
17 that, because we haven't yet done the deposition.

18 Now, from the Okada side the prejudice that we're
19 looking at is nonexistent. And here's why. What Mr. Peek is
20 complaining about at its heart is discovery, I would like to
21 discover what is in there, it might be useful to my position.
22 Fair point. I would make it if I was in his seat. But my
23 recommendation to the Court is let us go forward now, because
24 Mr. Peek doesn't have any standing in this discussion, he
25 doesn't have any standing on the protective order, and he

1 doesn't have any standing our protection of our privilege.

2 Now, you may find at the conclusion of the
3 deposition of Elaine Wynn and after all of the litigation that
4 will flow from her assertion of privilege that there are no
5 privileges or, more likely, that some things are and some
6 things are not, and then the record is preserved both from her
7 testimony and this motion that Mr. Peek will then be in the
8 position for Your Honor to say, okay, Mr. Peek, here it is,
9 you can see all of this, but not that, you can have this
10 portion of her testimony, but not that portion. In other
11 words, we will then have developed the evidence and developed
12 the arguments and the record for Your Honor to determine
13 whether we have been prejudiced or not. It seems that is the
14 only way to make sure that Ms. Wynn can advocate her position
15 for whatever protection she claims she's entitled to, and we
16 can preserve our rights in defense of her position without
17 being compromised and having to sacrifice something even
18 greater as it relates to the big case and our privileges than
19 simply this deposition. So Mr. Peek can have the debate
20 through a motion, through a discovery practice later, but not
21 now.

22 THE COURT: Okay. So do you want to tell me
23 specifics in this, or do you just want to rely on your general
24 position you just told me?

25 MR. PISANELLI: Well, I can't tell you specifics,

1 Judge, because I don't know the source of her information when
2 she says anything in her; right? I know that the legal
3 argument, which I will defer to Mr. Bice, he has some points
4 he wants to make, you know, whether a case applies to her in
5 the position she's in, which is not a disputed fact is nothing
6 that needs to be secret. But anything that is factually
7 based --

8 THE COURT: There's nothing factual in this motion.
9 The only factual things arguably are Exhibits 1 through 6.
10 That's the only factual stuff in this motion. Everything else
11 is law or articles somebody got off the Internet.

12 MR. PISANELLI: Well, that stuff obviously is never
13 going to be the subject of our protective debate with you. I
14 get that part.

15 THE COURT: So let me go back to what it was I was
16 asking.

17 MR. PISANELLI: Okay.

18 THE COURT: Not whether on the privilege issues, if
19 we ever get to those issues at the pace we're going, but from
20 the motion for protective order page 1 through 32, which is a
21 certificate of service --

22 MR. PISANELLI: Yep.

23 THE COURT: -- is there anything in that document
24 that you believe is factually based related to the privilege,
25 as opposed to allegations that regardless of whatever we

1 believe about them relate to the application of federal law?
2 That's what I'm trying to find out. Because I understand
3 after my discussion with Mr. Bice there may be issues related
4 to Exhibits 1 through 6, and I'm willing to pull those out of
5 the packet before I hand this copy to Mr. Peek.

6 MR. PISANELLI: Okay. That -- Your Honor, I will
7 concede immediately pulling those exhibits out is 90 percent
8 of our battle. I'm with you on that.

9 THE COURT: All right.

10 MR. PISANELLI: But let me take a moment --

11 MR. PEEK: I understand that --

12 MR. PISANELLI: Let me finish, please.

13 MR. PEEK: -- Exhibit 3 was produced, Your Honor.

14 MR. PISANELLI: Let me finish.

15 MR. PEEK: -- the Court's inquiry previously.

16 MR. PISANELLI: Let me finish, please.

17 So, Your Honor, the only thing I want to make sure
18 as I look through this fact section -- remember, she is
19 referencing the communications with EY and the compliance
20 committee, and those factual assertions, I can't remember off
21 the top of my head of whether they're specific in her fact
22 section to cause me pause.

23 THE COURT: They didn't seem to me to be fact based
24 at all when I read it.

25 MR. BICE: Your Honor, my belief is that Ms. Wynn

1 filed a motion to seal on this document, and --

2 THE COURT: I'm sure she did, because, remember,
3 that was the process we started. What I'm trying to skip
4 ahead to is can I give a portion of this document to Mr. Peek.
5 Because I don't agree that this document is entitled to the
6 same protection that issues related to the privilege and
7 waiver of privilege issues that I have to address is.

8 MR. BICE: And here's my -- the reason that I asked
9 that is this, Your Honor. Is I'm not sure why we need to
10 decide this question right now today, because my concern is
11 that we didn't look at this document with that sort of
12 question in mind. And if he wants to file an opposition to
13 the motion to seal, we could have a process by which we could
14 have that thoroughly sort of vetted and reviewed in that
15 context. But if the Court is telling me you're not going to
16 do that, there are summaries of the letters throughout the
17 brief. The whole statement of facts from Ms. Wynn I just a
18 summary of the very same letters that the Court is
19 acknowledging they can't have. So that's the problem that
20 we're sort of facing right here, Your Honor, on this. It
21 seems like it's an oral opposition to the motion to seal that
22 -- or a motion to unseal, an oral motion to unseal it that we
23 just haven't had a fair opportunity to address. And you can
24 see that the entire fact section is largely a regurgitation of
25 the letter.

1 THE COURT: Well, what I am becoming more concerned
2 with is that this issue related to the disqualification is
3 running the whole case and that things are being filed related
4 -- arguably related to the disqualification and the contempt
5 issues that really are broader issues that aren't limited to
6 those. And this is one of those items.

7 MR. BICE: I certainly think that from the legal
8 argument that is true. But I think the factual context in
9 which this legal argument arises it is -- directly grows out
10 of the disqualification and privilege questions. And so
11 therefore I think that the Court is -- you haven't severed Ms.
12 Wynn, and I understand that. But --

13 THE COURT: I probably can't, because she's a
14 defendant. And I keep coming back to that.

15 MR. BICE: Well, what the Court has done I think is,
16 without -- maybe not articulating it this way, but you really
17 have severed out this disqualification and privilege question
18 from the Okada parties' participation in it. And that is what
19 we are simply asking to be maintained so that there's not a
20 back-dooring of our privileges.

21 THE COURT: Anything else you want to say, Mr. Bice,
22 related to whether I give a copy to Mr. Peek or not?

23 MR. BICE: Your Honor, the point I'd have to make is
24 that the entire factual section is a summary of the letters,
25 and that is --

1 THE COURT: And so when it goes through and it
2 discusses the particular dates and issues related to those
3 communications you think that's too interrelated with the
4 privilege issues?

5 MR. BICE: It certainly is my concern in looking at
6 it right now, Your Honor. I mean, there are quotes from the
7 letters.

8 THE COURT: Okay. So what I'm going to order the
9 Wynn parties to do is to propose a redaction to this document
10 to be provided to Mr. Peek. How long do you need to do that?

11 MR. PISANELLI: Today or tomorrow.

12 THE COURT: Okay. So you'll propose a --

13 MR. PEEK: Will there be a log? Will there be some
14 form of a log, Your Honor, so that we can be able to see
15 whether or not those redactions are appropriate? I mean, I
16 have a -- I want to be heard on this issue, because I'm
17 becoming very, very troubled by the lack of my ability to
18 search for the truth.

19 THE COURT: Okay.

20 MR. PEEK: Because what I don't know, Your Honor --
21 and I'll wait till they're done at the lectern. I don't want
22 to take their time.

23 THE COURT: What I'm trying to do is I'm trying to
24 get you a redacted portion that deals with the not factual
25 issues related to the privileged communications that are at

1 issue related to the motion to disqualify. And I think by
2 having Mr. Bice provide you with a redacted version similar to
3 the way you redact motions when they're filed publicly will
4 probably give you most of the information you want. But if
5 you disagree and think the redactions are too broad, you can
6 then file a motion to release the additional information. But
7 I want to at least get you the information that relates to the
8 legal issues that are being raised here, as opposed to the
9 issues that more directly relate to the facts.

10 MR. PEEK: When Mr. Bice is done at the lectern I'll
11 comment, Your Honor, to that.

12 THE COURT: Well, I'm trying to get it --

13 MR. PEEK: I don't want to take away from his time.
14 He's monopolizing the lectern, so I don't want to go up there
15 until he's done.

16 THE COURT: Mr. Bice is going to take as much time
17 as I give him. You know he'll keep talking forever.

18 MR. PEEK: Been there, done that, Your Honor, with
19 him.

20 THE COURT: So, Mr. Bice, you think today or
21 tomorrow?

22 MR. BICE: Yes.

23 THE COURT: Okay. So, Mr. Peek, once you get that
24 if you do not believe that the redactions -- if it's too
25 heavily redacted in some portions and you think you need more

1 information to evaluate it, then I'll have an OST signed and
2 we'll hear it.

3 MR. PEEK: Okay, Your Honor. Because that --

4 MR. BICE: Go ahead.

5 THE COURT: Yeah.

6 MR. PEEK: I don't want to look at this.

7 Here's what I haven't heard. And maybe I'll know
8 this when I get a redacted version. But I'm concerned that
9 the redacted version may not give me this information. What I
10 heard from the Court is that there are certainly public --
11 publicly available information in the motion as exhibits,
12 there is an exhibit, as I understood, Exhibit 3 that has also
13 been produced to the Wynn parties. I think you asked that
14 question. I could be wrong, but I heard that earlier. So I
15 don't know why all of 1 through 6 should not be provided to
16 me. So maybe that'll be part of their redaction.

17 THE COURT: Well, one of the documents that they're
18 seeking to protect is a communication back to Ms. Wynn in
19 response to her letter to the audit committee, which at this
20 point --

21 MR. PEEK: I don't know that that's a -- that's not
22 a privileged communication, Your Honor.

23 THE COURT: I understand. I didn't say it was
24 privileged at this point.

25 MR. PEEK: So I'm concerned about -- I know we have

1 a disqualification issue. The disqualification issue as I
2 understand it is whether or not Quinn Emanuel from Elaine Wynn
3 has received attorney-client privileged communications that
4 Ms. Wynn received while she was a member of the board of
5 directors or an officer or whatever capacity she had, whether
6 or not she has then taken that information received in the
7 attorney-client context and provided it to Quinn Emanuel. I
8 haven't heard that this motion addresses those issues that Ms.
9 Wynn in this motion is revealing attorney-client
10 communications. Because I don't think she would do that,
11 because, if she did, that would go right to their
12 disqualification issue. If they are previewing to you within
13 this motion for protective order information that she received
14 while a member of the board of directors that was privileged
15 from Ms. Sinatra or other counsel, Mr. Turk, then it seems to
16 me that that's proving Wynn Resorts case. And I don't believe
17 that Quinn Emanuel would have done that in this motion. So
18 when you say redaction, you're not redacting what I understand
19 to be attorney-client privileged communication. That's part
20 one.

21 Part two -- and I don't say this lightly and people
22 may take offense at this, but what's troubling to me is when
23 we talk about Sarbanes-Oxley and we talk about Dodd-Frank and
24 we talk about a member of a board of directors that we all
25 know that there is a crime fraud exception to attorney-client

1 privilege. And this is beginning to trouble me that what
2 we're seeing is that she is being shut down from revealing
3 what may well have been -- and, again, Your Honor, I don't
4 want to go -- you know where I'm going. So that's also very
5 troubling to me. And I'm not suggesting that that happened,
6 but I don't even know that when I don't get to see those types
7 of motions. And it's very troubling to me because as I move
8 forward in this case the information that Ms. Wynn wants the
9 public -- wants to have known about the way the company
10 conducted itself, the way Mr. Wynn conducted himself is
11 important to my case against the board of directors, including
12 Ms. Wynn if she's now willing to come forward and say what she
13 has apparently been saying.

14 THE COURT: Okay. So, Mr. Peek, you're going to get
15 a redacted version of Elaine Wynn's motion. I'm having the
16 Wynn parties do the redaction instead of the Elaine Wynn
17 parties do the redaction because the Wynn parties are the ones
18 with the concern about the disclosure of the privileged
19 information and what I will call the fruit of the poisonous
20 tree even though we're not in a criminal case.

21 So at some point in time you're going to give us
22 that in the next few days.

23 MR. BICE: Yep.

24 THE COURT: Mr. Peek, you're going to get that.

25 MR. PEEK: Would I get some sort of a log, Your

1 Honor, so that I understand what's been redacted? Because
2 without having some sort of a log of subject matter --

3 THE COURT: Typically -- typically the redactions
4 you can figure out from the context.

5 MR. PEEK: Let's hope so.

6 THE COURT: And if you can't, then that'll be part
7 of the motion, won't it? So then you're going to file a
8 request, it'll be set on an OST, and we'll hear it after we've
9 had an opportunity to brief it. So while I clearly think many
10 of the exhibits attached here have nothing to do with any
11 factual information, I recognize your concern, Mr. Pisanelli,
12 Mr. Campbell, and Mr. Bice, that a couple of them probably do,
13 I will give you an opportunity to provide limited redactions
14 before I have it provided to Mr. Peek.

15 MR. PISANELLI: Thank you, Your Honor.

16 THE COURT: Mr. Polsenberg, was there anything you
17 wanted to say on that process before I go next?

18 MR. POLSENBERG: Just as long as we get a copy.

19 THE COURT: Of the redacted version.

20 MR. POLSENBERG: Yeah.

21 THE COURT: Yeah. Okay. You have a copy of the
22 unredacted, because you filed it.

23 MR. POLSENBERG: I do. I did. I'm not sure what
24 we're doing next, because since --

25 THE COURT: I'm going to listen to him before I say,

1 the motion is denied, go do the depo.

2 MR. POLSENBERG: But you already denied the motion.

3 THE COURT: I didn't deny it yet. I told you what I
4 was thinking of doing.

5 MR. POLSENBERG: Well, I would have argued the
6 merits if I was convinced I had the slightest chance that you
7 were going to grant my motion. So I think you've already -- I
8 mean, I've already listened to argument from two other counsel
9 on why I lose this entire case on the merits, which was
10 totally nonresponsive to anything, I'd rather not listen to
11 another argument on why I'm going to lose Sarbanes-Oxley and
12 joint defense agreements.

13 THE COURT: I don't know that there's a joint
14 defense agreement.

15 MR. POLSENBERG: I think we should take the
16 Sarbanes-Oxley issue after the deposition and when I get a
17 chance to finish briefing it.

18 THE COURT: I understand. And you heard me tell Mr.
19 Campbell a few minutes ago that some of the issues related to
20 whistleblowers involve factual issue and that is a signal that
21 I might wait until the deposition is completed and the
22 privileges are asserted or limitations are asserted at the
23 deposition before I go ahead and make a ruling on it.

24 MR. POLSENBERG: Right.

25 THE COURT: But I am willing to listen to Mr. Bice,

1 because sometimes he has interesting things to say.

2 MR. POLSENBERG: Very good. Acknowledged, Your
3 Honor.

4 MR. BICE: Your Honor, the observations that we want
5 to make are just really a couplefold. As we proceed through
6 the deposition -- and I understand the Court's instruction
7 that we will ask --

8 THE COURT: They're the same I always give you.

9 MR. BICE: Yes. Exactly. But, of course, at the
10 same time we have this motion from Ms. Wynn. And your
11 description of it is exactly right. You gave a perfect
12 summary of it, I can do whatever I want. That is exactly what
13 her position is. I don't know -- the motion should just be
14 styled that, Elaine Wynn's motion to do whatever I want.
15 Because that's what it is.

16 THE COURT: Because I'm a whistleblower.

17 MR. BICE: Well, yeah.

18 THE COURT: Okay.

19 MR. BICE: We'll see about that. That's what all
20 those press releases evidence, as well. But, nonetheless, our
21 point here on this, Your Honor, is the suggestion that
22 Sarbanes-Oxley or that Dodd-Frank have any application to Ms.
23 Wynn is outright laughable, and we will be happy to address
24 that at the point of the deposition. And for her to pretend
25 that she was outed -- look at what her motion says, Your

1 Honor, by merely asking these questions at the deposition,
2 merely asking these questions about her violation of a Court
3 order, that's what Ms. Wynn wants to forget. Actually, I'm
4 quite sure she hasn't forgotten it, and that's why we got this
5 motion at the last minute and that's why they were, oh, let's
6 not even allow this deposition to go forward, is because Ms.
7 Wynn knows exactly what she did and she knows exactly what the
8 protective order prohibited her from doing. And it is not a
9 coincidence to anyone in this room that this campaign of this
10 letter writing to Ernst & Young happened on the same day that
11 the Court entered its stay. The privilege log shows exactly
12 what happened, and it exposes her and exposes Quinn Emanuel of
13 they just don't like the protective order because it doesn't
14 allow them to do what they want when they want to do it.

15 And let's remember how important these protective
16 orders are, Your Honor. As the U.S. Supreme Court has said,
17 these documents exist for a reason, courts impose them for a
18 reason. The process --

19 THE COURT: But they're supposed to be used in a
20 limited fashion without overdesignation of highly
21 confidentially.

22 MR. BICE: And I understand the Court's concern
23 about that, because you remember I had some concerns in
24 another case --

25 THE COURT: Absolutely. Which is why it's --

1 MR. BICE: -- about some lawyer designating
2 everything as confidential.

3 THE COURT: Turn about is fair play, is it?

4 MR. BICE: And I'm not going to look at that person
5 who's sitting in the courtroom. But, nonetheless --

6 THE COURT: Mr. Peek, it's nice of all to have a
7 good sense of humor.

8 MR. PEEK: Your Honor, I was -- I got the look.

9 THE COURT: Yeah. Let's keep going.

10 MR. BICE: So, Your Honor -- but this process --

11 MR. PEEK: So turn about is fair play.

12 MR. BICE: -- particularly the depositions, Your
13 Honor, depositions only occur because of the Court's power.
14 That's it. And now Ms. Wynn is going around trying to
15 disseminate that very information in violation of the
16 protective order. So to suggest with this phony argument that
17 Dodd-Frank immunizes her compliance with the Court order is
18 laughable. It is absolutely laughable.

19 So our point being this, Your Honor. There'd better
20 be a Rule 11 good-faith basis to be saying -- instructing a
21 witness not to answer a question at a deposition if they're
22 going to instruct her not to answer a question about who it
23 was she disseminated this information to, who of her friends,
24 who was it that she had call people, et cetera. Because there
25 is absolutely no protection for Ms. Wynn violating a Court

1 order. And that's what this is really all about. And so
2 we'll be happy -- obviously it bothers me a little bit that
3 Mr. Polsenberg now comes in and tries to say, well, now that
4 I've made them work over two days to oppose a 30-page motion
5 that we obviously took our -- they took their fair time in
6 drafting, now I want to file a reply brief after I made them
7 generate their opposition in two days. I think that's a
8 little unfair. You want to file motions on OST, you know that
9 the consequences are you don't get to be filing replies after
10 you make the other side drop everything to do it. So I do
11 think that process is unfair.

12 We will proceed with the deposition. If she isn't
13 properly instructed not to answer questions, we will be filing
14 a motion against her, and we will bring that matter to the
15 Court's attention promptly. Because we want to get this issue
16 resolved. We know that she took documents from the company.
17 She misrepresented to the Court that she took documents from
18 the company. Everybody seems to now want to brush that onto
19 the side, Mr. Zeller telling the Court, oh, this isn't like
20 Jacobs where there were a lot of documents. He's right about
21 one thing. It's way worse, because she took the document in
22 the middle of the litigation after signing documents
23 acknowledging that she wasn't allowed to do that and then
24 concealed that from us and concealed it from the Court and
25 represented to the Court she didn't do it, which was false and

1 knowingly false when made to the Court.

2 So we will proceed with the deposition. We will ask
3 these questions. And if we are back here in front, I'm just
4 giving fair warning no one who has looked at any actual Dodd-
5 Frank cases or any SOX cases believes that she somehow is
6 entitled to avoid answering questions about violation of a
7 Court order in good faith.

8 THE COURT: Okay. So, Mr. Polsenberg, do you want
9 to say --

10 MR. POLSENBERG: I've got to reply on my motion,
11 Judge.

12 THE COURT: Absolutely.

13 MR. PEEK: Your Honor, before he replies, do I get
14 the opposition, as well, in a redacted manner?

15 THE COURT: Sure. Can you redact the opposition,
16 too.

17 MR. BICE: Yes.

18 MR. PISANELLI: Yes. Your Honor, consistent with
19 the redaction order, Mr. Peek and the Okada parties certainly
20 cannot be allowed to attend the deposition. Otherwise we --

21 THE COURT: I didn't say that, Mr. Pisanelli.

22 MR. PISANELLI: Just checking.

23 MR. PEEK: Well, Your Honor, so you're saying I'm
24 not allowed to --

25 THE COURT: No. He's saying you can't attend the

1 depo. And I haven't said that.

2 MR. PEEK: Okay. Good. Because I want --

3 THE COURT: I may say that in a minute, but I
4 haven't said that yet.

5 MR. PEEK: -- to be heard on that.

6 THE COURT: And I'm going to write that down now.

7 MR. PEEK: That's why I waited, Your Honor, because
8 I didn't want to go there and then [inaudible].

9 THE COURT: Well, I've got it written down. So
10 we'll --

11 MR. PEEK: Dan, we've been doing well here till you
12 came in. So don't disrupt, please.

13 THE COURT: Mr. Polsenberg.

14 MR. POLSENBERG: Thank you. My reply. You know,
15 this is -- this is what I was worried about in the opposition.
16 I mean, I'm going to try to get you back to the motion,
17 because, you know, Wynn's counsel got up here and said, you
18 know, we're all trying to brush aside all these bad things and
19 all these issues and things that aren't in front of you right
20 now. And I'm trying to get it focused on one simple issue.
21 We're talking about disclosures to the auditors. It's where
22 we started out earlier this morning, where I said, yes, I
23 agree with you that these motions are related. We're talking
24 about -- and, yes, I have a much broader reading of Sarbanes-
25 Oxley than counsel does. I think that them finding out what

1 -- it's not just who, but it's what and when and all of these
2 disclosures. And, yes, I think there's a lot of retaliation
3 that I see here. I don't think my position is at all
4 laughable, but I see them trying to win a different issue, and
5 in trying to win the different issue trying to get you to
6 ignore the issues that I'm presenting here. I understand that
7 this was done on an order shortening time. And I do -- and I
8 appreciate if they don't need to do another answering brief.
9 But this is an incredibly important issue. The scope and
10 breadth of these issues, these things related to privileges I
11 just -- I'm just amazed that we are ignoring all that, calling
12 my position laughable when I've got authority that supports
13 me. And I would really love to have a real chance to address
14 these issues. And if you're going to grant the motion for
15 protective order, which I -- I mean deny the motion for
16 protective order, which I believe you're doing so that it can
17 be set up in a certain way, I don't want you to lose scope of
18 what it is just because of us being painted with this broad
19 brush. This is a very important legal issue.

20 THE COURT: I understand. But the interpretation of
21 whether certain activities or communications may receive
22 protection has a factual element that needs to be identified.
23 And the only way that's going to be identified is if the
24 deposition goes forward and we have that factual information
25 before I make a determination.

1 MR. POLSENBERG: But, Judge, is that really true? I
2 mean, if it's anything --

3 THE COURT: Yes, it's really true.

4 MR. POLSENBERG: If it's -- if --

5 THE COURT: Because if she made a disclosure to her
6 neighbor down the street and then the neighbor down the street
7 is the one who makes the anonymous call to Ernst & Young, then
8 I don't have any protections for that. You understand what
9 I'm saying?

10 MR. POLSENBERG: Yeah. But they can't ask what
11 disclosures we made to Ernst & Young, because that would be --
12 and we will be raising objections to that.

13 THE COURT: You can make the objections to that,
14 make your instructions, and then I'll make a ruling at the
15 briefing schedule. Okay. So but I just -- everything in the
16 world isn't protected. And that's what you're saying in this
17 motion basically.

18 MR. POLSENBERG: I am saying a lot is, yes.

19 THE COURT: Okay. So the motion is denied without
20 prejudice for you to properly instruct the witness during the
21 deposition on any issues of which you believe there is
22 arguable merit for a privilege to be asserted and for us then
23 to have briefing not on an order shortening time related to
24 those provision issues.

25 MR. POLSENBERG: Excellent. Thank you, Your Honor.

1 THE COURT: Okay. So when you file the motion to
2 compel her to appear don't put an OST on it, because we need
3 to get good briefing on this, whoever it is who puts the OSTs
4 on. I don't know which one of you --

5 MS. SPINELLI: Yes, Your Honor.

6 MR. BICE: We understand.

7 THE COURT: -- which of you it is.

8 MR. BICE: We understand, Your Honor.

9 THE COURT: All right. So --

10 MR. BICE: They will get -- they will get ample time
11 to oppose our motion.

12 THE COURT: Yes. Okay.

13 So this was also my monthly status check on how we
14 were doing. Since apparently I dropped the ball since I
15 thought I gave an order to Mr. Urga which never left my
16 office, you guys lost a week on the protocol related to the
17 disqualification issues. And I apologize for that. And thank
18 you, Mr. Urga and Mr. Malley, for cooperating with Dan's
19 inquiry of you yesterday of where things were. So how are
20 doing? You're standing up. I'm assuming you want to talk.
21 Or are you like Mr. Polsenberg, it gives you a better
22 viewpoint to watch from?

23 MR. PISANELLI: No. I have something I still need
24 guidance from Your Honor, but it's not your point. So Ms.
25 Spinelli can address your point.

1 THE COURT: So how are we doing since I got you the
2 order last night about 5:00 o'clock?

3 MS. SPINELLI: We filed a notice for entry.

4 THE COURT: That's great.

5 MS. SPINELLI: And we did that last night. And I
6 talked to Mr. Zeller this morning about having a call
7 tomorrow. WE'll send an email to Advance Discovery and try to
8 set up a call tomorrow with Advance Discovery to move forward
9 on that protocol.

10 THE COURT: And I did give the date in here, I can't
11 remember what date it was, but I filled in the blank you guys
12 had left for the date by which they're supposed --

13 MR. ZELLER: I think it was the 19th, Your Honor.

14 MR. URGAS: 19th, Your Honor.

15 MR. ZELLER: 19th.

16 THE COURT: I put the date in there for what you
17 left, and I tried to give you enough time to do it
18 effectively. And also the other issue had to do with a
19 notebook that was hard copies, and I had made a decision
20 that's not going to be scanned at this point but may at a
21 later time if you guys decide to. And I dealt with the
22 metadata issue, and I modified your special master provisions
23 and I modified your notice provisions and motion practice
24 provisions.

25 MS. SPINELLI: Understood.

1 THE COURT: And I thought I'd done all that before
2 in handwriting on Mr. Urga's copy of an order, but I -- I
3 apparently lost it because somebody let me touch an original.

4 MS. SPINELLI: No worries. It was number one on our
5 status check today.

6 We also -- I circulated admittedly yesterday, Your
7 Honor, to all counsel a proposed TRO order, because there was
8 no order entered on the TRO before. And I don't -- I didn't
9 hear back from anyone, understandably, again, because I did it
10 yesterday. So I have copies of what I sent to everyone. I
11 have a copy for Your Honor.

12 THE COURT: Can I have a copy. And then if somebody
13 has an objection, will you let me know by this afternoon.

14 MR. URGa: We will, Your Honor.

15 THE COURT: That'd be great.

16 MS. SPINELLI: I don't know if that one I signed,
17 actually.

18 THE COURT: I'm not allowed to keep them. I've been
19 reinstructed not to keep originals today.

20 MR. PISANELLI: I don't get them, either, ever.

21 MS. SPINELLI: I signed this one.

22 THE COURT: Just let Dan --

23 MR. URGa: Debbie, is that the one you sent about
24 5:00 o'clock last night?

25 MS. SPINELLI: Yes.

1 MR. URGAL: Okay.

2 THE COURT: Okay. Any more things on your status
3 check agenda, Ms. Spinelli?

4 MS. SPINELLI: Mr. Miller and I were talking about a
5 briefing schedule for the MPDPA briefing, Your Honor; and I
6 don't know if I have an agreement yet, but we may have an
7 agreement on my team filing a brief next Friday, his the
8 Friday after, with a hearing on the 2nd -- 1st or 2nd. I'm
9 waiting to hear back from him.

10 THE COURT: And this has to do with my 18 boxes that
11 are sitting in Dan's office that I have concerns on why Mr.
12 Okada's name is blanked out on half the stuff I did my random
13 selection on?

14 MS. SPINELLI: Yes. And last Friday we submitted a
15 joint status report on opposition.

16 THE COURT: I read it.

17 MR. PEEK: She read it and gave a minute order on
18 it.

19 THE COURT: And he told me that it's not like
20 Jacobs. That was what the brief said.

21 MS. SPINELLI: That's right. We did.

22 MR. PEEK: We all agreed on that, Your Honor. We
23 filed a joint report.

24 THE COURT: You all agreed it's not like Jacobs
25 because nobody was in Macau most of the time.

1 All right. What else on your agenda, Ms. Spinelli?
2 Mr. Pisanelli.

3 MR. PISANELLI: Attendance of Mr. Peek.

4 THE COURT: I'm not there yet.

5 MR. PISANELLI: Okay.

6 THE COURT: I'm on status check issues.

7 MR. PISANELLI: All right. That's it.

8 THE COURT: Anything else on your side of the room
9 before I go to Mr. Peek and company on this side of the room?
10 Mr. Peek.

11 MR. PEEK: The only issue, Your Honor, that I had
12 raised, and I thought that was why the Court moved the status
13 check from the 18th to the 11th, is when are we going to have
14 what are now two hearings with respect to the activities of
15 Elaine Wynn, one being the preliminary injunction combined
16 with a sanctions hearing. That's what a deposition is about
17 on Monday, as I understand it. And the other, of course, is
18 the disqualification. And I know that you now have a protocol
19 in place for folks to begin to review documents and come back
20 to you. But I'm looking to move this case forward so that we
21 can have a trial sooner than later.

22 THE COURT: We have a trial scheduled for February.

23 MR. PEEK: We have a trial scheduled for February.
24 We have a significant amount of discovery left to do before
25 that.

1 THE COURT: And I understand there were issues
2 related to experts that have been suspended because of where
3 we are in the process.

4 MR. PEEK: Well, the only date that was suspended,
5 Your Honor, was the date -- and this is all actually addressed
6 in the stipulation that hopefully with your guidance this
7 morning on what is -- what constitutes brought to trial,
8 that'll resolve that stipulation, and it should get modified
9 and executed hopefully this week. So that'll resolve the
10 issue of scheduling order and discovery. Because what that
11 stipulation does provide is that all of those discovery
12 deadlines that the Court has currently set within its
13 scheduling order are going to be vacated. So that's the
14 expert --

15 THE COURT: Not modified?

16 MR. PEEK: Not modified at this time, because we
17 don't know what the extent of the stay will be, Your Honor.
18 That's the problem that I'm facing, is you've got two motions
19 -- or two evidentiary hearings that I understand the Court is
20 going to conduct. And so perhaps with some guidance from the
21 Court of setting those evidentiary hearings today or sooner
22 than later we will at least see a road -- or see a light at
23 the end of the tunnel so that we can begin to reset
24 everything, including the discovery schedule.

25 THE COURT: Okay. Well, it looks like I may have

1 room on my September stack, because Mr. Pisanelli has like
2 five cases on it, and I know two of them have settled.
3 Because he can't do all of them.

4 MR. PEEK: Okay. Well, that's good, because I would
5 like to see --

6 THE COURT: You'd like to see that last week of
7 September, first week of October when he finishes the
8 Swarovski Retail Ventures versus JGB Retail Lessee about this
9 really cool thing that is on the corner of Flamingo and Las
10 Vegas Boulevard, a starburst.

11 MR. PEEK: Yeah. I've watched that proceeding, Your
12 Honor, from time to time. Very important to everybody on both
13 sides.

14 But what I'm interesting in is moving this case
15 forward. So you have two evidentiary hearings. So if you're
16 going to schedule --

17 THE COURT: I'm going to do one.

18 MR. PEEK: Well, you said you were going to do two.
19 You were going to do the one related to the preliminary
20 injunction and sanctions --

21 THE COURT: I think they go together.

22 MR. PEEK: Okay. So one will combine --

23 THE COURT: Yes.

24 MR. PEEK: -- that -- the preliminary hearing, the
25 sanctions related to the letter to the board copied to Ernst &

1 Young, and the disqualification?

2 THE COURT: Yes.

3 MR. PEEK: Okay.

4 THE COURT: I can't do it right now because I've got
5 to ask some questions of Mr. Urga and his team, and I'm not
6 quite there because I was [inaudible] --

7 MR. PEEK: No. That's why I thought you accelerated
8 from the 18th to 11th is begin to set these so we could --

9 THE COURT: I was hoping. Okay.

10 Now, Mr. Zeller, Mr. Urga, Mr. Polsenberg, the
11 process that is outlined under the order that you got
12 yesterday gives you a bit of time to do that deposit, and then
13 the review process starts.

14 MR. ZELLER: Right.

15 THE COURT: The review process is in my mind what
16 controls most of our time. Can you give me a best guess?

17 MR. ZELLER: Unfortunately, I wouldn't want to give
18 a guess right now. Because once we get --

19 THE COURT: How about a best speculative estimate?

20 MR. ZELLER: As quickly as humanly possible.

21 THE COURT: No, no, no.

22 MR. ZELLER: Your Honor, I just don't know. Until I
23 get what the directories are, it's just part of the first
24 step, we'll see what the quantities are. Because, again, we
25 didn't create any of this stuff. I mean, Munger created the

1 hard drive, gave it to us. You know, there are these
2 preservation images. We don't know even what's on them.
3 We've never had them. So until we get the directories, we
4 just don't know.

5 THE COURT: You're not doing it, are you?

6 MR. ZELLER: No.

7 THE COURT: You hired somebody else to do it; right?

8 MR. ZELLER: Absolutely not, Your Honor. We are not
9 doing it. But we are going to, of course, I think as a first
10 step we need to know just what is the universe of what we're
11 dealing with. And, unfortunately, we just don't know. We
12 just don't know.

13 THE COURT: So you can't give me any guesstimate?

14 MR. ZELLER: Well, I think when we have the call
15 with Advance Discovery tomorrow, that's our plan when I talked
16 with Ms. Spinelli, that we will ask them to -- you know, to
17 collect these items. I have every reason to think that they
18 can do it in the next -- you know, certainly within the next
19 week. And they presumably can get the directories to us very
20 quickly. We would endeavor to turn that around as quickly as
21 humanly possible. I mean, that probably wasn't going to take
22 more than a couple days once we get the directories and then
23 share them with Wynn Resorts.

24 THE COURT: So let me go back to my question,
25 because I'm trying to answer the question Mr. Peek asked, but

1 he didn't ask it directly, which is how long before you're
2 going to schedule this evidentiary hearing, Judge. And part
3 of that decision is how long before you complete your review
4 so that then it can go to them to do their review. And that
5 process sometimes takes longer than we anticipate.

6 MR. ZELLER: Right. And, unfortunately, I just
7 don't have any expectation at all. I just don't know what the
8 quantities are. What I understand from Munger is there's not
9 -- there's not a lot of documents. Presumably it can be
10 reviewed very quickly. But I just -- I don't know that.

11 THE COURT: Okay. So, in other words, you can't
12 give me any kind of answer.

13 MR. ZELLER: That's -- not today, Your Honor. I
14 apologize, but I cannot.

15 THE COURT: Okay. It's all right, Mr. Zeller, I'm
16 not trying to --

17 Ms. Spinelli, did you settle Performance Steel
18 versus Wallner Tool?

19 MS. SPINELLI: No.

20 THE COURT: Okay. Never mind.

21 MS. SPINELLI: They did not settle it.

22 THE COURT: Okay. So, Mr. Peek, I can't answer your
23 question. While I would hope to have done it in the September
24 time frame, early October time frame, based on the answer I'm
25 getting from Mr. Zeller my guess is I will not be able to

1 schedule the evidentiary hearing until later this year, maybe
2 the November time frame.

3 MR. PEEK: Well, certainly then that, Your Honor --
4 because we have that stay in place --

5 THE COURT: So file the motion.

6 MR. PEEK: -- all of the -- yeah. We'll get you the
7 stipulation which at least provides for agreement on 186 days,
8 and then it also provides for an agreement that whatever this
9 time period is we'll include that. But that happens at a
10 later time, because we don't know what that time frame is
11 right now.

12 THE COURT: We don't know that math yet.

13 MR. PEEK: We do not know that math yet. But we'd
14 at least -- you'll see it in the stipulation, Your Honor. But
15 the discovery -- all the discovery deadlines as part of that I
16 believe are stipulated to go away. I'm looking at Ms.
17 Spinelli. She remembers it, too. And Laura. So --

18 THE COURT: So I guess what I'm telling you, Mr.
19 Peek, is that, while I understand your frustration, it may be
20 appropriate for you to file a motion to stay that cuts out
21 certain events or types of activities to lift the stay or
22 modify the stay on discovery. I need you to do that in
23 writing for me to then address it and have everybody --
24 because there's repercussions and ripples related to some --

25 MR. PEEK: Yeah. And that's why I asked earlier,

1 Your Honor, about the motion for certain relief.

2 THE COURT: And I would hope that we can address the
3 highly confidential designation of depositions before I have to get
4 involved and get frustrated.

5 MR. PEEK: We'll do our best. Ms. Spinelli tries.
6 They have made an effort, but we're still a little frustrated
7 by it. And Ms. Spinelli's right, she's got a category issue,
8 and maybe the -- if we can get to the category issue, maybe we
9 can resolve it. So we can address it.

10 And we have the MPDPA issue, as well, Your Honor,
11 as to whether the Court is going to move forward at all.
12 We're certainly going to have a briefing schedule on that.
13 And so --

14 THE COURT: I'm not really doing it till you guys
15 tell me you're taking Okada's name out of the blanks. Because
16 if you do that, my 18 boxes or how many boxes in the hallway
17 is down to three.

18 MR. PEEK: So are you ordering --

19 THE COURT: Given my -- no, I'm not ordering you.
20 Because I won't do it until you file a motion. From a
21 practical standpoint that appears to be the easiest solution
22 for most of the documents that include redactions based on the
23 MPDPA, but I understand this is different than Jacobs and you
24 guys want to brief it. And I'm going to read the briefs
25 before I decide. Because you're right, it may be different

1 from Jacobs. And just because I think that it's silly doesn't
2 mean that the Macau Data Privacy Act doesn't apply.

3 MR. PEEK: You'll see that -- you'll see the
4 briefing, Your Honor, on that issue. And so we'll hopefully
5 get that scheduled --

6 THE COURT: So if you're going to file a motion to
7 carve out certain things from the stay or to permit you to do
8 certain things or modify the stay, go ahead and file it, and
9 then we'll deal with it.

10 The other issue I want to address with you before
11 you leave is the Elaine Wynn depo scheduled for Monday. There
12 is an issue about who gets to attend that deposition. Tell
13 me, Mr. Pisanelli, instead of nodding.

14 MR. PISANELLI: Yeah. So my position is the same as
15 it relates to the brief, that we will be exploring issues with
16 her that are both foundational and -- well, mostly it's the
17 foundational issue of the source of her information, what it
18 was that was disclosed. And it would seem to me that allowing
19 our opponent in the room when we've already agreed that
20 redacting the brief is the safe, appropriate way to go would
21 be inconsistent positions to take, just like redacting the
22 brief, leaving the door open for them as Your Honor did that
23 maybe you'll get it unredacted in the future, because it is
24 just a discovery issue, is the same thing that'll happen here
25 for Ms. Wynn's deposition. That once it's completed -- we're

1 going to have a lot of litigation over this. You can see it
2 coming; right?

3 THE COURT: Yes.

4 MR. PISANELLI: So once this process runs its course
5 you will have a completed record with actual answers, those
6 that we're allowed to get, and you will be able to make a
7 determination at that point of what our opponent gets to get
8 that is not privileged. In all likelihood I envision the
9 exact same process. We'll do the deposition, we'll make a
10 proposed set of redactions for Your Honor, you'll approve them
11 or disapprove them, and then we'll give whatever you tell us
12 to Mr. Peek and his clients. But allowing them in the room
13 defeats the whole purpose.

14 THE COURT: Mr. Peek, you want to go to the depo,
15 huh?

16 MR. PEEK: Yes, I do, Your Honor.

17 THE COURT: Okay.

18 MR. PEEK: And as I understand the Wynn parties'
19 position, as well as Elaine Wynn's position, is that questions
20 regarding communications between Kim Sinatra and Elaine Wynn
21 certainly won't be discussed, because they don't want to waive
22 that privilege. Quinn Emanuel certainly says, I don't have
23 that information, wasn't given to me so I shouldn't be
24 disqualified. So this concern as I see is sort of a the sky
25 is falling position and Chicken Little running around saying

1 the sky is falling when Henny Penny's saying it's not. So I
2 see a little bit of that as sort of we shouldn't allow the
3 Okada parties to participate or to know what issues are that
4 relate to independence of the board, knowledge of Ms. Wynn
5 with respect to misconduct of Steve Wynn and misconduct of the
6 board, not, quote, unquote, "attorney-client privilege." I
7 keep hearing the word "privilege," and I hear it really in a
8 lot of different contexts as being conflated. Let's all
9 remember that privilege relates to attorney-client
10 communications. And I don't see attorney-client
11 communications here being discussed in this deposition. And I
12 certainly know that with respect to -- well, say the draft of
13 the letter. We found out last time that Mr. Zeller was
14 involved in the drafting of the letter with Ms. Wynn.

15 THE COURT: The letter to Ernst & Young.

16 MR. PEEK: No. The letter to the board that copied
17 to Ernst & Young, as I recall.

18 THE COURT: Audit committee.

19 MR. PEEK: The audit committee. Excuse me. It went
20 to the audit committee, copied to Ernst & Young. And it was
21 pretty clear to me that Mr. Zeller's not going to allow
22 discussions about what he said to Ms. Wynn with respect to the
23 drafting of that letter. So --

24 THE COURT: Drafting and revising is what he told
25 me.

1 MR. PEEK: Drafting and advising. I mean, I --

2 THE COURT: Revising.

3 MR. PEEK: Revising. Right, revise. I'm pretty
4 clear that that's not going to come up. And if it does, the
5 Wynn parties shouldn't even be there. Similarly, I'm sure
6 that Mr. Pisanelli's not going to get into specifics with
7 respect to attorney-client communications of Kim Sinatra with
8 Elaine Wynn that might go -- that might have been disclosed to
9 Quinn Emanuel. Because that's the issue, is whether or not
10 Quinn Emanuel received some privileged communications or
11 communications that Wynn Resorts claims are privileged that
12 would somehow disqualify them. That's not going to come up in
13 this deposition. That might come up later during the
14 evidentiary hearing when everybody sees all of these documents
15 that Munger Tolles did or collected and shared or did not
16 share with or that Quinn Emanuel reviewed or did not review.
17 That's part of that later hearing. That's not part of this
18 deposition.

19 But with respect to things that she may have
20 disclosed or believes that she has to whether she is or is not
21 bound by some protection or some confidentiality that she has
22 with the company I'm entitled to hear that information, Your
23 Honor. Because that's going to be important, as well, down
24 the road. And, as I said, though I'm not asserting that such
25 would exist, if there is an effort on the part of Wynn Resorts

1 to hide the truth here from everybody, its shareholders,
2 Okada, who was a shareholder at the time, member of the board
3 of directors, if that's what's happening here, that may well
4 come under some exceptions to the privilege. So I would like
5 to be there.

6 THE COURT: Okay.

7 MR. PISANELLI: So we never heard Counsel say,
8 because he can't, that he's entitled to ask questions.
9 Because he's not. And so what prejudice results from allowing
10 the litigation process to move forward so that everyone's
11 rights are protected and then let him read the transcript, as
12 opposed to watch or even watch the video after it's over if he
13 wants to? We didn't hear anything about that, because that
14 really should, respectfully, resolve this issue. He is
15 talking about gaining discovery on merits and whether he can
16 use this in this case. Okay. Well, we'll have the motion
17 practice after the deposition process and the litigation that
18 will be associated with it runs its course. Then we can
19 decide what, if anything, from that deposition he gets to see.
20 He doesn't need to be in the room and upset the process from
21 the very beginning.

22 THE COURT: Okay. Before you sit down. And this is
23 your memory, as well as Mr. Peek's memory and perhaps Ms.
24 Spinelli's. We had a discussion, and I can't find it. I was
25 looking through the minute orders and the interim order I

1 entered related to how this conduct was going to occur and the
2 service of motion practice. And was that reduced to a written
3 order?

4 MR. PISANELLI: I don't remember. I don't think so.

5 MS. CALDERON: No, Your Honor.

6 THE COURT: Ms. Calderon is saying no, so, Ms.
7 Chester, do you remember?

8 MS. CHESTER: I don't think so, Your Honor.

9 THE COURT: Okay. I remember we first discussed it
10 with Mr. Kunimoto on a conference call because Mr. Peek was
11 out. Hold on. I'm trying to see if I can find --

12 MR. PEEK: Your Honor, I -- that would certainly
13 have been sometime -- because if it's when I was gone, I was
14 gone from the 9th of June until the 25th, I think, of June, or
15 24th of June. And I know there was a hearing I think on the
16 17th or 16th perhaps.

17 THE COURT: Hold on a second. I'm looking. Give me
18 just a minute, guys. I'm sorry it's taking so long.

19 (Pause in the proceedings)

20 MR. MALLEY: Your Honor, we're talking about a
21 conversation about service of documents on the Okada parties?

22 THE COURT: Yep.

23 MR. MALLEY: I believe we had a telephone call one
24 afternoon at about 3:30. I want to say August 1st, but I
25 could be wrong on that.

1 MR. PEEK: August 1st?

2 MS. CALDERON: I think it was July 22nd [inaudible]
3 motion.

4 THE COURT: Wasn't July 21st phone call. Let's see
5 if it's July 22nd's phone call.

6 MR. PEEK: I don't think -- I think you're talking
7 about the disqualification issue, Your Honor, which came up
8 much earlier than that.

9 So, respectfully, Mr. Malley, I think we're dealing
10 with a much earlier period.

11 THE COURT: Hold on. I'm still looking, guys. Just
12 give me a second.

13 (Pause in the proceedings)

14 THE COURT: Okay. So I've finished reading the
15 transcript from the July 7th telephone conference call that
16 was filed on July 8th. And it appears that it all -- at that
17 time all parties agreed to avoid prior contamination of those
18 parties not involved with the motion to disqualify that on
19 briefing issues related to the motion to disqualify we were
20 going to serve them on a limited basis. This deposition
21 appears to relate to the motion to disqualify and the related
22 issues. So I am going to preclude Mr. Peek's attendance at
23 that deposition, as well as Mr. Albright's.

24 That does not mean, however, they won't be able to
25 get a copy of the deposition if they file a motion requesting

1 it and you have an opportunity to tell me why you think it has
2 attorney-client privileged information. Because, remember,
3 the focus of this whole discussion is not about things Ms.
4 Wynn has in disputes she has with the board. It is about
5 whether she and her chosen law firm, Quinn Emanuel, have
6 obtained the company's attorney-client privileged information
7 and used it inappropriately.

8 MR. PISANELLI: Understood.

9 THE COURT: Okay?

10 MR. PISANELLI: Yes.

11 THE COURT: So --

12 MR. PEEK: I understand, Your Honor. But I thought
13 the deposition was a very limited deposition. But I'll let
14 the Quinn Emanuel or Elaine Wynn parties address that.

15 THE COURT: Okay.

16 MR. ZELLER: My understanding from the last hearing
17 was that it was going to be limited to the protective order
18 issues, which is specifically the audit committee letter.
19 That was -- that was that letter, Your Honor, in particular
20 the language that was used in it. That was what the
21 parameters were previously of this deposition.

22 THE COURT: No. It related to the sanctions issues
23 and the contempt issues and the injunctive relief issues.

24 MR. ZELLER: Which is the protective order. But
25 specifically it was --

1 THE COURT: Violation of the protective order -- or
2 the alleged violation of the protective order.

3 MR. ZELLER: But it was -- but, Your Honor, you
4 limited it to that letter. If we're going to now have
5 disqualification issues could be the subject of the
6 deposition, this is not enough notice for Ms. Wynn to be
7 prepared on that. I mean, we're now, you know, three days
8 from it, three business days. Less now. So that's -- Your
9 Honor, respectfully, that's different from what we understood
10 the scope was of her deposition.

11 THE COURT: Well, but the letter that goes to the
12 audit committee has been represented to me -- I'm not going to
13 say what my conclusions are, but it's been represented to me
14 that that letter includes information that could only have
15 been gleaned from highly confidential information that was
16 produced in this litigation, whether it was through a
17 deposition or other discovery process. I understand your side
18 disagrees with it --

19 MR. ZELLER: Right.

20 THE COURT: -- and I've not reached a decision yet,
21 because I don't have enough information.

22 MR. ZELLER: Sure.

23 THE COURT: But that's the argument.

24 MR. ZELLER: I understand.

25 THE COURT: So that in and of itself involves the

1 issues related to the source of that information and the
2 communication of that information, which does implicate
3 attorney-client communications, not just discovery and
4 violations of the protective order.

5 MR. ZELLER: Well, as I understood their
6 allegations, however, were never that the information that she
7 relied upon in this letter, whatever that universe is, was
8 company privileged information. They've never made that
9 allegation. And there certainly has not been a showing of
10 that.

11 THE COURT: Okay. Anything else you want to tell
12 me?

13 MR. ZELLER: Well, Your Honor, if the Court is now
14 from my perspective, you know, rightly or wrongly broadening
15 the scope of the deposition, then that's something that we're
16 going to need more time to address.

17 THE COURT: Your request to move the depo is denied.
18 Anything else?

19 Okay. So remember the deposition's limited. Right?

20 MR. PEEK: Just so that when I make my motion --

21 THE COURT: And that's why I'm excluding Mr. Peek,
22 is because it's limited.

23 MR. PEEK: Limited to -- so when I make my motion,
24 limited to?

25 MR. PISANELLI: Limited to what you just said, Your

1 Honor. We understand.

2 MR. PEEK: I don't.

3 THE COURT: It's limited -- it's limited to the
4 issues related to the evidentiary hearings I'm going to
5 conduct on the disqualification issues and the violation of
6 the protective order issues. Those are the two things it's
7 limited to, because that's why I'm letting the deposition go
8 forward before I do the evidentiary hearing and why I told you
9 that if you think you need more after you do that deposition
10 you have to ask. Because the only thing I've allowed you to
11 do is that one depo.

12 MR. PISANELLI: Got it.

13 MR. ZELLER: If I can just ask maybe for some
14 examples of what would be within the scope, Your Honor.

15 THE COURT: Mr. Zeller, are you done? Okay.
16 Anything else?

17 MR. ZELLER: Unfortunately, Your Honor, I don't know
18 the scope of the deposition at this point. Are they allowed,
19 for example, to ask about the preservation images or what's on
20 it and --

21 THE COURT: No. We're not going into all that
22 stuff.

23 MR. ZELLER: That's where my confusion is.

24 THE COURT: I'm not going into how data was created
25 at the time her laptop computer was taken and she started

1 using it for other purposes.

2 MR. ZELLER: That was my concern, Your Honor.

3 THE COURT: That's not part of my issues.

4 MR. ZELLER: I appreciate the clarification.

5 THE COURT: Mr. Peek, you're still here.

6 MR. PEEK: Yeah. I just want to confirm with
7 Ms. Spinelli that we've reached a briefing schedule on the
8 MPDPA --

9 MS. SPINELLI: The one I articulated.

10 MR. PEEK: -- as she had previewed with you, which
11 is we'll have a -- she'll have a brief --

12 MS. SPINELLI: Next Friday.

13 MR. PEEK: -- next Friday, we'll file an opposition
14 on the 26th, and we'll have it heard on the 1st of September.

15 THE COURT: So Dan -- I will be out of the
16 jurisdiction for a week or so. I will be available by
17 telephone. Dan will set all OSTs that come in that I approve
18 for September 1st, because August 30th is pretty full already.
19 So I'll be available by phone. So if you have to have an
20 emergency conference call while you're in the depo, you can
21 reach me and I will say things from a grumpy voice.

22 MR. URGAS: Well, I understood you said that you
23 didn't -- that was off the table on the deposition.

24 THE COURT: Well, but if somebody -- here's an
25 example. Somebody shows up at the office with armed guards.

1 Those issues have to be brought to my attention so that I can
2 make a determination as to whether -- these are real examples,
3 Mr. Urga.

4 MR. URGA: We might have an armed guard to keep Mr.
5 Peek out. That's the only thing, Your Honor.

6 MR. MALLEY: I think she's saying I should stay
7 home.

8 MR. PEEK: I'm glad --

9 MR. POLSENBERG: That's the only kind of issue
10 you're going to take up by phone; right?

11 THE COURT: Well, no. Well --

12 MR. POLSENBERG: See, my problem is I'm in Dallas on
13 Monday. So if you're going to take up --

14 THE COURT: I'm not taking up substantive rulings --

15 MR. POLSENBERG: -- actual argument --

16 THE COURT: -- on privilege issue. But who can sit
17 in the room, oh, Judge, we think we should get more breaks
18 than this, oh, Judge, we've been going more than four hours
19 and they won't give us a break, oh, Judge, the seven hours are
20 over and we're leaving, those kind of things. You know, the
21 process things, not the substantive things.

22 MR. POLSENBERG: Seven hours for this one?

23 THE COURT: Didn't I say one day? Isn't the rule
24 one day of seven hours? Yeah.

25 MR. ZELLER: Presumably, then, that's going to apply

1 to any other subsequent deposition on any time that they use.

2 THE COURT: What?

3 MR. ZELLER: They're only allowed to take the
4 deposition of the witness once without leave of the Court.

5 THE COURT: Oh, Mr. Zeller, that's a real funny
6 argument.

7 MR. ZELLER: Well, no. We have been through that
8 many times, Your Honor.

9 THE COURT: I am very aware of that issue and the
10 findings that I would have to be making if someone requested
11 the deposition to go longer. But just for the record, this
12 deposition has nothing to do with any substantive deposition
13 in the case that may actually be used. This deposition is in
14 fact limited to the issues on my evidentiary hearing related
15 to the disqualification and my injunctive relief.

16 Anything else?

17 MR. URGAS: That's fine.

18 MS. SPINELLI: Thank you, Your Honor.

19 MR. ZELLER: No, Your Honor.

20 THE COURT: Okay. Goodbye.

21 THE PROCEEDINGS CONCLUDED AT 11:54 A.M.

22 * * * * *

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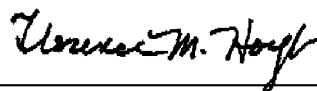
CERTIFICATION

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

AFFIRMATION

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

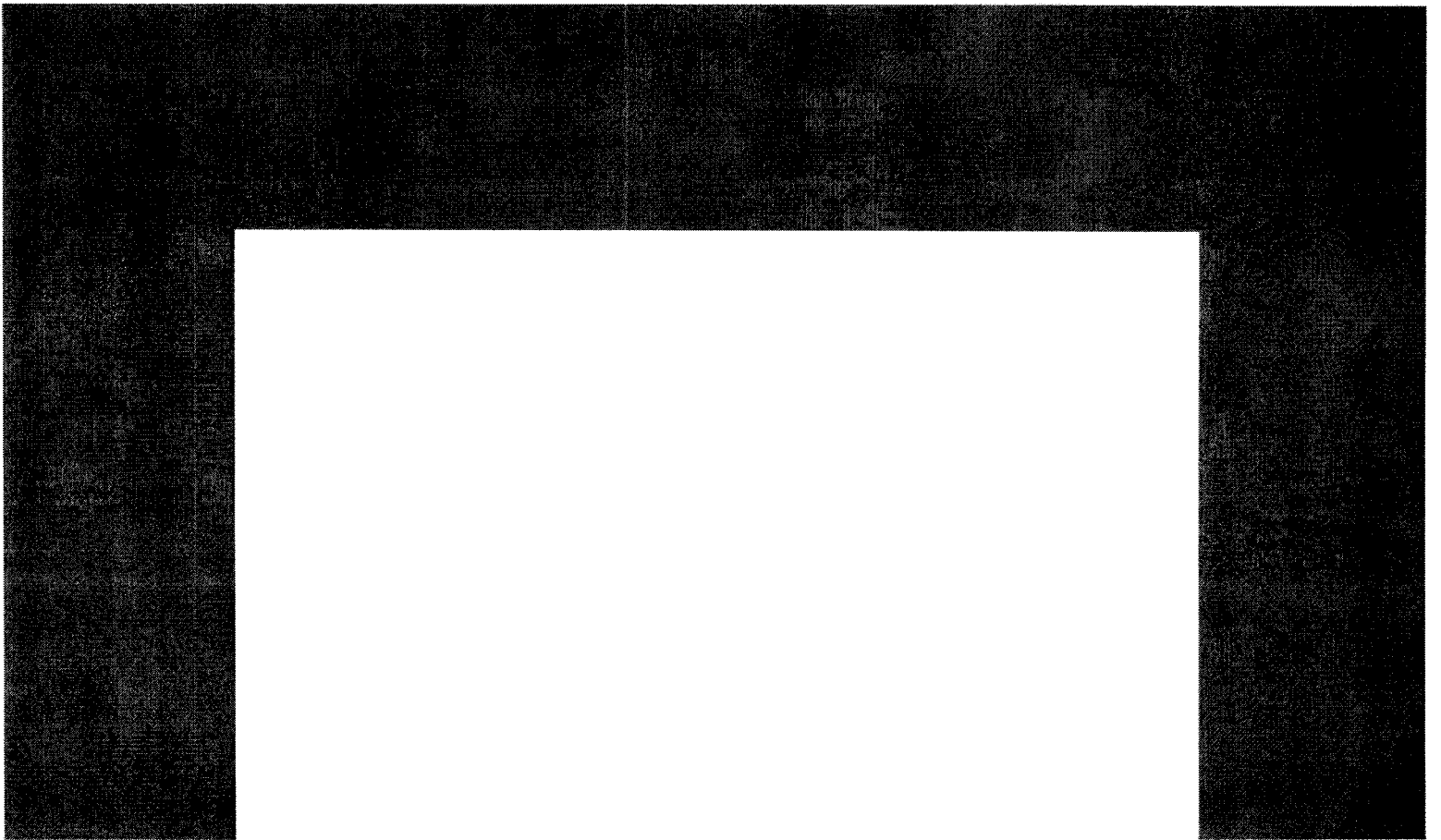
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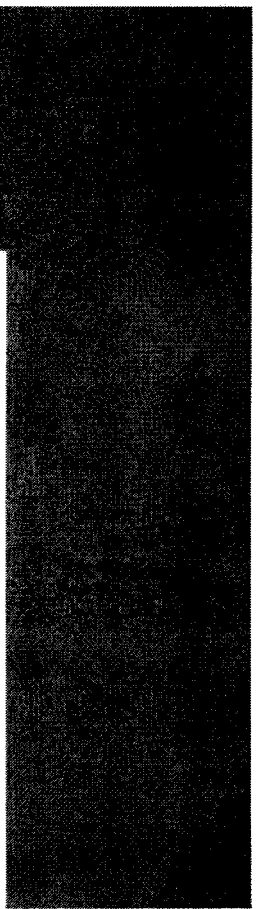
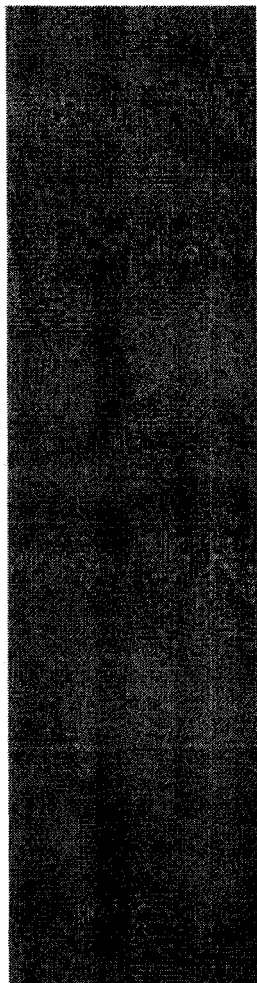
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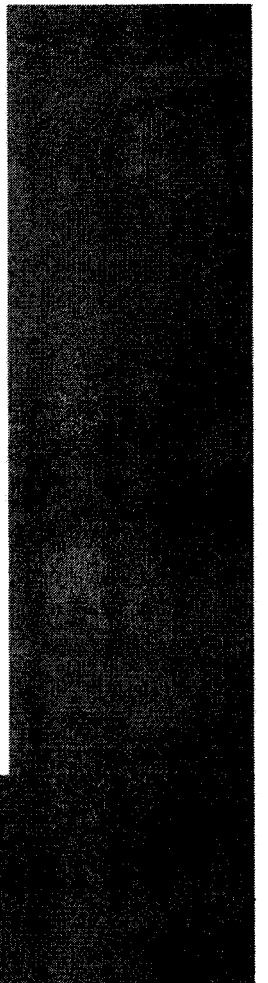
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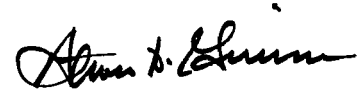


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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED .

Plaintiff .

vs. .

KAZUO OKADA, et al. .

Defendants .

.

CASE NO. A-656710

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

FRIDAY, SEPTEMBER 2, 2016

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD L. BICE, ESQ.
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
WILLIAM R. URGAS, ESQ.
DAVID MALLEY, ESQ.
DAN R. POLSENBERG, ESQ.
DONALD JUDE CAMPBELL, ESQ.
MICHAEL ZELLER, ESQ.

1 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 2, 2016, 9:59 A.M.

2 (Court was called to order)

3 MR. KUTINAC: I need to make sure all cell phones
4 are off, Mr. Polsenberg.

5 THE COURT: Did you get promoted?

6 MR. POLSENBERG: How about I just turn the volume
7 down?

8 THE COURT: Okay. You can be seated. We have until
9 11:30, with the sole exception that if my jury comes back with
10 a verdict I have to stop once I have everybody in the
11 courtroom to take the verdict.

12 Okay. I wanted to start this morning with Mr.
13 Peek's motions.

14 MR. PEEK: That's the motion to compel?

15 THE COURT: And the multiple briefings.

16 MR. PEEK: And the multiple briefings on it, yeah.
17 Okay, Your Honor.

18 Good morning, Your Honor. This is the Aruze party's
19 motion to compel which, as you know, was filed some time ago.
20 And it was filed to compel the Wynn Resorts to produce
21 unredacted copies of documents from Macau that we contend were
22 improperly redacted. Although Wynn Resorts has previously
23 disputed the relevancy of these documents, that issue has been
24 resolved against them both by you and then later on writ by
25 the Supreme Court. So there's no question but that the

1 documents satisfy the requirements of Rule 26 and Rule 34 and
2 are obliged to be produced.

3 The documents that are the subject of the motion --
4 at least the current motion; there may be more practice on
5 this -- fall into two categories. First category are the
6 2,041 produced documents that contain redactions based upon
7 Wynn Resorts' interpretation of the MPDPA and its application
8 to documents obliged to be produced in the United States.

9 The second category is a collection of 639 documents
10 that were either redacted based upon the MPDPA in part or
11 withheld entirely based upon something that the Wynn Resorts
12 characterizes as the Macau law privilege. They add the word
13 "privilege" throughout their log as though by giving it this
14 moniker it gets elevated into what they contend is what we all
15 say is a typical privilege. But we know it not to be a
16 typical privilege. So after for accounting for the overlaps
17 of the documents, we have the total number of the documents is
18 really 2,640. That doesn't include, Your Honor, a collection
19 of documents that they have not yet produced that they have
20 put on a log that consist of about 150,000 pages, and I think
21 the count is about 2500 documents that they have not produced
22 but have put on a log with various claims of privilege.
23 That'll be the subject of a different motion.

24 In this case Wynn Resorts is hiding behind its
25 inappropriate claim based upon the MPDPA or based upon the

1 alleged Macau law privilege to delay the unredacted production
2 of these 2,640 documents.

3 Let's go first to the MPDPA. As we explained in our
4 briefs, Nevada caselaw demonstrates that the Court does not
5 need to conduct an in-camera review, because the MPDPA is not
6 yet relevant to its analysis. Caselaw holds, Court's familiar
7 with that, that a foreign privacy statute, including the
8 MPDPA, cannot be used as a shield to avoid Nevada's discovery
9 obligations. Court and I and Pisanelli Bice were all involved
10 in that decision by the Nevada Supreme Court in 2014.
11 According to that decision, the MPDPA may be relevant or is
12 relevant only to the imposition of sanctions for failure to
13 fulfill discovery obligations, but it cannot be used to avoid
14 discovery operations in the first place.

15 During our May 3rd hearing the Court explained that
16 it was not yet prepared to order production of the subject
17 documents without redactions without first conducting an in-
18 camera review. Although the Court didn't explain its
19 reasoning for wanting an in-camera review, as I pointed out in
20 my brief, it is my believe that the Court wanted to take a
21 look to see whether or not the redactions themselves rendered
22 the documents useless for purposes of discovery. But the
23 Court need not conduct that in-camera review and should order
24 production of the documents.

25 Most recently the Court has asked us and we have

1 provided supplemental briefing on an issue of whether or not
2 Mr. Okada through his actions, the actions really of Aruze USA
3 and Universal Entertainment Corp., should have waived or has
4 waived his rights under the MPDPA. That is not something that
5 we --

6 THE COURT: Can I stop you. He did file an action
7 personally in the books and records issues at an earlier time.

8 MR. PEEK: You are correct.

9 THE COURT: Okay.

10 MR. PEEK: He did. Seeking at that time books and
11 records of Wynn Resorts related to their use of money. The
12 Court may find based on that that he has waived whatever
13 rights that he has under the MPDPA. But to me, Your Honor,
14 whether or not there has been a waiver or not been a waiver of
15 the MPDPA does not go to the heart of the issue of whether or
16 not Wynn Resorts Limited and its subsidiary are obligated to
17 produce documents. That's a false premise, and we all seem to
18 be getting distracted by that false premise of that waiver.
19 It was not an issue, as the Court will recall, in its analysis
20 in a similar case of MPDPA. As we pointed out in the reply,
21 Mr. Okada's decision is unremarkable and does not impact the
22 motion to compel. The same is true about the Aruze party's
23 litigation in Macau to which Wynn Resorts trumpets loudly that
24 that alone seems to be some way that Okada and the Aruze
25 parties seek to gain some advantage and their production might

1 somehow implicate that litigation.

2 These arguments are just an attempt to distract the
3 Court from the key issue. Wynn Resorts has no excuse left to
4 withhold relevant, nonprivileged information from the Aruze
5 parties. We know it to be relevant, we know it to be
6 nonprivileged because that issue was addressed by the Court
7 over a year ago and affirmed by the Nevada Supreme Court.

8 Regarding the so-called Macau law privilege we know
9 from the briefing of Wynn Resorts itself that it has admitted
10 that the so-called privilege is nothing more than a
11 confidentiality provision in a contract, namely, its gaming
12 concession agreement. We know that from their opposition at
13 pages 16 and 17. Because the parties all operate under the
14 protective order, Wynn Resorts' concerns about the Macau law
15 privilege, which is not a privilege under that concession
16 agreement, are resolved. They can be produced, protected by
17 the stipulated protective order.

18 Consequently, Wynn Resorts has failed to meet its
19 burden first that such a privilege exists, because none does,
20 or, that if it did, that the privilege applies to the subject
21 documents. We have examples of those inappropriate claims.
22 We see, for example, a Wynn Resorts Macau document Bate
23 numbered 16370 to 16376. It's an email from a professor
24 administrator to Ian. The privilege log description says that
25 the email and attachment are protected by Macau law Article 92

1 regarding communications with University of Macau. Why would
2 a privilege, if one exists, apply to communication with a
3 university administrator? It's just an example of their
4 application.

5 Another one, Your Honor, is Wynn Resorts Document
6 54665 to 54672. It's a letter that was withheld dated
7 September 12, 2006, from Steve Wynn where no recipient is
8 listed, but it's still claimed to be protected by Macau
9 Special Administrative Region Law 16/2001, Section 1, Article
10 16 re Concession Contract. We don't -- we can't understand
11 how such a protection can exist, if any, when the privilege
12 log is not even clear alone about who the recipient is and
13 whether the alleged protection itself is intact.

14 There are many more examples. I need not go through
15 all of them, Your Honor, because I don't think that they
16 really in any way assist Wynn Resorts in meeting a burden that
17 a privilege exists and that such a privilege applies to their
18 documents.

19 If the Court is inclined to conduct its in-camera
20 review, the Court should at least receive all of the subject
21 documents. As we've pointed out in the reply brief, our
22 analysis of the documents tells us that Wynn Resorts has
23 failed to submit 563 documents to the Court for its in-camera
24 review. The majority of those relate to the Macau law
25 privilege claim. Those documents are identified in our

1 Exhibit T. Relatedly, Wynn Resorts has failed to explain why
2 certain Macau documents that were emailed to or from persons
3 at Wynn Las Vegas cannot be located in the United States.
4 That is still, Your Honor, an unknown issue for us.

5 But what we would know, Your Honor, is if they know
6 that there are documents that at one time did exist in the
7 United States and cannot yet -- and cannot today be located,
8 then they can produce those documents out of Macau in an
9 unredacted form. They don't have to produce them in the
10 United States. They can produce them out of Macau in an
11 unredacted form, as opposed to saying to you, oh, gosh, we
12 can't find them in the U.S. so therefore we can't produce
13 them. Well, they can, because they're in Macau and they can
14 take off the redactions and produce them to us.

15 Whether or not the in-camera submissions are
16 complete, the review will confirm what we have highlighted
17 repeatedly, is that the redactions of the documents have
18 rendered the documents effectively useless in terms of
19 evidentiary or discovery value and that the Macau law claims
20 are wholly inappropriate and should be stricken and documents
21 produced. We ask that the Court grant our motion to compel.
22 Thank you.

23 THE COURT: Before you sit down I have a question.

24 MR. PEEK: Certainly.

25 THE COURT: What is the status of your client Mr.

1 Okada's suit in Macau related to the disclosure of information
2 he believes was protected under the MDPA?

3 MR. PEEK: It's pending, Your Honor.

4 THE COURT: But pending isn't good. What's the --
5 where is it in the grand scheme of progress of litigation?
6 It's been pending for two years, right, a year and a half?

7 MR. PEEK: I didn't think it was two years, Your
8 Honor. My recollection is it is less than that. I don't know
9 how the courts work in Macau.

10 THE COURT: Me, either. Which is why I'm asking.

11 MR. PEEK: And, frankly, I appreciate your inquiry.
12 I'm not going to try to duck the question other than to say I
13 don't know. If that is important to the Court, I can
14 certainly find out. I will get a status report and file it
15 with the Court. But, as I said, that is a distraction to this
16 Court, a complete distraction. It ought not to be any part of
17 the Court's analysis of whether or not these documents should
18 or should not be produced in an unredacted form.

19 THE COURT: Okay.

20 MR. PEEK: I know Wynn Resorts wants to make it so.
21 They want to say, oh, well, Mr. Okada's now going to use it
22 because we get new documents that are unredacted and produced.
23 Remember, Your Honor, as we said in our supplemental reply,
24 that there was -- that lawsuit is based upon the activities
25 and the actions of Louis Freeh.

1 THE COURT: No. I understand. It relates to the
2 Freeh investigation.

3 MR. PEEK: Correct.

4 THE COURT: I understand.

5 MR. PEEK: And it also relates to the pretextual
6 activities of Wynn Resorts.

7 THE COURT: Okay. That's your allegation, and I
8 recognize you get to do discovery on it. Anything else?

9 MR. PEEK: Nothing, Your Honor.

10 THE COURT: All right. Ms. Spinelli.

11 MS. SPINELLI: Thank you, Your Honor.

12 If I can first address your question that you posed
13 to Mr. Peek about the Macau -- the status of the Macau
14 litigation. In Macau the cases don't begin until all parties
15 are served, and the service process takes a good deal of time.
16 So all parties were served in the early part of this year.
17 And then there were -- you have to answer the allegations more
18 fulsomely than you would have to in the United States, almost
19 like interrogatory responses, not exactly, but similar. And
20 that was answered earlier this summer, June. So it's pending
21 right now, and I think that they're in --

22 THE COURT: Then what happens after an answer's
23 done?

24 MS. SPINELLI: I think that there is more of a
25 discovery process of producing documents that relate -- that

1 support the specific allegations in the complaint and specific
2 allegations in the answer. That is my understanding, Your
3 Honor. We can also get more information.

4 THE COURT: And that process is ongoing --

5 MS. SPINELLI: It is.

6 THE COURT: -- what we would call discovery in the
7 United States?

8 MS. SPINELLI: Similar, yes. Yes.

9 THE COURT: All right.

10 MS. SPINELLI: And then my understanding is
11 litigation and trials in Macau take place at like a couple
12 days a week and then is off for a month and happens again and
13 then is off for a month. So the trial, if it ever goes to
14 trial, would take quite a while. That's my understanding of
15 it, so --

16 THE COURT: Okay. Thank you.

17 MS. SPINELLI: Your Honor, we're not intending to
18 distract the Court from anything. We're actually trying to
19 focus the Court and the Okada parties on the facts -- on the
20 issues in this case, the facts in this case, and the law that
21 applies to this and all other cases. And we actually
22 appreciate Your Honor's comment and question to us about
23 whether Mr. Okada waived the privilege -- not the privilege,
24 excuse me, whether Okada waived the MPDPA by being involved in
25 this litigation. And so we -- both the parties went back and

1 presented the status report to Your Honor after we had several
2 meet and confers. And I think it's very important to know,
3 which is why we asked for briefing, that they acknowledged the
4 validity of the Macau Data Privacy Act, they acknowledged that
5 third parties have rights under that Privacy Act that cannot
6 be waived by anyone but those individuals, and it's also
7 notable that Mr. Okada refuses to consent to waive. Aruze and
8 Universal can't be heard to have waived for third parties,
9 because it would subject them to liability. They know that's
10 true. They just would rather have this Court order non-party
11 Wynn Resorts Macau to violate third-party rights and Mr.
12 Okada's rights under the PDPA so that they can go sue in
13 Macau. Which is what they're doing already to both Wynn
14 Resorts, Wynn Resorts Macau, and a number of individual
15 executives based both in the United States and in Macau. We
16 thought that that needed to be brought to Your Honor's
17 attention, which is why we did so. So thank you for the
18 supplemental briefing.

19 The supplemental briefs I thought were supposed to
20 just address the MPDPA, but the reply, the supplemental reply
21 did address the Macau law-based objections. And our original
22 motion to dismiss we talked about it as Macau law-based
23 protections, privileges, whatever. I don't intend to be
24 focused on the word "privileged" like the Okada parties are,
25 but it is statutory-based protection. And it is not the

1 MPDPA, it is not a privacy protection; it stems from the
2 statutory regulatory theme that is in place regulating gaming
3 concessionaires in Macau. It is similar to, not exact, with
4 the framework governing Wynn Resorts and other gaming
5 licensees in Nevada. While it's our position that Okada
6 necessarily doesn't care about Nevada's gaming regulations in
7 the United States, it's our position that he doesn't care
8 about them in Macau unless, of course, he's trying to enforce
9 them there.

10 But I want to touch briefly on Exhibit T, which is
11 actually Wynn Resorts Macau's privilege log associated with
12 documents that Wynn Resorts Macau produced out of Macau. And
13 it is not just -- the citation to that document, Your Honor,
14 is misleading. That is all the documents that Wynn Resorts
15 Macau produced. It is not documents limited to the assertion
16 of the Macau-based privileges. It is -- what we understood
17 Your Honor to order, and I can cite to the transcript, was the
18 documents that -- for which the Macau law-based protections or
19 privileges were asserted, not including any other privilege,
20 not including any other protection. And that is what we
21 submitted to Your Honor in camera. We submitted all documents
22 where the Macau law-based protections were asserted by Wynn
23 Resorts Macau so both redacted and -- I'm sorry, by Wynn
24 Resorts, both redacted and withheld in the United States and
25 the redacted documents for the Macau-based privileges from

1 Wynn Macau. The withheld documents where there was only Wynn
2 -- where there was only Macau-based assertions, they are in
3 Macau. We put that in the notice of submission, Your Honor,
4 that those documents are in Macau and we weren't providing
5 them. So we did exactly what Your Honor ordered. The
6 Exhibit T is completely misleading.

7 We explained the law, we explained the protection,
8 we provided the privilege log. We were never asked about any
9 specific entries. I'm not saying it's perfect. Just like
10 every privilege log in every case there might be some
11 imperfections. They were never brought to our attention. I'm
12 not prepared to discuss the examples that Mr. Peek raised
13 today, because they weren't the same ones raised in his brief,
14 I don't believe. But I'm happy to address them with him or
15 his colleagues at BuckleySandler. But we think that we
16 established our burden to assert that protection at least on
17 the wide-scale basis that they're asking it to be overruled,
18 and we think it needs to be a document-by-document review.

19 I'm going to turn now to the Macau Data Privacy Act,
20 Your Honor, which most of us know, but some of us more
21 consistently than others articulate what it requires. And in
22 the reply brief I note that Mr. Okada kind of -- or the Okada
23 parties kind of focused on something that the Court said one
24 day, which is, Mr. Okada's name isn't sufficient for
25 invocation of the Macau Data Privacy Act. And, respectfully,

1 Your Honor, we disagree with that. The Macau Data Privacy Act
2 protects personal identity, items of personal identification.
3 It starts with their names. And if Mr. Okada thinks that
4 that's not sufficient, that his name should be unredacted,
5 then he should sign the consent, which he refuses to do.

6 It also relates to titles, which they kind of mocked
7 in their reply brief, as well. We did redact some titles of
8 individual people in Macau, and --

9 THE COURT: Hold on a second.

10 (Pause in the proceedings)

11 THE COURT: Okay. Keep going.

12 MS. SPINELLI: Okay. And the rule is the law
13 provides that if the title will describe and identify who the
14 person is, then it needs to be redacted. For instance, if
15 there's a document -- and this is just a crazy example --
16 talks about the President of the United States currently in
17 the year 2016, we all know who that is. We all might not want
18 it to be that -- not me -- but we all know who that is. We
19 would have to redact his title. We could identify him. And
20 even though the sleuthing of the Okada parties might not get
21 to the names that are redacted, that is the exact purpose of
22 the Macau Data Privacy Act. They can't sleuth to find it.

23 Mr. Okada actually says in his reply brief that he's
24 just like Mr. Jacobs, and he cites Exhibit 17, which is a
25 transcript from the hearing. And I don't believe he read very

1 far, because Mr. Jacobs did agree that he waived the MPDPA.
2 And I cited that -- we cited that, Your Honor, in our brief.

3 THE COURT: But not to be subject to Macau law.

4 MS. SPINELLI: That's exactly right.

5 THE COURT: He didn't want to sign Mr. Jones's
6 consent.

7 MS. SPINELLI: That's exactly right, Your Honor.

8 THE COURT: I remember.

9 MS. SPINELLI: That's exactly right. That was
10 something that was missing in their brief.

11 And it's also important to note that this was not a
12 sanctions motion, which Your Honor already said. But we're
13 still -- the Okada parties are still trying to swish this case
14 into Sands-Jacobs. And it's very important to actually look
15 at Sands-Jacobs and see that, unlike the summary, conclusion
16 that was just provided, the conclusion actually was that, "We,
17 the Supreme Court, conclude that the mere existence of an
18 applicable foreign/international privacy statute does not
19 itself preclude Nevada's District Courts from ordering foreign
20 parties to comply with Nevada discovery rules." In the Jacobs
21 case, Sands China, which is a Macau entity, was a party to
22 this action, was subject to 16.1, was subject to responses
23 under Rule 34. That is not the case with Wynn Resorts Macau,
24 which is the entity that produced these documents.

25 Now, the Okada parties try to squish it in by saying

1 that the documents of Wynn Resorts Macau, an independent
2 though subsidiary of Wynn Resorts, it was in our, Wynn
3 Resorts' possession, custody, and control. And that's just
4 not true. It's not in our possession, Your Honor. It's not
5 in Wynn Resorts' custody, and it's semi in our control. Which
6 is why we didn't create this farce that existed in the Jacobs
7 case. We said, we'll work with our Macau entity, our Macau
8 affiliate, we'll go there, we'll find documents that are
9 discoverable, and we'll produce them, and we said very
10 clearly and something that was misquoted in their reply
11 motion, subject to the Macau Data Privacy Act. So we did
12 exactly that. Some of the documents produced from Wynn
13 Resorts Macau were subject to the writ petition. But we also
14 produced before that. This wasn't just us acting bad and
15 waiting for the Supreme Court to decide our rights. It was --
16 we did it before and we did it after. So that's also
17 misconstrued by the Okada parties.

18 Unlike in Sands-Jacobs, we got 79 consents. I'm
19 happy to provide names. I have --

20 THE COURT: Seventy-nine?

21 MS. SPINELLI: Seventy-nine. Happy to provide the
22 names.

23 THE COURT: How many people did you ask for consent
24 that give you?

25 MS. SPINELLI: I'm not sure about the number, Your

1 Honor, but I can get that. I just don't think that we were
2 willing to provide the names of people who refused to consent
3 or with whom we could not get in touch with. But we did -- we
4 think that violates not only their personal -- their privacy,
5 but also the attorney-client privilege, the names of people
6 with whom we spoke that might be current employees of both
7 Wynn Resorts Macau or Wynn Resorts. But I do have that list,
8 Your Honor, of people from whom we received consents to the
9 extent it wasn't obvious from the unredacted names in our logs
10 and in our documents.

11 THE COURT: It wasn't obvious.

12 MS. SPINELLI: Okay. Well, I'm happy to provide it.

13 The Sands-Jacobs decision that everyone keeps
14 referring to is applicable here. There was an order that said
15 the PDPA didn't apply because of the bad acts. When we're
16 talking about and trying to compare what happened in Sands-
17 Jacobs, Sands China said they didn't have docs here, that they
18 wouldn't produce them, there was no produced documents, there
19 were no redacted, there were no redaction logs. There weren't
20 the descriptors that we provided, there weren't any consents,
21 at least that they acknowledged at that time, for purposes of
22 us, as opposed to the DOJ. This is very, very different. In
23 fact, Wynn Resorts did exactly what Sands did not do. And
24 again, Sands China was a party in that action, Your Honor.

25 I also lastly, Your Honor, want to address the

1 sword-and-shield privilege analogy. And in the reply brief it
2 was kind of acknowledged that it doesn't even apply here. The
3 Okada parties were forced to acknowledge the last time and
4 again that the documents for which Wynn Resorts was fined are
5 documents they received. Some of them are subject to
6 privilege in the writ up for Freeh, but they did receive them.
7 Nobody's withholding based on the PDPA. What they ask for,
8 though, it application of Wardly as an analogy. Wardly is the
9 waiver of the attorney-client provision for sword or shield.
10 That would be a subject matter waiver. Here they acknowledge
11 in their reply brief, we don't want the Freeh docs, we want
12 every other doc in Macau based on every other thing that we're
13 interested in. And simply that analogy fails on its face.

14 Your Honor, we think that it's clear that the Okada
15 parties want to continue to enforce their PDPA rights but get
16 this Court to require a non party in this litigation to
17 violate the PDPA. I don't know what they want to do with it.
18 We asked him if he would waive it, we asked him if he would
19 sue in Macau, if he would add to his suit. He said he wasn't
20 willing to do any of that or provide any of that information
21 to us. And based upon those facts, Your Honor, and our
22 efforts we have to bring this to the Court.

23 We think the motion should be denied and that Wynn
24 Resorts as the party in this case did absolutely everything it
25 needed to to comply with the discovery rules.

1 THE COURT: Two questions.

2 MS. SPINELLI: Sure.

3 THE COURT: Doesn't the stipulated protective order
4 resolve the issues with the Macau law confidentiality issues
5 because it is a process that you have provided to keep the
6 secrecy of the documents?

7 MS. SPINELLI: Your Honor, we don't think that it
8 applies. We --

9 THE COURT: Why?

10 MS. SPINELLI: One of the reasons why the word
11 "privilege" gets getting back and forth is if a document is
12 protected under the Nevada regulatory scheme, it can remain
13 protected. We think that --

14 THE COURT: Correct. Not privileged. Protected.

15 MS. SPINELLI: Understood. We think that the Macau
16 law established to -- at the beginning of the gaming -- when
17 the gaming industry was opened in Macau was to protect the
18 Macau Government, quite frankly, and the concessionaires from
19 their back and forth and what they were doing in order to set
20 it up. That is a protection that is by statute. It's
21 required and enforced by the government. And we would think
22 we would need government agreement in order to do that. We
23 don't think that's something that we could waive, that
24 confidentiality, without permission from the Macau Government,
25 so that's why we think that the stipulated protective order .

1 THE COURT: So you do not think the stipulated
2 protective order in this case undertakes to enforce the duty
3 of secrecy on other persons who have access to those
4 confidential documents?

5 MS. SPINELLI: Say that for me one more time, Your
6 Honor. I'm sorry.

7 THE COURT: You don't think the stipulated
8 protective undertakes to enforce the duty of secrecy on other
9 persons who have had or who might have access to the
10 confidential documents?

11 MS. SPINELLI: I don't believe so, Your Honor. I
12 don't think it's sufficient protection --

13 THE COURT: Okay.

14 MS. SPINELLI: -- according to what Wynn Resorts
15 Macau is required to do in Macau.

16 THE COURT: All right. Anything else, Mr. Peek?

17 MR. PEEK: Yes, Your Honor.

18 THE COURT: Oh. Wait. I have one more question for
19 Ms. Spinelli.

20 Ms. Spinelli, when the emails that are the subject
21 of the Macau Data Privacy Act were actually sent as part of
22 the business purpose they were sent in an unredacted form;
23 correct?

24 MS. SPINELLI: Which documents, Your Honor?

25 THE COURT: All the 18 boxes or whatever's sitting

1 in my lobby. So when the email is sent --

2 MS. SPINELLI: Right.

3 THE COURT: -- and one of the recipients on the
4 email is not in Macau --

5 MS. SPINELLI: Right.

6 THE COURT: -- there was no redaction; correct?

7 MS. SPINELLI: No. They were sent for business
8 purposes, that's right, Your Honor.

9 THE COURT: They were sent for business purposes,
10 and those wherever they were sent went as they were written?

11 MS. SPINELLI: Right, Your Honor. Which is why Wynn
12 Resorts Macau when they were -- Wynn Resorts produced them
13 unredacted when they existed in the United States.

14 THE COURT: Thank you.

15 MR. PEEK: I'm not going to address the Macau law
16 privilege issue, Your Honor, because I think that the Court
17 fully understands and appreciates our position and that issue.
18 But there are a couple of things that I believe should be
19 addressed.

20 With respect to the Aruze parties and Mr. Okada
21 specifically as to whether he did or did not consent or
22 whether he's willing to or not consent and what action that
23 has or implication it has in an action in Macau, that is, as I
24 said, Your Honor, a distraction and a red herring. Let's
25 assume for a moment that we were just to say, okay, you may

1 unredact Mr. Okada's name in all of these proceedings. That
2 still doesn't address the issue of all the other redactions.
3 It only addresses the issue of Mr. Okada's redactions, not all
4 of the other individuals whose names are redacted.

5 Ms. Spinelli attempts to distinguish Las Vegas Sands
6 versus Jacobs and the quoted language by saying, it only
7 applies to foreign parties and we're not a party. And she
8 fails to provide you any citation to any authority that would
9 hold that under NRCP Rule 34 or even it's analog, the FRCP
10 Rule 34, that a subsidiary and particularly a subsidiary whose
11 chairman is the same, whose president and CEO is the same is
12 not subject to control as we have cited. So for this Court --
13 for her to argue that Mr. Wynn, the chairman of the board of
14 Wynn Resorts Macau, does not have custody and control of those
15 documents or that Mr. Wynn, the CEO of Wynn Resorts Macau does
16 not have custody and control of those documents and they are
17 not in the possession of Wynn Resorts Limited is frankly
18 silliness and disingenuous.

19 We now know for the first time that there are
20 79 consents. We don't know from whom the consents are, we
21 don't know how those consents may or may not apply to the
22 redactions. But now I guess we're finally going to get the
23 consents after having asked for them repeatedly over the
24 course of the last year.

25 What we don't know is what efforts, if any, were

1 made by Wynn Resorts Macau to seek the consent of the Office
2 of Personal Data Protection, the OPDP. We know nothing about
3 that process. We don't know what efforts were made to say,
4 okay, here we have consents, or, here we have a court order,
5 here we have requests for production, we would like to produce
6 these documents in the United States. There's nothing at all
7 that shows that they have made an effort whatsoever to seek
8 consent from the OPDP.

9 So, Your Honor, again, let's not be distracted by
10 the issue of whether or not the Aruze parties and Mr. Okada
11 specifically has or has not waived or what his action in Macau
12 may or may not have to do with producing documents here.
13 Because, as I said, the action that he brought is based upon
14 the Freeh production and based upon the fact that Louis Freeh
15 used those documents to then later write a report which was
16 then later used by the board of directors to then redeem his
17 stock unlawfully, without any consent from Mr. Okada, without
18 any approval from the OPDP to do so; whereas, in our case, as
19 we have pointed out in our reply, Your Honor, what we seek are
20 documents relevant to the Macau land concession, which has
21 nothing to do with Mr. -- which has to do with Mr. Okada, but
22 doesn't have to do with how to bring an action, with the
23 concession agreement itself, with the University of Macau
24 Foundation. Those are the documents that we seek and where
25 the Court has ordered them to produce them over a year ago as

1 affirmed by the Nevada Supreme Court. It's now time for them
2 to step up and produce documents and not try to misinterpret
3 the Sands-Jacobs case and say it doesn't apply. Because it
4 does. Thank you.

5 THE COURT: Okay. So the motion is granted in part.
6 And it is not being treated as a sanctions motion, because, as
7 I mentioned at the time I originally heard this, I had not
8 previously ordered the production.

9 First, within 10 days of the entry of the order Wynn
10 must provide the consent list not only of those individuals
11 who have consented, but also include those individuals who
12 were contacted but did not consent or those who were not
13 contacted.

14 For documents other than pre-redemption Freeh
15 documents if it is an electronic document or an attachment to
16 an electronic document that was sent to a non-Macau recipient
17 without redactions at the time it was originally sent, that
18 document must be produced.

19 How long do you need to do that?

20 MS. SPINELLI: That's -- to the extent we don't seek
21 a stay, Your Honor, that is going to require a trip for a
22 bunch of people back to Macau. So it would take at least --
23 and you're not going to like this answer, but it will take at
24 least 60 days for the ramp-up of bringing IT people to set up
25 the system again and to get attorneys in Macau in order to

1 re-review the entire production there.

2 THE COURT: Do you understand what I'm saying,
3 though? To the extent that a recipient or a sender of a
4 document for which you have claimed protection under the Macau
5 Data Privacy Act is not a resident of Macau and their email
6 was not being sent to Macau -- and I use two prime examples,
7 Hong Kong and the United States -- you can't seek Macau Data
8 Privacy Act protection when it was originally sent for
9 business purposes to the other location.

10 MS. SPINELLI: I understand your position, Your
11 Honor.

12 THE COURT: All right. And so you're saying six
13 months.

14 MR. PEEK: Sixty days.

15 MS. SPINELLI: Sixty days.

16 MR. PEEK: Your Honor, may I address the --

17 THE COURT: No. I'm just writing down. I'm not
18 done with my ruling. I've still got more rulings to make.

19 MR. PEEK: Okay.

20 THE COURT: To the extent that Wynn seeks protection
21 under Macau laws to protect concessionaires and confidential
22 information between the concessionaire and the government, I
23 find that the stipulated protective order in this case
24 complies with Section 3 of Clause 92, and for that reason
25 those documents need to be produced in an unredacted form.

1 They may be marked as confidential or highly confidential to
2 ensure that you are enforcing the duty of secrecy on other
3 persons who have had or who might have access to those
4 documents.

5 Given Mr. Okada's lawsuit in Macau, I will not force
6 him to waive by his participation in this case, although he
7 was a plaintiff in the original case that was a book-and-
8 record case, and therefore I am not require a waiver by him,
9 and I am not going to find that he has made a waiver. For
10 that reason Wynn can't -- or does not have to produce those
11 documents if it believes because of the litigation that is
12 ongoing in Macau that Mr. Okada is taking the position the
13 Macau Data Privacy Act provides benefit to him as a non-Macau
14 citizen.

15 Okay. At this point based upon -- remember I told
16 you I did a random sampling of all the boxes that are in my
17 room that are sitting in front of Dan's desk. It appeared
18 based on my random sample, despite my displeasure with the
19 number of times Mr. Okada was redacted, that Wynn has
20 currently made good-faith efforts to find documents that are
21 either partial or total duplicates of these documents. So
22 what I'm going to ask you to do, Mr. Peek, is after we receive
23 the supplemental information that we are going to receive from
24 Ms. Spinelli in whatever time frame you, I, and she agree
25 with, that she suggested is 60 days, that you then do either

Case No. _____

In the Supreme Court of Nevada

ELAINE P. WYNN, an individual,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of
the State of Nevada, in and for the
County of Clark; and THE HONORABLE
ELIZABETH GONZALEZ, District Judge,

Respondent,

and

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Real Party in
Interest.

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District Court
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PETITIONER'S APPENDIX

VOLUME 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.

Case No.: A-12-656710-B

Dept. No.: XI

**WYNN PARTIES' PROPOSED
PROTECTIVE ORDER WITH
RESPECT TO CONFIDENTIALITY****AND ALL RELATED CLAIMS**

1 The Wynn Parties hereby propose that the handling of confidential material in these
2 proceedings shall be governed by the provisions set forth below:

3 1. **Applicability of this Protective Order:** Subject to Section 20 below, this
4 Protective Order does not and will not govern any trial proceedings in this action but will
5 otherwise be applicable to and govern the handling of documents, depositions, deposition
6 exhibits, interrogatory responses, responses to requests for admissions, responses to requests for
7 production of documents, and all other discovery obtained pursuant to Nevada Rules of Civil
8 Procedure or other legal process by or from, or produced on behalf of, a party or witness in
9 connection with this action (this information hereinafter shall be referred to as "Discovery
10 Material"). As used herein, "Producing Party" or "Disclosing Party" shall refer to the parties and
11 nonparties that give testimony or produce documents or other information in connection with this
12 action; "Receiving Party" shall refer to the parties in this action that receive such information, and
13 "Authorized Recipient" shall refer to any person or entity authorized by Sections 10 and 11 of this
14 Protective Order to obtain access to Confidential Information, Highly Confidential Information,
15 or the contents of such Discovery Material.

16 2. **Designation of Information:** Any Producing Party may designate Discovery
17 Material that is in its possession, custody, or control produced to a Receiving Party as
18 "Confidential" or "Highly Confidential" under the terms of this Protective Order if the Producing
19 Party in good faith reasonably believes that such Discovery Material contains nonpublic,
20 confidential information as defined in Sections 4 and 5 below.

21 3. **Exercise of Restraint and Care in Designating Material for Protection:** Each
22 Producing Party that designates information or items for protection under this Protective Order
23 must take care to limit any such designation to specific material that qualifies under the
24 appropriate standards. Indiscriminate designations are prohibited.

25 4. **Confidential Information:** For purposes of this Protective Order, "Confidential
26 Information" means any Protected Data (as defined below) or any information that constitutes,
27 reflects, or discloses nonpublic information, trade secrets, know-how, or other financial,
28 proprietary, commercially sensitive, confidential business, marketing, regulatory, or strategic

1 information (regarding business plans or strategies, technical data, and nonpublic designs), the
2 disclosure of which the Producing Party believes in good faith might reasonably result in
3 economic or competitive, or business injury to the Producing Party (or its affiliates, personnel, or
4 clients) and which is not publicly known and cannot be ascertained from an inspection of publicly
5 available sources, documents, material, or devices. Confidential Information shall also include
6 sensitive personal information that is not otherwise publicly available, such as home addresses;
7 social security numbers; dates of birth; employment personnel files; medical information; home
8 telephone records/numbers; employee disciplinary records; family court documents sealed by the
9 family court pursuant to NRS 125.110 or designated Confidential by agreement of the parties to
10 the family court proceedings at issue; wage statements or earnings statements; employee benefits
11 data; tax records; and other similar personal financial information. A party may also designate as
12 "CONFIDENTIAL" compilations of publicly available discovery materials, which would not be
13 known publicly in a compiled form.

14 (a) Protected Data. The term "Protected Data" shall refer to any information
15 that a party believes in good faith to be subject to federal, state or foreign data protection laws or
16 other privacy obligations. Protected Data constitutes highly sensitive materials requiring special
17 protection. Examples of such laws include, but are not limited to, the Macau Personal Data
18 Protection Act ("MDPA"), Macao Special Administrative Region Law n.º 16/2001 ("Judicial
19 system for operating games of fortune in casinos"), and other state, federal, and/or foreign law(s)
20 that impose special protections.

21 5. **Highly Confidential Information:** For purposes of this Protective Order, Highly
22 Confidential Information is any Protected Data and/or Confidential Information as defined in
23 Section 4 above that also includes (a) extremely sensitive, highly confidential, nonpublic
24 information, consisting either of trade secrets or proprietary or other highly confidential business,
25 financial, regulatory, private, or strategic information (including information regarding business
26 plans, technical data, and nonpublic designs), the disclosure of which would create a substantial
27 risk of competitive, business, or personal injury to the Producing Party, and/or (b) nonpublic
28 documents or information reflecting the substance of conduct or communications that are the

1 subject of state, federal, or foreign government investigations. Certain Protected Data may
2 compel alternative or additional protections beyond those afforded Highly Confidential
3 Information, in which event the parties shall meet and confer in good faith, and, if unsuccessful,
4 the party seeking any greater protection shall move the Court for appropriate relief. A party may
5 re-designate material originally "CONFIDENTIAL" as "HIGHLY CONFIDENTIAL" by giving
6 notice of such a re-designation to all parties.

7 **6. Designating Confidential Information or Highly Confidential Information.** If
8 any party in this action determines in good faith that any information, documents, things, or
9 responses produced in the course of discovery in this action should be designated as Confidential
10 Information or Highly Confidential Information (the "Designating Party"), it shall advise any
11 party receiving such material of this fact, and all copies of such document, things, or responses, or
12 portions thereof deemed to be confidential shall be marked "CONFIDENTIAL" or "HIGHLY
13 CONFIDENTIAL" (whether produced in hard copy or electronic form) at the expense of the
14 designating party and treated as such by all parties. A Designating Party may inform another
15 party that a document is Confidential or Highly Confidential by providing the Bates number of
16 the document in writing. If Confidential or Highly Confidential Information is produced via an
17 electronic form on a computer readable medium (e.g., CD-ROM), other digital storage medium,
18 or via Internet transmission, the Producing Party or Designating Party shall affix in a prominent
19 place on the storage medium or container file on which the information is stored, and on any
20 container(s) for such medium, the legend "Includes CONFIDENTIAL INFORMATION" or
21 "Includes HIGHLY CONFIDENTIAL INFORMATION." Nothing in this section shall extend
22 confidentiality or the protections associated therewith to any information that does not otherwise
23 constitute "Confidential Information" or "Highly Confidential Information" as defined in Sections
24 4 and 5 herein.

25 **7. Redaction Allowed:** Any Producing Party may redact from the documents or
26 things it produces matter that the Producing Party claims is subject to the attorney-client privilege,
27 the work product doctrine, a legal prohibition against disclosure, or any other privilege from
28 disclosure. Any Producing Party also may redact information that is both personal and

1 nonresponsive, such as a social security number. A Producing Party may not withhold
2 nonprivileged, responsive information solely on the grounds that such information is contained in
3 a document that includes privileged information. The Producing Party shall mark each redaction
4 with a legend stating "REDACTED," and include an annotation indicating the specific reason for
5 the redaction (e.g., "REDACTED—Work Product"). All documents redacted based on attorney
6 client privilege or work product immunity shall be listed in an appropriate log in conformity with
7 Nevada law and Nevada Rule of Civil Procedure 26(b)(5). Where a document consists of more
8 than one page, the page on which information has been redacted shall so be marked. The
9 Producing Party shall preserve an unredacted version of such document. In addition to the
10 foregoing, the following shall apply to redactions of Protected Data:

11 (a) Any party may redact Protected Data that it claims, in good faith, requires
12 protections under the terms of this Protective Order.

13 (b) Protected Data shall be redacted from any public filing not filed under seal.

14 (c) The right to challenge and the process for challenging redactions shall be
15 the same as the right to challenge and the process from challenging the designation of
16 Confidential Information or Highly Confidential Information.

17 **8. Use of Confidential Information or Highly Confidential Information.** Except
18 as provided herein, Confidential Information and Highly Confidential Information designated or
19 marked shall be maintained in confidence, used solely for the purposes of this action, to the extent
20 not otherwise prohibited by an order of the Court, shall be disclosed to no one except those
21 persons identified herein in Sections 10 and 11, and shall be handled in such manner until such
22 designation is removed by the Designating Party or by order of the Court. Confidential or Highly
23 Confidential information produced by another party shall not be used by any Receiving Party for
24 any commercial, competitive or personal purpose. Nothing in this Protective Order shall govern
25 or restrict a Producing Party's use of its own Confidential or Highly Confidential Information in
26 any way.

27 **9.** Once the Court enters this Protective Order, a party shall have thirty (30) days to
28 designate as Confidential or Highly Confidential any documents previously produced in this

1 action, which it can do by stamping "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on the
2 document, or informing the other parties of the Bates-numbers of the documents so designated.

3 10. **Use of Confidential Information and Highly Confidential Information in**
4 **Depositions.** Counsel for any party shall have the right to disclose Confidential or Highly
5 Confidential Information at depositions, provided that such disclosure is consistent with this
6 Protective Order, including Sections 10 and 11. Any counsel of record may request that all
7 persons not entitled under Sections 10 or 11 of this Protective Order to have access to
8 Confidential Information or Highly Confidential Information leave the deposition room during the
9 confidential portion of the deposition. Failure of such other persons to comply with a request to
10 leave the deposition shall constitute substantial justification for counsel to advise the witness that
11 the witness need not answer the question where the answer would disclose Confidential
12 Information or Highly Confidential Information. Additionally, at any deposition session, (1) upon
13 inquiry with regard to the content of any discovery material(s) designated or marked as
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY;"
15 (2) whenever counsel for a party deems that the answer to a question may result in the disclosure
16 or revelation of Confidential or Highly Confidential Information; and/or (3) whenever counsel
17 for a party deems that the answer to any question has resulted in the disclosure or revelation of
18 Confidential or Highly Confidential Information, counsel to any party may designate portions of a
19 deposition transcript and/or video of any deposition (or any other testimony) as containing
20 Confidential or Highly Confidential Information in accordance with this Order by a statement on
21 the record during the deposition or by notifying all other parties in writing, within thirty (30)
22 calendar days of receiving the transcript or video that it contains Confidential or Highly
23 Confidential Information and designating the specific pages, lines, and/or counter numbers as
24 containing Confidential or Highly Confidential Information. If a designation is made via a
25 statement on the record during a deposition, counsel must follow up in writing within thirty (30)
26 calendar days of receiving the transcript or video, identifying the specific pages, lines, and/or
27 counter numbers containing the Confidential or Highly Confidential Information. If no
28 confidentiality designations are made within the thirty calendar (30) day period, the entire

transcript shall be considered nonconfidential. During the thirty (30) day period, the entire transcript and video shall be treated as Confidential Information (or Highly Confidential Information). All originals and copies of deposition transcripts that contain Confidential Information or Highly Confidential Information shall be prominently marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on the cover thereof and, if and when filed with the Court, the portions of such transcript so designated shall be filed under seal. Counsel must designate portions of a deposition transcript as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" within thirty calendar (30) days of receiving the transcript. Any DVD or other digital storage medium containing Confidential or Highly Confidential deposition testimony shall be labeled in accordance with the provisions of Section 6.

11. Persons Authorized to Receive Confidential Information. Confidential Information produced pursuant to this Protective Order may be disclosed or made available only to the Court, its employees, other court personnel, any discovery referee, mediator or other official who may be appointed by the Court, and to the persons below:

(a) A party, or officers, directors, employees, and agents of a party deemed necessary by counsel to aid in the prosecution, defense, or settlement of this action;

(b) Counsel for a party (including in house attorneys, outside attorneys associated with a law firm(s) of record, and paralegal, clerical, and secretarial staff employed by such counsel);

(c) Persons retained by a party to provide litigation support services (photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing, storing, retrieving data in any form or medium, etc.);

(d) Consultants or expert witnesses (together with their support staff) retained for the prosecution or defense of this litigation, provided that such an expert or consultant is not a current employee of a direct competitor of a party named in this action;

(e) Court reporter(s) and videographers(s) employed in this action;

(f) Any authors or recipients of the Confidential Information;

(fn) A party may seek leave of court to provide information to a consultant employed by a competitor

1 (g) A witness at any deposition or other proceeding in this action, who shall
2 sign the Confidentiality Agreement attached as "Exhibit A" to this Protective Order before being
3 shown a confidential document; and

4 (h) Any other person as to whom the parties in writing agree or that the Court
5 in these proceedings so designates.

6 Any person to whom Confidential Information is disclosed pursuant to subparts (a)
7 through (g) hereinabove shall be advised that the Confidential Information is being disclosed
8 pursuant to an order of the Court, that the information may not be disclosed by such person to any
9 person not permitted to have access to the Confidential Information pursuant to this Protective
10 Order, and that any violation of this Protective Order may result in the imposition of such
11 sanctions as the Court deems proper. Any person to whom Confidential Information is disclosed
12 pursuant to subpart (c), (d), (g) or (h) of this section shall also be required to execute a copy of the
13 form Exhibit A. The persons shall agree in writing to be bound by the terms of this Protective
14 Order by executing a copy of Exhibit A (which shall be maintained by the counsel of record for
15 the party seeking to reveal the Confidential Information) in advance of being shown the
16 Confidential Information. No party (or its counsel) shall discourage any persons from signing a
17 copy of Exhibit A. If a person refuses to execute a copy of Exhibit A, the party seeking to reveal
18 the Confidential Information shall seek an order from the Court directing that the person be bound
19 by this Protective Order. In the event of the filing of such a motion, Confidential Information
20 may not be disclosed to such person until the Court resolves the issue. Proof of each written
21 agreement provided for under this Section shall be maintained by each of the parties while this
22 action is pending and disclosed to the other parties upon good cause shown and upon order of the
23 Court.

24 12. **Persons Authorized to Receive Highly Confidential Information.** "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" documents and information may be used only
26 in connection with this case and may be disclosed only to the Court and the persons listed in
27 subsections (b) to (e) and (g) to (h) of Section 10 above, but shall not be disclosed to a party, or
28 an employee of a party, unless otherwise agreed or ordered. With respect to sub-section (f), the

1 parties will consider disclosure of **Highly Confidential Information** to an author or recipient
2 on a case by case basis. Any person to whom Highly Confidential Information is disclosed
3 pursuant to sub-sections (c), (d), (g) or (h) of Section 10 above shall also be required to execute a
4 copy of the form Exhibit A.

5 **13. Filing of Confidential Information or Highly Confidential Information With**
6 **Court.** Any party seeking to file or disclose materials designated as Confidential Information or
7 Highly Confidential Information with the Court in this Action must seek to file such Confidential
8 or Highly Confidential Information under seal pursuant to Rule 3 of the Nevada Rules for Sealing
9 and Redacting Court Records. The Designating Party will have the burden to provide the Court
10 with any information necessary to support the designation as Confidential Information.

11 **14. Notice to Nonparties.** Any party issuing a subpoena to a nonparty shall enclose a
12 copy of this Protective Order and advise the nonparty that it may designate any Discovery
13 Material it produces pursuant to the terms of this Protective Order, should the nonparty producing
14 party wish to do so. This Order shall be binding in favor of nonparty designating parties to the
15 maximum extent permitted by law. Any nonparty invoking the Protective Order shall comply
16 with, and be subject to, all applicable sections of the Protective Order.

17 **15. Knowledge of Unauthorized Use or Possession.** If a party receiving Confidential
18 Information or Highly Confidential Information learns of any possession, knowledge, use or
19 disclosure of any Confidential Information or Highly Confidential Information in violation of the
20 terms of this Protective Order, the Receiving Party shall immediately notify in writing the party
21 that produced the Confidential Information or Highly Confidential Information. The Receiving
22 Party shall promptly furnish the Producing Party the full details of such possession, knowledge,
23 use or disclosure. With respect to such unauthorized possession, knowledge, use or disclosure the
24 Receiving Party shall assist the Producing Party in remedying the disclosure (e.g., by retrieving
25 the Confidential Information from an unauthorized recipient) and/or preventing its recurrence.

26 **16. Copies, Summaries or Abstracts.** Any copies, summaries, abstracts or exact
27 duplications of Confidential Information or Highly Confidential Information shall be marked
28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" and shall be

1 considered Confidential Information or Highly Confidential Information subject to the terms and
2 conditions of this Protective Order. Attorney-client communications and attorney work product
3 regarding Confidential Information or Highly Confidential Information shall not be subject to this
4 section, regardless of whether they summarize, abstract, paraphrase, or otherwise reflect
5 Confidential Information or Highly Confidential Information.

6 **17. Information Not Confidential.** The restrictions set forth in this Protective Order
7 shall not be construed to apply to any information or materials that:

8 (a) Were lawfully in the Receiving Party's possession prior to such
9 information being designated as Confidential or Highly Confidential Information in this action,
10 and that the Receiving Party is not otherwise obligated to treat as confidential;

11 (b) Were obtained without any benefit or use of Confidential or Highly
12 Confidential Information from a third party having the right to disclose such information to the
13 Receiving Party without restriction or obligation of confidentiality;

14 (c) Were independently developed after the time of disclosure by persons who
15 did not have access to the Producing Party's Confidential or Highly Confidential Information;

16 (d) Have been or become part of the public domain by publication or
17 otherwise and not due to any unauthorized act or omission on the part of a Receiving Party; or

18 (e) Under law, have been declared to be in the public domain.

19 **18. Challenges to Designations.** Any party may object to the designation of
20 Confidential Information or Highly Confidential Information on the ground that such information
21 does not constitute Confidential Information or Highly Confidential Information by serving
22 written notice upon counsel for the Producing Party within sixty (60) calendar days of the date
23 the item(s) was designated, specifying the item(s) in question and the grounds for the objection.
24 If a party objects to the designation of any materials as Confidential Information or Highly
25 Confidential Information, the party challenging the designation shall arrange for an EDCR 2.34
26 conference to be held within ten (10) calendar days of service of a written objection to the
27 designation to attempt to informally resolve the dispute. If the parties cannot resolve the matter,
28 the party challenging the designation may file a motion with the Court to resolve the dispute.

1 Such motions must be filed within ten (10) calendar days of the EDCR 2.34 conference. This
2 Protective Order will not affect the burden of proof on any such motion, or impose any burdens
3 upon any party that would not exist had the Protective Order not been entered; as a general
4 matter, the burden shall be on the person making the designation to establish the propriety of the
5 designation. Any contested information shall continue to be treated as confidential and subject to
6 this Protective Order until such time as such motion has been ruled upon.

7 **19. Use in Court.** If any Confidential Information or Highly Confidential Information
8 is used in any pretrial Court proceeding in this action, it shall not necessarily lose its confidential
9 status through such use, and the party using such information shall take all reasonable steps
10 consistent with the Nevada Supreme Court Rules Governing Sealing and Redacting Court
11 Records to maintain its confidentiality during such use.

12 **20. No Waiver.** This Protective Order is entered solely for the purpose of facilitating
13 the exchange of documents and information among the parties to this action without involving the
14 Court unnecessarily in the process. Nothing in this Protective Order, nor the production of any
15 information or document under the terms of this Protective Order, nor any proceedings pursuant
16 to this Protective Order shall be deemed to be a waiver of any rights or objections to challenge the
17 authenticity or admissibility of any document, testimony or other evidence at trial. Additionally,
18 this Protective Order will not prejudice the right of any party or nonparty to oppose production of
19 any information on the ground of attorney-client privilege; work product doctrine or any other
20 privilege or protection provided under the law.

21 **21. Reservation of Rights.** The parties each reserve the right to seek or oppose
22 additional or different protection for particular information, documents, materials, items or things.
23 This Stipulation shall neither enlarge nor affect the proper scope of discovery in this Action. In
24 addition, this Stipulation shall not limit or circumscribe in any manner any rights the Parties (or
25 their respective counsel) may have under common law or pursuant to any state, federal, or foreign
26 statute or regulation, and/or ethical rule.

27 **22. Inadvertent Failure to Designate.** The inadvertent failure to designate
28 information produced in discovery as Confidential or Highly Confidential shall not be deemed, by

1 itself, to be a waiver of the right to so designate such discovery materials as Confidential
 2 Information or Highly Confidential Information. Within a reasonable time of learning of any
 3 such inadvertent failure, the Producing Party shall notify all Receiving Parties of such inadvertent
 4 failure and take such other steps as necessary to correct such failure after becoming aware of it.
 5 Disclosure of such discovery materials to any other person prior to later designation of the
 6 discovery materials in accordance with this section shall not violate the terms of this Protective
 7 Order. However, immediately upon being notified of an inadvertent failure to designate, all
 8 parties shall treat such information as though properly designated, and shall take any actions
 9 necessary to prevent any future unauthorized disclosure, use, or possession.

10 **23. No Waiver of Privilege:** Disclosure (including production) of information after
 11 the parties' entry of this Protective Order that a party or nonparty later claims was inadvertent and
 12 should not have been disclosed because of a privilege, including, but not limited to, the
 13 attorney-client privilege or work product doctrine ("Privileged Information"), shall not constitute
 14 a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product, or
 15 other ground for withholding production as to which the Disclosing or Producing Party would be
 16 entitled in this action.

17 **24. Effect of disclosure of Privileged Information:** The Receiving Party hereby
 18 agrees to promptly return, sequester, or destroy any Privileged Information disclosed or produced
 19 by Disclosing or Producing Party upon request by Disclosing or Producing Party regardless of
 20 whether the Receiving Party disputes the designation of Privileged Information. The Receiving
 21 Party may sequester (rather than return or destroy) such Privileged Information only if it contends
 22 that the information itself is not privileged or otherwise protected and it challenges the privilege
 23 designation, in which case it may only sequester the information until the claim of privilege or
 24 other protection is resolved. If any party disputes the privilege claim ("Objecting Party"), that
 25 Objecting Party shall object in writing by notifying the Producing Party of the dispute and the
 26 basis therefore. The parties thereafter shall meet and confer in good faith regarding the disputed
 27 claim within seven (7) court days after service of the written objection. In the event that the
 28 parties do not resolve their dispute, the Objecting Party may bring a motion for a determination of

whether a privilege applies within ten (10) court days of the meet and confer session, but may only contest the asserted privileges on ground other than the inadvertent production of such document(s). In making such a motion, the Objecting Party shall not disclose the content of the document(s) at issue, but may refer to the information contained on the privilege log. Nothing herein shall relieve counsel from abiding by applicable ethical rules regarding inadvertent disclosure and discovery of inadvertently disclosed privileged or otherwise protected material. The failure of any party to provide notice or instructions under this Paragraph shall not constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product, or other ground for withholding production as to which the Disclosing or Producing Party would be entitled in this action.

25. **Inadvertent Production of Non-Discoverable Documents.** If a Producing Party inadvertently produces a document that contains no discoverable information, the Producing Party may request in writing that the Receiving Party return the document, and the Receiving Party will return the document. A Producing Party may not request the return of a document pursuant to this section if the document contains any discoverable information. If a Producing Party inadvertently fails to redact personal information (e.g., a social security number), the Producing Party may provide the Receiving Party a substitute version of the document that redacts the personal information, and the Receiving Party shall return the original, unredacted document to the Producing Party.

26. **Return of Information.** Within thirty (30) calendar days after the final disposition of this action, all Confidential Material and/or Highly Confidential Material produced by an opposing party or nonparty (including, without limitation, any copies, extracts or summaries thereof) as part of discovery in this action shall be destroyed by the parties to whom the Confidential Material and/or Highly Confidential Material was produced, and each counsel shall, by declaration delivered to all counsel for the Producing Party, affirm that all such Confidential Material and/or Highly Confidential Material (including, without limitation, any copies, extracts or summaries thereof) has been destroyed; provided, however, that each counsel shall be entitled to retain pleadings, motions and memoranda in support thereof, declarations or

1 affidavits, deposition transcripts and videotapes, or documents reflecting attorney work product or
2 consultant or expert work product, even if such material contains or refers to Confidential
3 Material and/or Highly Confidential Material, but only to the extent necessary to preserve a
4 litigation file with respect to this action.

5 **27. Attorney's Fees.** Nothing in this Protective Order is intended to either expand or
6 limit a prevailing party's right under the Nevada Rules of Civil Procedure or other applicable state
7 or federal law to pursue costs and attorney's fees incurred related to confidentiality designations
8 or the abuse of the process described herein.

9 **28. Injunctive Relief and Sanctions Available for Unauthorized Disclosure or Use**
10 **of Confidential Information or Highly Confidential Information.** The Parties and/or
11 nonparties shall not utilize any Confidential Information and/or Highly Confidential Information
12 for their own personal and/or business advantage or gain, aside from purpose(s) solely related to
13 the instant litigation. The Parties and nonparties acknowledge and agree that unauthorized use
14 and/or disclosure of Confidential Information and/or Highly Confidential Information beyond this
15 litigation shall subject the offending party or nonparty to sanctions contemplated in
16 NRCP 37(b)(2)(A)-(D), up to and including entry of judgment against the offending party in
17 circumstances involving willful disobedience with this order. Further, the Parties and/or
18 nonparties receiving or being given access to Confidential Information and/or Highly Confidential
19 Information acknowledge that monetary remedies would be inadequate to protect each party in
20 the case of unauthorized disclosure or use of Confidential Information or Highly Confidential
21 Information that the Receiving Party only received through discovery in this action and that
22 injunctive relief would be necessary and appropriate to protect each party's rights in the event
23 there is any such unauthorized disclosure or use of Confidential Information or Highly
24 Confidential Information. The availability of injunctive relief to protect against the unauthorized
25 disclosure or use of Confidential Information or Highly Confidential Information shall not be
26 exclusive.

27 **29. Other Actions and Proceedings.** If a Receiving Party (a) is subpoenaed in
28 another action, investigation, or proceeding, (b) is served with a demand in another action,

1 investigation, or proceeding, or (c) is served with any legal process by one not a party to this
 2 Protective Order, seeking materials which were produced or designated as Confidential or Highly
 3 Confidential pursuant to this Protective Order, the Receiving Party shall give prompt actual
 4 written notice by electronic transmission to counsel of record for such Producing Party within
 5 five (5) business days of receipt of such subpoena, demand or legal process, or such shorter notice
 6 as may be required to provide other parties with the opportunity to object to the immediate
 7 production of the requested discovery materials to the extent permitted by law. The burden of
 8 opposing enforcement of the subpoena shall fall upon the party or nonparty who produced or
 9 designated the Discovery Material as Confidential or Highly Confidential Information. Unless
 10 the party or nonparty who produced or designated the Confidential or Highly Confidential
 11 Information obtains an order directing that the subpoena not be complied with, and serves such
 12 order upon the Receiving Party prior to production pursuant to the subpoena, the Receiving Party
 13 shall be permitted to produce documents responsive to the subpoena on the subpoena response
 14 date. Compliance by the Receiving Party with any order directing production pursuant to a
 15 subpoena of any Confidential or Highly Confidential Information shall not constitute a violation
 16 of this Protective Order. Nothing in this Protective Order shall be construed as authorizing a
 17 party to disobey a lawful subpoena issued in another action.

18 **30. Execution in Counterparts.** This Protective Order may be signed in counterparts,
 19 and a fax or "PDF" signature shall have the same force and effect as an original ink signature.

20 **31. Order Survives Termination.** This Protective Order shall survive the termination
 21 of this action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of
 22 information disclosed hereunder.

23 DATED this 7th day of February 2013.

DATED this 7th day of February, 2013.

24 PISANELLI BICE PLLC

CAMPBELL & WILLIAMS

25 By: /s/ James J. Pisanelli
 26 James J. Pisanelli, Esq., Bar # 4027
 26 Todd L. Bice, Esq., Bar # 4534
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 27 3883 Howard Hughes Parkway, Suite 800
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 700 South Seventh Street
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Attorneys for Stephen A. Wynn

1 and

DATED this 7th of day of February, 2013.

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 3 Bradley R. Wilson, Esq. (*admitted pro hac vice*)
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 11 J. Miller, John A. Moran, Marc D. Schorr,
 Alvin V. Shoemaker, Kimmarie Sinatra, D.
 Boone Wayson, and Allan Zeman

Attorneys for Elaine P. Wynn

ORDER

IT IS SO ORDERED.

DATED: February 13, 2013


 THE HONORABLE ELIZABETH GONZALEZ
 DISTRICT COURT JUDGE

EXHIBIT A

CONFIDENTIALITY AGREEMENT

I, _____ do hereby acknowledge and agree, under penalty of perjury, as follows:

1. I have read the Stipulated Confidentiality Agreement and Protective Order ("the Protective Order") entered in *Wynn Resorts, Limited v. Kazuo Okada, et al.*, Eighth Judicial District Court Case No. A-12-656710-B on _____, _____, and I fully understand its contents.

2. I hereby agree and consent to be bound by the terms of the Protective Order and to comply with it in all respects, and to that end, I hereby knowingly and voluntarily submit and subject myself to the personal jurisdiction of the Eighth Judicial District Court of Nevada so that the said court shall have the power and authority to enforce the Protective Order and to impose appropriate sanctions upon me for knowingly violating the Protective Order, including punishment for contempt of court for a knowing violation of the Protective Order.

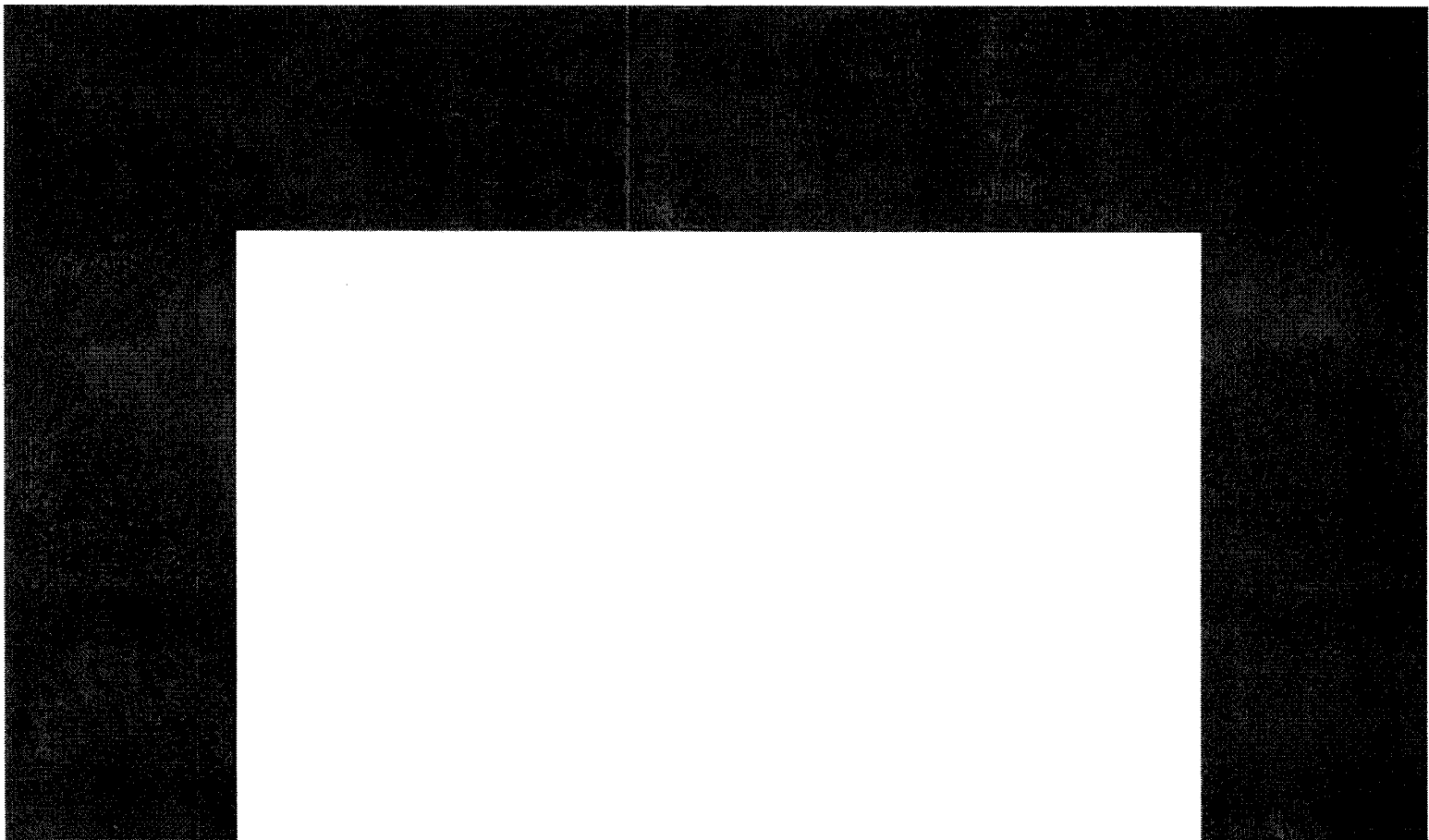
3. I understand that by signing this instrument, I will be eligible to receive "Confidential Information" and/or "Highly Confidential Information" under the terms and conditions of the Protective Order. I further understand and agree that I must treat any "Confidential Information" and/or "Highly Confidential Information" in accordance with the terms and conditions of the Protective Order, and that, if I should knowingly make a disclosure of any such information in a manner unauthorized by the Protective Order, I will have violated a court order, will be in contempt of court, and will be subject to punishment by the court for such conduct.

DATED: _____

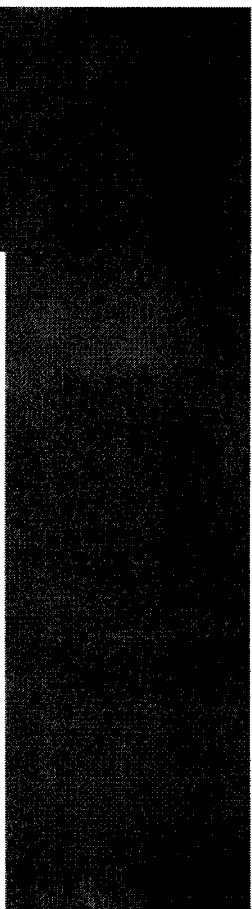
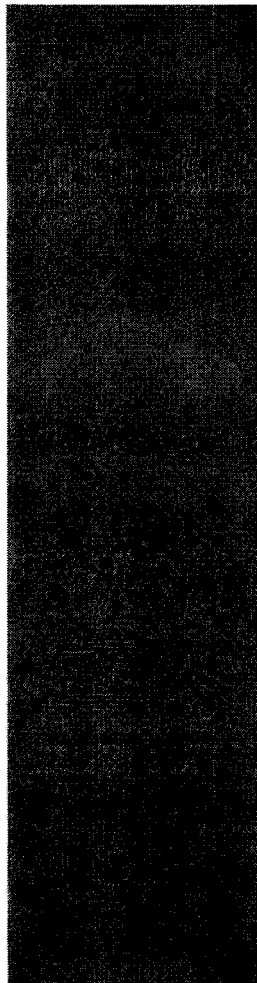
(Signature)

(Printed Name)

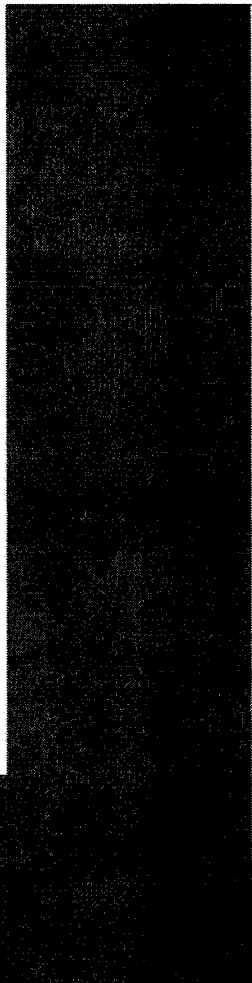
(Address)

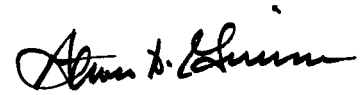


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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED .

Plaintiff .

vs. .

KAZUO OKADA, et al. .

Defendants .

.

CASE NO. A-656710

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

STATUS CHECK AND ELAINE WYNN'S MOTION FOR COMPLIANCE

THURSDAY, JULY 21, 2016

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
J. COLBY WILLIAMS, ESQ.
WILLIAM R. URGAS, ESQ.
MICHAEL T. ZELLER, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, JULY 21, 2016, 8:37 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to Wynn.

4 Mr. Peek, do you anticipate anybody else on your
5 team?

6 MR. PEEK: No, Your Honor.

7 THE COURT: All right. Mr. Zeller, how are you
8 doing?

9 MR. ZELLER: Fine, Your Honor.

10 MR. PISANELLI: Your Honor, we have issues about
11 privilege and confidentiality that we've been wrestling with,
12 and so going early in the calendar raises the complexity of
13 the oral arguments.

14 THE COURT: Well, but my -- we're not going to talk
15 about any specific issues today, because I've read everything
16 and I've got a plan. You know how that is when that happens.

17 MR. PISANELLI: Yes, I do. Okay.

18 THE COURT: So, Mr. Zeller --

19 MR. ZELLER: Yes.

20 THE COURT: -- I'm going to ask you to explain to
21 me, because currently I'm not convinced, even after I've read
22 many of the declarations --

23 MR. ZELLER: Certainly.

24 THE COURT: -- why you believe that the company
25 policy that Ms. Wynn executed is not binding upon her even

1 though she may be a director, rather than employee.

2 MR. ZELLER: Well, no. She -- we're not disputing
3 she's bound by the policy. We're saying the policy -- because
4 the policy is a --

5 THE COURT: You're saying the policy doesn't apply
6 to her because she's a director and not employee. That's what
7 you're saying. Or, alternatively, because she talked to the
8 guy whose name starts with a T who gave a declaration --

9 MR. ZELLER: Toburski.

10 THE COURT: -- that guy.

11 MR. ZELLER: Right. But Mr. Toburski actually does
12 not say he told her the company policy applied to her as
13 pertaining to the email access. All he said is, I never told
14 her any deviation from the policy. Those are his words.

15 THE COURT: Because the policy applies to her. She
16 signed it, and he didn't tell her it didn't.

17 MR. ZELLER: But the policy at large does apply to
18 her, but the email policy, the access policy at issue talks
19 about employees, not directors. That's the distinction.

20 THE COURT: So here's why I think you have a serious
21 flaw in your argument. You gave me in a status report an
22 affidavit from Mr. Wu --

23 MR. ZELLER: Yes.

24 THE COURT: -- who is from Munger Tolles.

25 MR. ZELLER: Correct.

1 THE COURT: And Mr. Wu correctly recognized one of
2 the reasons people don't like to use their employment
3 computers is because of the possibility of replicate or local
4 copies being inadvertently downloaded to your work computer.

5 MR. ZELLER: Right. And that was --

6 THE COURT: And he recognized that in 2013 --

7 MR. ZELLER: Yes, he did.

8 THE COURT: -- and took steps, apparently, to
9 cleanse computers of those items that may have been
10 inappropriately or inadvertently had local or replicate
11 copies.

12 MR. ZELLER: That's right. But those were her
13 personal materials through her personal emails. That's the
14 issue, Your Honor. And that --

15 THE COURT: I understand what you're saying.

16 MR. ZELLER: Sure.

17 THE COURT: I'm trying to get you to tell me,
18 because right now you're not winning --

19 MR. ZELLER: Okay.

20 THE COURT: -- why the policy does not apply to her.

21 MR. ZELLER: Well, number one, we're not disputing
22 the policy applies to her. We're arguing the language of the
23 policy does not say unambiguously that there's no privacy
24 rights even in instances where she used her work email.
25 That's point one.

1 Point two is that she actually endeavored to use her
2 personal email account, not her work accounts, but her
3 personal accounts when she was trying to communicate
4 confidentially with her attorneys.

5 THE COURT: Including her personal Drop Box account,
6 which has a tendency to create local replicate copies.

7 MR. ZELLER: Right. But then when her attorneys
8 realized that inadvertently -- because waiver doesn't come
9 about through inadvertence. It has to be a knowing,
10 deliberate waiver. And here counsel became concerned, Munger
11 became concerned that in fact her personal privileged
12 information was replicated across Drop Box, depending on --

13 THE COURT: You're moving the waiver date much
14 further back in time than I would think you would have it.
15 Why is your waiver date not when she signed the agreement?

16 MR. ZELLER: Well, I don't think there should be a
17 waiver at all, Your Honor.

18 THE COURT: Okay.

19 MR. ZELLER: She took steps to protect --

20 THE COURT: Anything else?

21 MR. ZELLER: Well, yes, Your Honor.

22 THE COURT: Okay.

23 MR. ZELLER: The Drop Box was not an intentional
24 effort on Ms. Wynn's part or anyone's part for her personal
25 emails and the like to be written down to the work hard drive.

1 That is why then Munger took steps. Number one, Ms. Wynn took
2 steps with Mr. Toburski to try and keep her personal email,
3 including with her attorneys, confidential. That's
4 undisputed. And he even acknowledges that.

5 THE COURT: Uh-huh.

6 MR. ZELLER: So those are the efforts she made.
7 Perfection is not required, because, number two, when people
8 realized that there was potentially this material in Drop Box
9 they took steps in order to rectify that.

10 And number three, I will say, Your Honor, there
11 was --

12 THE COURT: But Drop Box is in the Cloud. Drop Box
13 isn't Wynn's. Drop Box is in the Cloud. The issue is the
14 local and replicate copies that Drop Box may save locally on a
15 computer when you access your Drop Box account on the Cloud.

16 MR. ZELLER: Well, there's two different settings of
17 Drop Box, Your Honor. One is you can save it just to the
18 Cloud. Number two is it can get replicated across devices.
19 But Ms. Wynn, who's not sophisticated with computers, did not
20 know the answer to that. That is why Mr. Wu became concerned.
21 He didn't know -- they didn't know one way or another when
22 they went into this whether or not they were going to -- what
23 they were going to find in the Drop Box and whether anything
24 was written down locally.

25 THE COURT: Okay. Anything else you want to tell

1 me?

2 MR. ZELLER: Yes, Your Honor. Then the third point
3 is, you know, the Court will recall that this issue -- when
4 they talked about the emails -- this is between Gibson Dunn
5 and Munger back in 2013 -- they agreed to sequester them.
6 They didn't bring any sort of motion at the time to say that
7 there had been a waiver. Quite the contrary. They said that
8 they were going to sequester them. Now, years later, they're
9 saying for the first time that there's been waiver. And we
10 don't know what those emails even are. Some of these may very
11 well be ones that are subject to the common interest
12 privilege.

13 THE COURT: Okay. So we're not going to derail the
14 procedure I came up with with your firm's attempts to force
15 Wynn to also deposit materials. So we're going to go up to
16 the process -- go back to the process that I created, which is
17 y'all are going to deposit all of your devices and that then
18 there is going to be a period of review by Ms. Wynn to make
19 sure that there's nothing confidential or personal that's on
20 there. And I've told you what I think those kind of
21 informations are, health records, stuff about the divorce,
22 stuff about the grandkids. And we will have a discussion once
23 you identify it as to whether communications with her
24 attorneys in there do or do not survive a privilege claim.

25 But we're not there yet. I need you to do the

1 deposit of the device. I know you've done to some extent and
2 inventory --

3 MR. ZELLER: Yes.

4 THE COURT: -- and an identification. But you all
5 have only apparently agreed on one thing, and that's your
6 vendor. And that vendor you've picked is Advance Discovery,
7 right, and you're jointly splitting the costs?

8 MR. ZELLER: We've agreed on Advance Discovery.
9 There are a couple of other areas we have agreed on, Your
10 Honor.

11 THE COURT: Okay. Tell me.

12 MR. ZELLER: So part of it has to do with chain of
13 custody. We all agree that the Munger hard drive should be
14 among the devices that are imaged. We also have put into the
15 protocol, the draft protocol we did, this additional thumb
16 drive that Munger prepared. We don't know what's on it.

17 THE COURT: The Kingston --

18 MR. ZELLER: Huh?

19 THE COURT: -- Kingston thumb drive.

20 MR. ZELLER: Yes, the Kingston thumb drive. And
21 then we've offered Wynn Resorts to pick out anything else they
22 want. As the Court is aware, seeing from that inventory, we
23 have, for example, 79 CDs of produced documents. I mean, you
24 know, we want to be an open book on this, Your Honor. But it
25 doesn't seem to make a lot of sense for things like that to be

1 forensically examined by the vendor. I mean, the vendor can
2 confirm what those things are, rather than, you know, go
3 through -- because apparently there's 130,000 documents that
4 have been produced in this case.

5 THE COURT: Okay. Anything else?

6 MR. ZELLER: One thing I would like to say -- and if
7 I understand the Court correctly, the Court is not saying yet
8 that we cannot review for privilege.

9 THE COURT: No, I didn't say that.

10 MR. ZELLER: Right. I just wanted --

11 THE COURT: I said I'm not agreeing with you.

12 MR. ZELLER: You're just not there yet.

13 THE COURT: No. I'm not agreeing with you yet.

14 MR. ZELLER: Right.

15 THE COURT: You may be able to change my mind --

16 MR. ZELLER: Right.

17 THE COURT: -- but right now I believe that the
18 policy applies to Ms. Wynn. However, I am willing to consider
19 on a document-by-document basis an assessment that you make
20 that it should be otherwise protected from Wynn's review.

21 MR. ZELLER: Right. But the only way we're going to
22 know what those documents are is if the search protocol is
23 used to identify them.

24 THE COURT: Yes. But you're the one who's going to
25 have to do that, or third-party --

1 MR. ZELLER: Right.

2 THE COURT: -- law firm or vendor that you're going
3 to utilize.

4 MR. ZELLER: That was our intention, Your Honor.

5 THE COURT: Okay.

6 MR. ZELLER: I just -- I wanted to be clear about
7 that. Because the Court may see from the papers the Munger
8 drive is not -- is not the work image, it's --

9 THE COURT: I know.

10 MR. ZELLER: It obviously includes things like
11 internal Munger work product and communications.

12 THE COURT: And I really don't think Mr. Pisanelli
13 cares about the production part of that Munger Tolles drive,
14 but --

15 MR. ZELLER: I would hope. I would hope. But, you
16 know, we've been trying to negotiate the resolution of that.
17 And so that's one reason why we suggested getting a complete
18 list of the file folders so that we can -- if things are
19 obviously just of no concern to anybody, they can potentially
20 be excluded, as opposed to having -- you know, going through
21 the process. Because obviously the more documents involved
22 the more costly and expensive and, you know, more lengthy the
23 process will be.

24 THE COURT: Okay. Anything else, Mr. Zeller?

25 MR. ZELLER: Not on these issues, Your Honor.

1 THE COURT: Okay. Mr. Pisanelli, did you or Ms.
2 Spinelli want to tell me anything related to the protocol for
3 deposit of the information which someday will get me to the
4 point of having an evidentiary hearing on the motion to
5 disqualify?

6 MS. SPINELLI: Your Honor, just a few things. We
7 did -- we do have agreement on a couple of things which was in
8 an exhibit and email that I sent to Mr. Zeller a couple of
9 days ago after we filed our brief. We are absolutely on board
10 with doing the protocol that we did in Jacobs. That's the
11 protocol that we sent to Mr. Zeller at the end of June. It
12 was modified completely in a redline with different changes,
13 and there's some things that we are not going to agree with,
14 unless, of course, the Court orders it.

15 The first is the costs. The costs in Jacobs are not
16 the -- or the costs that we put in our protocol that was an
17 exhibit to Mr. Zeller's status check. It was that for work
18 performed related to Ms. Wynn and preservation of her
19 privileges those costs are going to be borne by Ms. Wynn. If
20 it relates to our review of our records, then those costs will
21 be borne by Wynn Resorts. And there is a provision at the end
22 that says if we want to change them or move to shift them, we
23 move the Court and the Court decides that later. That's the
24 protocol in Jacobs, that's the protocol we've provided to them
25 a couple of weeks ago. We won't agree that we're going to

1 split the costs evenly, however.

2 Also in their protocol, which was not in the Jacobs
3 protocol, was that Wynn Resorts uses search terms to find its
4 privileged documents in the documents that Ms. Wynn took.

5 The other thing that's an issue for us, and this is
6 kind of -- this is two, but they're related, Your Honor, is in
7 their protocol what is missing is the drives, multiple drives
8 that are in Ms. Wynn's home that we know for the first time
9 now from Mr. Wu that didn't sit in a sealed envelope, but they
10 looked at them multiple times. Maybe not Quinn Emanuel,
11 because it was before them, but in Mr. Wu's affidavit he
12 actually said he reviewed them. He may have reviewed some out
13 outside of the Drop Box, he's not sure, but it's not probable,
14 but maybe, I don't know. We need to look into that.

15 And the other thing that we're not interested in,
16 Your Honor --

17 THE COURT: Did you talk to Mr. Wu, too?

18 MS. SPINELLI: I did not.

19 THE COURT: Okay.

20 MS. SPINELLI: I did not.

21 THE COURT: Maybe you guys should have a conference
22 call with Mr. Wu to see if he can identify what the items are.

23 MS. SPINELLI: We probably should. If he remembers.

24 But --

25 THE COURT: Well, but, you know, you can try.

1 MS. SPINELLI: I understand. I understand. But
2 without a file listing, which is one of the things that we
3 would like, it's hard for him to remember, and it's going to
4 be hard for us to say, you don't have to look into that ESI
5 vendor, we don't know what's there. We -- I have told Mr.
6 Zeller on a meet and confer back at the beginning of July that
7 I'm not interested in deposition transcripts, I'm not
8 interested in the discovery Ms. Wynn produced or the discovery
9 the Okada parties produced. I don't know why they ended up in
10 his inventory of the documents that are supposed to be company
11 records or documents and files that potentially are company
12 records. But I don't want the burden to be shifted to Wynn
13 Resorts to say, don't look at that, when there might very well
14 be a subfolder or a folder or a file listing that indicates
15 that there are other documents in there. Like this Drop Box
16 idea. If there are files in the Drop Box that are her
17 personal, I understand she needs to do search terms for that,
18 Your Honor. But if that was on her company computer -- and
19 he's telling us it was -- then she could easily have linked --

20 THE COURT: Well, no. He's not necessarily telling
21 us it was. We didn't get it clear from Mr. Wu as to whether
22 that replicated copy that he has that's apparently somewhere
23 safe --

24 MS. SPINELLI: It's true, Your Honor. Our imaging
25 was done before their imaging, though, so we'll have to figure

1 that out with the vendors. I don't know. I did not look into
2 that. I'm not -- I'm not getting myself in any of that mess
3 when it relates to what could potentially be her privileged
4 documents. My point is if it was on the computer like they're
5 saying that it was, she could have easily pulled from company
6 records and stuck them into her Drop Box just very easily.
7 Without a file listing we can't figure that out. And that's
8 what we're asking for. And if they don't want to do it, I get
9 it. But then everything needs to be deposited with the vendor
10 so that the vendor give a folder or subfolder listing and
11 potentially a file listing to figure out what we need to look
12 at.

13 THE COURT: So you want to reserve the right to do a
14 document-by-document search if you so choose.

15 MS. SPINELLI: Yes, Your Honor. Of company records,
16 yes, for sure.

17 THE COURT: You don't want to pay for Wynn to do a
18 document-by-document review; right?

19 MR. ZELLER: It depends, Your Honor. It just only
20 depends on what the scope of it is. I mean, if I'm hearing
21 Counsel correctly -- and we did discuss this -- there are
22 certain categories obviously no one thinks should be examined.
23 However, if it turns out that say Wynn Resorts is going to
24 insist on categories we think have no reasonable basis, you
25 know, then there's going to be an issue on that.

1 THE COURT: Okay. The problem is nobody believes
2 you anymore. I mean, that's really the problem.

3 MR. ZELLER: Your Honor, I -- this is not an issue
4 of credibility. This is an issue -- I understand -- Your
5 Honor, I understand what the Court's trying to say. But this
6 is a matter of evidence.

7 THE COURT: Absolutely.

8 MR. ZELLER: The forensics are going to show one way
9 or another, and we think we know what they're going to show,
10 that allegations that have been made against Quinn Emanuel are
11 not true.

12 THE COURT: Well, but your own paralegal or whatever
13 you call her, your document person, because you decided to
14 take your ESI vendor in house, put in her declaration that you
15 submitted I think with the status report I got yesterday what
16 she reviewed.

17 MR. ZELLER: She in fact clarified, Your Honor --

18 THE COURT: I know.

19 MR. ZELLER: -- she only looked at C10. The Court
20 asked the question, Mr. Quinn didn't know the answer.

21 THE COURT: I understand.

22 MR. ZELLER: Right. But --

23 THE COURT: So, but the fact you decided to have the
24 ESI services provided by an in-house employee has
25 implications, sir.

1 MR. ZELLER: I agree with you.

2 THE COURT: And your firm refuses to recognize those
3 implications.

4 MR. ZELLER: We don't disagree with you.

5 THE COURT: I'm sorry. Mr. Quinn refuses to
6 recognize its implications.

7 MR. ZELLER: Maybe we disagree with --

8 THE COURT: Are you done?

9 MR. ZELLER: -- but, Your Honor, we agree that that
10 is part of our firm, that's all. We agree with that.

11 THE COURT: Are you done?

12 MS. SPINELLI: I am.

13 THE COURT: Thank you.

14 Wynn does not have to use search terms to search.
15 Quinn Emanuel may use search terms, if you'd like, or you can
16 use a document-by-document review, depending on what you think
17 is the most appropriate after you deposit the devices.

18 For that reason, since I am leaving the choice of
19 the search methodology to the parties, I am going to have each
20 side bear the costs related to their own searches, but split
21 equally any hosting or monthly maintenance expenses related to
22 Advance Discovery.

23 When are you going to deliver the devices, all the
24 devices you've identified currently?

25 Do you really want the 79 CDs with the discovery on

1 it, Mr. Pisanelli?

2 MR. PISANELLI: (No audible response)

3 THE COURT: When?

4 MR. ZELLER: Well, Your Honor, the soonest that they
5 can come and they can image the drive. Or we can take it. I
6 mean, I think we have to figure out logistically working with
7 Advance Discovery what is the way of -- but we'll -- we can do
8 it within days, Your Honor. I'm not talking about --

9 THE COURT: Great.

10 MR. ZELLER: I'm not talking about a week even. It
11 would be just a matter of a few days. But I think we have to
12 coordinate with Advance Discovery.

13 MS. SPINELLI: We have wanted to know, and I don't
14 think anyone's communicated with Advance Discovery yet, Your
15 Honor. But we can do that fairly quickly and get it situated.

16 I did have one question, Your Honor.

17 THE COURT: Let me go back to the date.

18 MS. SPINELLI: Okay.

19 THE COURT: When?

20 MR. ZELLER: Well, Your Honor, I will endeavor --

21 THE COURT: Within a week?

22 MR. ZELLER: Definitely within a week.

23 THE COURT: Great.

24 MR. ZELLER: I'll endeavor to have it done by Monday
25 if we can get Advance Discovery on board.

1 THE COURT: Okay. Now, Ms. Spinelli, you had
2 another question.

3 MS. SPINELLI: My one issue, I believe Your Honor
4 said that Wynn didn't have to use search terms, but Ms. Wynn
5 could -- may use search terms or could do a document-by-
6 document review. What -- document-by-document review of what
7 is my first question. And the second is by whom, this firm,
8 or by a third-party vendor who --

9 THE COURT: Well, you know, if they review it, it
10 then makes it worse for them. And they've already told me
11 that, that they recognize that.

12 MS. SPINELLI: Because they could be reviewing our
13 privilege.

14 THE COURT: Correct.

15 MS. SPINELLI: Okay.

16 THE COURT: But --

17 MS. SPINELLI: So it wouldn't be wise.

18 THE COURT: -- it's not my decision to tell them
19 whether it's wise or not.

20 MS. SPINELLI: That's fair. Okay. Gotcha. Thank
21 you, Your Honor.

22 THE COURT: But I'm not going to tell them what
23 search methodology they have to use.

24 MR. PISANELLI: So, Your Honor, do you want now
25 each side to submit their own proposed protocol to you with

1 a brief --

2 THE COURT: They might just work out all the issues
3 for you.

4 MR. PISANELLI: I don't think so.

5 THE COURT: Which one did I miss? Because I think I
6 hit every one of the issues that you guys had. The only
7 problem is the identification of the additional devices that
8 may be needed to be deposited. And we can always supplement
9 additional devices as they're discovered. And if it turns out
10 the best way to review is to get a file list the vendor
11 creates for you, you can do that.

12 MR. PISANELLI: Sure. So here's what I'm getting
13 at. I think you are giving us the direction we need. But
14 let's just assume hypothetically with this credibility issue
15 we find out that the inventory was something short of
16 complete, we come in complaining to you, and there's no formal
17 order. We've heard this in the past, well, we didn't violate
18 an order because there wasn't one in place.

19 THE COURT: Then maybe you should submit an order.

20 MR. PISANELLI: Yeah. That's what I'm getting at.

21 And then secondly, in connection with their review I
22 understand your ruling as we stand so far on the policy's
23 applying to her, as she acknowledged about five or six times
24 during the course of her tenure with the company. But it
25 sounds like we're going to be getting a review for personal

1 information and I'm sure they're going to assert privilege
2 document by document, not just selectively.

3 THE COURT: They may.

4 MR. PISANELLI: So we then expect a full and
5 complete log both to personal and privileged that give us at
6 least enough information that the law requires to challenge
7 document by document, be it personal or be it a privilege
8 assertion.

9 THE COURT: You will have to have that log, because,
10 as you remember from Jacobs, what has to happen if there is
11 any review of those is I have to use the log to get on the
12 Advance Discovery site and to try and figure it out.

13 MR. PISANELLI: Okay. With all of that said, Your
14 Honor, are you waiting to see the process develop before we
15 start putting timelines and deadlines to all this stuff?

16 THE COURT: Yes.

17 MR. PISANELLI: Okay. All right.

18 THE COURT: Mr. Zeller, what else?

19 MR. ZELLER: One thing I would ask is that the Court
20 put some sort of deadline on whether Wynn Resorts wants
21 additional materials added. I mean, you know, they're kind of
22 impugning our integrity. We went through monumental efforts
23 to provide a list of everything that Munger gave us,
24 regardless of whether there was any possible company
25 privileged material on it, for complete transparency. And now

1 we're, you know -- so I would like at least some sort of, you
2 know, deadline. Because if they come back a month from now
3 and say, you know, we want 79 CDs looked at, I mean, this is
4 just going to delay the process further.

5 MR. PISANELLI: So, Your Honor, it's an easy
6 equation for Quinn Emanuel. They're trying to shift the
7 burden to say, tell us what you want. I'll tell them now what
8 we want. We want everything that was stolen from the company,
9 period. Quinn Emanuel came to this Court telling us there
10 were two emails --

11 THE COURT: I'm sorry. I had to look at Mr. Peek.

12 MR. PISANELLI: Quinn Emanuel started this process
13 by telling Your Honor there were two emails. This isn't like
14 the Jacobs case, Mr. Zeller said, where she left with lots and
15 lots of documents, two emails, he said. And now he's
16 questioning and sounds a little insulted that we don't trust
17 his word or that of his client anymore. We are not going to
18 permit them to say, you only get it if asked for it. We want
19 it all.

20 THE COURT: Okay. So, Mr. Zeller, I think I've been
21 pretty clear that I mean all devices except for those devices
22 that are exclusively deposition transcripts and discovery
23 productions, pleadings, or correspondence by the Munger Tolles
24 firm with other attorneys. And those I understood from your
25 status report that Mr. Malley gave me are in a folder called

1 "Production Documents" or something.

2 MR. ZELLER: It is in more than one place, Your
3 Honor.

4 THE COURT: Okay.

5 MR. ZELLER: But, yes, that is one of the places
6 where it resides.

7 THE COURT: Well, if it's in a particular folder, we
8 can identify the particular folder I've just described. If it
9 is a cross-folder, I am unable to give you relief.

10 MR. ZELLER: Right, Your Honor.

11 THE COURT: So here's the reason I can't give you
12 the information you want. You have to deposit. After you
13 deposit you have to then do or have someone do the review that
14 needs to be done for personal information and any specific
15 privilege claims you're going to make.

16 MR. ZELLER: Right.

17 THE COURT: You then have to create a log. After
18 you create the log you then have to send the log to the Wynn
19 parties, and the Wynn parties are going to look at it and see
20 if there's an issue.

21 MR. ZELLER: Right. Exactly.

22 THE COURT: In the meantime the Wynn parties are
23 probably going to ask if they can get a file list from the
24 devices that just shows a snapshot of all the subfiles that
25 are listed on the devices that are deposited, and they're

1 going to review it and see if they think there's any more
2 stuff.

3 MR. ZELLER: Right. But we don't know what's on
4 these devices. That's what we proposed, is that the ESI
5 vendor prepare a file listing and we look at it in the first
6 instance.

7 THE COURT: That's what everybody wants. Everybody
8 wants that to happen.

9 MR. ZELLER: Yep. Exactly.

10 THE COURT: And our problem is I can't give you
11 deadlines on that right now.

12 MR. ZELLER: Thank you, Your Honor.

13 THE COURT: So I also have in front of me an
14 application from Wynn Resorts for a TRO and preliminary
15 injunction and sanctions related to a violation of protective
16 order.

17 MR. PISANELLI: Correct.

18 THE COURT: When would you like me to schedule that?

19 MR. PISANELLI: This afternoon.

20 MR. URGAS: Your Honor --

21 THE COURT: I have another preliminary injunction
22 hearing tomorrow.

23 MR. URGAS: -- I've been out of town -- I've been out
24 of the country, so I've got at least a defense on this. But I
25 noticed when I got up this morning and rushed to the office to

1 look at this they did not serve -- they did not serve Quinn
2 Emanuel. And I think we're getting to the point where they
3 all of a sudden are becoming the gatekeeper, the judge, jury,
4 and prosecutor of the case, which doesn't make sense to me.
5 And I think that I have to have the ability to give this
6 document to Quinn Emanuel to properly defend against it.

7 THE COURT: It looks like it, because it says Quinn
8 Emanuel has been very, very bad.

9 MR. URGAS: Exactly. So I'm getting a little tired
10 of having to always be worried on my side, because they only
11 give it to me, what I can and can't do or can show or can't
12 show. My understanding was that the discovery was prohibited
13 and stopped, but not the other issues that would go on in the
14 court.

15 THE COURT: But these issues that are raised -- did
16 you get a chance to look at it? I know you just got it.

17 MR. URGAS: I have not looked at it, Your Honor.

18 THE COURT: Okay. Basically it says there's a lot
19 of stuff that's being sent to third parties that maybe
20 violates the protective order and that would be problematic.
21 That's basically what this document says.

22 MR. URGAS: All right. Okay. Fine.

23 THE COURT: Right?

24 MR. URGAS: Fine. But they ought to be able to --

25 THE COURT: Oh. Absolutely.

1 MR. URGAS: Okay. Well, they didn't serve them.

2 THE COURT: I'm asking you a question. When would
3 you like me -- because I can't do it this afternoon. I have a
4 preliminary injunction on reciprocal parking easements in a
5 driveway.

6 MR. PISANELLI: Fun.

7 THE COURT: Better than Sandbags, which I was doing
8 yesterday.

9 MR. PISANELLI: So, Your Honor, from a scheduling
10 perspective we have two forms of relief there. One, of
11 course, is injunctive relief to stop this behavior. It's an
12 obvious violation of this Court's order, contrary --

13 THE COURT: You want tomorrow?

14 MR. PISANELLI: Yes. And then the second part of it
15 is an evidentiary hearing --

16 THE COURT: Okay.

17 MR. PISANELLI: -- to get to bottom of who's
18 actually penning these letters and behind this.

19 THE COURT: So there's an ex parte application for a
20 TRO. I don't do ex parte TROs. I usually set a conference
21 call with counsel or I set a meeting. Are you okay with
22 having the discussion about whether I should grant the request
23 for the ex parte TRO, which I'm going to make them disclose to
24 you, tomorrow, have that discussion tomorrow?

25 MR. ZELLER: Your Honor, since we haven't seen the

1 papers, I can't answer that question. I would like at least
2 until Monday.

3 THE COURT: No.

4 MR. ZELLER: Because -- well, Your Honor, I don't
5 even know when we're going to get them. I mean, we don't have
6 them. I have no idea how long it's going to take to find
7 whatever it is that they're complaining about and get to the
8 bottom of it. It takes time, Your Honor, till we can get to
9 the facts. I mean, it's --

10 MR. PISANELLI: Your Honor, suggesting that he
11 doesn't know how long it's going to take to get them, if you
12 order it, his co-counsel is about 18 inches away from him with
13 a copy of it. I think he knows when he's going to get it.
14 It's going to be immediately.

15 THE COURT: So we're going to make sure he gets a
16 copy. Would you like me to have Laura make a copy? My
17 problem with making the copy is mine has tabs, which means I
18 have to take it apart and put it -- does yours have tabs in
19 it?

20 MR. URGAS: I assume that I've got it. I don't know.

21 THE COURT: Do you want to let me look at -- is
22 yours the same height as mine, Mr. Urgas?

23 MR. URGAS: Probably.

24 THE COURT: Come and lay them next to each other.
25 Let's make sure they're the same.

1 MR. URGAL: I was trying to print this off this
2 morning, so --

3 THE COURT: It's all right. Where's Mr. Malley when
4 we need him?

5 MR. URGAL: Exactly.

6 MR. ZELLER: If I could make a suggestion.

7 THE COURT: Do you think it's the tabs?

8 MR. ZELLER: Your Honor, apparently it was emailed
9 by Wynn Resorts counsel. Could they email it to my firm?

10 THE COURT: Can you email it?

11 MR. ZELLER: That would be the easiest thing to do.

12 MR. URGAL: You know what, I don't think I have it
13 all, because this --

14 MR. ZELLER: Then we'd ensure that what we have is
15 the same thing that everyone else has, rather than, you know,
16 go off of a hard copy. It should be easy enough for Ms.
17 Spinelli to email it.

18 MR. PISANELLI: So, Your Honor, if you're ordering
19 us --

20 THE COURT: Well, hold on a second. First I want to
21 pick a time to talk about it. I don't think that it's going
22 to be that complicated, Mr. Zeller, since it is about 20 pages
23 of text, and it's really not that complicated an issue. And
24 some specific examples are attached to the document. So I
25 don't think it's going to be that complicated for you to read.

1 MR. ZELLER: May I look at it now, Your Honor, with
2 Mr. --

3 THE COURT: Sure. You can look at what Mr. Urga
4 has.

5 MR. URGA: I don't know if I've got -- I don't think
6 I've got the complete copy, Your Honor.

7 THE COURT: I understand. You and I had a
8 difference in height when your documents were laid next to
9 mine. But I will tell you Pisanelli Bice uses really good-
10 quality paper, so it's thicker than the paper that would come
11 out of your copy machine stuff.

12 MR. URGA: It just ends at a funny part.

13 MR. PEEK: Your Honor --

14 THE COURT: Hold on, Mr. Peek. Hold on.

15 MR. ZELLER: It appears to end in the middle of --

16 MR. URGA: Yeah. I was copying it this morning
17 and could have run out of paper. I was running around at
18 7:00 o'clock this morning trying to copy it, Your Honor.

19 THE COURT: Okay. So, Mr. Zeller, I'm going to have
20 Mr. Pisanelli or Ms. Spinelli email it to your firm.

21 Can you do it from here?

22 MS. SPINELLI: Yes, Your Honor.

23 THE COURT: That would be lovely. They're going to
24 email it to you right now.

25 What time would you like to talk tomorrow.

1 MR. ZELLER: Tomorrow.

2 THE COURT: Because somebody I'm talking to at
3 11:00.

4 MR. URGAS: Can we do it early afternoon?

5 THE COURT: Yes, we can.

6 (Off-record colloquy - Clerk and Court)

7 THE COURT: Can we do it at 1:30? I have to talk to
8 the Schechter School tomorrow.

9 MR. URGAS: I thought that was resolved.

10 THE COURT: Yes.

11 MR. URGAS: Mike, tomorrow afternoon work?

12 MR. ZELLER: Yes. Yes, Your Honor.

13 THE COURT: 1:30.

14 MR. ZELLER: Early afternoon.

15 MR. PEEK: And this is not a conference call, this
16 is in court?

17 THE COURT: Yeah. We're going to talk.

18 MR. PEEK: Okay. Because you talked about --

19 THE COURT: You want to come?

20 MR. PEEK: I do want to come, Your Honor. I don't
21 know what position -- I might have a position, and I want to
22 analyze --

23 THE COURT: You may well have a position.

24 MR. PEEK: Yeah. What they seem to do is shut down
25 Elaine Wynn.

1 THE COURT: Well, I don't know what they're trying
2 to do. I'm not clear from the requested relief. And that was
3 part of what I was going to ask.

4 So tomorrow 1:30. I'm going to sign this. And we
5 are only discussing the TRO at that time. We are not
6 discussing a preliminary injunction. We will discuss
7 scheduling for the preliminary injunction at that time.

8 MR. PISANELLI: Your Honor, when we do that is it
9 your expectation that you'll combine, if you find it
10 appropriately, of course, a preliminary injunction with the
11 evidentiary hearing that we're requesting for sanctions, or
12 are we going to do a separate hearing on the sanctions?

13 THE COURT: It's going to depend on a couple of
14 things that I'm going to ask about what information and
15 investigation you need to know prior to that.

16 Here is your hard copy -- wait. It's not 8:30.
17 Sorry.

18 You're right, Laura.

19 MR. PEEK: 1:30.

20 THE COURT: 1:30 now that Laura --

21 MR. URGAS: And you want us in court at 1:30
22 tomorrow?

23 MR. ZELLER: Yes, Your Honor.

24 THE COURT: Is 1:30 going to work, or 2:00? 1:30
25 will be okay.

1 THE COURT: What I'm going to do when Laura leaves
2 me. Okay. There you go, Mr. Pisanelli.

3 MR. URGAS: Your Honor, one other point. Again, I
4 understand there was a phone call yesterday with everybody --
5 I was not on it, but Mr. Malley was on it, and everybody I
6 thought has agreed that the discovery -- I thought somebody
7 from Holland & Hart was on it.

8 MR. PEEK: Maybe they were .

9 MR. URGAS: You may not have.

10 MR. PEEK: I was unaware of it, but --

11 MS. SPINELLI: It wasn't yesterday. It was --

12 MR. URGAS: Well, sometime this week.

13 MR. PEEK: Yeah. Okay.

14 MR. URGAS: I apologize. Maybe it was -- whatever
15 day it was. But they've agreed that the scheduling order has
16 to be either vacated or the timing, because we've had no
17 discovery here for the last month or so.

18 THE COURT: One would think.

19 MR. URGAS: Right. And I assume that that's not a
20 problem.

21 THE COURT: So do you guys want to talk about that
22 tomorrow after we finish the discussion on the application for
23 TRO?

24 MR. URGAS: Sure.

25 MR. PISANELLI: Sure.

1 THE COURT: Okay. Anything else?

2 Ms. Spinelli --

3 MS. SPINELLI: Yes, Your Honor.

4 THE COURT: -- I want you to do the first draft of
5 the order that we've discussed for the deposit of the
6 materials.

7 MS. SPINELLI: Correct.

8 THE COURT: And I would like you, if you can, to
9 email, reflecting the comments I made today, to Mr. Zeller and
10 his team this afternoon so if there are any issues about it I
11 can address them tomorrow afternoon.

12 MS. SPINELLI: Yes, Your Honor.

13 MR. ZELLER: To be clear, also these papers, though,
14 that we're responding to we would like --

15 THE COURT: She already sent them.

16 MR. ZELLER: Okay. Thank you.

17 THE COURT: She showed it on her phone.

18 MR. ZELLER: Okay. Thank you.

19 MS. SPINELLI: It's loading, Your Honor. This
20 happens. So if it doesn't happen now, it will happen as soon
21 as it loads or as soon as they get back.

22 THE COURT: She's holding up the phone demonstrating
23 she has complied with my request to send it to you.

24 MR. PISANELLI: And what she's loading is the same
25 thing that was emailed to Mr. Urga.

1 THE COURT: Well, you know, but I can't expect Mr.
2 Urga to figure that out. If Mr. Malley were here, I would be
3 able.

4 MR. URGa: Your Honor, I got back last night at 8:00
5 o'clock, so --

6 THE COURT: I'm not --

7 MR. URGa: -- I was lucky to find all the stuff that
8 they've been filing.

9 MR. PISANELLI: Your Honor, we had a status check,
10 but I think we've covered it now. Speaking for the people in
11 the gallery, we've covered it.

12 THE COURT: Okay.

13 MR. PISANELLI: Thanks.

14 THE COURT: See you tomorrow.

15 MR. PEEK: Your Honor, to the extent that there were
16 things that we didn't cover today, we can probably cover them
17 tomorrow?

18 THE COURT: Well, but the issues that were on today.
19 we covered every single one of them. You have something you
20 wanted to say.

21 MR. PEEK: Your Honor, I -- there was -- we were at
22 least told yesterday when we called as to what the status
23 check was that you wanted to have Mr. Kunimoto here to talk
24 about --

25 THE COURT: Oh. The boxes.

1 MR. PEEK: -- the boxes. And so that's why -- I
2 mean, I didn't want to --

3 THE COURT: No, that's --

4 MR. PEEK: And I'm not necessarily trying to force
5 the issue with the Court, because you do have other folks. We
6 can talk about it tomorrow.

7 THE COURT: Well, no. My question to Laura
8 yesterday was, did you get an answer from Ms. Spinelli and Mr.
9 Peek about removing the blocking on Mr. Okada and his --

10 MR. PEEK: And she has not. And we're hoping that
11 she will soon, Your Honor.

12 MS. SPINELLI: The parties are discussing it.

13 MR. PEEK: Yeah, we're working on it.

14 THE COURT: Because that will significantly reduce
15 the number of documents in those 18 boxes I actually have to
16 read.

17 MR. PEEK: Yeah. There are a number of issues that
18 we have discussed with Ms. Spinelli that we're trying to work
19 through, and we will at least advise the Court very soon. We
20 want to have it resolved quickly, as well.

21 THE COURT: Okay. Then how about I put the status
22 check on the -- and just call it the 18 boxes -- two weeks
23 from tomorrow. No. Not tomorrow, not the next week, but the
24 week after, which is -- and it's on --

25 MR. PEEK: And you want it on a Friday?

1 THE COURT: It's on the chambers calendar --

2 MR. PEEK: Oh. Just the chambers calendar.

3 THE COURT: -- on August 5th to see if we heard from
4 you so I can ask my new law clerk to nag you. 'Bye. See you
5 tomorrow.

6 MR. PEEK: Thank you, Your Honor.

7 MR. PISANELLI: Thank you.

8 MR. ZELLER: Your Honor, I'm checking my email. I
9 don't have it.

10 MS. SPINELLI: I said it's loading.

11 MR. ZELLER: I just don't want to be in a position
12 where we aren't able to respond tomorrow.

13 THE COURT: Well, Mr. Urga has it. And if you don't
14 have it in the next 15 minutes or something, maybe somebody
15 from his office can try and send it to you, too.

16 MR. PEEK: I'll send it to you, as well, Mike.

17 MR. ZELLER: Okay. Apparently everyone has it
18 except me. Thank you.

19 THE COURT: Goodbye.

20 THE PROCEEDINGS CONCLUDED AT 9:10 A.M.

21 * * * * *

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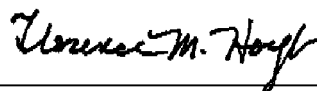
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AFFIRMATION

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Las Vegas, Nevada 89146



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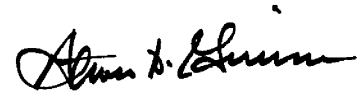
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DATE



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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED .

Plaintiff .

vs. .

KAZUO OKADA, et al. .

Defendants .

.

CASE NO. A-656710

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**STATUS CHECK AND PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION,
AND SANCTIONS**

FRIDAY, JULY 22, 2016

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD L. BICE, ESQ.
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
WILLIAM R. URGAS, ESQ.
DAVID MALLEY, ESQ.
MICHAEL T. ZELLER, ESQ.
COLBY WILLIAMS, ESQ.

1 LAS VEGAS, NEVADA, FRIDAY, JULY 22, 2016, 2:16 P.M.

2 (Court was called to order)

3 THE COURT: It's your motion. Did you get the
4 opposition and a chance to read it?

5 MR. PISANELLI: Yep.

6 THE COURT: Okay. Thank you for doing that. I know
7 it was hard getting it on short notice, but I appreciate it.

8 MR. ZELLER: Thank you, Your Honor.

9 MR. PEEK: I didn't get the opposition.

10 THE COURT: Mr. Peek, do you want to borrow mine?

11 MR. PEEK: I was in court -- in Federal Court this
12 morning, Your Honor, so that's probably why I didn't get it.

13 THE COURT: Can we hand this to Mr. Peek so he can
14 read it. It's not very long. I'm sure he'll catch up.

15 MR. PEEK: Thank you, Your Honor.

16 THE COURT: You're up, Mr. Pisanelli. We do not
17 have the 10 minute rule, but I do need to leave about 4:45 to
18 get down to Judge Scann's service.

19 MR. PISANELLI: Okay. Very good, Your Honor. Thank
20 you.

21 So, Your Honor, yesterday we were here debating a
22 simple proposition, that being whether Wynn Resorts' policies
23 apply to everyone at the company. And Ms. Wynn actually
24 argued that they applied to everyone at the company except
25 her. She actually and literally argued in papers and before

1 this Court that there is one exception in the history of this
2 company that doesn't have to -- one person who doesn't have to
3 apply -- comply with the company policy and that was her. So
4 today's debate is reminiscent. Only this time we're talking
5 about your court orders. No surprise, here she is again
6 saying that they don't apply to her.

7 So the issues before your Court by way of this
8 application, Your Honor, are twofold. First of all, was the
9 confidentiality order violated and, if so, by whom? So the
10 background facts, we don't need to go through the history of
11 this case, but there's some key things. We know that this
12 case has been shut down because of Elaine Wynn and Quinn
13 Emanuel's actions as it relates to the company's confidential
14 documents, I should just say business records, confidential or
15 otherwise. She took hard drives and thumb drives and we don't
16 know what yet. And so we have to get to the bottom of those
17 issues both as it relates to the Sands-Jacobs case concerning
18 privilege and Merits Incentives case to see what, if anything,
19 needs to be done for violations of those principles of law in
20 this case.

21 That apparently has been met with frustration by Ms.
22 Wynn, and so her I'm going to call it leverage campaign has
23 shifted gears. This time, rather than coming into this court
24 with motions coming into the deposition process or the
25 discovery process with onerous depositions one after another

1 on her topics that are unrelated to the merits, this time she
2 has set her sights on the audit -- auditors for the company to
3 try and instigate some type of harassment investigation into
4 issues concerning Mark Shore and his termination.

5 So we have brought to your attention, Your Honor,
6 more than one violation. She -- well, we know others have
7 engaged in this campaign, and that's what we're here to talk
8 about. So before we do, let me just spend a moment or two
9 highlighting the issues of the order that are at issue for us.

10 As Your Honor may recall, on February 14th, 2013, is
11 the order we're taking about which governs the parties'
12 management of information, not just documents, but information
13 that any party may designate as confidential or highly
14 confidential. Paragraph 8 tells us in part that,
15 "Confidential information," again emphasis on the word
16 "information" and not just documents, information is the key
17 here, "or highly confidential information designated or marked
18 shall be maintained in confidence, used solely for the purpose
19 of this action." Solely. "It shall be disclosed to no one
20 except those authorized under Sections 10 and 11."

21 Paragraph 28 goes on to tell us that, "The parties
22 and/or non parties shall not utilize," another important key
23 word, not simply a narrow word like "disclose," "copy," "give
24 away," but utilize, "any confidential information for their
25 own personal or business advantage or gain." And, of course,

1 paragraph 28 is the foundation, as well as common-law rights
2 at issue here, but paragraph 28 is the foundation for our
3 application and request for relief in that it empowers you to
4 enter injunctive relief for violations that have occurred and
5 to enter sanctions, which you've already done once in this
6 case.

7 So now let's talk about the violations. We start
8 off -- there's two, and I'm going to start with the second
9 one, the one that's attached to our application. And that's
10 the letter with the bold letterhead. It says nothing more
11 than "Elaine P. Wynn" at the top of it. And it was addressed
12 to two different parties. One is the audit committee of the
13 company, so sending a communication basically to us is not the
14 foundation of our grievance, it's not what we're complaining
15 about. Not that we couldn't, but that's not what today's
16 debate is about. The cc list is the real target here, Your
17 Honor, and that is a collection of our auditors from Ernst &
18 Young, starting with the partner in charge at the top, and
19 moving down to those who are charged with auditing and
20 basically keeping an eye on this publicly traded company.

21 So she tells us -- and "us" I mean the audit
22 committee -- through the letter of why the audit committee's
23 receipt is largely irrelevant, claiming them to be incompetent
24 and not doing their job. Same theme and theory that she's
25 brought throughout this case. So this letter really is for

1 the benefit of outside auditors to instigate an investigation,
2 an investigation that we all know for publicly traded
3 companies and highly regulated companies like this is costly,
4 it's time consuming, it's burdensome, to say the least. But
5 when real issues are brought and there's real concerns in a
6 company it's there to protect everyone, the company and the
7 investing public. But this now is the new tool she is using
8 because you have shut her down in this case and she can no
9 longer maintain her leverage campaign for her settlement
10 purposes.

11 So the problems we have are twofold with this
12 letter. First of all, it attaches two different documents.
13 One is a letter from me, and the other is interrogatory
14 responses from Tim Poster, starting with the letter from me.
15 Your Honor, that letter has been designated as highly
16 confidential. And, of course, the tap dance we get from
17 Elaine Wynn is, yes, I know the letter is highly confidential
18 in one circumstance but there's other circumstances, like when
19 you sent it directly to me, when it wasn't -- didn't have that
20 stamp; so while I know this --

21 THE COURT: Or when it was attached to a brief.

22 MR. PISANELLI: Whatever it is wherever it is she
23 knew and her lawyers knew that it has been stamped highly
24 confidential. But that two-step around that problem isn't
25 good enough, and that's why I highlighted the concepts of

1 "utilizing" and the concept of "information," not just
2 documents.

3 If you look starting at paragraph 4, she starts this
4 letter -- and I say she, because right now, before we have
5 gotten into this issue, before there's an evidentiary hearing
6 or any discovery you may order, we don't know who crafted this
7 letter. Does this come from the pen, the actual hand and
8 typing of Elaine Wynn? We'll find out. I have a feeling it
9 didn't. And I'm going to tell you why in a minute. But
10 whoever drafted this letter in their fourth paragraph talks
11 about new developments. So the new developments can't be the
12 SEC statements from 2013 that had already disclosed the stale
13 information. The new developments obviously from a fair and
14 objective reading of this letter are the depositions in this
15 case. How do we know that? Because that's all that's been
16 going on on this topic. There is no one interested in Mark
17 Shore's resignation from the company and these allegations
18 that he was actually terminated other than Elaine Wynn. And
19 the sole place where that is taking place is in this
20 litigation.

21 And then the letter goes on to summarize taking
22 information, their interpretation of depositions, all of which
23 was designated highly confidential, and using it as leverage
24 to try and instigate an audit from Ernst & Young. That's
25 paragraph -- the very first one, starting with the new

1 developments, talking about what has happened and what has
2 occurred -- what has happened in these depositions concerning
3 his retirement.

4 The very next paragraph goes on to my letter. And
5 I've just discussed that with you. It already has the highly
6 confidential designation, and it, too, talks about the topics
7 in all of the depositions. All of the depositions, the Mark
8 Shore testimony in all the depositions has been designated
9 highly confidential, so she cannot run and hide and say, ah,
10 you designated in one place but not the other so now it's free
11 game and I can talk about it anywhere. That's not how an
12 order of this sort works. They actually argue to Your Honor
13 that there's no spirit in the order; in other words, they can
14 dance between these raindrops and if they found a place where
15 it's designated in one and not the other it's free game
16 despite the parties' obvious intentions and negotiations
17 through exhausting 2.34 meetings about how and what
18 information would be designated as confidential or highly
19 confidential.

20 The very next paragraph on the second page, which is
21 basically a runover of the paragraph that starts with my name,
22 also references highly confidential information, this time the
23 same excuse, right, that we have the response from Tim
24 Poster's lawyers in which he protected himself for whatever
25 reasons only he and his lawyers know. But all of that

1 information, all of it, same questions, same answers, are part
2 of his deposition which were designated highly confidential.
3 So it's the same game that's being played.

4 And finally, in the last paragraph about a third of
5 the way down, which starts that "Mr. Shore was one of only
6 three members of the committee," again talking about
7 information that has been designated highly confidential. And
8 this is her or her team's interpretation of what's been going
9 on in these depositions. So that's issue or cluster of issues
10 number one.

11 This letter, Your Honor, you should know was
12 preceded by a phone call from a person who asked to remain
13 anonymous, who expressed to the senior management at Ernst &
14 Young frustration at the lack of press in this case and again
15 telling Ernst & Young that they should take a look at what's
16 going on in the depositions, and proceeded to give an
17 interpretation of what's been going on in the depositions, an
18 interpretation and disclosure, Your Honor, of exactly what we
19 have designated as highly confidential.

20 Now, as I stand here before you do I know who that
21 person was? Not yet I don't. But I invite Mr. Zeller to
22 stand up and explain to you what he knows about it. Obviously
23 the first person of interest would be the lawyers for Ms.
24 Elaine Wynn, who's the only person who cares about Mark Shore,
25 and this person told Ernst & Young that they're familiar with

1 Wynn Resorts and this litigation. This is a very small
2 universe of people that know about these depositions, Your
3 Honor, because of these designations and because of your
4 order. So if Mr. Zeller had anything to do with it, I invite
5 him to tell you it was him. Or was it John Quinn? Or was it
6 someone associated with their company, or was it a surrogate
7 for their company? If he can stand up and say he has
8 absolutely no idea and that no one in his firm had anything to
9 do with, well, fine, we'll hold him to his word and we'll get
10 to the bottom of it through this process. But there has been
11 two violations of Your Honor's order, this letter that we've
12 given to you and this phone call or phone calls to Ernst &
13 Young where confidential information is being disclosed
14 because of the frustration of the lack of press of Ms. Wynn's
15 grievances.

16 So what we're going to do, Your Honor, is we're
17 going to do what we need to do as it relates to Ernst & Young.
18 We're going to be transparent, we're going to let them see
19 everything they need to see to make their judgment. In other
20 words, Elaine Wynn has been successful thus far, all right.
21 She has caused at least some activity, and we'll see where it
22 goes from here. We're going to do everything we can to
23 cooperate and be transparent. When we need to we're going to
24 come to you. Unlike Elaine, we're going to come to you when
25 we need your permission to disclose information to these

1 auditors if they have any concerns, rather than just disregard
2 what your confidentiality order says. If we don't need to,
3 then we're going to shine a light on what happened in this
4 litigation or shine a light what happened when Mark Shore
5 resigned. We're not going to run from anything that Ernst &
6 Young needs to hear or see from us. But that is not to say
7 that we're going to tolerate this type of behavior from Elaine
8 Wynn and whoever assisted her. If whoever this person is that
9 made these phone calls or phone call, whoever this person is
10 that actually drafted this letter has nothing to do with this
11 case and is not subject to order, then this process will be
12 focused solely on Elaine Wynn and what should be the
13 appropriate remedy for what she is doing with her disregard of
14 your order in the same way she disregards our company policy.
15 But we have a feeling there's going to be more than one person
16 that's involved in this.

17 So this is what we ask of you, Your Honor. While we
18 move forward and do what we need to do to cooperate, as I
19 said, we may come back to you when we need your permission,
20 but we're going to do that on our own here in order to make
21 sure that rights are being protected and this type of behavior
22 is not going to run rampant any further. We would like at
23 least initially a TRO. And that TRO is largely redundant,
24 right. It's what's you've already ordered in confidentiality
25 order, finding that preliminarily at least, through what we've

1 shown you in this letter and from the obvious and objective
2 read of it that she has disclosed confidential information and
3 violated this Court order, and set, to Your Honor's judgment,
4 a preliminary injunction hearing to see exactly what should be
5 the long-term resolution after we have some witnesses,
6 including Elaine Wynn, take that stand.

7 We'd also like you to set an evidentiary hearing for
8 the sanctions, because we're going to ask for more than just
9 monetary sanctions, including being reimbursed for this
10 motion. We're going to ask for evidentiary sanctions if we
11 find just how deep this violation has been running. In other
12 words, if it goes all the way to Mr. Zeller's lap and Mr.
13 Quinn that they are the ones behind these phone calls and
14 drafting this letter and Ms. Wynn is knowingly working with
15 these lawyers to violate your orders so as to continue to try
16 and obtain leverage on us, then some serious sanctions need to
17 occur, and that shouldn't be done on brief or off the cuff; we
18 should have witnesses on the stand, including whoever it is
19 that authored this letter, including whoever it is that made
20 that phone call, have them on the stand and explain to you and
21 the rest of us why it is that they felt, like the company
22 policies, they're not subject to your orders.

23 We would also add in that, Your Honor, so as to make
24 either of those evidentiary hearings if you decide to do them
25 separately, to make them efficient and meaningful we ask for

1 limited discovery, including and starting with the deposition
2 on this topic alone of Elaine Wynn.

3 THE COURT: So can I ask you a question. It is
4 unclear to me from your application for a TRO what the exact
5 relief are that you're attempting to restrain. Do you want to
6 tell me what that is.

7 MR. PISANELLI: Yes. So right now we know of only
8 the violations of the Court order as it relates to
9 communications with Ernst & Young. So we could ask for a
10 injunction telling her to stop any and all violations of this
11 order, but I would do that based only upon my knowledge that
12 she's violated as it relates to Ernst & Young. So, since
13 that's the starting point, it seems appropriate to me that
14 injunction against Elaine Wynn should be that she and any of
15 her agents and surrogates be enjoined from any further
16 communication in violation of the order absent permission from
17 you.

18 THE COURT: And by "the order" you're referring to
19 the Wynn party's protective order with respect to
20 confidentiality that was filed on December 14th, 2013?

21 MR. PISANELLI: Yes.

22 THE COURT: Okay. So all you're asking me to do is
23 to reiterate the obligations and duties that are required of
24 everyone based upon confidentiality and highly confidential
25 designations that are made both to documents and testimony.

1 MR. PISANELLI: Yeah. Not a lot of teeth there.
2 But because we know there's a campaign as it relates to Ernst
3 & Young, we would ask that it be pointed and directed at that
4 campaign, and that any further communication with that entity
5 or any others, for that matter, be done only with your
6 permission as is required by the order, to come before you if
7 she thinks it's a compelling reason to violate the order and
8 not to take these matters into their own hands. I said to you
9 and I will reiterate it is our intent to be fully transparent
10 with Quinn Emanuel and to comply with your order. And if we
11 feel that those two concepts are in conflict, we'll come back
12 to you and explain why we need some relief in order to give
13 Ernst & Young what they need.

14 THE COURT: Okay.

15 MR. PISANELLI: Okay. Thank you.

16 THE COURT: Mr. Zeller.

17 MR. ZELLER: Good afternoon, Your Honor.

18 THE COURT: Good afternoon. Thank you again for
19 getting me the opposition before lunch.

20 MR. ZELLER: I appreciate the opportunity to put
21 this in. I hope the Court had a chance to look at our papers.

22 THE COURT: I read it, yeah, I did --

23 MR. ZELLER: Thank you. I just didn't want --

24 THE COURT: -- before I started my settlement again.

25 MR. ZELLER: Yeah. I understand. I just didn't

1 want to -- I just didn't want to reiterate things that --
2 necessarily that are in the papers.

3 THE COURT: Mr. Malley brought it, we took it, I
4 read it. I continued talking about the use of Temple Beth
5 Sholom and its school.

6 MR. ZELLER: The one thing I will say is that, as we
7 show in the papers, there's no violation of the protective
8 order at all. Neither of these materials were designated.

9 THE COURT: So what does the word "new developments"
10 mean?

11 MR. ZELLER: New developments are referring to the
12 fact that Tim Poster refused to produce these documents by
13 invoking his Fifth Amendment rights. That is what it's
14 referring to. And now we know that what Mr. Pisanelli said in
15 his letter is incorrect and was showing that in fact they were
16 looking in the wrong place. I met and conferred with Mr.
17 Poster's attorneys well into June in an effort to get them to
18 change this. So, you know, it was an ongoing process. But
19 those were the new developments, Your Honor, the ones
20 explained here, and this is what's attached to the letter.

21 THE COURT: Okay.

22 MR. ZELLER: But, as the Court is aware, the letter
23 was publicly filed. It's been on the public docket to this
24 day. Paragraph 17(d) of the protective order makes it clear
25 that that is now public domain and cannot subject to the

1 protective order. The Poster objections have never been
2 designated, so there simply cannot be a protective order
3 violation here. And there is not one.

4 THE COURT: And your position is nothing in the
5 letter which is Exhibit 3 to the application dated July 12th,
6 2016, contains a reference to highly confidential deposition
7 testimony or confidential deposition testimony?

8 MR. ZELLER: That's correct, Your Honor. It makes
9 no reference whatsoever to a deposition. The word
10 "deposition" is not used anywhere in here.

11 THE COURT: So you --

12 MR. ZELLER: I mean, Mr. Pisanelli, I would invite
13 him to point to where there's a single reference to
14 "deposition."

15 THE COURT: Anything else you want to tell me?

16 MR. ZELLER: Your Honor, one thing I would say, too,
17 is that -- I mean, I, too, am just sort of -- beyond the fact
18 that there's no violation here, I'm certainly troubled by this
19 idea that somehow Wynn Resorts can obtain an injunction to
20 stop a major shareholder from sharing her concerns with the
21 audit committee. She has a right and obligation to do that.
22 Wynn Resorts may not like it, but she absolutely has that
23 right to do it. And so, I mean, the injunction certainly
24 cannot tread upon her right to do that as long as she's not
25 violating the protective order. Which has not been shown.

1 THE COURT: Anything else you want to tell me, Mr.
2 Zeller?

3 MR. ZELLER: No, Your Honor.

4 THE COURT: All right. Anybody else on this side of
5 the room want to say anything?

6 Mr. Peek, you're not involved. Nobody's accused you
7 of being bad or misbehaving.

8 MR. PEEK: I know, Your Honor. And maybe I can just
9 say this afterwards. But the concern that I have, and this is
10 a concern that I've expressed to counsel, and I think Mr.
11 Zeller's also expressed to counsel for Wynn Resorts is what we
12 consider to be the overdesignation of information. I mean,
13 for example, they now say, well, Ms. Calderon designated this
14 letter as highly confidential after the deposition of Tim
15 Poster and now therefore it gets -- it now has this highly
16 confidential designation and therefore can't use it, when in
17 fact --

18 THE COURT: Except it's in the public domain.

19 MR. PEEK: Except it's in the public domain. And if
20 you look at the letter itself --

21 THE COURT: Problematic.

22 MR. PEEK: If you look at the letter itself --

23 THE COURT: [Inaudible].

24 MR. PEEK: -- the problem is that we have this
25 pattern, Your Honor, of overdesignation of highly confidential

1 and confidential information by Wynn Resorts.

2 THE COURT: Gosh. I remember this discussion from
3 several months ago in another forum.

4 MR. PEEK: You're exactly right.

5 THE COURT: I just say I remember the discussion. I
6 didn't say anything else. But it is unfortunately part of how
7 it seems to work in cases where we have sensitive commercial
8 information that somebody thinks needs to be protected and
9 perhaps their adversary thinks they're overreaching. And the
10 mechanism for working through the straightening out of those
11 designations on a deposition-by-deposition basis or document-
12 by-document basis no matter what the agreement among you is is
13 unwieldy. How's that?

14 MR. PEEK: I agree with that, Your Honor. And I
15 know how the Court reacted to my colleagues' arguments on
16 sensitive, highly confidential information in the other case
17 that you're referencing. It still points out a problem that
18 exists, Your Honor, here.

19 THE COURT: I agree it's a problem.

20 MR. PEEK: For all of us. Both sides. And that's
21 the only reason I'm standing up, is just -- and the reason why
22 I wanted to be heard here is that --

23 THE COURT: Can I have my opposition back.

24 MR. PEEK: Pardon?

25 THE COURT: Can I have my opposition --

1 MR. PEEK: Yes, you may.

2 THE COURT: Thank you. The marshal's going to come
3 get it.

4 MR. PEEK: Okay.

5 THE COURT: Mr. Zeller, anything else before I let
6 Mr. Pisanelli speak again? Because, remember, you're not on
7 the 10-minute rule, and it's not often you're off the clock.

8 MR. ZELLER: Well, thank you, Your Honor. Yes,
9 there are a couple things I just wanted to add.

10 Which is in terms of the fact that the letter has
11 been publicly filed it was itself -- we also quoted it in the
12 public motion that has been publicly available. And it was
13 only after -- it was more than a month later in the context of
14 the Samantha Bieber deposition where someone apparently said
15 now suddenly that that letter was confidential. So the
16 processes do not apply in terms of the regular kind of
17 challenge that's required, because 17(d) itself says the
18 protective order shall not be construed to cover those
19 materials. It'd be no different than if like say a trial
20 exhibit were entered and then after the fact someone tried to
21 designate it as confidential. I mean, that just wouldn't be
22 permissible or even make any sense. And they've taken no
23 steps to try and remove this letter or the public memo from
24 this Court's docket.

25 THE COURT: Okay.

1 MR. ZELLER: Thank you.

2 THE COURT: Anything else, Mr. Zeller, before I let
3 you sit down?

4 MR. ZELLER: No, Your Honor.

5 THE COURT: Thank you.

6 Mr. Pisanelli.

7 MR. PISANELLI: A couple important things that Mr.
8 Zeller didn't say. Didn't tell you once that he didn't know
9 that this letter had been designated confidential. He did,
10 and we know he did because, of course, he was put on notice
11 when it was, and he even says in his own motion to seal his
12 opposition that other parties consider this information to be
13 confidential. So it's been a subject of discussion, it's been
14 a subject of meet and confer. Rather than follow the protocol
15 -- and this addresses Mr. Peek's point, which is not an
16 unreasonable point, is that we have a protocol when you feel
17 that there's overdesignating. If I feel he has, he feels that
18 I have, we have a protocol. And that means that you decide.

19 THE COURT: An unwieldy protocol --

20 MR. PISANELLI: Yeah.

21 THE COURT: -- but we do have a protocol.

22 MR. PISANELLI: We do. In the end the most
23 important thing in a protocol is you're the judge and that's
24 the end of the discussion. We don't get to do like Ms. Wynn
25 has done here and just say, well, I know that there's

1 confidential designations here but not there so I will make
2 the decision not to follow the protocol to get permission from
3 this Court. Remember, Your Honor, this is the same party when
4 they produced the privileged memo to Kim Sinatra during her
5 deposition the day before refused our clawback. They didn't
6 follow the protocol there, either. They just said, no, we
7 disagree with you, we're not going to follow the protocol and
8 get permission from the Court no matter what you designate.
9 They've continued to anoint themselves the judge in this case
10 rather than you and to go on a reckless path, running the risk
11 of violating your order.

12 Now, the point is this. Even if they get away with
13 this one because it was attached to a motion that was not
14 sealed, it is the substance that is the violation. Mr. Zeller
15 tells you that the new development is that Tim Poster's
16 response to the subpoena pled the Fifth. That's the new
17 development. That has nothing to do with my letter. And he
18 said that somehow exhibits that my letter is inaccurate
19 because we looked at the wrong place. I'm not sure what in
20 the world that means, but it doesn't have anything to do with
21 the new developments and the paragraph that follows. The
22 paragraph that follows is the same thing that was raised in
23 the phone call that preceded the letter. And, noticeably Mr.
24 Zeller chose not to accept my invitation to tell you that
25 Quinn Emanuel had nothing to do with that phone call. I can

1 tell you from my perspective, even though I'm not the judge,
2 tells me everything I need to know. And it is our intention
3 to get to the bottom of it and bring it to your attention.
4 Surely had Mr. Zeller accused me of making a phone call of
5 that sort and I knew the truth and that I had nothing to do
6 with it, I would not be sitting on my hands under that
7 circumstance.

8 So we know what's going on here, we know that
9 they're playing a game of trying to find cracks and say that
10 they get to sneak through them. But the prudent best practice
11 is to make sure that we are always in compliance with your
12 orders, come to this courtroom and seek your permission, and
13 make the exact argument they made today, rather than blaze
14 ahead, achieve your objective, and ask for forgiveness later.
15 That's been the Elaine Wynn-Quinn Emanuel strategy in this
16 case, is ask for forgiveness later. And we're asking you to
17 get in front of it and not tolerate this any further.

18 MR. ZELLER: If I may just briefly, Your Honor.

19 THE COURT: Uh-huh.

20 MR. ZELLER: First of all let me say the first time
21 I've heard about an anonymous phone call is today. So, I
22 mean, that is a denial. They didn't even -- they've presented
23 no evidence of this. They don't even say who this was
24 supposedly made to. But don't let my silence, Your Honor,
25 mean that I agree with anything that Mr. Pisanelli says. He

1 obviously accuses us of all manner of things, and, you know,
2 we don't necessarily see fit to go, you know, point by point
3 on that. He's just speculating. And whether it's even
4 through or not we have no idea, because there's no evidence of
5 it.

6 The other point is that in terms of complaining now
7 about the clawback of the Sinatra document is that this Court
8 had previously ruled that it was only the producing party who
9 had the right to claw back, not the party claiming privilege.
10 So it wasn't like we took it upon ourselves to do something
11 new under a protocol.

12 THE COURT: Anything else anybody wants to tell me?

13 The motion for TRO is granted in a limited respect.
14 Since I do not believe Mr. Zeller's characterization related
15 to new developments given the contents of the fourth paragraph
16 of Exhibit 3 to the application, I am going to grant the TRO.
17 But it is only going to be granted to the extent that I am
18 requiring that Elaine Wynn specifically comply with all terms
19 of the protective order with respect to confidentiality that
20 was entered on 2/14, 2013. Which means that if there is any
21 request by Ms. Wynn or her surrogates or agents or counsel to
22 release that information, it must be made to the Court prior
23 to that information being released, and that includes
24 information in depositions that are designated as confidential
25 or highly confidential.

1 MR. ZELLER: And just so it's clear, Your Honor.
2 Because there is a disagreement about the scope of the
3 protective order, since Wynn Resorts claims that it applies to
4 any kind of information in the lawsuit, whereas our reading is
5 it must be designated either as confidential or highly
6 confidential.

7 THE COURT: The problem is that your deposition
8 protocol for designating depositions is an after-the-fact, as
9 well as a during-deposition portion. So I think you would be
10 well served to make sure that in depositions, especially those
11 depositions where there will be concerns about sensitive
12 information, that you take the safer rather than sorry path of
13 requesting permission to disclose information.

14 MR. ZELLER: I see. Just so -- if the Court is
15 saying Elaine Wynn is going to be personally bound by the
16 terms of the existing protective.

17 THE COURT: She was already personally bound by it.

18 MR. ZELLER: Yes. Exactly. Well, right. And
19 that's the reason --

20 THE COURT: Which was why I asked Mr. Pisanelli what
21 he was really asking me. And he said, Judge, just tell her
22 she has to follow the confidentiality order. So I'm telling
23 her she has to follow the confidentiality order.

24 MR. ZELLER: I'll remind her.

25 THE COURT: But she already had to.

1 MR. ZELLER: Yes. She was, Your Honor. And
2 that's --

3 THE COURT: Even though she's not technically a
4 signatory to it, her counsel are.

5 MR. ZELLER: Understood. And we've always treated
6 it that way. So I will reiterate --

7 THE COURT: I assume so.

8 MR. ZELLER: -- and, of course, let Elaine know.

9 THE COURT: So I'm at the second part of the request
10 that Mr. Pisanelli had made, and that relates to a motion for
11 preliminary injunction, a motion for sanctions. So what do
12 you guys want to do?

13 MR. PISANELLI: I'd like to depose Elaine Wynn and
14 have an evidentiary hearing of what exactly happened so that
15 Your Honor can determine the necessary sanction, if any.

16 THE COURT: Well, I have to have a hearing on a
17 preliminary injunction. So you're telling me prior to that
18 hearing you want to depose Ms. Wynn and you want to depose her
19 about the limited issues contained in Exhibit 3 and this
20 anonymous phone call that you've referred to to Ernst & Young.

21 MR. PISANELLI: Yes, Your Honor.

22 THE COURT: And those are the two limited issues --

23 MR. PISANELLI: Yes.

24 THE COURT: -- you seek to take her deposition.
25 Anything else?

1 Is there any discovery you'd like to do prior to
2 that?

3 MR. ZELLER: Your Honor, first of all, this has not
4 been noticed. This is not something that they --

5 THE COURT: It is noticed. It's right here on the
6 front of the page.

7 MR. ZELLER: I'm not saying in terms of the scope of
8 what it is now forcing Elaine Wynn to have her deposition
9 first about the subjects of the letter. That's a different
10 issue.

11 THE COURT: Phraseology in the fourth paragraph,
12 which says, "New developments indicate that Mr. Shore, who had
13 just entered into a new multi-year employment contract with
14 the company, did not seek retirement, but was actually
15 terminated from his position for engaging in illegal
16 gambling." That seems to be unlikely to have been in Mr.
17 Poster's responses to a subpoena duces tecum which you told me
18 was the only new development.

19 MR. ZELLER: No, it was not the only new
20 development, Your Honor.

21 THE COURT: It's the only one you told me about when
22 I asked you the question, Mr. Zeller.

23 MR. ZELLER: I apologize, Your Honor, if I was
24 unclear. Because what it showed -- Mr. Pisanelli says he
25 claims he doesn't understand the point, but what I said was it

1 also showed that in fact the investigation that was undertaken
2 now that we knew that Mr. Poster was going to refuse to
3 produce documents like the spreadsheet and that they hadn't
4 looked in the right place, it showed that that investigation
5 was inadequate.

6 THE COURT: I understand what you're saying. But
7 you need to remember that when I ask you a question there's
8 usually a reason. And we have a history of you not
9 necessarily answering my questions.

10 MR. ZELLER: I apologize.

11 THE COURT: So Mr. Pisanelli has told me he wants to
12 take two depositions, the anonymous individual -- or he wants
13 to take Elaine Wynn's deposition on two issues, on the letter
14 and the anonymous phone call. Do you want to take any
15 depositions or do anything prior to me scheduling --

16 MR. ZELLER: Yes, Your Honor. I would like --

17 THE COURT: What?

18 MR. ZELLER: -- the deposition of the person who
19 claims they received an anonymous phone call.

20 THE COURT: The Ernst & Young person?

21 MR. ZELLER: Yes. I'd like --

22 THE COURT: Okay. So --

23 MR. ZELLER: I'd like to depose the Ernst & Young --

24 THE COURT: -- Mr. Pisanelli, we're going to need to
25 identify that individual.

1 MR. PISANELLI: I don't know who it is.

2 THE COURT: Well, no. The person who received the
3 anonymous phone call.

4 MR. PISANELLI: I don't know that person's identity.

5 MR. ZELLER: Then I would like --

6 THE COURT: How do you not know?

7 MR. PISANELLI: Because I have received the
8 information secondhand --

9 THE COURT: Okay.

10 MR. PISANELLI: -- from Ernst & Young.

11 THE COURT: Well, somebody should -- wait.

12 MR. PISANELLI: They could do a 30(b)(6).

13 THE COURT: Can I --

14 MR. PISANELLI: They can do a 30(b)(6) and find it
15 out. I'm just saying I don't know the person's name.

16 THE COURT: Can you stop. Thanks.

17 Someone received a phone call from Ernst & Young,
18 who is the auditors for the company.

19 MR. PISANELLI: Yes.

20 THE COURT: One would think that your auditor would
21 tell you who the individual was at their company who received
22 the anonymous phone call.

23 MR. PISANELLI: I'll tell you why they wouldn't.
24 And they expressly would not. And the reason why is their
25 responsibilities of overseeing this company in auditing

1 includes gathering information. And when someone comes to
2 them asking for anonymity they grant it so as to be able to
3 collect information.

4 THE COURT: Absolutely.

5 MR. PISANELLI: That's what happened.

6 THE COURT: I'm not asking you to get from them the
7 identity of the anonymous individual, the tipster. I want the
8 identification of the individual --

9 MR. PISANELLI: Oh. I --

10 THE COURT: -- at Ernst & Young who received the
11 phone call who can say, yes, I received a phone --

12 MR. PISANELLI: I misunderstood you.

13 THE COURT: -- we always grant -- I'm having a hard
14 time with words today -- anonymity because we have a duty to
15 do an investigation of any company we're auditing.

16 So what I'm asking you for is the person at Ernst &
17 Young who received the phone call, because Mr. Zeller said
18 he'd like to depose them.

19 MR. PISANELLI: I'll find that out. I misunderstood
20 you.

21 MR. ZELLER: Your Honor, I mean, obviously we should
22 be able to discover if they're going to ask for it. And
23 apparently they're not in a position to give it. And --

24 THE COURT: To give what?

25 MR. ZELLER: To give us discovery on that issue.

1 THE COURT: On what issue?

2 MR. ZELLER: What I would suggest is we do a -- we
3 do a 30(b)(6). We can do a corporate deposition notice of
4 Ernst & Young. I would like -- I would like to do that.

5 THE COURT: Absolutely you can. But he said he's
6 going to get you the name of the person who received the phone
7 call. But if you want to do a 30(b)(6) deposition instead,
8 you can.

9 MR. ZELLER: Yeah. Because I think there'd be other
10 topics we'd want to cover, as well.

11 THE COURT: Well, related to the communications.

12 MR. PISANELLI: They could probably ask --

13 MR. ZELLER: Yes. I mean, how they --

14 THE COURT: You're not going to ask about the
15 general auditing. We're only looking at the disclosures and
16 the communications. You are not going into, what audits have
17 you done over the last 10 years for Wynn.

18 MR. ZELLER: Uh-huh. No, I understand. That --

19 THE COURT: Yes, you understand?

20 MR. ZELLER: Right. I understand, yes. Yes, I
21 understand.

22 MR. PISANELLI: Should be a one-question deposition.

23 THE COURT: Well, maybe three.

24 MR. ZELLER: I doubt that they're going to make the
25 same representation with Elaine Wynn's deposition.

1 The other thing is, Your Honor, then I would also
2 like to take the deposition of one of the audit committee
3 members and their understanding of this letter.

4 MR. PISANELLI: What does the audit committee's
5 understanding of this letter have to do with Elaine Wynn's
6 violation of this Court's order?

7 THE COURT: I don't think the audit committee has
8 anything to do with the disclosures.

9 MR. ZELLER: Well, Wynn Resorts is making
10 representations about inferences that's drawn from the letter,
11 that somehow there must be --

12 THE COURT: Sir, we're not -- we're not talking
13 about the letter or what anybody's inferences are from the
14 letter. We're talking about whether the letter signed by your
15 client on her letterhead with her foundation's address on it
16 is making a disclosure of confidential or highly confidential
17 information obtained in this litigation. And from my reading
18 of paragraph 4 of the letter which is attached as Exhibit 3 to
19 the application Mr. Pisanelli filed it's not consistent with
20 what you told me, and it seems to relate to information you
21 would have learned in depositions.

22 MR. ZELLER: You're talking about his invocation of
23 the Fifth Amendment?

24 THE COURT: "New developments indicate --"

25 MR. ZELLER: Yeah.

1 THE COURT: "-- that Mr. Shore --" who was not the
2 person who invoked the Fifth Amendment "-- who had just
3 entered into a new multi-year employment contract with the
4 company did not seek retirement, but was actually terminated
5 from his position for engaging in illegal gambling."

6 MR. ZELLER: That's because Mr. Poster and Mr. Shore
7 were doing it together. Then Mr. Shore -- or, excuse me, Mr.
8 Poster invoked the Fifth Amendment in refusing to produce the
9 documents that would show one way or another whether Mr.
10 Poster was engaged in that activity.

11 THE COURT: Okay. So --

12 MR. PISANELLI: Can we also have copies of all
13 drafts and email communication from Elaine Wynn about this
14 letter?

15 MR. ZELLER: That would be privileged and work
16 product, Your Honor.

17 THE COURT: Would it be?

18 MR. PISANELLI: Only if a lawyer drafted it.

19 THE COURT: Because if the lawyers are drafting it,
20 then I have a much more serious problem on the violation of
21 the confidentiality and highly confidential protective order.

22 MR. ZELLER: Obviously lawyers were involved,
23 including me, in drafting and revising the letter.

24 MR. PISANELLI: Ah.

25 THE COURT: I'm going to take a short break while

1 you guys talk about what the extent of discovery is and talk
2 about your new appellate counsel.

3 MR. PISANELLI: Thank you, Your Honor.

4 THE COURT: Talk with your new appellate counsel
5 about it.

6 MR. PEEK: So that's why you're here, Dan.

7 (Court recessed at 2:54 p.m., until 3:06 p.m.)

8 THE COURT: Okay. I was at the point I was asking
9 people what discovery they wanted to do prior to the
10 preliminary injunction hearing and request for sanctions that
11 was made.

12 You're back up.

13 MR. ZELLER: Yes, Your Honor. And it's quite clear
14 what obviously they want to do is invade the attorney-client
15 privilege. And that's not appropriate. We believe that there
16 should be a mechanism in order to protect that.

17 THE COURT: So the last time I had a sanctions
18 hearing when someone alleged that it was the attorneys who did
19 the bad thing, rather than the client, those attorneys had
20 other counsel that represented them during the evidentiary
21 hearing.

22 MR. ZELLER: Well, I don't think we're quite there
23 yet, Your Honor, simply because I think we need to first talk
24 about the mechanism for protecting the attorney-client
25 privilege.

1 THE COURT: So since it appears that Ms. Wynn's
2 letter that is Exhibit 3 to the application that we've been
3 discussing today may have had attorney-client involvement, I'm
4 going to let you take her deposition first, Mr. Pisanelli.
5 And then if you think that other depositions are necessary
6 after you've had an opportunity to take that deposition, that
7 you then make an application on an order shortening time to do
8 so.

9 MR. PISANELLI: That makes sense to us, Your Honor.
10 I would ask that we continue with our ability to request
11 drafts, emails, et cetera. And if they're going to assert a
12 privilege on them, fine. They can put them on a log. But I
13 don't know who was involved in this that was or was not a
14 lawyer.

15 THE COURT: No. You can make your requests, and
16 then they'll object.

17 MR. PISANELLI: Okay. I just wanted to make sure I
18 had leave of Court to request those documents.

19 THE COURT: I am at this time saying there's been
20 any waiver, nor am I requiring any attorney to testify at this
21 time.

22 MR. PISANELLI: Understood. Understood.

23 THE COURT: There may be a discussion that we have
24 one way or the other about that, but I'm not there today.

25 MR. PISANELLI: So we'll give a formal request. Do

1 you want to leave the ordinary response times in place, or
2 have --

3 THE COURT: Well, that's part of what I'm trying to
4 do, talk.

5 MR. PISANELLI: Okay. I'm sorry.

6 THE COURT: Because Mr. Zeller was at the point he
7 had asked me to depose an audit committee member, and I wasn't
8 convinced.

9 So I was going to say was there anything else you
10 wanted to ask me.

11 MR. ZELLER: Right. And I just wanted to make --
12 one thing I would like, Your Honor, is that I would like also
13 the opportunity to propound discovery, written discovery on
14 the company where they are basically alleging somehow that,
15 you know, they have been harmed by a protective order
16 violation, what's the basis for these -- their -- anything
17 else beyond --

18 THE COURT: That request is denied.

19 MR. ZELLER: It's anything beyond now that they've
20 revealed that there was some anonymous phone call. We don't
21 know what else there is that they haven't told us about. So
22 that's what I'm saying, is, Your Honor, I'd like the
23 opportunity to at least propound written discovery to find out
24 if there's anything else that they have not disclosed that
25 would bear on their motion here.

1 THE COURT: If we get to a hearing for sanctions
2 under Rule 37, they will have to show what the basis is for
3 any sanctions that they request, whether it's an evidentiary
4 sanction or whether it's a monetary sanction.

5 MR. ZELLER: Right. But --

6 THE COURT: I do not think that your request for
7 discovery on that issue is well founded. Anything else?

8 MR. ZELLER: Well, it's just that we would want to
9 test it is all, Your Honor.

10 THE COURT: I understand what you're saying.

11 MR. ZELLER: Okay.

12 THE COURT: And under Nevada Power I have to give
13 you an evidentiary hearing.

14 MR. ZELLER: Sure. I understand.

15 THE COURT: Anything else?

16 MR. PEEK: Your Honor, I -- because Mr. Zeller was
17 not involved in this other case that you keep referencing --

18 THE COURT: I can't help it.

19 MR. PEEK: I understand you can't help it. But I
20 just want Mr. --

21 THE COURT: It has some similarities, except for you
22 guys are on opposite sides of the room.

23 MR. PEEK: Yeah, we were. And I want Mr. Zeller to
24 understand that you did deny their application, certainly, to
25 take the depositions of counsel.

1 THE COURT: Most of the time.

2 MR. PEEK: Yeah.

3 THE COURT: But counsel did testify.

4 MR. PEEK: Counsel did testify, and counsel did --

5 THE COURT: And I honored to the extent that I could
6 the attorney-client --

7 MR. PEEK: Yes.

8 THE COURT: -- privilege that was asserted by
9 counsel. Mr. Lionel was here that day representing you, Mr.
10 Peek.

11 MR. PEEK: Mr. McCrea and Mr. Lionel were both here
12 on my behalf, Your Honor.

13 THE COURT: Mr. Zeller, did you want to ask me
14 something else now?

15 MR. ZELLER: Yeah. Well, fortunately, I wasn't here
16 during that time period.

17 MR. PEEK: Well, I didn't -- I mean, I --

18 MR. ZELLER: One thing I would like to ask, Your
19 Honor, is just in terms of procedure on attorney-client
20 privilege, because obviously I'm sure that they're going to
21 ask questions of Elaine Wynn that are going to invoke
22 instructions.

23 THE COURT: And you're going to instruct.

24 MR. ZELLER: Okay.

25 THE COURT: And then I'm going to have a hearing.

1 MR. ZELLER: And then -- okay. I just wanted to be
2 -- is there any --

3 THE COURT: I may not wait for a deposition
4 transcript to have the hearing, but then I'll have a hearing.

5 So you're going to -- this is how it works. They're
6 going to ask a question. If you think it's appropriate to
7 instruct, there are two ways to follow. One is a phone call
8 to me, which we're not going to follow in this case. The
9 other is a written motion by them to overrule the privilege
10 that you've asserted. And then I make a determination. I
11 don't always wait for the deposition transcript. Sometimes
12 it's obvious without it. I make a ruling one way or the
13 other, and then you have a chance if you want to seek review
14 of that some other place that's 800 miles north of here or so,
15 and you make that --

16 MR. PEEK: It's only 400, Your Honor.

17 THE COURT: Is it 400?

18 MR. PEEK: It's 400.

19 THE COURT: It seems like they're on another planet.

20 MR. PEEK: Only 430 to Carson City. It's 450 to
21 Reno, I know that.

22 MR. ZELLER: Well, I'm just wondering if there's any
23 benefit in some sort of advance guidance from the Court. I
24 think that's a no.

25 THE COURT: Nope.

1 MR. ZELLER: Thank you, Your Honor. That was all I
2 had.

3 THE COURT: So when would you like me to shoot for
4 on scheduling this hearing?

5 MR. PISANELLI: That depends if you're going to
6 shorten the response time on our document requests.

7 THE COURT: I hadn't had anybody ask me to do that,
8 nor have they asked me to shorten --

9 MR. PISANELLI: Your Honor, will you shorten that
10 response time?

11 MR. ZELLER: If I can make a suggestion, Your Honor.
12 I think we'd be agreeable to shortening the time, but it sort
13 of depends on what they're going to ask us for. I mean, I
14 don't think there's going to be very much there. But I would
15 -- I would just be concerned that if they ask for things that
16 are much beyond --

17 THE COURT: So let me go back to big picture, okay.

18 MR. ZELLER: Sure.

19 THE COURT: I have stayed discovery in this case
20 pending the results of the disqualification hearing.

21 MR. ZELLER: Right.

22 THE COURT: This issue is sort of in the same ball
23 of wax. So, remember, the longer this takes, the longer Mr.
24 Peek sits here and complains that he's not able to be involved
25 in participating in the case. Because he's really not allowed

1 to be involved in most of the stuff that involves strict
2 attorney-client relationship and breach of confidential
3 information that your client is alleged to have shared with
4 you. Remember? So we're trying to keep him isolated from
5 that so he doesn't have a problem later.

6 MR. ZELLER: Sure. Of course.

7 THE COURT: So the longer this process drags out --

8 MR. ZELLER: I agree with the Court.

9 THE COURT: -- the longer my stay related to the
10 discovery is.

11 MR. ZELLER: I understand.

12 THE COURT: Because I do not want to prejudice Ms.
13 Wynn by proceeding with discovery without her being able to
14 have counsel of her choice involved.

15 MR. ZELLER: Right.

16 THE COURT: Counsel of her choice who's not
17 disqualified.

18 MR. ZELLER: So I guess one question, then, is how
19 long is it going to take them to get us the document requests.

20 THE COURT: Well, they'll probably get it to you by
21 Monday.

22 MR. ZELLER: If we have them by Monday, then we
23 could have responsive --

24 THE COURT: Was Monday a good guess?

25 MR. PISANELLI: It is now.

1 THE COURT: Ms. Spinelli's not in.

2 MR. ZELLER: I'll take that as an agreement. If we
3 receive the requests on Monday, we can have a request [sic] no
4 later than the following Monday -- the responses, rather, the
5 following Monday.

6 THE COURT: Well, I was going to give you 10 days.

7 MR. ZELLER: Okay. Fine. I guess I'll take that.

8 THE COURT: I always give at least 10 days, because
9 things happen.

10 MR. PEEK: That's 10 business days?

11 THE COURT: No.

12 MR. PEEK: Ten calendar days.

13 THE COURT: Ten calendar days.

14 MR. ZELLER: So we agree. We want this on shortened
15 time, Your Honor.

16 MR. PEEK: Because it's less than 11. That's why I
17 said that, Your Honor.

18 THE COURT: I know.

19 MR. PEEK: Under the rule.

20 THE COURT: I know, but -- okay. So 12. Twelve is
21 the same as nine under that counting.

22 MR. PISANELLI: We will then proceed --

23 THE COURT: Unless you're Tom Beatty.

24 MR. PISANELLI: We'll then proceed to get the
25 deposition conducted after that.

1 THE COURT: Yes. That would be how you would do it.

2 MR. PISANELLI: That's the perfect world, right,
3 knowing that nothing ever goes perfectly. So it seems to me
4 if we set this evidentiary hearing out 60 days, we should be
5 able to get it done.

6 THE COURT: Remember the last time we tried to do
7 this? So today is July 22nd. So if you're going to get Mr.
8 Zeller document requests, he's going to then turn those around
9 to you so you have them by around August 5th.

10 MR. PISANELLI: Okay.

11 THE COURT: And then are you shortening the time for
12 the depositions?

13 MR. PISANELLI: I can't speak for Ernst & Young, but
14 we would -- I guess I can't speak for Elaine Wynn, either. I
15 mean, we would like to shorten the 15-day notice.

16 THE COURT: It was a question. It's not an answer,
17 it's a question.

18 MR. ZELLER: Yeah. And obviously -- and I don't
19 know offhand what Ms. Wynn's schedule is, so -- and just like
20 Wynn Resorts doesn't know about the Ernst & Young people, I
21 would suggest, Your Honor, we just discuss that and see. But
22 obviously we would endeavor to do it as quickly as possible.

23 THE COURT: So best guess, Mr. Pisanelli, Mr.
24 Zeller, it looks like you're looking for some time in
25 September for an evidentiary hearing. How long in hours do

1 you think the hearing would take?

2 Mr. Peek, you're still on my calendar. I have two
3 followup questions for you that are unrelated to this.

4 MR. PEEK: I know. And I see this stay train
5 extending and extending and extending, Your Honor, which
6 troubles me. Because discovery's stayed. We all understand
7 that.

8 THE COURT: And I'm not deciding any of the motions,
9 and I have a pile back there that's 12 feet tall.

10 MR. PEEK: And you have a pile of motions, you have
11 a pile of things to do.

12 THE COURT: And 18 boxes.

13 MR. PEEK: And you have -- 18 binders, or 18 boxes?

14 THE COURT: Eighteen boxes.

15 MR. PEEK: Eighteen boxes. And you have eighteen
16 boxes. So I'm concerned that this hearing interferes with the
17 other hearing regarding the disqualification of Quinn Emanuel,
18 because the Court obviously wants to move -- advance that one.
19 I see all of these hearings beginning to complicate my ability
20 to get to trial and actually their ability to get to trial, as
21 well, on their --

22 THE COURT: All of your ability to get to trial.

23 MR. PEEK: All of our ability to get to trial.

24 Because we need to complete discovery. And I know that the
25 Court in that other sanction hearing that it refers to did it

1 in I think less than 60 days. And we did discovery, and we
2 did a lot of depositions in that same time frame.

3 THE COURT: You sure did.

4 MR. PEEK: So it seems to me --

5 THE COURT: And I wrote a decision.

6 MR. PEEK: And you made a decision right away, as
7 well, Your Honor. So I would hope that we would do this early
8 September or late August, as opposed to 60 days that Mr.
9 Pisanelli's asking. And I'm not -- I mean, I just want to get
10 this done and out of the way so that you can get to the next
11 one so that we can get back on track to having a trial in
12 February if we even can get close to that. I know we all
13 laugh, but --

14 MR. PISANELLI: So, to answer your question, Judge,
15 my gut tells me this hearing will take a day, which means
16 it'll take at least two.

17 THE COURT: Mr. Urga is one of the few people in
18 this world who's ever told me he had a two-day trial. And do
19 you know how many trial days it took? Eight.

20 MR. URGA: Your Honor, it was --

21 THE COURT: Eight.

22 MR. URGA: They said it was a week, and I got
23 brought in late and I said two weeks, and it went five. But
24 there were some gaps in there, and there was also a proper
25 person party, and you gave them a lot of --

1 THE COURT: There's always an explanation. But it's
2 illustrative of the estimates that we try and do.

3 So, Mr. Zeller, in your best opinion, if you have to
4 do an evidentiary hearing on Nevada Power versus Fluor and the
5 Rule 37 sanctions issues, how long in hours do you think it
6 would take?

7 MR. ZELLER: From our perspective --

8 THE COURT: Look at Mr. Polsenberg. He's sending
9 you a signal.

10 MR. POLSENBERG: Three.

11 MR. ZELLER: I will take -- I will take the advice
12 of my counsel.

13 THE COURT: Three Polsenberg days are five regular
14 days.

15 MR. PEEK: Yeah.

16 THE COURT: How many days did we do the Jacobs ones?

17 MR. PEEK: I think, what, three days?

18 THE COURT: Mr. Bice, how many days did we take?
19 Come on.

20 MR. PEEK: Didn't we do that in three days? I think
21 we did it in three days.

22 UNIDENTIFIED SPEAKER: [Inaudible] 12th, 13th, and
23 14th.

24 MR. PEEK: Yeah. Eric remembers, because Eric was
25 involved.

1 MR. BICE: Your Honor, my recollection is it was
2 started in an afternoon and then we finished. So I think it
3 was really about two and a half, is my recollection.

4 THE COURT: So three to four days.

5 MR. PEEK: And a lot more witnesses and a lot of
6 issues. So early -- late August, Your Honor.

7 THE COURT: The one thing about this case is the
8 discovery you are doing is much more limited and much more
9 focused. So I would think you could get this discovery done
10 and be ready to go at the very beginning of September.

11 So anything else on this? Since you can't be ready
12 to do the hearing until the very beginning of September, I am
13 going to leave the TRO in force pending the conclusion of that
14 hearing, because I can't conduct the preliminary injunction
15 hearing until you've done that discovery. If instead you want
16 to advance your discovery and agree to shorten up some more of
17 your time frames, I would move the hearing up.

18 MR. PEEK: My understanding is this is a preliminary
19 injunction hearing and then there still may be a sanction
20 hearing after that?

21 THE COURT: I'm going to try and do the preliminary
22 injunction hearing and sanctions hearing at the same time.

23 MR. PEEK: Okay. That's what -- I was hoping you
24 would say that so that we don't delay this even further.

25 THE COURT: Okay. Because the scope of the

1 discovery you're doing is very different than the ones that
2 was done in the Sands-Jacobs case.

3 Mr. Peek, did you and Ms. Spinelli consult further
4 about my 18 boxes of documents and whether many of the
5 protections under the Macau Data Privacy Act can be removed
6 because it's Mr. Okada and his company being hidden from my
7 view?

8 MS. SPINELLI: We have been conferring, Your Honor.
9 Well, actually we had a call with all of us and Mr. Krakoff's
10 team last week, and we are waiting to hear back from Mr.
11 Krakoff. He's speaking with his client and has some time
12 difference things. So I think that we -- we do have
13 disagreements. I don't know if we'll be able to resolve them.
14 We're trying to see if there is a partial resolution, but
15 ultimately I think Steve will agree that I think there may
16 have to be some motion practice related to the issues, Your
17 Honor. But we are still trying to reach an agreement, at
18 least partial, if we can.

19 THE COURT: Okay. So --

20 MR. PEEK: I think that's why you put it on your
21 chambers calendar, as I recall, for --

22 MS. SPINELLI: Two weeks from Friday.

23 MR. PEEK: -- two weeks from --

24 THE COURT: Which is why I keep nagging you.

25 MR. PEEK: -- today. Right. And Ms. Spinelli has

1 accurately stated it, is that we did have a meet and confer
2 call last week. We made a reasonable effort to resolve it.
3 We have questions, we have concerns. I'm not going to, you
4 know, vet those with you now, Your Honor, but we're trying to
5 work through those both internally as well as with Ms.
6 Spinelli to see if we can reach some resolution.

7 MR. ZELLER: One other thing occurs to me, Your
8 Honor, which is that --

9 THE COURT: On what issue?

10 MR. ZELLER: On the discovery scope.

11 THE COURT: Okay. Hold on. I'll come back to that.
12 I put another checkbox, because I've got three more things on
13 my list. So let me finish with this issue.

14 So we're going to have an answer two weeks or not as
15 to whether my suggestion that there has been -- there is no
16 protection to Mr. Okada because of the nature of the
17 litigation we're currently in for his name to be hidden from
18 me on all these 18 boxes of documents.

19 MS. SPINELLI: Yeah. I think actually we might be
20 able to talk to you before the two weeks, Your Honor, to say
21 that we have a disagreement.

22 THE COURT: Okay.

23 MS. SPINELLI: And we are probably both wanting --
24 want to submit briefs on it, because there are distinctions in
25 the Jacobs case versus --

1 THE COURT: No, I know there are.

2 MS. SPINELLI: -- the Okada case. So --

3 THE COURT: I do. I know there are.

4 MR. PEEK: Significant distinctions between the two.

5 MS. SPINELLI: Yeah.

6 THE COURT: But given the number of boxes and
7 binders that you have delivered to me and my initial review of
8 those, there is a significant number of the information that
9 is blocked which deals with Mr. Okada or his companies' names.
10 And one would think that would be a silly thing to protect.
11 But I'll wait to hear from you.

12 So the deposit protocol for the Elaine Wynn devices.
13 Did we make any progress?

14 MR. ZELLER: I think --

15 THE COURT: I know it was only yesterday.

16 MR. PEEK: That was an order you were supposed to
17 give me.

18 MS. SPINELLI: Yeah. We sent an order yesterday
19 afternoon. No, not to Your Honor, to Quinn Emanuel, as you
20 told us. Quinn Emanuel gave us redlines before this hearing.
21 We can probably reach an agreement on some of the issues, but
22 I think we're going to have a disagreement on others.

23 THE COURT: Can you both submit your competing
24 orders to me Monday afternoon.

25 MS. SPINELLI: Yes.

1 THE COURT: Thank you. And then the last issue I
2 have on my list is somebody thinks there might be a problem
3 with the February trial date and you have some ongoing
4 deposition and other discovery issues you'd like me to help
5 you talk about.

6 MS. SPINELLI: Who's that?

7 THE COURT: Who said that? I think that was you,
8 Ms. Spinelli, who started that discussion.

9 MS. SPINELLI: Me?

10 MR. URGAL: That was me, Your Honor.

11 MR. PEEK: No. Actually, that was Mr. Urgal, Your
12 Honor, that initiated it.

13 THE COURT: Mr. Urgal?

14 MR. PEEK: Because I think Ms. Spinelli and I have a
15 -- and so the Wynn parties and the Okada parties and Mr.
16 Malley had a conversation while Mr. Urgal was not there about
17 the February trial date, about 41(e), about how to resolve
18 41(e). We're working through that, as well. We think we have
19 an agreement on that, but only time will tell. But I think
20 we're going to work through at least coming up with some
21 calculations on 41(e) which may or may not address the trial
22 and extension of discovery. But we're not at that point right
23 now.

24 MS. SPINELLI: Right. We're close, Your Honor.

25 MR. PEEK: But we're close.

1 MS. SPINELLI: And I actually think that we do -- we
2 are waiting to hear back from Ms. Wynn's firm -- or her
3 counsel about their position on 41(e), which may -- actually
4 may or may not cause problems. Because I think we and the
5 Okada parties are very close to an agreement on the 41(e).

6 MR. PEEK: And making a stipulation to that effect,
7 Your Honor, so that it doesn't become an issue as it became in
8 other cases.

9 THE COURT: Can you include in whatever agreement
10 you make a definition of "start of trial" for me, please.

11 MS. SPINELLI: Yes.

12 THE COURT: Thank you.

13 MR. URGAS: Well, Your Honor, I had raised the issue,
14 and I'll let Mr. Malley, since he was involved in the phone
15 call, if there's an issue, to make sure that the dates that --
16 under the present scheduling order are going to have to be
17 vacated. Because August 1st is here in another two weeks --
18 or less than a week, two weeks.

19 THE COURT: I know. I'm looking for the order right
20 now so I can -- I understood your request was for some relief
21 on an immediate basis.

22 MR. URGAS: Well, I mean, just the dates are fast
23 approaching.

24 MS. SPINELLI: There's a stipulation and order, Your
25 Honor, related to the expert deadlines and the close of

1 discovery.

2 THE COURT: Where is it?

3 MR. URGAS: Maybe you've decided to discuss it. I
4 don't know.

5 MR. PEEK: I don't think August 1st is a deadline.
6 I think it's already been vacated.

7 MS. SPINELLI: Yeah.

8 MR. ZELLER: There's a disclosure of experts
9 deadline that's August 1st.

10 MR. PEEK: No. It's a disclosure of the name of an
11 expert, that's correct, but not the actual reports themselves.

12 MR. URGAS: Right.

13 MR. PISANELLI: Yeah. I think things fall into
14 place once we hear from Elaine Wynn's counsel on 41(e),
15 because then we can manage everything once we know that
16 February is not a trigger. So we can't really do anything
17 about the current dates till we know what your position is on
18 the trial.

19 MR. ZELLER: Okay.

20 THE COURT: That's it? Hold on a second.

21 MS. SPINELLI: Well, we have one more issue.

22 THE COURT: Wait. So you have extended your fact
23 discovery from August 1st to October 5th. Your initial expert
24 disclosures is August 1st, and you agreed you will say the
25 names of your experts on August 1st. So their reports are

1 September 1st, and their names --

2 MR. PEEK: It's names and topics, Your Honor, I
3 think is what we were --

4 THE COURT: A brief description of the subject
5 matter of the expert's testimony.

6 MR. PEEK: I think we'd all like to be relieved of
7 that.

8 MR. URGAS: Yes.

9 MS. SPINELLI: Yes, I agree with that.

10 MR. ZELLER: Yes, Your Honor.

11 MR. PEEK: And we're just waiting to hear back from
12 Ms. Wynn's counsel on the 41(e) issue.

13 MS. SPINELLI: Because if -- yeah. If Ms. Wynn's
14 counsel doesn't agree with the 41(e) or we can't reach them,
15 we can all probably agree that the expert disclosures can
16 take --

17 THE COURT: Can I compress your August 1st date to
18 the September 1st date, which was the day on which you were
19 making initial expert disclosures, which is all information
20 and reports required pursuant to NRCP 16.1(a)(2).

21 MR. PEEK: It's certainly a nice aspirational goal,
22 Your Honor. But absent completion of -- or the ability to
23 conduct discovery it's a challenge to be able to meet either
24 -- meet that date because of what you're saying. You're
25 compressing the disclosure of the individual and the topics

1 with the report. The challenge will be being able to do any
2 reports in the absence of the ability to complete discovery.

3 THE COURT: I understand that.

4 MS. SPINELLI: Which is why Ms. Wynn's position on
5 41(e) is important.

6 MR. PEEK: Yeah. That's why we're trying to get the
7 41(e) issue resolved, Your Honor.

8 THE COURT: Definition of start of trial.

9 MR. PEEK: Pardon?

10 THE COURT: No. Never mind. I'm probably the only
11 one in the building who thinks that's a problem. Okay.

12 MR. ZELLER: Your Honor, I just wanted to actually
13 ask instead that I be given the name of the Ernst & Young
14 person who supposedly received this anonymous phone call.
15 Because I don't want to show up at some PMK deposition and
16 then find out this person doesn't know anything. So I would
17 like -- I would like Wynn Resorts to give me the name of --

18 THE COURT: He said he would.

19 MR. ZELLER: Okay. I didn't understand that, but --

20 MR. PISANELLI: What I said, Your Honor, is that I
21 don't control that entity, it's not my client. So if they
22 have their own internal policy where they won't even tell me,
23 then I --

24 THE COURT: Well, then you'll tell us they won't
25 tell you.

1 MR. PISANELLI: They're either going to give me the
2 name or say they won't give it to me. I'll give you one or
3 the other.

4 THE COURT: Yeah. And they don't give you the name,
5 he'll do a 30(b)(6).

6 MR. ZELLER: Yeah.

7 THE COURT: And if they give you the name, you'll
8 tell him so he can take their deposition.

9 MR. ZELLER: Right. Because if we're just going to
10 run into an issue of whether or not we even get discovery on
11 this, I'd like to know in advance before wasting time.
12 Because if we -- if this person's in New York or something,
13 that's what got me a little bit more concerned.

14 THE COURT: Okay.

15 MR. ZELLER: Could we have an answer by Monday, I
16 mean, one way or another?

17 THE COURT: How about by Wednesday? Okay.

18 I have concerns about you being ready in any near
19 term, so --

20 MS. SPINELLI: Your Honor, I have one other issue.
21 Yesterday a potential intervenor, Mr. Sokolowski, served a
22 notice of nonopposition to his motion to intervene. We do --
23 the company does and intends to oppose that intervention and
24 requests for documents. But because of --

25 THE COURT: Is it Mark Albright again?

1 MS. SPINELLI: Yes. Same thing in both cases. But
2 because of the discovery stay, that was a discovery-related
3 motion, we didn't file an opposition.

4 THE COURT: Motions to intervene aren't discovery.

5 MS. SPINELLI: It was a motion to intervene and to
6 get documents related. So if -- quite frankly, Your Honor, we
7 are opposing. We're prepared to oppose it, so I just --

8 THE COURT: Hold on. Let me look and see when it
9 is.

10 MR. PEEK: It's set for August 2nd, Your Honor.
11 It's set for the same time as the Sokolowski motion in Jacobs.

12 MS. SPINELLI: Right.

13 MR. PEEK: So -- and it was something we did by
14 stipulation with Mr. Albright some time ago.

15 THE COURT: Okay. He is seeking to intervene and
16 unseal certain documents.

17 MS. SPINELLI: Right. So I just wanted to let Your
18 Honor know that. And we can file that opposition, but I
19 wanted to let Your Honor know that we are actually filing it.

20 THE COURT: Okay. I look forward to receiving it.

21 Anything else?

22 MR. PEEK: Your Honor, I think there are a number of
23 orders that we have submitted to you.

24 THE COURT: I signed a stack yesterday.

25 MR. PEEK: You signed a stack of those?

1 THE COURT: There was a cover letter from some nice
2 person who apologized for sending so many at one time, and I
3 signed every single one of them.

4 MR. PEEK: Well, I wonder who that was.

5 THE COURT: That was Linda. That was Mr. Urga's
6 person. She was so polite. Valerie always sends nice notes,
7 too.

8 MR. PEEK: Yeah. I think Valerie probably has some,
9 as well. And then I think that the Wynn parties and us have
10 one disagreement on another --

11 Where are we on that other motion or that other one?

12 MS. SPINELLI: I don't know which one you're talking
13 about. We agreed on them all.

14 (Off-record colloquy - Mr. Peek and Ms. Spinelli)

15 THE COURT: I have two competing orders I've got to
16 review, a Cotter and Swarovski. I have no competing orders in
17 Wynn.

18 MS. SPINELLI: Oh. Okay. So --

19 THE COURT: I only have competing orders in Cotter
20 and Swarovski.

21 MS. SPINELLI: So we submitted our order last Friday
22 or Monday, and so we're waiting on your order. So --

23 THE COURT: Word format of your version.

24 MR. PEEK: I'll check on it, Your Honor, to try to
25 find out where it is.

1 THE COURT: Then once I get it I will review it.

2 MR. PEEK: Yeah. But otherwise I think we have --
3 we are prepared to submit a number of other orders to you
4 where we have reached agreement, and we have reached --

5 THE COURT: I'll be happy to sign them.

6 MS. SPINELLI: The only competing order, Your Honor,
7 is on the motion to sever. We disagreed on certain language
8 in the motion to sever, just to let you know.

9 THE COURT: Okay. Is there anything else anybody
10 wanted to say?

11 MR. PEEK: There are competing orders, as well, Your
12 Honor, that --

13 THE COURT: Mr. Polsenberg, thank you for joining
14 us.

15 MR. PEEK: -- the Elaine Wynn folks have with the
16 Wynn parties on the disqualification motion.

17 MS. SPINELLI: [Inaudible].

18 MR. PEEK: We signed off on it. We accepted the
19 Wynn party's order, and then I don't know if we're waiting for
20 Elaine Wynn to do a competing order or not on that.

21 THE COURT: That's what Laura says. She's waiting
22 for Mr. Urga.

23 MR. URGa: Your Honor, I'm still trying to wake up.

24 THE COURT: It's been three days.

25 MR. URGa: Well, not really. Tell my body that last

1 night.

2 THE COURT: Mr. Peek, thank you.

3 Anything else?

4 Mr. Polsenberg, pleasure to see you.

5 MR. POLSENBERG: Thank you, Your Honor.

6 THE COURT: 'Bye, guys.

7 MR. URGAS: Have a nice weekend, Your Honor.

8 THE COURT: Yeah. I'm spending a lot of time at
9 funerals this weekend.

10 MR. PEEK: So when do we know that the hearing is
11 set, Your Honor? That's what I -- I mean, all I heard was an
12 aspirational --

13 THE COURT: I haven't set it. You guys have like
14 three hearings between now and then.

15 So, Dulce, can you set a status check "set
16 evidentiary hearing" on August 11th.

17 MR. PEEK: And when, Your Honor, is there any
18 aspirational goal for the disqualification hearing?

19 THE COURT: That's a really good question.

20 MR. PEEK: Because, again, that --

21 THE COURT: That would be a great one to do
22 together.

23 MR. PEEK: Well, it's all about the stay, Your
24 Honor. Because I --

25 THE COURT: I know.

1 MR. PEEK: It impacts the stay.

2 MR. ZELLER: Your Honor, I think it's a little
3 premature to try and figure that out until we know the
4 schedule of people's depositions.

5 THE COURT: No. I'm setting a status check.

6 MR. ZELLER: Yes.

7 THE COURT: So, Dulce, there's a status check on
8 August 18th at 8:30. Can you move that to August 11th. And
9 we'll do a status check, and at that time we'll discuss the
10 setting of the evidentiary hearing because we'll know where
11 you are.

12 MR. URGA: Status check on what, Your Honor?

13 THE COURT: My monthly status check with you.

14 MR. URGA: Oh.

15 THE COURT: I'm moving it from August 18th to
16 August 11th.

17 MR. URGA: I thought I heard at some point you were
18 waiving those since there was no discovery. But I guess
19 they're still on?

20 THE COURT: They're still on.

21 MR. URGA: Oh. Okay.

22 THE COURT: We vacate them as needed if there's
23 nothing except discovery issues.

24 MR. URGA: Okay. So August 11th.

25 MR. MALLEY: And you said that --

1 THE COURT: August 11th, 8:30. Be here.

2 MR. PEEK: And Dulce will send out a little --

3 MR. MALLEY: Happily.

4 THE COURT: She's going to send out a minute order
5 saying she just moved it.

6 MR. URGAS: Okay. That will help.

7 THE COURT: All right. 3:30. Farmers call.

8 MS. SPINELLI: Thank you, Your Honor.

9 MR. URGAS: Thank you, Your Honor.

10 MR. PEEK: Thank you, Your Honor.

11 THE COURT: See you all later.

12 THE PROCEEDINGS CONCLUDED AT 3:34 P.M.

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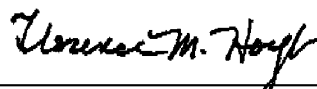
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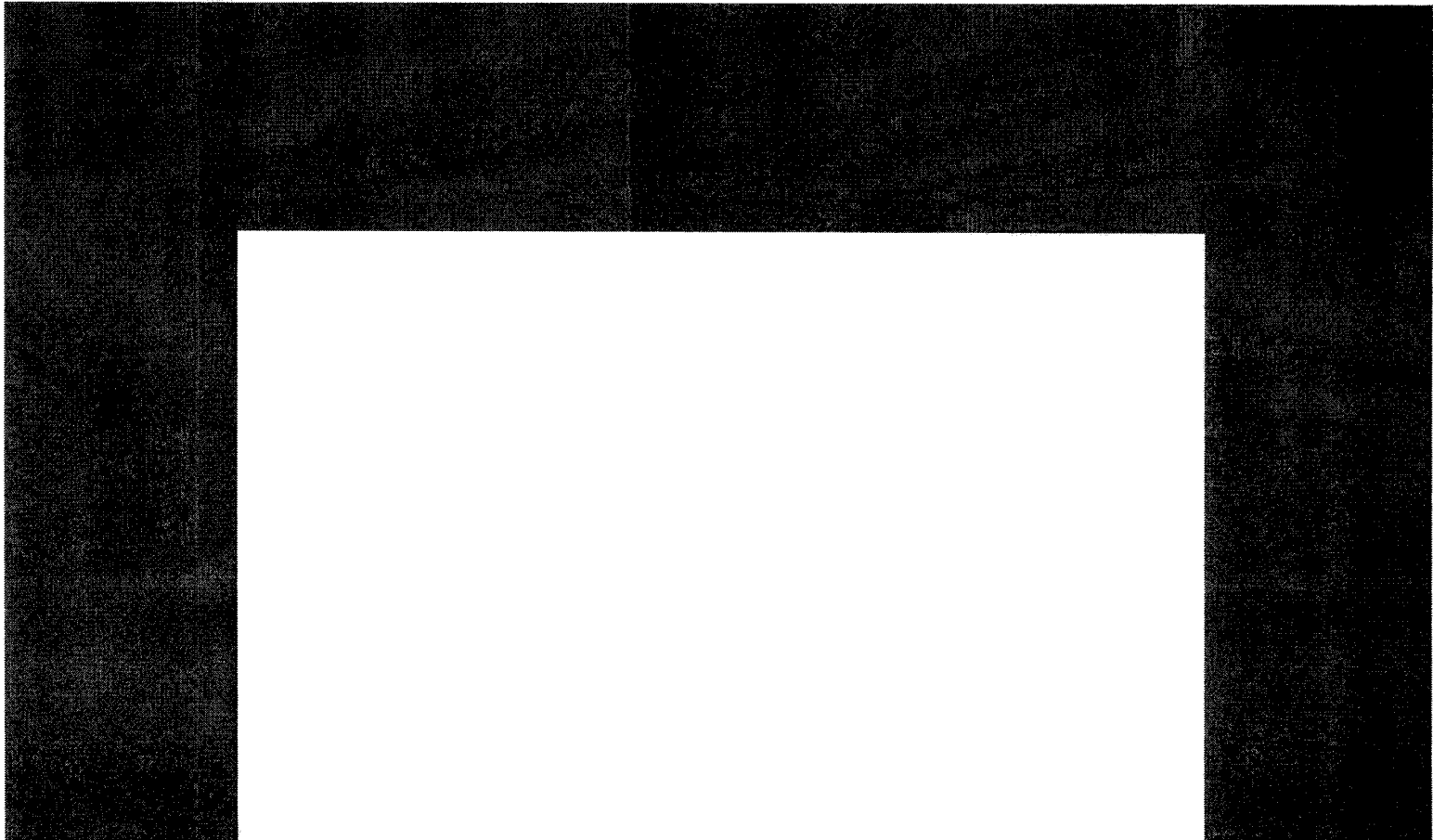
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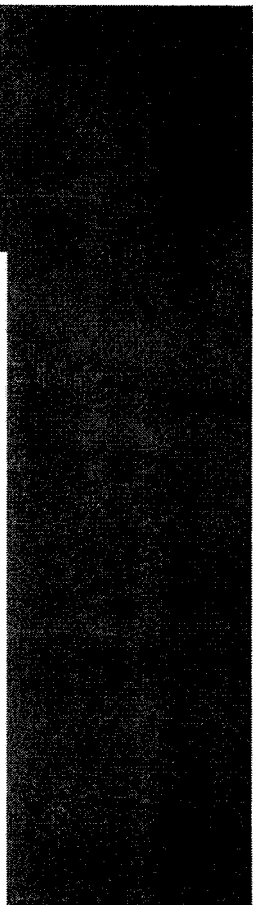
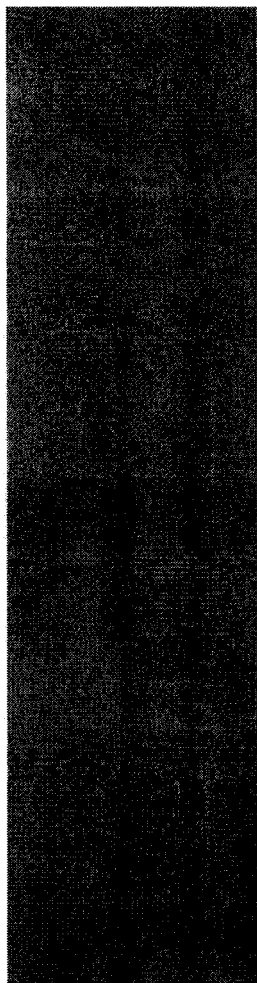
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