

# **EXHIBIT E**

  
CLERK OF THE COURT

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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

6 WYNN RESORTS, LIMITED, a Nevada  
7 Corporation,

8 Plaintiffs,

9 vs.

10 KAZUO OKADA, an individual; ARUZE  
11 USA, INC., a Nevada corporation,  
12 UNIVERSAL ENTERTAINMENT  
13 CORPORATION, a Japanese corporation,

14 Defendants.

15  
16 AND ALL RELATED CLAIMS.

CASE NO. A-12-656710-B  
Dept. No.: XI

**ORDER ON WYNN RESORTS,  
LIMITED'S EX PARTE APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER**

Hearing Date: July 22, 2016

Hearing Time: 2:00 p.m.

**ELECTRONIC FILING CASE**

17 Plaintiff Wynn Resorts, Limited's ("Wynn Resorts") *Ex Parte* Application For Temporary  
18 Restraining Order, Motion For Preliminary Injunction, And Motion For Sanctions For Violations  
19 Of The Protective Order; Ex Parte Application For An Order Shortening Time, filed on Order  
20 Shortening Time on July 20, 2016 (the "Application"), came before this Court for hearing on July  
21 22, 2016 at 2:00 p.m. James J. Pisanelli, Esq., Todd L. Bice, Esq., and Debra L. Spinelli, Esq., of  
22 Pisanelli Bice appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited and  
23 Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran,  
24 Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman  
25 (collectively the "Wynn Parties"). J. Colby Williams, Esq., of Campbell & Williams, appeared on  
26 behalf of Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). William R. Urga,  
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1 Esq. and David Malley, Esq., of Jolley Urga Woodbury & Little, and Michael T. Zeller, Esq. of  
2 Quinn Emmanuel, appeared on behalf of Counterdefendant/Counterclaimant/Cross-claimant  
3 Elaine P. Wynn ("Ms. Wynn"). And, J. Stephen Peek, Esq., of Holland & Hart, LLP, appeared  
4 behalf of Defendant Kazuo Okada ("Okada") and Defendants/Counterclaimants/Counter-  
5 defendants Aruze USA, Inc. ("Aruze USA") and Universal Entertainment Corp. ("Universal")  
6 (collectively the "Okada Parties").

7 The Court having considered the Motion, the Opposition filed by Ms. Wynn, as well as  
8 the arguments of counsel presented at the hearing, and good cause appearing therefor, THE  
9 COURT HEREBY FINDS THAT:

10 Based on the record before the Court, the Court finds it appropriate to grant the motion for  
11 temporary restraining order in a limited respect. In particular, the temporary restraining order is  
12 granted to the extent that the Court is requiring that Elaine Wynn specifically comply with all  
13 terms of the protective order with respect to confidentiality that was entered by the Court on  
14 February 14, 2013.

15 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

- 16 1. Wynn Resorts' Application for a Temporary Restraining Order is GRANTED; and
- 17 2. Ms. Wynn is required to specifically comply with all terms of the Protective  
18 Order.
- 19 3. Wynn Resorts will suffer irreparable harm because if Ms. Wynn releases  
20 information designated as Confidential or Highly Confidential under the Protective Order.
- 21 4. Prior to release of any information, Ms. Wynn (or her agents, or counsel) must  
22 seek permission from the Court to release information obtained in discovery, including  
23 information from any deposition that has been designated as Confidential or Highly Confidential  
24 pursuant to the Protective Order.
- 25 5. The deposition of Ms. Wynn and the individual who placed the anonymous phone  
26 call to Ernst & Young; and the deposition of either the 30(b)(6) designee of Ernst & Young or the  
27 person at Ernst & Young who received the phone call may be completed prior to the hearing on  
28

1 the preliminary injunction. Additional discovery on these issues may be taken upon agreement of  
2 the parties<sup>1</sup> or by order of the court.

3 6. The Court further orders that security is set at a nominal amount of \$ 100.

4 7. The Hearing on Wynn Resorts' Motion for Preliminary Injunction and Sanctions  
5 will be scheduled after completion of the discovery ordered herein.

6 8. The Temporary Restraining Order shall remain in place until the conclusion of the  
7 preliminary injunction hearing.

8 IT IS SO ORDERED.

9 DATED this 12 day of Aug, 2016.

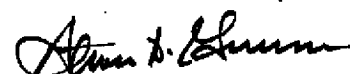
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12 DISTRICT COURT JUDGE  
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26 <sup>1</sup> Because of the privileged nature of the issues which form the basis of these depositions, the  
27 Okada parties are precluded from participation in the depositions, but may request a copy of the  
28 record of the depositions. Wynn may seek redaction or other protection from the Court to  
maintain privileged information.

**EXHIBIT D**  
**(To be filed under seal)**

# **EXHIBIT C**



CLERK OF THE COURT

1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 WYNN RESORTS, LIMITED, a Nevada  
5 Corporation,

Case No.: A-12-656710-B  
Dept. No.: XI

6 Plaintiff,

7 vs.

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

**ORDER APPOINTING A SPECIAL  
MASTER FOR LIMITED DISCOVERY  
PURPOSES**

10 Defendants.

11 **AND ALL RELATED CLAIMS.**

12  
13  
14 Based upon the submittals of Wynn Resorts, Limited and Elaine P. Wynn, the Court enters  
15 the following findings and order:

16 1. The Order Regarding Protocol for Collection, Search, and Review of Documents  
17 Related to the Motion to Disqualify Quinn Emanuel and for Orders Turning Over Privileged  
18 Matter, Injunctive Relief, Protection and Other Appropriate Relief (hereinafter "Protocol"),  
19 entered by this Court on August 10, 2016, contemplated the possible use of a Special Master for  
20 limited discovery purposes.

21 2. At the hearings on September 2, 2016, the Parties agreed a special master should  
22 be appointed for limited purposes, with the possibility that the scope of duties listed herein may  
23 expand upon further stipulation by the parties and/or order of the Court.

24 3. The Court hereby appoints the Honorable David Wall (Ret.) as special master (the  
25 "Special Master"), and Officer of the Court, for the purpose of assisting in the following limited  
26 discovery issues:

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1 a. Conduct the review for any privileged or highly personal emails/documents  
2 from the documents deposited with the ESI Vendor, as specified in  
3 Paragraph 17 of the Protocol.

4 i. The Special Master shall determine the manner or mode of his/her  
5 review, *e.g.*, whether to use search terms or conduct a  
6 document-by-document review.

7 b. Conduct the review of the folder, subfolder, and file listings for each  
8 imaged device (as described in Paragraph 15 of the Protocol), for  
9 potentially privileged or work product protected information for Ms. Wynn  
10 for the devices listed in Paragraph 4(a), (b), and (d) of the Protocol, and for  
11 Wynn Resorts for the devices listed in Paragraph 4(c) of the Protocol.

12 4. The Special Master will have authority to resolve any disputes relating to the  
13 review. Subject to his schedule, the Special Master will conduct an initial conference with the  
14 parties to discuss the Protocol and its implementation.

15 5. All decisions by the Special Master will be made in writing after giving the parties  
16 notice and an opportunity to be heard. The Special Master shall be guided by the processes and  
17 procedures specified in EDCR 2.34(f), and any party may object to a recommendation of the  
18 Special Master through the procedures specified therein.

19 6. The Court shall retain jurisdiction and authority over all other issues,  
20 discovery-related or otherwise. As such, the Parties shall continue to submit all other  
21 discovery-related motions through the normal processes, including their obligations under  
22 EDCR 2.34.

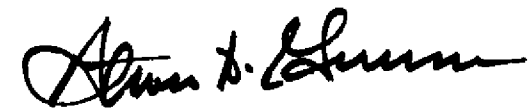
23 IT IS SO ORDERED.

24 DATED: 20 Sept 16

25   
26 THE HONORABLE ELIZABETH GONZALEZ  
27 DISTRICT COURT JUDGE  
28



# **EXHIBIT B**



CLERK OF THE COURT

**ORDR**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

**Plaintiff,**

**vs.**

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

**Defendants.**

**AND ALL RELATED CLAIMS**

Case No.: A-12-656710-B  
Dept. No.: XI

**INTERIM ORDER ON WYNN RESORTS'  
MOTION FOR DISQUALIFICATION**

Date of Hearing: June 23, 2016

Time of Hearing: 10:00 a.m.

1 Before this Court are the following additional submittals related to  
2 Wynn Resorts, Limited's ("Wynn Resorts" or the "Company") Motion to Disqualify  
3 Quinn Emanuel and for Order Requiring Turnover of Privileged Matter, Injunctive Relief,  
4 Protection and Other Appropriate Relief on an Order Shortening Time (the "Disqualification  
5 Motion"):

- 6 1. Elaine Wynn's Notice of Submission of Materials for *In Camera* Review;
- 7 2. Elaine P. Wynn's Request for a Ruling on Wynn Resorts, Limited's Motion to  
8 Disqualify Quinn Emanuel;
- 9 3. List of communications submitted by Elaine P. Wynn and Quinn Emanuel  
10 Urquhart & Sullivan, LLP *In Camera* Pursuant to the Court's June 7, 2016 and June 17, 2016  
11 Orders;
- 12 4. Elaine Wynn's *In Camera* Submission of Materials by Quinn Emanuel Urquhart &  
13 Sullivan, LLP and Elaine P. Wynn Pursuant to the Court's June 7, 2016 and June 17, 2016 Orders;
- 14 5. Notice of Declarations of Aruze Attorneys in Response to Wynn Resorts' Motion  
15 to Disqualify Quinn Emanuel;
- 16 6. Wynn Resorts' Response to In Camera Submission; and
- 17 7. Declaration of Ian S. Shelton, Esq. (Quinn Emanuel of counsel) in Support of  
18 Elaine P. Wynn's Opposition to Wynn Resorts' Motion to Disqualify Quinn Emanuel.

19 In its Response to In Camera Submission, Wynn Resorts asks this Court to impose a  
20 protocol to protect and preserve its privileges. Specifically, Wynn Resorts asks this Court to  
21 implement four protocols to address its privileged communications which may be in the  
22 possession of its adversary, Elaine Wynn, including that which may be in the possession of her  
23 counsel.

24 Based upon the Disqualification Motion and the recent submittals by the respective  
25 parties, the Court concludes that it will convene an evidentiary hearing on Wynn Resorts'  
26 Disqualification Motion. Before doing so, the Court finds it appropriate to implement the  
27 protocol requested by Wynn Resorts, subject to certain modifications, to establish and catalogue  
28 all information over which Wynn Resorts may claim privilege. As the Nevada Supreme Court

1 has held in *Las Vegas Sands v. Eighth Judicial District Court*, 331 P.3d 905, 910-11 (Nev. 2014),  
2 Wynn Resorts' current management is the holder of the Company's privileges, and current  
3 management is entitled to determine who may possess and use such information. While she may  
4 be a former director of Wynn Resorts, Elaine Wynn has no rights relative to the Company's  
5 privileged and protected information.

6 Accordingly, IT IS HEREBY ORDERED:

7 1. Elaine P. Wynn and her counsel shall deposit all documents, including any  
8 electronic hard drives or other electronic storage devices that contain any type of company  
9 information, including Elaine Wynn's use of Wynn Resorts' email, with a Court-approved  
10 third-party ESI administrator. Elaine Wynn and Wynn Resorts are directed to meet and confer to  
11 see if they can reach an agreement on a third-party administrator that has an agreed protocol on  
12 how all data deposited with the third-party administrator can thereafter be searched for claims of  
13 privilege. If Elaine Wynn and Wynn Resorts cannot reach agreement, the Court will select a  
14 vendor and establish a protocol based upon the parties' submissions.


15 2. Elaine Wynn and Wynn Resorts shall meet and confer and establish a briefing  
16 schedule, if any, to resolve any claims of privilege by Elaine Wynn as to her use of Wynn Resorts'  
17 email and computer to communicate with her separate counsel.

18 3. At this point, the Court has not yet determined whether it will appoint a special  
19 master to address communications between Elaine Wynn and her counsel to determine if and to  
20 what degree she has disseminated privileged information. The Court will take up this issue again  
21 as the soon-to-be-established protocol for viewing Elaine Wynn's data is implemented and  
22 progressing.

23 4. The Court will await setting the date for an evidentiary hearing upon an assessment  
24 of the progress and satisfaction of the other provisions of this Order.

1 IT IS FURTHER ORDERED that because of the potential for irreparable harm stemming  
2 from a potential misuse of privileged information, a stay of discovery in this proceeding is  
3 required at this time, except as otherwise ordered by the Court.

4  
5 DATED: 28 Aug 16

6  
7   
8 THE HONORABLE ELIZABETH GONZALEZ  
9 EIGHTH JUDICIAL DISTRICT COURT

10 Respectfully submitted by:

11 PISANELLI BICE PLLC

12 By: 

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28 Russell Goldsmith, Ray R. Irani, Robert J. Miller,  
John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,  
Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

1 Approved as to form and content by:

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3 By:

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HOLLAND & HART LLP

By:

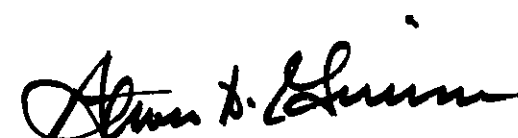
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*Attorneys for Kazuo Okada, Aruze USA, Inc.,  
and Universal Entertainment Corp.*

# **EXHIBIT A**



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

WYNN RESORTS LIMITED

Plaintiff

vs.

KAZUO OKADA, et al.

Defendants  
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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. Urga?

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 \* \* \* \* \*  
22  
23  
24  
25

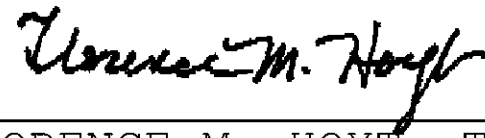
**CERTIFICATION**

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.

**FLORENCE HOYT  
Las Vegas, Nevada 89146**



\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

7/21/16

\_\_\_\_\_  
DATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELAINE P. WYNN,

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,

WYNN RESORTS, LIMITED, a  
Nevada Corporation,

Real Party in Interest.

Case No. 71432

Electronically Filed  
Nov 02 2016 09:10 a.m.

WYNN RESORTS, LIMITED'S  
OPPOSITION TO SUPREME COURT  
WYNN'S MOTION TO EXTEND  
DISTRICT COURT'S STAY  
PENDING WRIT PETITION

I. INTRODUCTION

Elaine P. Wynn ("Ms. Wynn") feigns surprise that the District Court declined to extend its limited stay entered on September 20, 2016. But Ms. Wynn's last minute request to extend the stay rests on the same untenable legal and factual assertions that the District Court rejected: that federal statutes providing remedies for employment retaliation for certain employees – something that Ms. Wynn insisted to the District Court she was not (*i.e.*, an employee) – somehow precludes the District Court's order of discovery into Ms. Wynn and her counsel's improper possession of the Wynn Resorts, Limited's ("Wynn Resorts" or the "Company") privileged information, their concealment of that fact, and their improper dissemination of protected discovery information outside of the litigation in violation of an agreed-to Protective Order.

The two federal statutes Ms. Wynn attempted to claim as a life raft to conceal her activities do not remotely apply to her or to her conduct, nor do they provide a "privilege" to withhold discovery. Rather, Ms. Wynn's sought-after stay would

1 only allow her to further conceal evidence and, with the passage of time, allow her  
2 and those participating in the misconduct to claim faded memories to avoid  
3 accountability. Ms. Wynn cites not a single case from anywhere that provides her  
4 with a privilege to conceal discovery into her violations of the District Court's  
5 discovery orders and her counsel's clandestine possession of the Company's  
6 privileged information. The stay must be denied.

## 7 **II. FACTS**

### 8 **A. Ms. Wynn Misappropriates Privileged Information and Violates** 9 **the District Court's Discovery Orders.**

10 The discovery Ms. Wynn seeks to avoid by way of her proposed stay stems  
11 from two interrelated acts of litigation misconduct by Ms. Wynn and her lead  
12 counsel, Quinn Emanuel Urquhart & Sullivan LLP ("Quinn Emanuel"). The first  
13 involved the surreptitious copying of two Wynn Resorts' computer drives, one used  
14 by Ms. Wynn when she was a director of Wynn Resorts and another used by then-  
15 Wynn Resorts employee, Jacklyn DelRossi. (5 App. 985-86.) That secret copying,  
16 which occurred on a Saturday to evade detection, was concealed from both Wynn  
17 Resorts and the District Court for a number of years. (*Id.*) Included on those  
18 devices is invariably a host of privileged information belonging solely to the  
19 Company. Thus, Ms. Wynn and her counsel have long been in the possession of  
20 the Company's privileged information and concealed that fact.

21 Wynn Resorts got the first inkling of this misconduct at the deposition of its  
22 general counsel, Kimmarie Sinatra, where Quinn Emanuel sought to use an email  
23 communication involving Sinatra. When this matter was first brought to the  
24 District Court's attention, Ms. Wynn and Quinn Emanuel insisted they had very few  
25 documents, representing that this was not a case where Ms. Wynn walked out with  
26 volumes of Wynn Resorts' records. (*See generally* Ex. A, Hr'g Tr. Jul. 21, 2016.)  
27 But as time passed and the District Court ordered further investigation, those  
28 representations proved to be shamelessly untrue. Not only had Ms. Wynn copied

1 volumes of data, she also improperly deleted information from the Company's  
2 devices. (*Id.*) This impropriety transpired despite Ms. Wynn's written  
3 acknowledgement, as a then-Board member of Wynn Resorts, that she was not  
4 allowed to keep, delete, or tamper with Company records. (*Id.* at 3:24-4:16.)

5 When the District Court learned of the true magnitude of what Ms. Wynn and  
6 Quinn Emanuel possessed, it immediately entered a discovery stay, recognizing the  
7 need for a full investigation to assess the misuse of privileged information and then  
8 consider Wynn Resorts' motion for disqualification of Quinn Emanuel. (Ex. B,  
9 Interim Order on Wynn Resorts' Mot. for Disqualification, July 29, 2016.) Due to  
10 the complexities of extracting Ms. Wynn's personal and purported privileged  
11 information from what she had comingled with the Company's records, the District  
12 Court ultimately elected to appoint former District Court Judge David Wall as a  
13 Special Master to oversee the review. (Ex. C, Order Appointing A Special Master  
14 for Limited Disc. Purposes, Sept. 20, 2016.)

15 It is the District Court's entry of a stay pending Quinn Emanuel's potential  
16 disqualification that prompted the next act of litigation misconduct. When the  
17 District Court announced the stay pending potential disqualification, Ms. Wynn and  
18 Quinn Emanuel began an alternative course of conduct, one equally fraught with  
19 disregard for ethics and court orders. According to their own log of  
20 communications – one ordered by the District Court – the very same day the case  
21 was stayed, Ms. Wynn and Quinn Emanuel began working on a letter to repackage  
22 Ms. Wynn's allegations to Wynn Resorts' audit committee as well as its outside  
23 auditors, Ernst & Young ("EY"). (Ex. D, Ex. A to Wynn Resorts, Limited's Oppn.  
24 to Elaine P. Wynn's Mot. for Protective Order, or in the Alternative, Mot. for Stay  
25 of Disc., Aug. 10, 2016.) Despite the District Court's entry of a Protective Order in  
26 this action precluding the parties from using confidential and highly confidential  
27 discovery material for purposes unrelated to the litigation – an order to which Ms.  
28

1 Wynn stipulated no less – Ms. Wynn's letter to EY asserted that "new information"  
2 had come to light warranting the auditor's immediate attention.

3 Anyone with a sense of candor knew that this so-called "new information"  
4 was a reference to confidential and highly confidential discovery material from the  
5 action, and that it necessarily violated the terms of the Court's Protective Order.  
6 Accordingly, when Wynn Resorts learned of that impropriety, it promptly sought  
7 and obtained a Temporary Restraining Order against any further transgressions.  
8 (Ex. E, Order on Wynn Resorts, Limited's *Ex Parte* Appl. for TRO, Aug. 12, 2016.)  
9 The District Court also announced it would hold a sanctions hearing concerning the  
10 use of the Company's information and misuse of the Court's discovery processes.  
11 (*Id.*)

12 **B. The District Court Orders and Approves Discovery.**

13 It is the District Court's planned sanctions hearing and the hearing to  
14 disqualify Quinn Emanuel that lead to the discovery Ms. Wynn wants to avoid.  
15 Notably omitted from Ms. Wynn's Petition and her motion for stay is the fact that  
16 Ms. Wynn is the one who sought and obtained approval from the District Court to  
17 conduct discovery from EY.<sup>1</sup> (*Id.*) It is only later, when Ms. Wynn realized that  
18 such discovery contradicted her opposition to Wynn Resorts' discovery, that Ms.  
19 Wynn reversed course. To avoid Wynn Resorts' discovery about her misuse of  
20 Company information, Ms. Wynn began searching for an excuse to not answer  
21 deposition questions despite her affirmative claims and allegations in this case.

22 Her chosen path was to tardily portray herself as a "whistleblower" and then  
23 suggest discovery into her discovery misconduct is some type of "retaliation" for  
24 her whistleblowing. (3 App. 000621-22.) Yet, Ms. Wynn offered nothing but  
25 creative references to the Dodd-Frank Wall Street Reform and Consumer Protection  
26

---

27 <sup>1</sup> Incredibly, in desperation to grab this Court's attention, Ms. Wynn asserted a  
28 stay is needed because Wynn Resorts seeks discovery as to her communications  
with the Company's auditors. Not so, and she knows better.



1 Act ("Dodd-Frank") and the Sarbanes-Oxley Act of 2002 ("SOX"), insinuating that  
2 those statutes overrode the requirements of the Nevada Rules of Civil Procedure as  
3 well as the District Court's jurisdiction to control and manage the discovery process  
4 or enforce its orders. (*Id.* at 000611-25.)

5 As briefing before the District Court confirmed, Ms. Wynn's claims to an in  
6 vogue label – whistleblower – is devoid of evidence, law, and logic. It is a last  
7 ditch argument to try to avoid discovery that will confirm Ms. Wynn's own  
8 misconduct and bring about the disqualification of her lead counsel, Quinn  
9 Emanuel. The District Court saw through that ruse and so, too, should this Court.

### 10 **III. ARGUMENT**

#### 11 **A. The Petition Presents Neither Meritorious Nor Serious Legal** 12 **Issues.**

13 Ms. Wynn seeks to stay her compliance with a discovery order, discovery  
14 arising from her violations of a court order and the disqualification of her lead  
15 counsel, Quinn Emanuel, for their surreptitious possession and use of the  
16 Company's privileged information. "[T]here is a strong presumption in favor of  
17 discovery, and it is the party who moves for a stay that bears the burden of  
18 overcoming this presumption." *Aspen Fin. Servs. v. Dist. Ct.*, 128 Nev. Adv. Op.  
19 57, 289 P.3d 201, 206 (2012) (quoting *Alcala v. Tex. Webb Cty.*, 625 F. Supp. 2d  
20 391, 397-98 (S.D. Tex. 2009). NRCP 26(b)(1) makes clear that Wynn Resorts  
21 "may obtain discovery regarding any matter, not privileged, which is relevant to the  
22 subject matter involved in the pending action . . . ."

23 The Legislature has similarly made clear that a party is obligated to disclose  
24 potentially-relevant information, unless an explicit privilege exists that permits  
25 concealment. As NRS 49.015 says, "[e]xcept as otherwise required by the  
26 Constitution of the United States or of the State of Nevada, and except as otherwise  
27 provided in this Title or Title 14 of NRS, or NRS 41.071, *no person has a privilege*  
28 *to:*

- (a) ***Refuse to be a witness;***
- (b) ***Refuse to disclose any matter;***
- (c) Refuse to produce any object or writing; or
- (d) Prevent another from being a witness or disclosing any matter or producing any object or writing."

NRS 49.015(1) (emphasis added). Put succinctly, the Court "'has a right to every man's evidence.'" *Greenspun v. Eighth Jud. Dist. Ct.*, 91 Nev. 211, 215 n.6, 533 P.2d 482, 485 n.6 (1975) (quoting 8 Wigmore, Evidence (McNaughton rev. 1961) § 2192). Contrary to Ms. Wynn's apparent belief, she cannot simply throw around the word "privilege" without any substance to avoid her discovery obligations. The proponent of a privilege to conceal information bears the burden of establishing all the facts of its existence. *Rogers v. State*, 127 Nev. 323, 330, 255 P.3d 1264, 1268 (2011).

Long gone are the days of trial by ambush, as the rules now preclude gamesmanship with respect to disclosure of witnesses and discoverable information. NRCP 16.1 & 26; *see also Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 862 (9th Cir. 2014). Unremarkably then, Ms. Wynn cites no authority where a litigant is entitled to conceal with whom she has inappropriately disseminated information or discussed the basis for her allegations in the case. Ms. Wynn likewise has no authority that a litigant can conceal the identity of persons that purport to have knowledge of the facts and circumstances giving rise to her claims or with whom she has discussed those claims. *See* NRCP 26 (mandating discovery without a request). Ms. Wynn simply prefers the luxury of making allegations without the risk of contradiction or expose by those who Ms. Wynn claims to have obtained or shared information.

And Ms. Wynn's attempted Hail Mary – suggesting that SOX and/or Dodd-Frank purportedly provide a federal "privilege" to conceal discoverable information – is meritless. Nowhere did Congress provide for a "privilege" that allows a litigant

1 to conceal with whom they have discussed their claims and allegations or the  
2 purported source of their information. These statutes were created to protect  
3 "employees of publicly-traded companies from discrimination *in the terms and*  
4 *conditions of their employment* when they take certain actions to report conduct  
5 that they reasonably believe constitutes certain types of fraud or securities  
6 violations." *Tides v. The Boeing Co.*, 644 F.3d 809, 813 (9th Cir. 2011) (emphasis  
7 added). Congress gave protected *employees* a cause of action in the event that their  
8 employer discriminates against them for undertaking certain protected acts,  
9 including providing for back pay and reinstatement for wrongful termination.

10 Besides the fact that neither SOX nor Dodd-Frank creates any privilege to  
11 excuse Ms. Wynn's compliance with her discovery obligations, neither of these  
12 statutes is even applicable to her or her activities here. These statutes only apply to  
13 actual employees of the Company, where the terms and conditions of their  
14 employment may be impacted. 18 U.S.C. 1514A(a). *See, e.g., Feldman v. Law*  
15 *Enforcement Assoc. Corp.*, 779 F. Supp. 2d 472, 493 (E.D.N.C. 2011) (dismissing  
16 SOX claim due to lack of employee/employer relationship); *Cunningham v.*  
17 *LiveDeal, Inc.*, 2011-SOX-4 (ALJ Apr. 1, 2011)<sup>2</sup> (Company's former director could  
18 not bring SOX whistleblower suit against Nevada corporation alleging that he was  
19 ousted from the Board for whistleblowing since he was not a covered "employee,"  
20 but a former director). And, contrary to what Ms. Wynn tells this Court, the  
21 District Court did not ignore Ms. Wynn's role with Wynn Resorts: *Ms. Wynn*  
22 *insisted that she was only a director and not an employee of the Company.* (2  
23 App. 000358.)<sup>3</sup> Not only does SOX not provide a bar to discovery into Ms. Wynn's

24 \_\_\_\_\_  
25 <sup>2</sup> SOX administrative cases cited in this brief are available at  
[www.oalj.dol.gov/libwhist.htm](http://www.oalj.dol.gov/libwhist.htm).

26 <sup>3</sup> Ms. Wynn had insisted upon her non-employee status at the time when she  
27 was attempting to explain why the Company's Code of Conduct concerning  
28 computer usage did not apply to her. She insisted that she was a director, not an  
employee, and that the rules were different for her.

1 contemptuous and improper litigation conduct, it would not even apply to her if it  
2 did. Indeed, SOX employee provisions "shelter an employee from employment  
3 discrimination and retaliation for his or her protected activities, *while the*  
4 *complainant is an employee of the respondent.*" *Harvey v. Home Depot, Inc.*,  
5 2004-SOX 36 (ALJ May 28, 2004) (emphasis added), *aff'd*, ARB. Case No. 04-114  
6 (ARB June 2, 2006).

7 Nor is Ms. Wynn a "whistleblower" under Dodd-Frank. "Under Dodd-  
8 Frank's plain language and structure, there is only one category of whistleblowers:  
9 individuals who provide information relating to a securities law violation to the  
10 SEC." *Asadi v. G.E. Energy (USA), L.L.C.*, 720 F.3d 620, 629 (5th Cir. 2013).  
11 Once again, not only does Dodd-Frank not provide a shield to discovery, it is not  
12 even implicated as Ms. Wynn's talking with prospective witnesses has nothing to  
13 do with providing information to the SEC.

14 Ms. Wynn's whistleblower assertions are frivolous stall tactics. She wants to  
15 avoid discovery as to her misconduct under the Court's orders and the  
16 disqualification of her lead counsel. But wanting to avoid the truth is not grounds  
17 for a stay.

18 **B. Ms. Wynn Faces No Potentially Irreparable Harm, But Wynn**  
19 **Resorts Does.**

20 The extent of Ms. Wynn's purported harm is that she will have to disclose the  
21 identity of witnesses and her communications with them. In other words, her  
22 purported harm is that she will have to comply with the ordinary rules of disclosure  
23 that apply to every other litigant in a case pending in the Nevada courts. NRCP  
24 16.1 & 26. Having to do so imposes no harm, let alone an irreparable one. If Ms.  
25 Wynn wants to contradict herself further and claim that she is an employee entitled  
26 to some unspecified protections under SOX and/or Dodd-Frank, she can assert  
27 those claims in the appropriate forum and face the consequences under that forum's  
28 rules for asserting frivolous claims. There is simply no irreparable harm to Ms.

Wynn. *See Generally Guyden v. Aetna, Inc.*, 544 F.3d 376, 383 (2d Cir. 2008) ("The primary purpose of the [whistleblower protections] is to provide a private remedy for the aggrieved employee, not to publicize alleged corporate misconduct."); *JVS Uniphase v. Jennings*, 473 F. Supp. 2d 697, 703 (E.D. Va. 2007) (rejecting argument that California statute encouraging employees to report their employer's violations of the law avoids confidentiality agreement, as "it does not follow from this that California meant by this declaration to invalidate confidentiality agreements or authorize whistleblowers to steal or convert their employers' proprietary documents. Succinctly put, ***Sarbanes-Oxley is not a license to steal documents and break contracts.***") (emphasis added).

But Wynn Resorts faces real prejudice from a continued stay. It presently has pending motions for a preliminary injunction, sanctions, and disqualification of Quinn Emanuel. The District Court sought to schedule evidentiary hearings concerning Wynn Resorts' requested relief. Those motions are being delayed needlessly by Ms. Wynn's false claims of whistleblower protection so that she can continue to have the tainted Quinn Emanuel firm participate on her behalf. The continued involvement of tainted counsel is harm to Wynn Resorts and the entire judicial process.

Moreover, this Court has acknowledged that delays frustrate the litigation process and can lead to the loss of evidence, including faded memories. *Aspen Fin. Servs.*, 128 Nev. Adv. Op. 57, 289 P.3d at 206. And further delay will inevitably lead to just that here. Ms. Wynn claims to have information relevant to this case based upon her conversations with unidentified witnesses. The passage of time will only permit her to evade discovery and claim a faulty memory when she is required to finally comply. There is no cause for facilitating future evasiveness.

#### IV. CONCLUSION

Ms. Wynn is the opposite of an actual whistleblower. She seeks to manipulate the judicial process to avoid discovery while simultaneously making

1 wild allegations. The law grants her no "privilege" to conceal the identity of  
2 witnesses or conceal those with whom she has discussed this case, her allegations,  
3 and the information she impermissibly disseminated to circumvent the District  
4 Court's orders. Nor does the law provide her any sanctuary for surreptitiously  
5 copying Company records, including privileged information, and sharing it with  
6 her now-tainted attorneys. Ms. Wynn's stay request has no merit and this Court  
7 should deny her request to avoid discovery so that the still-pending motions to  
8 disqualify Quinn Emanuel and for sanctions against her may proceed promptly  
9 without the loss of evidence.

10 DATED this 1st day of November, 2016.

11 PISANELLI BICE PLLC

12  
13 By: /s/ Todd L. Bice  
14 James J. Pisanelli, Esq., Bar No. 4027  
15 Todd L. Bice, Esq., Bar No. 4534  
16 Debra L. Spinelli, Esq., Bar No. 9695  
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Las Vegas, Nevada 89101

17 Attorneys for Real Party in Interest  
Wynn Resorts, Limited

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 1st day of November, 2016, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **WYNN RESORTS, LIMITED'S OPPOSITION TO ELAINE P. WYNN'S MOTION TO EXTEND DISTRICT COURT'S STAY PENDING WRIT PETITION** properly addressed to the following:

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