

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

2  
3 ELAINE P. WYNN,

4 Petitioner,  
5 vs.

6 THE EIGHTH JUDICIAL DISTRICT  
7 COURT OF THE STATE OF  
8 NEVADA, IN AND FOR THE  
9 COUNTY OF CLARK; AND  
10 THE HONORABLE ELIZABETH  
11 GONZALEZ, DISTRICT JUDGE,

12 Respondent,

13 WYNN RESORTS, LIMITED, a  
14 Nevada Corporation,

15 Real Party in Interest.

Case No. 71432

Electronically Filed  
Nov 29 2016 11:38 a.m.

WYNN RESORTS, LIMITED'S  
OPPOSITION TO ELAINE P.  
WYNN'S MOTION TO STRIKE  
PORTIONS OF OPPOSITION

PISANELIBICE PLLC  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

16 **I. INTRODUCTION**

17 Elaine P. Wynn ("Ms. Wynn") reiterates her opposition to this Court knowing  
18 the facts and contexts leading to the District Court's Discovery Order (the "Order")  
19 which is the subject of Ms. Wynn's pending Writ Petition. Thus, Ms. Wynn claims  
20 that this Court should strike portions of Wynn Resorts' opposition. Unremarkably  
21 those portions that outline the litigation misconduct of Ms. Wynn and her lead  
22 attorneys, Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), which  
23 necessitated the District Court's Order. Contrary to Ms. Wynn's needs and wants, the  
24 actual facts do matter, particularly where the movant omits those facts and seeks a  
25 stay with meritless claims of a testimonial privilege so as to delay the sanctions  
26 sought by Wynn Resorts and the disqualification of her lead counsel.

1 **II. ARGUMENT**

2 NRAP 28(j) authorizes the striking of briefs that are "inadequate," or that  
3 include "burdensome, irrelevant, immaterial or scandalous matter." For her current  
4 Motion, Ms. Wynn claims that the facts – those of her surreptitious copying of  
5 Company records (including privileged information), concealing that fact from the  
6 District Court and her violation of the Court's Protective Order in response – is all  
7 somehow irrelevant to whether the District Court's Order should be stayed. (Mot. 2.)  
8 Not so. The Order at issue and the discovery that it compels are the direct product of  
9 Ms. Wynn's litigation misconduct.

10 Not coincidentally, Ms. Wynn's misappropriation and use of privileged and  
11 protected information is also why the District Court excluded the Okada Parties from  
12 Ms. Wynn's deposition, the very deposition where she refused to answer the most  
13 basic of questions, including with whom she had discussed her allegations and the  
14 factual basis for them. It is wholly appropriate that this Court knows the factual  
15 context of why the District Court ordered Ms. Wynn's deposition and why it  
16 overruled Ms. Wynn's argument that Dodd-Frank and SOX provide a "testimonial"  
17 privilege that allows a litigant making allegations to conceal the sources and  
18 substance of them.

19 It is also no coincidence that Ms. Wynn can cite not a single authority from  
20 anywhere that these statutes provide any form of privilege, let alone a testimonial  
21 privilege. Indeed, even the Department of Labor itself notes that those statutes are  
22 designed for the protection of existing employees who engage in protected activities.  
23 They have nothing to do with disgruntled former directors that are engaged in  
24 advancing claims in litigation. In fact, "with the exception of blacklisting or other  
25 active interference with subsequent employment<sup>1</sup>, the SOX employee protection  
26 provisions essentially shelter an employee from employment discrimination and  
27 retaliation for his or her protected activities, *while the complainant is an employee*

28 \_\_\_\_\_  
<sup>1</sup> Not even Ms. Wynn can suggest that she is looking for other employment.

1 *of the respondent.*" *Harvey v. The Home Depot, Inc.*, 2004 WL 5840284 at \*3 (U.S.  
2 Dep. Labor SAROX 2004) (emphasis in original & added). As it is undisputed that  
3 Ms. Wynn is not currently an employee of Wynn Resorts – even ignoring that she  
4 previously insisted she was never an employee – the employment retaliation  
5 provisions of federal law are not implicated. Of course, even if they were applicable,  
6 they provide a remedy for employment retaliation. They do not provide a testimonial  
7 privilege to conceal discoverable information, most notably the facts that Ms. Wynn  
8 claims she has gained through persons who she refuses to identify. But Ms. Wynn is  
9 so desperate to avoid discovery into her activities and misuse of the Company's  
10 privileged and protected information – as well as the disqualification of her counsel  
11 – she has no legitimate arguments to advance.

12 Again, the facts are highly pertinent to the stay Ms. Wynn seeks. Granting Ms.  
13 Wynn a stay in the face of such facts would only reward litigation misconduct of the  
14 type she has undertaken and encourage groundless claims of non-existent testimonial  
15 privileges so as to thwart and delay discovery. Not only are such facts relevant and  
16 appropriate for Wynn Resorts' opposition, they are precisely why this Court should  
17 decline any further stay and why Wynn Resorts raised them.

18 **III. CONCLUSION**

19 The Court should deny Ms. Wynn's Motion to Strike.

20 DATED this 28th day of November, 2016.

21 PISANELLI BICE PLLC

22  
23 By: /s/ Todd L. Bice  
24 James J. Pisanelli, Esq., Bar No. 4027  
25 Todd L. Bice, Esq., Bar No. 4534  
26 Debra L. Spinelli, Esq., Bar No. 9695  
27 400 South 7th Street, Suite 300  
28 Las Vegas, Nevada 89101

Attorneys for Real Party in Interest  
Wynn Resorts, Limited

PISANELLIBICE PLLC  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 28th 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 STRIKE PORTIONS OF OPPOSITION** properly addressed to the following:

John B. Quinn, Esq.  
Michael T. Zeller, Esq.  
Jennifer D. English, Esq.  
Susan R. Estrich, Esq.  
QUINN EMANUEL URQUHART  
& SULLIVAN LLP  
865 Figueroa Street, Tenth Floor  
Los Angeles, CA 90017  
*Attorneys for Elaine P. Wynn*

William R. Urga, Esq.  
Martin A. Little, Esq.  
JOLLEY URGA WOODBURY &  
LITTLE  
3800 Howard Hughes Parkway  
16th Floor  
Las Vegas, NV 89169  
*Attorneys for Elaine P. Wynn*

J. Stephen Peek, Esq.  
Bryce K. Kunimoto, Esq.  
Robert J. Cassity, Esq.  
Brian G. Anderson, Esq.  
HOLLAND & HART LLP  
9555 Hillwood Drive, Second Floor  
Las Vegas, NV 89134  
*Attorneys for Kazuo Okada,  
Universal  
Entertainment, Inc. and Aruze USA,  
Inc.*

**SERVED VIA HAND-DELIVERY**  
The Honorable Elizabeth Gonzalez  
Eighth Judicial District court, Dept. XI  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

David S. Krakoff, Esq.  
Benjamin B. Klubes, Esq.  
Joseph J. Reilly, Esq.  
BUCKLEY SANDLER LLP  
1250 – 24th Street NW, Suite 700  
Washington, DC 20037  
*Attorneys for Kazuo Okada,  
Universal Entertainment, Inc. and  
Aruze USA, Inc.*

/s/ Shannon Thomas  
An employee of Pisanelli Bice PLLC