

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

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**WYNN RESORTS, LIMITED
OPPOSES THE ARUZE
DESIGNATE THE ARUZE
PARTIES AS REAL PARTIES IN
INTEREST**

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14 Real Party in Interest Wynn Resorts, Limited ("Wynn Resorts") opposes Aruze
15 USA, Inc., Universal Entertainment Corp., and Kazuo Okada's (the "Okada Parties")
16 motion to be designated as a Real Party in Interest to the Writ Petition filed by Elaine
17 P. Wynn ("Ms. Wynn"). They are not real parties in interest relative to Ms. Wynn's
18 Petition, which seeks to arrest a discovery order obtained by Wynn Resorts that does
19 not pertain to the Okada Parties. Indeed, the Okada Parties did not participate in the
20 motion practice leading up to the Order. Recall, the Okada Parties expressly
21 disavowed taking any position on the merits of Ms. Wynn's Petition when responding
22 to her motion to extend the District Court's stay. (Ex. 1 at p.4) ("the Aruze Parties
23 take no position on the merits of Ms. Wynn's whistleblower claims . . .").

24 A Real Party in Interest is someone who possesses legal rights in the pending
25 issue and has a significant interest in its outcome. *Beazer Homes Holding Corp. v.*
26 *Eighth Jud. Dist. Ct.*, 128 Nev. Adv., Op. 66, 291 P.3d 128, 133 (2012); *NAD, Inc. v.*
27 *Eighth Jud. Dist. Ct.*, 115 Nev. 71, 76, 976 P.2d 994, 997 (1999). Here, the Okada
28 Parties have no rights in the District Court's Order either by way of a movant or an

1 opponent to it. The Order does not concern them; they did not support Wynn Resorts'
2 motion seeking the Order; they did not oppose entry of the Order; nor did they
3 participate. The Order compels the Okada Parties to do nothing. Nor were they a
4 movant in securing the Order of discovery from Ms. Wynn. Again, the Okada Parties
5 have no rights that are implicated by the District Court's Order and sought no relief
6 in the District Court on the matter at hand.

7 Indeed, the opposite is true. The District Court has expressly restricted the
8 Okada Parties' participation in the proceedings and discovery surrounding the Order,
9 including excluding the Okada Parties from Ms. Wynn's deposition. (Ex. 2 at 96-97;
10 directing that counsel for Okada Parties is excluded from Ms. Wynn's deposition
11 because "he's really not allowed to be involved in most of the stuff that involves strict
12 attorney-client relationships in breach of confidential information that your client is
13 alleged to have shared . . ."). Similarly, the Okada Parties are excluded from the
14 Special Master process that the District Court has ordered to untangle claims of
15 privilege between Ms. Wynn and Wynn Resorts. (Ex. 3 at p.5; in establishing
16 privilege protocol, the District Court has ordered Ms. Wynn and Wynn Resorts to
17 "not communicate with or otherwise involve the Okada Parties regarding any issues
18 related to this protocol absent the orders from the Court."); (Ex. 4 at p.2; restricting
19 service of un-redacted filings related to disqualification motions to Wynn Resorts,
20 Mr. Wynn and Mrs. Wynn, excluding the Okada Parties); (Ex. 5 at 76-77; Okada
21 Parties stating at District Court's hearing that they would not be a participant in the
22 Special Master process).

23 The basis for the Okada Parties' non-participation in the Order and the
24 proceedings leading to it is obvious: as a one-time director of Wynn Resorts and a
25 defendant in the claims brought by the Okada Parties, Ms. Wynn and Wynn Resorts
26 share a number of common interests, including confidentiality, and related privileges
27 concerning the Okada Parties' claims. While Ms. Wynn has brought affirmative
28 cross-claims against others, that does not diminish the Company's rights and

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privileges relative to the claims asserted by the Okada Parties. Accordingly, the District Court has narrowly confined the Okada Parties' involvement, including their exclusion from the discovery and process that is the subject of the present Order.

Simply stated, the Okada Parties provide no facts or law that allows, let alone warrants, their designation as a Real Party in Interest to the relief sought by Ms. Wynn's Petition. They are not a participant to the proceedings concerning the Order. The District Court has sought to preserve Wynn Resorts' privileges and confidential information by excluding the Okada Parties from the discovery and processes giving rise to its Order. The Okada Parties have not challenged that exclusion in this Court and cannot backdoor the District Court's restricted processes through their nondescript motion to be designated as a Real Party in Interest here. Their motion should be denied.

DATED this 30th day of November, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 30th day of 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 MOTION TO DESIGNATE THE ARUZE PARTIES AS REAL PARTIES IN INTEREST** properly addressed to the following:

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EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELAINE P. WYNN, an individual,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GONZALEZ, DISTRICT
JUDGE,

Respondents,

and

WYNN RESORTS, LIMITED, KAZUO
OKADA, UNIVERSAL
ENTERTAINMENT CORP. AND
ARUZE USA, INC.,

Real Parties in Interest.

Supreme Court No. 71432

Dist. Court Case No. A-12-656710-B

**ARUZE PARTIES' RESPONSE TO
PETITIONER ELAINE WYNN'S
MOTION TO EXTEND DISTRICT
COURT'S STAY OF DISCOVERY
PENDING DISPOSITION OF THIS
WRIT PETITION**

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Universal Entertainment Corp. and
Aruze USA, Inc.*

Aruze USA, Inc., Universal Entertainment Corp., and Kazuo Okada (the “Aruze Parties”) respectfully submit this Opposition to the Motion to Extend District Court’s Stay Pending Writ Petition filed by Petitioner Elaine P. Wynn (“Ms. Wynn”) on October 20, 2016. The District Court refused to further extend the stay entered on September 20, 2016, because Ms. Wynn’s whistleblower claims, which are collateral to the merits of the dispute that gave rise to this lawsuit, have brought the entire case to a halt. This Court should not disturb the District Court’s thoughtfully reasoned case management determination that this sideshow controversy should not thwart all efforts to move this litigation forward on the merits.

The Aruze Parties contend that in February 2012, the Board of Directors of Wynn Resorts, Limited (“WRL”) executed an unfair and illegal “redemption” of \$2.7 billion in WRL stock held by Aruze USA, a company controlled by Mr. Okada. As they have explained in previous writ proceedings in this Court, the stock redemption was, in fact, a pretext designed to remove Mr. Okada from the company because he had begun challenging the Chairman and CEO, Stephen Wynn. *See* Real Parties’ Answer to Petition for Writ of Prohibition or Alternatively, Mandamus, Docket No. 68439, at 4-7 (Oct. 15, 2015).

The day after the redemption, WRL filed the underlying action seeking judicial ratification of its unlawful actions. A month later, the Aruze Parties filed

counter-claims against the company and all members of its Board, including both Mr. Wynn and his ex-wife, Ms. Wynn. Thereafter, in June 2012, Ms. Wynn filed cross-claims against Mr. Wynn relating to the interpretation of a shareholders' agreement between Mr. Wynn, Ms. Wynn, and Aruze USA.

For most of the history of this case, Ms. Wynn's cross-claim against Mr. Wynn has played a minor role in these proceedings. Recently, however, this collateral dispute between Ms. Wynn and her former husband has metastasized into a disruptive grudge match that threatens the District Court's efforts to efficiently manage and dispose of this case. Earlier this year, Ms. Wynn hired new lawyers, Quinn Emanuel, who filed amended pleadings greatly enlarging her claims against Mr. Wynn and adding new claims against WRL unrelated to any dispute with the Aruze Parties. WRL responded to this attack in June with a motion to disqualify Ms. Wynn's new lawyers, alleging that they had improperly gained access to the company's privileged information. As a result, the District Court stayed all discovery for what she thought would be a brief period of time.¹ Shortly thereafter, Ms. Wynn claimed that WRL's litigation conduct constituted illegal "retaliation" for her whistleblowing activities, and WRL responded by

¹ The District Court stayed discovery at a hearing on June 23, 2016. At the time, she suggested that the evidentiary hearing to resolve the disqualification motions might take place "the week of July 5th." *See* Exhibit A, at 48 (June 23, 2016 Hearing Transcript).

alleging that Ms. Wynn's activities violated a protective order relating to confidentiality.

To resolve this tangle of issues, the District Court ordered WRL and Ms. Wynn to engage in certain limited discovery, including a deposition of Ms. Wynn. However, that discovery was disrupted by various subsidiary disputes between Ms. Wynn and WRL that involve claims of privilege and the scope of federal whistleblower protections, including the dispute that gives rise to the present writ petition.

At a hearing on September 20, 2016, the District Court resolved several of these collateral issues against Ms. Wynn and made clear that it was time for this diversionary dispute to be brought to a close so that the principal claims and this case can proceed to trial. Accordingly, the District Court granted Ms. Wynn a 30-day stay to allow her to file her current writ petition, but stated clearly that the stay would not be extended. *See* 2 PA 366, 370.² The District Court then denied Ms. Wynn's motion to extend the stay at a hearing on October 20, 2016. *See* 7 PA 1312, 1317.

The District Court was correct to deny a further stay of discovery. This case is now four and a half years old, and the parties have not reached the finish line for

² Ms. Wynn did not file her writ petition until October 6, 2016, two weeks after the hearing at which the District Court stated that the stay would not be extended beyond 30 days.

discovery. It must move forward if the policy underlying NRCP 1 and NRAP 1(c) is to be implemented: that civil litigation should be managed to achieve “the proper and efficient administration of the business and affairs of the courts and to promote and facilitate the administration of justice by the courts.” NRAP 1(c) The seemingly endless collateral disputes between Ms. Wynn and WRL have become the tail wagging the dog.

The Aruze Parties take no position on the merits of Ms. Wynn’s whistleblower claims, but this Court should not disrupt the District Court’s management of the case or otherwise facilitate further delay without a compelling reason to do so, which Ms. Wynn has not provided. The proceedings before Judge Gonzalez should be resumed as soon as possible.

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CONCLUSION

For the foregoing reasons, in the event that this Court is inclined to grant a stay, the Aruze Parties respectfully request that it consider the impact of the length of the stay on the underlying proceedings consistent with the policy underlying NRCP 1 and NRAP 1(c).³

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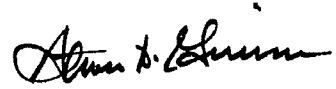
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³ The Aruze Parties also respectfully note that there are two other fully briefed writ petitions relating to the same underlying case. *See* Docket Nos. 70050 (petition filed Mar. 30, 2016), 70452 (petition filed May 25, 2016). For purposes of judicial efficiency, the Aruze Parties respectfully request that this Court consider consolidating the hearing and decision of all of these matters.

EXHIBIT 2



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED	.	
	.	
Plaintiff	.	CASE NO. A-656710
	.	
vs.	.	
	.	DEPT. NO. XI
KAZUO OKADA, et al.	.	
	.	Transcript of
Defendants	.	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.

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. URGA: 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

REGISTER OF ACTIONS

CASE NO. A-12-656710-B

Wynn Resorts, Limited, Plaintiff(s) vs. Kazuo Okada, Defendant(s)

§
§
§
§
§
§
§

Case Type: **Business Court**
Subtype: **NRS Chapters 78-89**
Date Filed: **02/19/2012**
Location: **Department 11**
Cross-Reference Case Number: **A656710**
Supreme Court No.: **61966**

PARTY INFORMATION

Counter Claimant	Aruze USA Inc	Lead Attorneys Joseph S. Peek <i>Retained</i> 702-669-4600(W)
Counter Claimant	Universal Entertainment Corp	Joseph S. Peek <i>Retained</i> 702-669-4600(W)
Counter Claimant	Wynn, Elaine P.	William R. Urga <i>Retained</i> 7026997500(W)
Counter Defendant	Aruze USA Inc	Joseph S. Peek <i>Retained</i> 702-669-4600(W)
Counter Defendant	Chen, Linda	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Counter Defendant	Goldsmith, Russell	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Counter Defendant	Irani, Ray R	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Counter Defendant	Miller, Robert J	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Counter Defendant	Moran, John A	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Counter Defendant	Schorr, Marc D	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Counter Defendant	Shoemaker, Alvin V	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Counter Defendant	Sinatra, Kimmarie	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Counter	Wayson, D Boone	James J Pisanelli

Defendant		<i>Retained</i> 702-214-2100(W)
Counter Defendant	Wynn Resorts, Limited	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Counter Defendant	Wynn, Elaine P.	William R. Urga <i>Retained</i> 7026997500(W)
Counter Defendant	Wynn, Stephen A	Donald Jude Campbell <i>Retained</i> 7023825222(W)
Counter Defendant	Zeman, Allan	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Cross Claimant	Wynn, Elaine P.	William R. Urga <i>Retained</i> 7026997500(W)
Cross Defendant	Wynn, Stephen A	Donald Jude Campbell <i>Retained</i> 7023825222(W)
Defendant	Aruze USA Inc	Joseph S. Peek <i>Retained</i> 702-669-4600(W)
Defendant	Okada, Kazuo	Joseph S. Peek <i>Retained</i> 702-669-4600(W)
Defendant	Universal Entertainment Corp	Joseph S. Peek <i>Retained</i> 702-669-4600(W)
Intervenor	United States Of America	Daniel G. Bogden <i>Retained</i> 7757845438(W)
Plaintiff	Wynn Resorts, Limited	James J Pisanelli <i>Retained</i> 702-214-2100(W)

EVENTS & ORDERS OF THE COURT

08/11/2016 **All Pending Motions** (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)

Minutes

08/11/2016 8:30 AM

- Also present: Attorney Laura Chester for the Okada Defendants; Attorney Daniel Polsenberg for Elaine Wynn. Mr. Pisanelli advised notice of Mr. Polsenberg's appearance was received into this case yesterday; Mr. Polsenberg and his firm were involved in representing Wynn Resorts years back. Mr. Pisanelli stated he does not know the details of that representation; he does not object to Mr. Polsenberg going forward as long as there is no waiver, in case there is in fact a conflict, and they would reserve their rights in that regard. Mr. Campbell joined in this representation. Court directed counsel to file a motion if there is a conflict. With regards to 41(e), Court advised it needs a definition of what the start of trial is that all parties agree to and what they believe to be the periods of stay that apply to this case. Mr. Peek advised they have resolved the latter and just need to resolve the start of trial. Mr. Pisanelli stated they will file a stipulation re: minimum tolling. Court noted it will use the conservative definition, which is 5 years + from the date Plaintiff filed unless parties reach an

agreement to an extension of that period, and, if they do, a trial date will be given depending on what parties' definition of what the start of trial is. WYNN RESORTS, LIMITED'S MOTION TO STRIKE THE OKADA PARTIES' MOTION TO MODIFY THE PROTECTIVE ORDER ON AN ORDER SHORTENING TIME; AND APPLICATION FOR ORDER SHORTENING TIME: COURT ORDERED, motion DENIED. DEFENDANTS' MOTION TO MODIFY THE PROTECTIVE ORDER...ELAINE WYNN'S JOINDER TO THE ARUZE PARTIES' MOTION TO MODIFY THE PROTECTIVE ORDER [Joinder advanced from the 9/2/16 Chambers calendar as set there in error]: Arguments by Mr. Peek and Ms. Spinelli. Mr. Zeller submitted on the papers. COURT ORDERED, the protective order will be MODIFIED as follows: the 30 days to designate testimony after receipt of the transcript will be shortened to 20 days; the time to challenge designations is shortened from 60 days to 20 days; after the challenge is received, there will be a 10-day period to meet and confer regarding the challenge; if after that it is unresolved counsel may file a motion 10 days after the meet-and-confer. Court noted its concern about the overuse of highly confidential designation. Mr. Peek to prepare the written modification and run it by counsel prior to submission. MOTION TO REDACT THE ARUZE PARTIES' MOTION TO MODIFY PROTECTIVE ORDER ON OST AND TO REDACT EXHIBITS D-I THERETO[Advanced from the 9/2/16 Chambers calendar]: Motion GRANTED. Mr. Peek advised Defendants will do a motion to modify the stay, and that will give the Wynn parties an opportunity to respond. Court so noted. WYNN RESORTS, LIMITED'S MOTION FOR LIMITED AND SPECIFIC RELIEF RELATED TO THE PROTECTIVE ORDER WITH RESPECT TO CONFIDENTIALITY; EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME: Following arguments by Mr. Pisanelli and Mr. Polsenberg, COURT ORDERED, while it does not believe all portions of the deposition selected to provide to Ernst and Young are entitled to highly confidential protection, the request to provide them that information is GRANTED. Upon his inquiry, Court stated Mr. Peek can see it. Court again stated its concern about the overuse of the highly confidential designation. Mr. Pisanelli argued, whether there has been an overdesignation or not, that is an issue for a designation by designation motion. Court stated it can look at the information if counsel is willing to give it to the Court to look at; counsel to file a motion to preserve the highly confidential designation if he wants to do so; because the Court is concerned about the overdesignation it is shifting the burden to Wynn; anything being given to Ernst & Young the Court is going to assume is being treated as confidential, unless counsel obtains leave from the Court to treat it as highly confidential. ELAINE P WYNN'S MOTION FOR PROTECTIVE ORDER REGARDING WYNN RESORTS VIOLATIONS OF THE DODD-FRANK AND SARBANES-OXLEY ACT ON ORDER SHORTENING TIME, OR IN THE ALTERNATIVE MOTION FOR STAY OF DISCOVERY PENDING RESOLUTION OF THE MOTION AND OR WRIT PETITION IF THE MOTION IS DENIED: Mr. Polsenberg requested they come up with categories that will be brought at Ms. Wynn's deposition and address privilege issues to the Court on a briefing schedule; the issue should be properly presented without having to do the deposition. Court noted the deposition is scheduled for August 15 and a limited timeframe was given. Following further argument by Mr. Polsenberg, Court reiterated its preference for the process of the deposition taking place first, counsel preserving the issue, motion practice, the Court ruling, and counsel taking a writ. Mr. Peek advised he was not served this motion but he is entitled to it. Mr. Pisanelli noted, the motion is being sealed, and a debate is taking place between Wynn, Ms. Wynn, and the Court so Ms. Wynn can resolve issues without violating her duties to the company. Mr. Campbell noted a document by Ms. Wynn which exists but one he has not seen. Court summarized the motion for Mr. Peek. Mr. Bice advised they need to confer given the exhibits that have been attached. RECESS. Proceedings resumed. Colloquy between Court and counsel regarding the factual things in the motion and the issue related to the disqualification motion. COURT ORDERED, Wynn Parties to PROPOSE a redaction to this document TO BE PROVIDED to Mr. Peek. Mr. Pisanelli stated they will do so today or tomorrow. Court FURTHER directed Mr. Peek that once he receives that redaction and it is too heavily redacted and counsel wants more information to evaluate it, the Court will sign an OST for a motion by counsel. Upon Court's inquiry, counsel for Plaintiff agreed to also prepare a proposed redaction to the Opposition. Following further argument regarding Elaine Wynn's motion for protective order, COURT ORDERED, motion DENIED WITHOUT PREJUDICE for the witness to be properly INSTRUCTED at the deposition on issues with arguable merit for privilege to be asserted and for briefing to OCCUR, NOT ON OST, related to those privilege issues. STATUS CHECK:

Court thanked Mr. Urga and Mr. Malley for their cooperation on the

protocol order. Ms. Spinelli advised she and Mr. Zeller have talked and will be emailing Advanced Discovery. Ms. Spinelli further advised she has circulated the TRO and submitted a copy to the Court. COURT ORDERED, if anyone has an objection to the proposed TRO, they are to notify the Court this afternoon. Ms. Spinelli further advised she and Mr. Miller were talking about a schedule for the MPDPA briefing; the first brief will be due next Friday, the response the Friday thereafter, with a hearing on September 1st. Ms. Spinelli confirmed this concerns the boxes in Chambers. STATUS CHECK: EVIDENTIARY HEARING: Mr. Peek noted there are pending hearings on the preliminary injunction, sanctions, and motion to disqualify Quinn Emmanuel and requested they be set sooner rather than later so everything including the discovery schedule can be reset. Court NOTED it will do one hearing. Court further NOTED, the order distributed yesterday talks about the deposit process and review process; the review process is what controls most of everyone's time. Mr. Zeller advised he simply does not know what that would be as he needs to know the universe they are dealing with; once they speak with Advanced Discovery tomorrow he has every reason to think they can get the items within the next week and Advanced Discovery can get the directories to them quickly. Court noted perhaps the hearing cannot be scheduled until later this year. Mr. Peek advised they have that stay in place. Court directed counsel file a motion. Mr. Peek stated they will do a stipulation and that he does not know the math yet. Court noted it may also be good to file a motion regarding carving out some of the events in the stay/lifting the stay/modifying the stay; this needs to be done in writing because of the repercussions. ~ Following arguments by counsel as to who gets to attend Ms. Wynn's deposition, COURT noting the July 7th transcript stated, it appears all parties agreed to avoid prior contamination of those parties not involved in the motion to disqualify, that in briefing they would be served on a limited basis; this deposition appears to relate to the motion to disqualify and related issues, so, the Court will PRECLUDE Mr. Peek's as well as Mr. Albright's presence at the deposition; this does not mean they will not be able to get a copy of the deposition if they file a motion and explain why does it does not have attorney-client communication. Colloquy regarding the letter. COURT ORDERED, request to move the deposition DENIED. Court reminded counsel the deposition is limited to issues subject to the evidentiary hearing that is related to disqualification and injunctive relief; counsel will not go into how data was taken. Court advised emergencies can be addressed at a telephonic conference and OST's will be SET for September 1st, 2016.

[Parties Present](#)

[Return to Register of Actions](#)

EXHIBIT 3

ORIGINAL

AUG 10 2016

1 ORDR

2
3 DISTRICT COURT

BY: 
DULCE MARIE ROMEA, DEPUTY

4 CLARK COUNTY, NEVADA

5 WYNN RESORTS, LIMITED, a Nevada
6 Corporation,

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

7 Plaintiff,

**ORDER REGARDING PROTOCOL FOR
COLLECTION, SEARCH, AND REVIEW
OF DOCUMENTS RELATED TO THE
MOTION TO DISQUALIFY QUINN
EMANUEL AND FOR ORDERS TURNING
OVER PRIVILEGED MATTER,
INJUNCTIVE RELIEF, PROTECTION
AND OTHER APPROPRIATE RELIEF**

8 vs.

9 KAZUO OKADA, an individual, ARUZE
10 USA, INC., a Nevada corporation, and
11 UNIVERSAL ENTERTAINMENT CORP.,
12 a Japanese corporation;

13 Defendants.

Date of Hearing: July 21, 2016

14 AND ALL RELATED CLAIMS.

Time of Hearing 8:30 a.m.

15 The above-captioned action came before the Court on July 21, 2016 on a number of
16 matters related to Wynn Resorts, Limited's Motion to Disqualify Quinn Emanuel and for Orders
17 Requiring Turnover of Privileged Matter, Injunctive Relief, Protection and Other Appropriate
18 Relief, filed on June 3, 2016 ("Motion to Disqualify"). James J. Pisanelli, Esq., and Debra L.
19 Spinelli, Esq., of PISANELLI BICE PLLC, appeared on behalf of Plaintiff/Counterdefendant
20 Wynn Resorts, Limited ("Wynn Resorts") and Counterdefendants Linda Chen, Russell
21 Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
22 D. Boone Wayson, and Allan Zeman (collectively with Wynn Resorts, the "Wynn Parties"). J.
23 Colby Williams, and Phil Erwin, Esq., of Campbell & Williams, appeared on behalf of
24 Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). William R. Urga, Esq., of
25 Jolley Urga Woodbury & Little, and Michael T. Zeller, Esq., of Quinn Emanuel Urquhart &
26 Sullivan LLP, appeared on behalf of Counterdefendant/ Counterclaimant/Crossclaimant Elaine P.
27 Wynn ("Ms. Wynn"). And, J. Stephen Peck, Esq., of Holland & Hart LLP, appeared on behalf of
28 Defendant Kazuo Okada ("Mr. Okada") and Defendants/Counterclaimants/Counterdefendants

1 Aruze USA, Inc. ("Aruze USA") and Universal Entertainment Corp. ("Universal") (the "Okada
2 Parties").

3 During a telephone conference on June 29, 2016, and in the context of Wynn Resorts'
4 Motion to Disqualify, the Court set a briefing schedule on the issue of whether Ms. Wynn can
5 claim attorney-client privilege over communications she had with her personal counsel through a
6 Wynn Resorts email address. The Court had before it and considered the following filings:

- 7 A. Elaine P. Wynn's (1) Memorandum Re: Wynn Resorts' Waiver Arguments and
8 (2) Motion Requiring Wynn Resorts' Reciprocal Compliance with Protocol and for
9 Orders Requiring Turnover of Privileged Matter, Injunctive Relief, Protection and
10 Other Appropriate Relief ("Motion for Reciprocal Compliance"), filed on July 7,
11 2016;
- 12 B. Wynn Resorts, Limited's (1) Response Memorandum RE: Waiver Arguments and
13 (2) Opposition to Elaine P. Wynn's Motion Requiring Wynn Resorts' Reciprocal
14 Compliance with Protocol and For Orders Requiring Turnover of Privileged
15 Matter, Injunctive Relief, Protection and Other Appropriate Relief, filed on June
16 18, 2016;
- 17 C. Elaine P. Wynn's Reply in Support of (1) Memorandum Re: Wynn Resorts' Waiver
18 Arguments and (2) Motion Requiring Wynn Resorts' Reciprocal Compliance with
19 Protocol and For Orders Requiring Turnover of Privileged Matter, Injunctive
20 Relief, Protection and Other Appropriate Relief, filed on July 20, 2016; and
- 21 D. Elaine P. Wynn's Status Report Regarding Proposed ESI Protocol for July 21,
22 2016 Hearing (and exhibits thereto), filed on July 20, 2016.

23 The Court having considered the above filings, as well as arguments of counsel presented
24 at the hearing, and good cause appearing therefor,

25 **IT IS HEREBY ORDERED** as follows:

- 26 1. Ms. Wynn's Motion for Reciprocal Compliance is DENIED.
27 2. The Court finds that Wynn Resorts' policies related to use of Company computers,
28

1 emails, and servers applies to Ms. Wynn. However, because the origin of each document subject
2 to review via this and related orders has not yet been established, the Court reserves ruling on the
3 issues of privilege and waiver so to conduct a document-by-document review.

4 3. Upon agreement of the parties, the Court appoints Advanced Discovery to serve as
5 the independent ESI vendor (the "ESI Vendor") in this action to take possession of all of the
6 documents and devices identified by Ms. Wynn and Quinn Emanuel pursuant to Paragraph 4
7 below for preservation, analysis, and review as discussed herein or by further stipulation and/or
8 order of the Court.

9 4. By or before August 19, 2016, Ms. Wynn and Quinn Emanuel shall identify and
10 make available for imaging all documents and electronic storage devices in Ms. Wynn and
11 Quinn Emanuel's possession that are or potentially contain Wynn Resort's documents, including,
12 but not limited to:

- 13 a. the "MTO Hard Drive" referenced in the declarations attached to the
14 *In Camera* Submission by Quinn Emanuel Urquhart & Sullivan, LLP and
15 Elaine P. Wynn Pursuant to the Court's June 7, 2016 and June 17, 2016
16 Orders, filed on June 20, 2016 ("*In Camera* Submission");
- 17 b. the Kingston thumb drive referenced in Ms. Wynn's Status Report
18 Regarding Proposed ESI Protocol for July 21, 2016 Hearing, filed on July
19 20, 2016;
- 20 c. the imaged "computer hard drives" referenced in paragraph 4 of Elaine P.
21 Wynn's declaration, attached to the *In Camera* Submission);¹ and
- 22 d. the thumb drive referenced in Ms. Wynn's inventory letter to Wynn Resorts,
23 dated July 1, 2016.²

24
25 ¹ According to paragraph 4 of the Declaration of Jeffrey Y. Wu, Esq., dated July 20, 2016,
26 Ms. Wynn had imaged the hard drives of Ms. Wynn's work computer *and* the work computer of
her then-assistant, former Wynn Resorts' employee, Jaclyn DelRossi.

27 ² Ms. Wynn is identifying the devices listed in 2(b) and 2(d) in an abundance of caution
28 because Quinn Emanuel is insufficiently able to ascertain the content of those devices, which will
be determined through the protocol set forth herein. This identification does not constitute an

1 The ESI Vendor will take possession of (but not image) the sealed hard copy binder
2 referenced in Ms. Wynn's inventory letter to Wynn Resorts, dated July 1, 2016. The ESI Vendor
3 shall not unseal the sealed hard copy binder or take any other actions with respect to the binder
4 until further instructed by stipulation or agreement of the Parties and/or order of the Court.

5 This protocol is not intended to include directories, documents or devices that exclusively
6 contain deposition or hearing transcripts, pleadings, motion practice, produced discovery from this
7 action, and/or correspondence between counsel for Ms. Wynn and other counsel in this action.

8 5. The Court-appointed ESI Vendor will take instructions directly from the Court
9 and/or from stipulation or agreement by the parties. There shall be no *ex parte* communications
10 between any party and the ESI Vendor.

11 6. The Court, counsel for Ms. Wynn, and counsel for Wynn Resorts will conduct joint
12 conference calls or meetings with the ESI Vendor as necessary to discuss, among other things, the
13 scope of work to be performed by the ESI Vendor. The ESI Vendor and/or counsel for Ms.
14 Wynn, and/or counsel for Wynn Resorts should not communicate with or otherwise involve the
15 Okada Parties regarding any issues related to this protocol absent further orders of the Court.

16 7. Pursuant to the Protective Order entered in this action on February 13, 2013, the
17 ESI Vendor shall treat and designate as Highly Confidential all information, including hard copy
18 documents and electronic devices, all copies or images thereof, and all associated information,
19 that it takes possession of, images or otherwise receives or generates pursuant to the protocol set
20 forth herein. This treatment shall not bind or otherwise prejudice the rights of any party to argue
21 that any information is or should be designated as Highly Confidential or Confidential in any
22 context other than in connection with this protocol.

23 8. Compliance with this order in imaging and turning over any documents or devices
24 to the ESI Vendor shall not be construed as a waiver, and shall not be argued to be a waiver, of
25 any applicable attorney-client privilege, work product protection, or other applicable privilege or
26 protection. Compliance with this order in turning over any documents or devices to Wynn Resorts

27 admission and is not an admission that any identified device does in fact contain Wynn Resorts'
28 company privileged information.

1 for its review under this protocol shall not be construed as a waiver, and shall not be argued to be
2 a waiver, of any applicable attorney-client privilege, work product protection, or other applicable
3 privilege or protection.

4 9. The ESI Vendor shall prepare and maintain a true and complete chain of custody
5 for all documents and devices that it takes possession of or images, and it shall photograph and
6 document the original condition and packaging of those documents and devices (including
7 whether they are password protected and/or sealed).

8 10. The ESI Vendor will scan all hard copy documents and make them searchable.

9 11. The ESI Vendor shall make a full, forensically sound image of all electronic
10 storage devices ("Working Copy") and maintain possession of the hard copy documents and
11 original media devices until further order of the Court.

12 12. Counsel and experts for Wynn Resorts and/or Ms. Wynn may be present for any
13 imaging for observation purposes but shall not interfere with such imaging or have *ex parte*
14 communications with the ESI Vendor.

15 13. The ESI Vendor shall prepare a forensic acquisition log, and provide copies to
16 counsel for Wynn Resorts and Ms. Wynn.

17 14. The ESI Vendor shall examine the Working Copies to verify that nothing has been
18 deleted, shall determine the dates of creation and access (including last access) for each device,
19 folder, subfolder and document contained within them, shall allow experts for Wynn Resorts and
20 Ms. Wynn to monitor or participate in this process, and shall provide a report regarding these
21 issues to the Court and counsel for Ms. Wynn, Wynn Resorts and Mr. Wynn.

22 15. The ESI Vendor shall create a folder and subfolder printout, and a file listing for
23 each imaged device. The ESI Vendor shall first provide a copy of the folder and subfolder
24 printout and file listings to counsel for Ms. Wynn or her third-party designee, which they may
25 redact for reasons of confidentiality, personal matters (e.g., health, divorce, grandchildren),
26 privilege or work product, and then produce to Wynn Resorts. In the event that Ms. Wynn or her
27 third-party designee redacts any information from the folder and subfolder printout or file listings,
28

1 Ms. Wynn and Wynn Resorts shall meet and confer within three (3) judicial days and, if the issue
2 of redactions is not resolved, Ms. Wynn or her third-party designee shall provide an unredacted
3 copy of the printout *in camera* to the Court for its review and determination.

4 16. After the ESI Vendor has completed its work as described above, the ESI Vendor
5 shall de-duplicate the documents received from Ms. Wynn and Quinn Emanuel.

6 17. Thereafter, Ms. Wynn or her third-party designee may conduct a review for
7 Ms. Wynn's personal, confidential, privileged and/or work product protected information.
8 Ms. Wynn's counsel or third-party designee may use search terms, or conduct a document-by-
9 document review, as her counsel considers most appropriate after depositing the devices. If
10 Ms. Wynn elects to use a third-party designee to conduct such review, her use of a third-party
11 designee under this protocol shall not be construed as a waiver of Ms. Wynn's privilege, and shall
12 not be argued to be a waiver, of any applicable attorney-client privilege, work product protection,
13 or other applicable privilege or protection. After the review is complete, Ms. Wynn's counsel or
14 her third-party designee will prepare a log of documents containing Ms. Wynn's personal,
15 confidential, and/or privileged information being withheld from Wynn Resorts' review and serve
16 such log upon Wynn Resorts.

17 a. The review must take place on the ESI Vendor's review platform. Neither
18 Ms. Wynn nor her counsel may save, copy, print, make screen shots of, or
19 otherwise recreate, in full or in part, any of the documents.

20 b. In the event Ms. Wynn/Quinn Emanuel chooses to utilize the search term
21 process for the review, the procedure shall be as follows:

22 i. Ms. Wynn will identify search terms designed to isolate Ms. Wynn's
23 confidential, personal, privileged, or work product information,
24 disclose them to Wynn Resorts, and meet and confer within three
25 (3) judicial days regarding the terms. If no agreement can be
26 reached, the Court will resolve any issues regarding the proposed
27
28

1 search terms through motion practice, which may be heard on
2 shortened time with at least two (2) judicial days' notice.

3 ii. Upon receipt of the agreed upon or Court ordered search terms, the
4 ESI Vendor will run the search terms across the subject data to
5 identify documents that Ms. Wynn contends may be confidential,
6 personal, privileged, or work product in nature

7 iii. Upon completion of the search, the ESI Vendor shall produce the
8 search results to (1) Ms. Wynn's counsel; or (2) to the Court or a
9 special master agreed upon by these parties for an *in camera* review
10 to determine if there is any basis for these documents to be withheld
11 from Wynn Resorts' review. If the latter, upon the *in camera* review
12 of these documents, the Court or special master will determine if it
13 is appropriate for some of these documents to be released to Ms.
14 Wynn's counsel to provide a log identifying the reasons or basis for
15 the protection from disclosure.

16 iv. If a special master is agreed upon by these parties, the special
17 master shall present his/her findings in a report and recommendation
18 to the Court for review and approval, consistent with EDCR 2.34(f),
19 which applies hereto in its entirety.

20 v. If a special master is agreed upon by these parties, the special
21 master will be compensated in the method agreed to by the parties.

22 c. If Ms. Wynn/Quinn Emanuel determines that a document-by-document
23 review is the appropriate process, such review is done at the risk of further
24 proceedings related to sanction and/or disqualification for the review of
25 confidential or potentially privileged information belonging to Wynn
26 Resorts.

27 18. After the ESI Vendor has removed Ms. Wynn's privileged, confidential and/or
28

1 personal information as designated by Ms. Wynn, her third party designee, or Quinn Emanuel,
2 Wynn Resorts may review the remaining documents, subject to any other Court-imposed
3 limitation. Wynn Resorts is not required to use search terms for its review.

4 19. In the event that Ms. Wynn releases a document(s) to Wynn Resorts and
5 Wynn Resorts identifies the document(s) during its review as subject to privacy (e.g., medical,
6 family, personal banking), privilege, or work product protections belonging to Ms. Wynn, Wynn
7 Resorts shall notify Ms. Wynn, and such document(s) shall be sequestered until further addressed
8 by the Court.

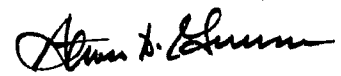
9 20. The Court will resolve any issues regarding the present protocol or for other
10 appropriate relief through motion practice, which the Parties agree may be heard on shortened
11 time with at least two (2) judicial days' notice following a meet and confer pursuant to EDCR
12 2.34.

13 21. Each side shall bear its own fees and costs related to their own searches or review,
14 but split equally any hosting or monthly maintenance expenses related to Advanced Discovery.
15 The costs of the initial imaging by Advanced Discovery will be borne by Ms. Wynn. Wynn
16 Resorts and/or Ms. Wynn may petition the Court to seek a shifting of costs upon completion of
17 this protocol. Each side shall bear its own attorney's fees, subject to further Court order.

18 DATED: 10 Aug 16

19 
20 _____
21 DISTRICT COURT JUDGE
22
23
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27
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EXHIBIT 4



CLERK OF THE COURT

ORDER

1 James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
2 Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
3 Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
4 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
5 Las Vegas, Nevada 89101
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16

DISTRICT COURT

CLARK COUNTY, NEVADA

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18
19 WYNN RESORTS, LIMITED, a Nevada
Corporation,

20 Plaintiff,

21 vs.

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

24 Defendants.
25

26 AND ALL RELATED CLAIMS.
27
28

Case No.: A-12-656710-B

Dept. No.: XI

**ORDER REGARDING SERVICE OF
FILINGS RELATED TO
DISQUALIFICATION OF QUINN
EMANUEL**

PISANELLI BICE PLLC
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LAS VEGAS, NEVADA 89101

1 The Court held a Telephonic Conference on July 7, 2016. James J. Pisanelli, Esq., Todd
2 L. Bice, Esq., and M. Magali Mercera, Esq. of Pisanelli Bice PLLC, appeared on behalf of
3 Plaintiff/Counterdefendant Wynn Resorts, Limited ("Wynn Resorts") and Counterdefendants
4 Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr,
5 Alvin V. Shoemaker, D. Boone Wayson, and Allan Zeman (with Wynn Resorts, the "Wynn
6 Parties"), William Erwin, Esq. of Campbell & Williams appeared on behalf of
7 Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"), William R. Urga, Esq. and
8 David Malley, Esq. of Jolley Urga Woodbury & Little, as well as Michael T. Zeller, Esq. and Ian
9 Shelton, Esq. of Quinn Emanuel Urqhart & Sullivan, LLP, appeared on behalf of
10 Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn ("Ms. Wynn"), and J. Stephen
11 Peek, Esq. and Bryce Kunimoto, Esq. of Holland & Hart, as well as David Krakoff, Esq. of
12 Buckley Sandler LLP, appeared on behalf of Defendant Kazuo Okada and Defendant/
13 Counterclaimants Aruze USA, Inc. and Universal Entertainment Corp. (collectively the "Okada
14 Parties") (hereinafter referred to as the "Parties").

15 The Court and the Parties discussed service of filings related to the Wynn Resorts' Motion
16 to Disqualify Quinn Emanuel and for Orders Requiring Turnover of Privileged Matter, Injunctive
17 Relief, Protection and Other Appropriate Relief on an Order Shortening Time (hereinafter the
18 "Motion") that was and remains pending before the Court. Based on the subject of the Motion,
19 and the potential for contamination related to privileged information if filings are served on all
20 Parties, the Parties agree that unredacted filings related to the subject matter of the Motion shall
21 not be served on the Okada Parties.

22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that service of unredacted
23 filings related to the subject matter of the Motion shall be limited to the Wynn Parties, Mr. Wynn,
24 and Ms. Wynn. The Parties may submit a proposed stipulation for Court approval governing the
25 service of such filings on the Okada Parties in redacted form and containing a procedure for the
26 Okada Parties to challenge such redactions.

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IT IS SO ORDERED.

DATED: 09/20/16



DISTRICT COURT JUDGE

Respectfully submitted by:

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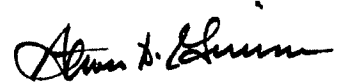
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EXHIBIT 5



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED	.	
	.	
Plaintiff	.	CASE NO. A-656710
	.	
vs.	.	
	.	DEPT. NO. XI
KAZUO OKADA, et al.	.	
	.	
Defendants	.	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 89146

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

1 this afternoon interrelate, okay. And it also keeps me from
2 having to worry about an open courtroom issue while those
3 proceedings are occurring. Okay?

4 MR. POLSENBERG: Thank you.

5 THE COURT: So I'll see you guys at 1:15?

6 MR. PEEK: Yes, Your Honor.

7 THE COURT: All right. And then you'll answer my
8 question, and then I'll go back to them, okay.

9 (Court recessed at 11:42 a.m., until 1:19 p.m.)

10 THE COURT: Good afternoon, counsel.

11 We were on Elaine Wynn's thinking about what I'd
12 said before we left for lunch. Unless you want to tell me you
13 settled the case while I was gone.

14 MR. POLSENBERG: Your Honor, I think a master
15 sounds like a great idea. Of course, the details would be
16 in how we --

17 THE COURT: Devil's always in the details, Mr.
18 Polsenberg.

19 MR. POLSENBERG: We'll have to figure out the scope,
20 we'll have to figure out who.

21 THE COURT: Absolutely. Okay.

22 MR. POLSENBERG: And Mr. Peek might actually be
23 involved.

24 THE COURT: I know.

25 So it sounds like we have a preliminary agreement

1 that a special master may be the appropriate mechanism to make
2 sure that everybody's protected and nobody gets further
3 tainted and we don't have any additional problems with
4 disclosure of the potentially privileged material either from
5 Ms. Wynn or from Wynn Resorts.

6 MR. PEEK: I'm sorry, I --

7 THE COURT: Can you not hear me? Is it selective
8 hearing today?

9 MR. PEEK: I'm not hearing you. I apologize, Your
10 Honor.

11 THE COURT: It's okay.

12 THE COURT RECORDER: Maybe I should give him
13 headsets.

14 THE COURT: No, don't.

15 MR. POLSENBERG: We did that with Allen
16 Liechtenstein the other day.

17 (Off-record colloquy re headphones)

18 MR. POLSENBERG: So I imagine a lot of the issues
19 we've talked about today and even other issues in the case we
20 can -- the Court nods.

21 THE COURT: So who's doing the first draft?

22 MR. PISANELLI: Of?

23 THE COURT: An order for the appointment of a
24 special master.

25 MR. POLSENBERG: I think we ought to have a meet and

1 confer and figure it out.

2 MR. BICE: That would be fine, Your Honor. I mean,
3 it seems like at least our motion -- our current motion is
4 being granted in part.

5 MR. POLSENBERG: Well, I'm not agreeing to that.

6 MR. BICE: Okay. Well --

7 THE COURT: Well --

8 MR. POLSENBERG: I'll agree to a special master or a
9 hearing --

10 THE COURT: So wait. Remember, one at a time.

11 MR. POLSENBERG: Oh. I'm sorry.

12 THE COURT: One at a time.

13 MR. POLSENBERG: Mr. Bice, I apologize.

14 THE COURT: Mr. Bice, would you finish, please.

15 MR. BICE: WE have a current motion pending. I
16 understand they want to resolve that motion by the appointment
17 of a special master. We will be happy to meet and confer with
18 them, and if we can't agree on who that would be, typically my
19 experience -- I'm not sure I've had any with this particular
20 Court, but if the parties can't agree, they submit a list of
21 three names --

22 THE COURT: Three names.

23 MR. BICE: -- and the Court picks who it's going to
24 be.

25 THE COURT: I need CVs and rates that come with

1 three names.

2 MR. BICE: Understood.

3 MR. POLSENBERG: Exactly what we were thinking.

4 MR. BICE: Yeah. So we'll sit down and we will do
5 that process promptly.

6 THE COURT: Yeah. We have done this before.

7 MR. BICE: Now I'll turn it over to Mr. Pisanelli to
8 address the depo, since I think that's related to the special
9 master issue.

10 MR. URGA: There's a miscommunication.

11 MR. POLSENBERG: Yeah. Your Honor --

12 THE COURT: What is the miscommunication?

13 MR. POLSENBERG: -- I had just suggested that Mr.
14 Peek would be involved because I think it would -- that this
15 could extend to discovery issues throughout the case.

16 THE COURT: If you guys agree to that scope.

17 MR. POLSENBERG: Yeah.

18 THE COURT: I'm not ordering that, though.

19 MR. PEEK: Yeah. That's what I just -- just
20 wondering if that's what Mr. Polsenberg is suggesting is that
21 the special master be somebody appointed for all depositions
22 that would occur after the resolution of the disqualification
23 and the recommencement of the proceedings.

24 MR. POLSENBERG: Yes.

25 THE COURT: I am waiting to hear exactly what the

1 scope is, because I made the suggestion because I saw two
2 intersecting areas, the issue with the Elaine Wynn deposition
3 that if it wasn't about privilege she'd be sitting in there
4 and watching everything we do and we'd be moving on. And the
5 other issue has to do with the ESI issues with the documents.
6 ESI. You're familiar with that? Yeah?

7 MR. PEEK: I heard that, Your Honor, yes.

8 MR. PEEK: Heard that before. The ESI issues with
9 the review and retrievable and sequestering of any potentially
10 privileged or personal information of Ms. Wynn on that
11 information before we begin the process of have a review done
12 by Wynn for their privilege [inaudible]. So that was my
13 intent. If you want to expand it, that's fine. I think
14 it's --

15 MR. POLSENBERG: I'm suggesting it also go to review
16 of confidential and highly confidential information. And
17 we've had trouble in other depositions, as well.

18 THE COURT: I'm not saying what the scope is.

19 MR. POLSENBERG: Right.

20 THE COURT: What I'm saying is you should meet and
21 confer. And it sounds like you'd like Mr. Peek to join you.
22 And you should talk. And if you can reach an agreement on
23 scope, that's lovely. If you can't reach an agreement on
24 scope, I'll fix it for ya.

25 MR. POLSENBERG: Right. Right. As long as I'm

1 clear I think Mr. Peek has to be involved, it's not that I
2 want him to join us.

3 MR. PEEK: I won't take that as a left-handed
4 insult, Your Honor, but I appreciate Mr. Polsenberg's concern
5 about my welfare and well being.

6 I don't know if Mr. Bice was actually desirous of
7 having a special master for the entire proceeding, or just for
8 the limited purpose of Elaine Wynn. So I would prefer that
9 they go forward for their limited purpose of Elaine Wynn's
10 issues -- or, excuse me, Wynn Resorts' issues related to
11 Elaine Wynn and Quinn Emanuel. If we want to address the
12 issue of a special master at a later time, I'm happy to
13 address it at a later time. But I think right now it's
14 premature to do that.

15 MR. BICE: We actually -- as much as it pains me --

16 MR. POLSENBERG: He doesn't even --

17 THE COURT: We're going to mark down he agrees with
18 Steve Peek.

19 MR. POLSENBERG: He doesn't even have to finish the
20 sentence.

21 MR. BICE: I don't even have to finish the sentence.

22 We have two -- we have two issues pending before the
23 Court today that we want to get resolved. I do not want this
24 process to become all bogged down in trying to anticipate
25 future issues and future disputes and who should be handling

1 them. We're seeking a special master on this issue about
2 Elaine Wynn, and we'll include the deposition of Elaine Wynn
3 in that. And if somebody wants to later seek additional
4 appointments of a special master over other issues, they have
5 the right to do that at any point in time.

6 THE COURT: So what I'm going to tell you to do is
7 what I said already, is you guys are going to talk, you're
8 either going to reach an agreement or you're not. If you
9 don't reach an agreement, I'm going to resolve the issue for
10 you. I understand your position. Anything else?

11 MR. PEEK: I'm not going to be involved, Your Honor.

12 THE COURT: Did you want to talk --

13 MR. POLSENBERG: And I understand your position.
14 And as long as Mr. Peek realizes the nature of momentum, if we
15 agree and he doesn't want to have input, the Court's probably
16 not going to appoint a different hearing master for other
17 things.

18 THE COURT: I have in other cases appointed more
19 than one special master.

20 MS. SPINELLI: You have into s case. There is a
21 special master with the Okada parties in the validation set.

22 THE COURT: What?

23 MS. SPINELLI: We already have --

24 MR. PEEK: On the validation set.

25 THE COURT: Yeah. That's on ESI.

1 MR. PEEK: So maybe we should use that one, Your
2 Honor.

3 MR. POLSENBERG: Maybe.

4 MR. PEEK: So Mr. Polsenberg's suggesting that
5 you've already done it once?

6 MR. POLSENBERG: I'm just simply stating the laws of
7 physics.

8 THE COURT: I'm sitting down now.

9 MR. BICE: Yes. Your Honor, our only issue is we
10 want to make clear that the Court's order is being modified,
11 because --

12 THE COURT: Which order?

13 MR. BICE: The order that they claim allows them to
14 engage this third -- what they're characterizing as a third-
15 party taint team that is answerable to them. We want to make
16 sure that that order is modified to reflect the fact that it
17 is being substituted with a special master to oversee that
18 process.

19 MR. POLSENBERG: No.

20 THE COURT: That's incorrect, Mr. Bice.

21 MR. POLSENBERG: Yeah.

22 THE COURT: On my order of August 10th, 2016, I have
23 a provision that if the parties agree they want to have a
24 special master, that we're going to have a special master. It
25 sounds like you've reached an agreement on that issue, so

1 there's going to be a supplementation to this order and
2 modification of it to some extent to reflect this special
3 master will coordinate the review instead of a third party.
4 But the order contemplated that it was possible -- possible --
5 I don't -- highly unlikely, but possible that you would reach
6 an agreement.

7 MR. BICE: Except I guess that raises an additional
8 question with us. Has a third party already been reviewing my
9 client's privileged information?

10 THE COURT: They told me when I asked the question
11 the person they selected had been Justice Rose and that
12 Justice Rose had not yet begun the review.

13 Is that right?

14 MR. ZELLER: That's correct, Your Honor.

15 THE COURT: Okay.

16 MR. BICE: So there has been no other third parties
17 that they have given our documents to? See, this is -- this
18 is the problem, Your Honor. They don't want this order
19 modified because they want the order to stand that it somehow
20 authorized them to engage in that process.

21 THE COURT: Okay.

22 MR. BICE: We disagree with that, and we don't
23 accept -- again --

24 THE COURT: Mr. Bice, if you want to argue later
25 about any conduct they've done between the date I entered the

1 order on August 10th and the day I've said we'll have a
2 special master perform those functions as the third-party
3 reviewer and perhaps other scope issues because there has
4 been an agreement of the parties, I will be happy to address
5 those issues that occurred in the three-week period between
6 August 10 and September 2.

7 MR. BICE: Or anything that preceded that point in
8 time.

9 THE COURT: Sure.

10 MR. BICE: Yes. All right. Thank you.

11 MS. SPINELLI: So, Your Honor, just so that -- the
12 reason why Mr. Bice is asking is because we did with Advance
13 Discovery do the imaging of the electronic devices on Monday,
14 and the next step after the file listings were given to our
15 respective experts is the search of the review. And we want
16 to make sure that the review by Ms. Wynn's team does not
17 happen. Instead, it'll be by the special master, which I
18 think is what you're saying at this point, because --

19 MR. ZELLER: Your Honor --

20 THE COURT: Mr. Zeller.

21 MR. ZELLER: -- Ms. Spinelli and I discussed this.
22 Pending resolution of this motion, which apparently now is
23 going to be resolved because, as the Court pointed out, this
24 which contemplated that if the parties agreed to a special
25 master -- this is -- there's been nothing that's been