

EXHIBIT 5

EXHIBIT 5

ORDER

J. Stephen Peek, Esq. (1758)
Bryce K. Kunitomo, Esq. (7781)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
speek@hollandhart.com
bkunitomo@hollandhart.com
bcassity@hollandhart.com

David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)
Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)
Adam Miller, Esq. (*Admitted Pro Hac Vice*)
BUCKLEYSANDLER LLP
1250 24th Street NW, Suite 700
Washington DC 20037
Tel: (202) 349-8000
Fax: (202) 349-8080
dkrakoff@bucklesandler.com
bklubes@bucklesandler.com
amiller@bucklesandler.com

*Attorneys for Defendant Kazuo Okada and
Defendants/Counterclaimants Aruze USA, Inc.,
and Universal Entertainment Corp.*

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
corporation,

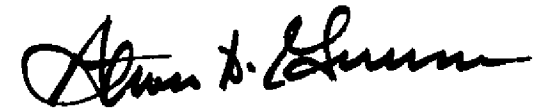
Plaintiff,
v.

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

Defendants.

AND ALL RELATED CLAIMS.

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CLERK OF THE COURT

CASE NO.: A-12-656710-B
DEPT. NO.: XI

**ORDER GRANTING THE ARUZE
PARTIES' MOTION TO COMPEL
SERVICE OF CERTAIN FILINGS AND
THE DEPOSITION TRANSCRIPT OF
ELAINE P. WYNN**

Electronic Filing Case

Hearing Date: Sept. 27, 2016
Hearing Time: 8:30 a.m.

Defendants Aruze USA, Inc., Universal Entertainment Corp. and Kazuo Okada (the

1 “Aruze Parties”) filed their Motion to Compel Service of Certain Filings and the Deposition
2 Transcript of Elaine P. Wynn (the “Motion”) on September 23, 2016. After briefing, the Motion
3 came before this Court for hearing on September 27, 2016. James J. Pisanelli, Esq., Todd L.
4 Bice, Esq., and Debra L. Spinelli, Esq., of PISANELLI BICE PLLC, appeared on behalf of
5 Plaintiff/Counterdefendant Wynn Resorts, Limited (“WRL”) and Counterdefendants Linda
6 Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin
7 V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (collectively, with WRL,
8 the “Wynn Parties”). Donald J. Campbell, Esq. of Campbell & Williams, appeared on behalf of
9 Counterdefendant/Cross-defendant Stephen A. Wynn (“Mr. Wynn”). Dan Polsenberg, Esq. of
10 Lewis Roca Rothgerber Christie, LLP, William R. Urga, Esq. and David J. Malley, Esq. of Jolley
11 Urga Woodbury & Little, and Michael Zeller of Quinn Emanuel Urquhart & Sullivan LLP,
12 appeared on behalf of Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn (“Ms.
13 Wynn”). And, J. Stephen Peek, Esq. and Robert J. Cassity, Esq. of Holland & Hart LLP appeared
14 on behalf of the Aruze Parties.

15 The Court having considered the Motion, the Opposition filed by Ms. Wynn, as well as
16 the arguments of counsel presented at the hearing, and good cause appearing therefor, IT IS
17 HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is GRANTED as
18 follows:

19 1. During the September 20, 2016 hearing, the Court found that Ms. Wynn is not an
20 employee of Wynn Resorts, Limited. Therefore, there is no potential retaliation and no
21 protection under the Sarbanes-Oxley Act of 2002 (“SOX”). The Court also found that Ms.
22 Wynn is not providing information to agencies that would fall within the Dodd-Frank Wall Street
23 Reform and Consumer Protection Act (“DFA”). Therefore, Ms. Wynn is not entitled to
24 protection under the DFA at this time.

25 2. Ms. Wynn has failed to establish a basis upon which any party is not required to
26 comply with Rule 5(a) of the Nevada Rules of Civil Procedure with respect to filings that
27 concern information Ms. Wynn claims is subject to protection under SOX or DFA.
28

3. Ms. Wynn shall immediately serve the Aruze Parties with all of her filings that have not been served upon the Aruze Parties on the basis of Ms. Wynn's claim of protections under SOX or the DFA, subject to the provisions of the *Protocol Regarding Service of Filings Related to Motion to Disqualify Quinn Emanuel* dated September 20, 2016 (the "Protocol") for filings containing information that is the subject of a claim of attorney-client privilege and/or work product doctrine.

4. The Wynn Parties shall immediately serve the Aruze Parties with all of their filings that have not been served upon the Aruze Parties on the basis of Ms. Wynn's claim of protections under SOX or the DFA, subject to the provisions of the Protocol for filings containing information that is the subject of a claim of attorney-client privilege and/or work product doctrine.

5. The Wynn Parties and Ms. Wynn shall provide to counsel for the Aruze Parties a copy of the deposition transcript of Ms. Wynn's deposition taken on August 15, 2016.

6. This Order is stayed until October 20, 2016 to enable Ms. Wynn to seek writ relief from the Nevada Supreme Court. Absent relief from the Nevada Supreme Court, Ms. Wynn and the Wynn Parties shall comply with the requirements of Paragraphs 3-5 of this Order no later than October 21, 2016.

DATED this 10 day of ^{October}~~September~~ 2016.


THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

By: 

J. Stephen Peek, Esq. (7758)
Bryce K. Kunimoto, Esq. (7781)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Benjamin B. Klubes, Esq. (*pro hac vice*)
David S. Krakoff, Esq. (*pro hac vice*)
Adam Miller, Esq. (*pro hac vice*)
BUCKLEY SANDLER LLP
1250 24th Street NW, Suite 700
Washington, DC 20037

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

Approved as to form and content:

By: _____

James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Robert L. Shapiro, Esq. (*pro hac vice*)
GLASER WEIL FINK HOWARD AVCHEN &
SHAPIRO, LLP
10529 Constellation Blvd., 19th Floor
Los Angeles, California 90067

Mitchell J. Langberg, Esq., Bar No. 10118
BROWNSTEIN HYATT FARBER SCHRECK LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106

*Attorneys for Wynn Resorts, Limited, Linda
Chen, Russell Goldsmith, Ray R. Irani, Robert
J. Miller, John A. Moran, Marc Schorr, Alvin
V. Shoemaker, Kimmarie Sinatra, D. Boone
Wayson, and Allan Zeman*

By: _____

Donald J. Campbell, Esq., Bar No. 1216
J. Colby Williams, Esq., Bar No. 5549
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, Nevada 89109

Attorneys for Stephen A. Wynn

By: _____

William R. Urga, Esq.
David J. Malley, Esq.
JOLLY URGA WOODBURY & LITTLE
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169

John B. Quinn, Esq. (*pro hac vice*)
Michael T. Zeller, Esq. (*pro hac vice*)
Jennifer D. English, Esq. (*pro hac vice*)
Susan R. Estrich, Esq. (*pro hac vice*)
Michael L. Fazio, Esq. (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017

Daniel F. Polsenberg, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169

Attorneys for Elaine P. Wynn

EXHIBIT 4

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Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

MCOM

J. Stephen Peek, Esq. (1758)
Bryce K. Kunimoto, Esq. (7781)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
speek@hollandhart.com
bkunimoto@hollandhart.com
bcassity@hollandhart.com

David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)
Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)
Adam Miller, Esq. (*Admitted Pro Hac Vice*)
BUCKLEYSANDLER LLP
1250 24th Street NW, Suite 700
Washington DC 20037
Tel: (202) 349-8000
Fax: (202) 349-8080
dkrakoff@bucklesander.com
bklubes@bucklesandler.com
amiller@bucklesandler.com

*Attorneys for Defendant Kazuo Okada and
Defendants/Counterclaimants Aruze USA, Inc.,
and Universal Entertainment Corp.*

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,

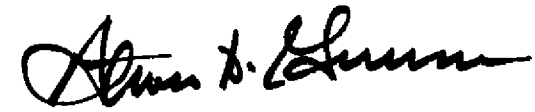
v.

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

Defendants.

AND ALL RELATED CLAIMS.

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CLERK OF THE COURT

CASE NO.: A-12-656710-B
DEPT NO.: XI

**THE ARUZE PARTIES' MOTION TO
COMPEL SERVICE OF CERTAIN
FILINGS AND THE DEPOSITION
TRANSCRIPT OF ELAINE P. WYNN**

**EX PARTE APPLICATION FOR ORDER
SHORTENING TIME AND ORDER
THEREON**

Hearing Date:
Hearing Time:

Universal Entertainment Corporation, Aruze USA, Inc., and Mr. Kazuo Okada, (collectively, the “Aruze Parties”) respectfully move the Court for an order compelling the Wynn Parties¹ and Elaine P. Wynn to serve them with unredacted copies of all filings that have not been served upon the Aruze Parties, including all exhibits thereto (collectively, the “Withheld Briefs”²), subject to the protocol entered by the Court for challenging information within the Withheld Briefs that is claimed to be protected by the attorney-client privilege or work product doctrine.³ As of now, the Withheld Briefs include at least the following:

(1) Elaine P. Wynn’s (1) Memorandum re: Wynn Resorts’ Waiver Arguments and (2) Motion Requiring Wynn Resorts’ Reciprocal Compliance with Protocol and for Orders Requiring Turnover of Privileged Matter, Injunctive Relief, Protection and Other Appropriate Relief (filed July 7, 2016);

(2) WRL’s Response Memorandum Re: Wynn Resorts’ Waiver Arguments and WRL’s Opposition to Elaine P. Wynn’s Motion Requiring Wynn Resorts’ Reciprocal Compliance with Protocol and for Orders Requiring Turnover of Privileged Matter, Injunctive Relief, Protection and Other Appropriate Relief and Appendix Thereto (filed July 18, 2016);

(3) Elaine P. Wynn’s Status Report Regarding Proposed ESI Protocol for July 21, 2016 Hearing (filed July 20, 2016);

¹ The Wynn Parties consist of Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, 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.

² The Aruze Parties have identified those motions and briefs for which they have received accompanying motions to seal but which WRL and Ms. Wynn have refused to serve them with copies of either the actual and (in most instances) redacted briefs. To the extent any of the Wynn Parties (including Mr. Wynn) or Ms. Wynn have submitted and/or filed any other motions and/or papers without serving them on the Aruze Parties, the Aruze Parties move to compel the service of complete, unredacted copies of any such motions and papers to be served immediately.

³ On September 20, 2016, the Court entered a *Protocol Regarding Service of Filings Related to Motion to Disqualify Quinn Emanuel* (the “Protocol”), which allows the Aruze Parties to address information (within certain filings) that is claimed to be subject to the attorney-client privilege or work product doctrine.

1 (4) Elaine P. Wynn's Reply in Support of Memorandum re: Wynn Resorts' Waiver
2 Arguments (filed July 20, 2016);

3 (5) Elaine P. Wynn's Response to Wynn Resorts, Limited's Motion for Limited and
4 Specific Relief Related to the Protective Order With Respect to Confidentiality (filed August 10,
5 2016);

6 (6) Elaine P. Wynn's Supplement to Motion for Protective Order Regarding Wynn
7 Resorts' Violations of Dodd-Frank and Sarbanes-Oxley Act on Order Shortening Time, or in the
8 Alternative, Motion for Stay of Discovery Pending Resolution of the Motion and/or Writ Petition
9 if the Motion is Denied (filed August 10, 2016);

10 (7) Elaine P. Wynn's Motion to Clarify or, in the Alternative, Stay the Court's
11 Temporary Restraining Order Dated August 12, 2016, Pending Appeal (filed August 29, 2016)
12 (the Aruze Parties were served only with a redacted copy);

13 (8) Elaine P. Wynn's Motion for Protective Order, or in the Alternative for
14 Preliminary Injunction, to Prevent Wynn Resorts from Reviewing Ms. Wynn's Privileged
15 Information (filed August 29, 2016) (the Aruze Parties were served only with a redacted copy);

16 (9) Wynn Resorts, Limited's Motion to Compel Elaine P. Wynn to Answer Deposition
17 Questions, to Extend Deposition Time and for Sanctions (filed August 30, 2016);

18 (10) Wynn Resorts Limited's Opposition to Elaine P. Wynn's Motion for Protective
19 Order to Prevent WRL from Reviewing Ms. Wynn's Privileged Information (filed September 1,
20 2016) (the Aruze Parties have sequestered this brief pending motion practice).

21 (11) Elaine P. Wynn's Opposition to Motion to Compel Elaine P. Wynn to Answer
22 Deposition Questions, to Extend Deposition Time and for Sanctions (filed on September 1, 2016)
23 (the Aruze Parties were served only with a redacted copy);

24 (12) Wynn Resorts, Limited's Supplemental Opposition to Elaine P. Wynn's Motion
25 for Protective Order, Or in the Alternative, Motion for Stay of Discovery (filed on September 7,
26 2016);

(13) Elaine P. Wynn's Supplemental Reply in Support of Her Motion for Protective Order Regarding Wynn Resorts' Violations of the Dodd-Frank and Sarbanes-Oxley Act, or in the Alternative, Motion for Stay (filed on September 16, 2016);

(14) Elaine P. Wynn's Notice of Filing Errata to Deposition Transcript of Elaine P. Wynn Taken August 15, 2016 (filed September 19, 2016); and

(15) Elaine P. Wynn's Motion for Leave to Take Discovery Regarding Her Protected Status and Wynn Resorts' Violations of the Dodd-Frank and Sarbanes-Oxley Whistleblower Anti-Retaliation Statutes on Order Shortening Time (filed September 19, 2016).⁴

The Aruze Parties further move the Court for an order requiring the Wynn Parties and Elaine Wynn to provide them with a copy of the deposition transcript of Elaine P. Wynn, which was taken on or about August 15, 2016. The Aruze Parties request that this Motion be heard on shortened time.

Dated this 22nd day of September 2016.



J. Stephen Peek, Esq. (1758)
Bryce K. Kunitomo, Esq. (7781)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

David S. Krakoff, Esq. (*Pro Hac Vice*)
Benjamin B. Klubes, Esq. (*Pro Hac Vice*)
Adam Miller, Esq. (*Pro Hac Vice*)
BUCKLEYSANDLER LLP

⁴ Pursuant to a minute order dated September 6, 2016, the Court has already required the Wynn Parties and Ms. Wynn to serve the Aruze Parties with unredacted copies of (1) 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 (filed August 9, 2016); and (2) Wynn Resorts Limited's Opposition to Elaine P. Wynn's Motion for Protective Order or in the Alternative, Motion for Stay of Discovery (filed August 11, 2016). On September 20, 2016, the Court entered an order memorializing the September 6 minute order. For that reason, these filings are not identified above but the Aruze Parties seek compliance with that Order for which no stay has been granted. Further, the Aruze Parties have identified all of the withheld filings of which they are aware. WRL has suggested that some of the Withheld Briefs are only being withheld on the basis of attorney-client privilege or work product doctrine, but Ms. Wynn's counsel has not confirmed her position as to these filings.

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

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1250 24th Street NW, Suite 700
Washington DC 20037


*Attorneys for Defendant Kazuo Okada and
Defendants/Counterclaimants Aruze USA, Inc.,
and Universal Entertainment Corp.*

EX PARTE APPLICATION FOR ORDER SHORTENING TIME

Pursuant to EDCR 2.26, the Aruze Parties apply to the Court *ex parte* for an Order Shortening Time for the hearing of Defendants' Motion to Compel ("Motion").

As explained in the Declaration of Robert J. Cassity below, good cause supports the Aruze Parties' request for an order shortening time. For over a month now, the Wynn Parties and Elaine Wynn have refused to serve the Aruze Parties with the Withheld Briefs. Before filing this Motion, the Aruze Parties' counsel held a meet-and-confer conference call with counsel for WRL and Elaine Wynn on September 14, 2016 at 3:00 p.m. The parties discussed a procedure for addressing information claimed to be subject of the attorney-client privilege and work product doctrine, and the Court has since entered a Protocol to address such filings. For those filings that contain information alleged by Ms. Wynn to be protected under certain whistleblower laws, including the Dodd-Frank Act and Sarbanes-Oxley Act, counsel for the Wynn Parties does not object to providing those materials to the Aruze Parties, but they will not serve them absent a Court order because Ms. Wynn has refused to consent to the service of the requested filings. During the conference call, counsel for Ms. Wynn has refused to provide any of the Withheld Briefs or other filings related to the so-called "whistleblower" issues to the Aruze Parties. Because the Withheld Briefs relate to other hearings that have been held and are scheduled to be held before the Court, a hearing on shortened time is necessary. Accordingly, the Aruze Parties respectfully request that the Court set the Motion for hearing on shortened time.

Dated this 22nd day of September 2016.



J. Stephen Peek, Esq. (1758)
Bryce K. Kunitomo, Esq. (7781)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

David S. Krakoff, Esq. (*Pro Hac Vice*)
Benjamin B. Klubes, Esq. (*Pro Hac Vice*)
Adam Miller, Esq. (*Pro Hac Vice*)
BUCKLEYSANDLER LLP
1250 24th Street NW, Suite 700

Washington DC 20037

*Attorneys for Defendant Kazuo Okada and
Defendants/Counterclaimants Aruze USA, Inc.,
and Universal Entertainment Corp.*

DECLARATION OF ROBERT J. CASSITY

I, Robert J. Cassity, declare as follows:

1. I am over 18 years of age and am competent to testify as to the matters set forth in this Declaration based upon my own personal knowledge.

2. I am an attorney at Holland & Hart LLP, counsel for Defendant Kazuo Okada and Defendants and Counterclaimants Aruze USA, Inc. and Universal Entertainment Corp. (collectively, the "Aruze Parties" or "Defendants") in this action. I make this Declaration in support of Defendants' Motion to Compel Service of Certain Filings and the Deposition Transcript of Elaine P. Wynn ("Motion").

3. Good cause supports the Aruze Parties' request for an order shortening time. For over a month now, the Wynn Parties and Elaine Wynn have refused to serve the Aruze Parties with the Withheld Briefs.

4. Before filing this Motion, the Aruze Parties' counsel held a meet-and-confer conference call with counsel for WRL and Elaine Wynn on September 14, 2016 at 3:00 p.m., in which the parties discussed a procedure for addressing information claimed to be subject of the attorney-client privilege and work product doctrine, and the Court has since entered a Protocol to address such filings. For those filings that contain information alleged by Ms. Wynn to be protected under certain whistleblower laws, including the Dodd-Frank Act and Sarbanes-Oxley Act, counsel for the Wynn Parties does not object to providing those materials to the Aruze Parties, but they will not serve them absent a Court order because Ms. Wynn has refused to consent to the service of the requested filings.

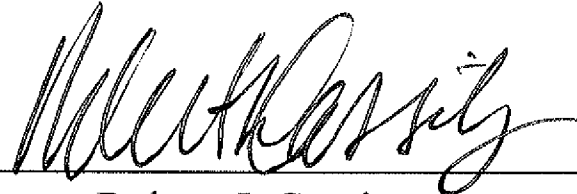
5. During the conference call, counsel for Ms. Wynn refused to provide any of the Withheld Briefs or other filings related to the so-called "whistleblower" issues to the Aruze Parties. Because the Withheld Briefs relate to other hearings that have been held and are

1 scheduled to be held before the Court, a hearing on shortened time is necessary. Accordingly,
2 the Aruze Parties respectfully request that the Court set the Motion for hearing on shortened
3 time, and specifically on September 27.

4 6. This request for shortened time is made in good faith and not for any improper
5 motive.

6 I declare under penalty of perjury that the foregoing is true and correct.

7 Executed this 22nd day of September, 2016, in Las Vegas, Clark County, Nevada.

8
9 

10 Robert J. Cassity

11 **ORDER SHORTENING TIME**

12 Having considered the Ex Parte Application for Order Shortening Time Filed by the
13 Aruze Parties, and good cause appearing,

14 IT IS HEREBY ORDERED that THE ARUZE PARTIES' MOTION TO COMPEL
15 SERVICE OF CERTAIN FILINGS AND THE DEPOSITION TRANSCRIPT OF ELAINE P.
16 WYNN shall come for hearing before Department XI of the above-entitled Court on the 27th
17 day of Sept 2016 at the hour of 8:30 a.m./p.m.

18 DATED this 23 day of SEPT, 2016.

19
20 
21 DISTRICT COURT JUDGE

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1 **I. INTRODUCTION**

2 For over a month now, the Wynn Parties and Elaine Wynn have refused to serve the Aruze
3 Parties with a number of motions and briefs that they have filed with the Court. This violates
4 Rule 5 of the Nevada Rules of Civil Procedure, which is controlling and which requires service of
5 all motions and related briefing on all parties. But for the accompanying motions to seal, the
6 Aruze Parties would not have known that WRL and Ms. Wynn had submitted many of these
7 briefs to the Court and served them on all other parties to the case. The purported grounds for
8 withholding the Withheld Briefs are that (1) some of the filings contain attorney-client privilege
9 issues related to the motion to disqualify Quinn Emanuel; and (2) Ms. Wynn claims that certain
10 information in some of the filings is protected by federal and/or state whistleblower laws. The
11 Court has now entered a Protocol which addresses the first category by allowing the Aruze Parties
12 to challenge information subject to a claim of the attorney-client privilege or work product
13 doctrine. Thus, this Motion is directed to the second category of filings that are allegedly subject
14 to whistleblower protections (as well as any other undisclosed basis for withholding such filings)
15 and the deposition of Ms. Wynn.

16 Rule 5 specifically requires parties to serve *all other parties* with copies of all motions and
17 related briefs, yet WRL and Ms. Wynn have refused to comply with this Rule. In addition, there
18 are no valid claims of any federal or state law whistleblower protections that excuse WRL and/or
19 Ms. Wynn from serving the Aruze Parties with unredacted copies of the Withheld Briefs. Given
20 Ms. Wynn's ongoing refusal to serve the Aruze Parties with copies of the Withheld Briefs that
21 allegedly contain such information, the Aruze Parties have been forced to seek relief from the
22 Court. Accordingly, the Aruze Parties request that the Court order WRL and Ms. Wynn to
23 immediately serve unredacted copies of the Withheld Briefs and all other and future filings—
24 subject to the procedure in the Protocol for any information subject to a claim of attorney-client
25 privilege or work product doctrine—and Ms. Wynn's deposition transcript upon the Aruze
26 Parties.

27 ///

1 **II. ARGUMENT**

2 **A. WRL and Ms. Wynn Should Be Ordered to Immediately Serve the Aruze**
3 **Parties With Copies of The Withheld Briefs.**

4 Rule 5(a) of the Nevada Rules of Civil Procedure governs the service of motions on
5 parties to the proceedings and requires the service of all motions and related papers upon the
6 Aruze Parties:

7 Except as otherwise provided in these rules, . . . *every written motion other*
8 *than one which may be heard ex parte*, and every written notice,
9 appearance, demand, offer of judgment, designation of record on appeal,
10 *and similar paper shall be served upon each of the parties.*

10 NRCP 5(a) (emphasis added).

11 NRCP 5(a) therefore requires WRL and Ms. Wynn to serve the Withheld Briefs upon the
12 Aruze Parties, but they still refuse to do so. For this reason alone, the Court should require
13 service of the Withheld Briefs.

14 Moreover, there is no legal basis to shield such information from the Aruze Parties. Ms.
15 Wynn has claimed that she is entitled to certain protections which may be afforded to an
16 individual who, under certain statutes (including The Dodd-Frank Wall Street Reform and
17 Consumer Protection Act and the Sarbanes-Oxley Act of 2002), is a “whistleblower.” But these
18 protections are *not privileges*, and do not provide a basis upon which to refuse to serve a party to
19 the proceedings with their filings. While these “whistleblower” protections may guard against
20 retaliatory actions by the individual’s employer, they do not amount to a “privilege” upon which a
21 party may withhold information from (and refuse to serve related briefing on) a co-litigant in a
22 civil lawsuit.⁵ Not only has Ms. Wynn failed to supply the Court with any case authority
23 authorizing the withholding of such information from a co-litigant either in briefs filed with court
24 or during a deposition, neither Ms. Wynn and WRL have established that such information should
25 be shielded from the Aruze Parties in any event.⁶ Ms. Wynn has not filed any motion permitting

26 ⁵ Of course, it is undisputed that the Aruze Parties are not Ms. Wynn’s “employer” and could not engage in
27 any retaliatory actions against her that would be subject to protection under these statutes.

28 ⁶ The cases that have been cited by Ms. Wynn do not authorize or in any way support her continued refusal

1 her to refuse service upon the Aruze Parties, and the Court observed during the September 15
2 hearing that it had not entered any order authorizing Ms. Wynn to refuse to serve the Aruze
3 Parties with any such filings. Because Ms. Wynn has failed to identify any legitimate basis upon
4 which to refuse to serve any of the Withheld Briefs, the Court should order all filings that Ms.
5 Wynn has failed to serve upon the Aruze Parties, including the Withheld Briefs, to be served upon
6 them in unredacted format immediately—and to direct that any future filings that are not the
7 subject of a claim of attorney-client privilege or work product doctrine to likewise be served upon
8 the Aruze Parties.⁷

9 **C. The Court Should Compel the Wynn Parties and Ms. Wynn to Provide a**
10 **Complete, Unredacted Copy of Ms. Wynn's Deposition Transcript to the**
11 **Aruze Parties.**

12 Ms. Wynn's deposition transcript should likewise be provided to the Aruze Parties in an
13 unredacted form. Neither WRL nor Ms. Wynn have claimed that any of the information
14 discussed during Ms. Wynn's deposition constitutes privileged information. And as discussed
15 above, any possible "whistleblower" protections that may apply to information discussed during
16 Ms. Wynn's deposition do not amount to any privilege that would shield such information from
17 disclosure to the Aruze Parties. In addition, the Court's recent comments during the September 2,
18 2016 hearing confirm that Ms. Wynn's deposition transcript contains no information that should
19 be shielded from the Aruze Parties. *See* 9/2/16 Hr'g Tr. at 53:3-6; ("I intend[ed] it to originally
20 relate only to the issues of the disqualification, *not to the other issues*. And so I am not able

21 to serve the Withheld Briefs upon the Aruze Parties. *See* Elaine Wynn's Objections and Responses to the
22 Okada Parties' and Wynn Resorts' Notice of Submission ("Objections and Responses"), at 5 (citing
23 *Halliburton, Inc. v. Admin. Review Bd.*, 771 F.3d 254, 262 (5th Cir. 2014) (per curiam) (holding that
24 employer revealing the identity of whistleblower to whistleblower's colleagues amounted to retaliation
25 under Sarbanes-Oxley, but the court did not address the service of filings on co-litigants); *Guitron v. Wells*
26 *Fargo Bank, NA*, 2012 WL 2708517, at *16 (N.D. Cal. July 6, 2012), *aff'd*, 619 Fed. Appx. 590 (9th Cir.
2015) (holding that state privilege did not bar federal action under American Disabilities Act, but not
discussing service of filings on co-litigants); *Pardi v. Kaiser Found. Hospitals*, 389 F.3d 840, 851-52 (9th
Cir. 2004) (discussing two plaintiff's retaliation and discriminatory practices claims, but not addressing
service of filings on co-litigants)).

27 ⁷ Although the Court invited counsel for Ms. Wynn at the September 15 hearing to file a motion to allow
28 her not to serve the Aruze Parties, no such motion has been submitted.

1 necessarily to discern what is and is not being served on the Aruze [sic] parties, which is why I
2 am in this quandary”) (emphasis added); *id.* at 53:10-15 (“I did limit, though, Mr. Peek’s
3 participation in the deposition of Ms. Wynn related to those particular issues *because of the*
4 *overlapping privilege issues that I perceived might occur* in the deposition. *But after reading*
5 *portions of the transcript, I was clearly mistaken.*”) (Emphasis added).

6 Because WRL and Ms. Wynn have failed to demonstrate the existence of any privileged
7 information in Ms. Wynn’s deposition transcript, and because Ms. Wynn has failed to
8 demonstrate how any federal whistleblower laws would allow her to prevent a co-litigant from
9 receiving said information, the Court should require WRL and Ms. Wynn to provide the Aruze
10 Parties with a complete, unredacted copy of Ms. Wynn’s deposition transcript.

11 **III. CONCLUSION**

12 For these reasons, the Court should order WRL and Ms. Wynn to immediately provide the
13 Aruze Parties with complete, unredacted copies of the Withheld Briefs and any other filings that
14 they have not served upon the Aruze Parties (subject to the Court’s Protocol for resolving
15 information subject to a claim of attorney-client privilege or work product doctrine), as well as a
16 complete, unredacted copy of Ms. Wynn’s deposition transcript.

17 Dated this 22nd day of September 2016.



J. Stephen Peek, Esq. (1758)
Bryce K. Kunitomo, Esq. (7781)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

23 David S. Krakoff, Esq. (*Pro Hac Vice*)
24 Benjamin B. Klubes, Esq. (*Pro Hac Vice*)
25 Adam Miller, Esq. (*Pro Hac Vice*)
26 BUCKLEYSANDLER LLP
27 1250 24th Street NW, Suite 700
28 Washington DC 20037

*Attorneys for Defendant Kazuo Okada and
Defendants/Counterclaimants Aruze USA, Inc.,
and Universal Entertainment Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September 2016, a true and correct copy of the foregoing **THE ARUZE PARTIES' MOTION TO COMPEL SERVICE OF CERTAIN FILINGS AND THE DEPOSITION TRANSCRIPT OF ELAINE P. WYNN** was served by the following method(s):

☒ **Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
PISANELII BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Paul K. Rowe, Esq. (*pro hac vice*)
Bradley R. Wilson, Esq. (*pro hac vice*)
Grant R. Mainland, Esq. (*pro hac vice*)
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019

Robert L. Shapiro, Esq. (*pro hac vice*)
GLASER WEIL FINK HOWARD AVCHEN &
SHAPIRO, LLP
10529 Constellation Blvd., 19th Floor
Los Angeles, California 90067

Mitchell J. Langberg, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106

Attorneys for Wynn Resorts, Limited, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Mare De. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

William R. Urga, Esq.
David J. Malley, Esq.
JOLLY URGAL WOODBURY & LITTLE
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway Ste 600
Las Vegas, NV 89169

John B. Quinn, Esq. (*pro hac vice*)
Michael T. Zeller, Esq. (*pro hac vice*)
Jennifer D. English, Esq. (*pro hac vice*)
Susan R. Estrich, Esq. (*pro hac vice*)
Michael L. Fazio, Esq. (*pro hac vice*)
QUINN EMANUEL URQUHART & SULLIVAN
LLP
865 S. Figueroa Street, Tenth Floor
Los Angeles, CA 90017

Attorneys for Elaine P. Wynn

Richard A. Wright, Esq.
WRIGHT STANISH & WINCKLER
300 S. 4th Street Ste 701
Las Vegas, NV 89101

Attorneys for Defendant Kazuo Okada and Defendants/Counterclaimants Aruze USA, Inc., and Universal Entertainment Corp.

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25
26
27
28

Melinda Haag, Esq. (*pro hac vice*)
James N. Kramer, Esq. (*pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94015

Attorneys for Kimmarie Sinatra

G. Mark Albright, Esq.
William H. Stoddard, Jr. Esq.
ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT
801 South Rancho Drive, Ste D-4
Las Vegas, NV 89106

Attorneys for Intervenor

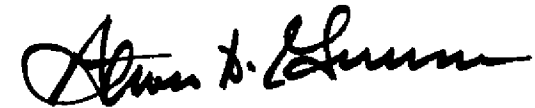
Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, Nevada 89109

Attorneys for Stephen A. Wynn

/s/ Valerie Larsen
An Employee of Holland & Hart, LLP

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

ORDR

J. Stephen Peek, Esq. (1758)
Bryce K. Kunimoto, Esq. (7781)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
speek@hollandhart.com
bkunimoto@hollandhart.com
bcassity@hollandhart.com

David S. Krakoff, Esq. (*Admitted Pro Hac Vice*)
Benjamin B. Klubes, Esq. (*Admitted Pro Hac Vice*)
Adam Miller, Esq. (*Admitted Pro Hac Vice*)
BUCKLEYSANDLER LLP
1250 24th Street NW, Suite 700
Washington DC 20037
Tel: (202) 349-8000
Fax: (202) 349-8080
dkrakoff@bucklesandler.com
bklubes@bucklesandler.com
amiller@bucklesandler.com

*Attorneys for Defendant Kazuo Okada and
Defendants/Counterclaimants Aruze USA, Inc.,
and Universal Entertainment Corp.*

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,
v.

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

**ORDER REGARDING WYNN
RESORTS, LIMITED'S NOTICE OF
SUBMISSION OF MATERIALS FOR IN
CAMERA REVIEW**

Electronic Filing Case

Hearing Date: September 6, 2016
Hearing Time: In Chambers

This matter came before the Court on August 11, 2016 for a hearing on Elaine P. Wynn's
("Ms. Wynn") Motion for Protective Order Regarding Wynn Resorts' Violations of the Dodd-

1 Frank and Sarbanes-Oxley Act on Order Shortening Time, or in the Alternative, Motion for Stay
2 of Discovery Pending Resolution of the Motion and/or Writ Petition if the Motion is Denied
3 (filed August 9, 2016) (“Ms. Wynn’s Motion for Protective Order”), during which the Court
4 directed Wynn Resorts, Limited (“WRL”) to provide proposed redactions of Ms. Wynn’s Motion
5 for Protective Order and Wynn Resorts, Limited’s Opposition to Elaine P. Wynn’s Motion for
6 Protective Order or in the Alternative, Motion for Stay of Discovery (filed August 11, 2016)
7 (“WRL’s Opposition”). On August 23, 2016, WRL filed a Notice of Submission of Materials for
8 *In Camera* Review (“Notice of Submission”), with which it provided to the Court proposed
9 redactions for Ms. Wynn’s Motion for Protective Order and WRL’s Opposition.

10 The Court having reviewed and considered WRL’s Notice of Submission, WRL’s
11 proposed redactions and sealing of Ms. Wynn’s Motion for Protective Order and WRL’s
12 Opposition submitted *in camera* with WRL’s Notice of Submission, and the Aruze Parties’
13 Response to the Notice of Submission (filed August 31, 2016), and the Court having issued a
14 minute order dated September 6, 2016, and good cause appearing,

15 IT IS HEREBY ORDERED that the proposed redactions to Ms. Wynn’s Motion for
16 Protective Order and WRL’s Opposition are APPROVED for purposes of filing with the Clerk’s
17 Office and the requested sealing is PERMITTED, in light of the commercially sensitive
18 information contained therein.

19 IT IS FURTHER ORDERED that Ms. Wynn shall forthwith serve an unredacted and
20 unsealed copy of Ms. Wynn’s Motion for Protective Order, together with all exhibits thereto,
21 upon all counsel for all parties in the litigation who are bound by the Protective Order With
22 Respect to Confidentiality (filed February 14, 2013) (the “Protective Order”), and shall file a
23 redacted copy of Ms. Wynn’s Motion for Protective Order with the Clerk’s Office.

24 ///

25 ///

26 ///

27 ///

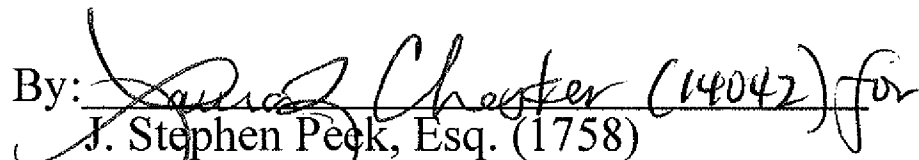
1 IT IS FURTHER ORDERED that WRL shall forthwith serve an unredacted and unsealed
2 copy of WRL's Opposition, together with all exhibits thereto, upon all counsel for all parties in
3 the litigation who are bound by the Protective Order, and shall file a redacted copy of WRL's
4 Opposition with the Clerk's Office.

5 DATED this 20th day of September 2016.

6
7 

8 THE HONORABLE ELIZABETH GONZALEZ
9 EIGHTH JUDICIAL DISTRICT COURT

10 Respectfully submitted by:

11
12 By:  for
13 J. Stephen Peek, Esq. (1758)
14 Bryce K. Kunitomo, Esq. (7781)
15 Robert J. Cassity, Esq. (9779)
16 HOLLAND & HART LLP
17 9555 Hillwood Drive, 2nd Floor
18 Las Vegas, NV 89134

19 Benjamin B. Klubes, Esq. (*pro hac vice*)
20 David S. Krakoff, Esq. (*pro hac vice*)
21 Adam Miller, Esq. (*pro hac vice*)
22 BUCKLEYSANDLER LLP
23 1250 24th Street NW, Suite 700
24 Washington, DC 20037

25
26 *Attorneys for Kazuo Okada, Aruze USA, Inc., and*
27 *Universal Entertainment Corp.*
28

1 Approved as to form and content:

2
3 By: 

4 James J. Pisanelli, Esq., Bar No. 4027

5 Todd L. Bice, Esq., Bar No. 4534

6 Debra L. Spinelli, Esq., Bar No. 9695

7 PISANELLI BICE PLLC

8 400 South 7th Street, Suite 300

9 Las Vegas, Nevada 89101

10 Robert L. Shapiro, Esq. (*pro hac vice*)

11 GLASER WEIL FINK HOWARD AVCHEN &
12 SHAPIRO, LLP

13 10529 Constellation Blvd., 19th Floor

14 Los Angeles, California 90067

15 Mitchell J. Langberg, Esq., Bar No. 10118

16 BROWNSTEIN HYATT FARBER SCHRECK LLP

17 100 North City Parkway, Suite 1600

18 Las Vegas, Nevada 89106

19 *Attorneys for Wynn Resorts, Limited, Linda*
20 *Chen, Russell Goldsmith, Ray R. Irani, Robert*
21 *J. Miller, John A. Moran, Marc D. Schorr,*
22 *Alvin V. Shoemaker, Kimmarie Sinatra, D.*
23 *Boone Wayson, and Allan Zeman*

24
25 By: _____

26 Donald J. Campbell, Esq., Bar No. 1216

27 J. Colby Williams, Esq., Bar No. 5549

28 CAMPBELL & WILLIAMS

700 South Seventh Street

Las Vegas, Nevada 89109

Attorneys for Stephen A. Wynn

By: _____

William R. Urga, Esq.

David J. Malley, Esq.

JOLLY URGA WOODBURY & LITTLE

3800 Howard Hughes Parkway, 16th Floor

Las Vegas, Nevada 89169

John B. Quinn, Esq. (*pro hac vice*)

Michael T. Zeller, Esq. (*pro hac vice*)

Jennifer D. English, Esq. (*pro hac vice*)

Susan R. Estrich, Esq. (*pro hac vice*)

Michael L. Fazio, Esq. (*pro hac vice*)

QUINN EMANUEL URQUHART & SULLIVAN LLP

865 S. Figueroa Street, 10th Floor

Los Angeles, California 90017

Daniel F. Polsenberg, Esq.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Parkway

Suite 600

Las Vegas, NV 89169

Attorneys for Elaine P. Wynn

EXHIBIT 2

EXHIBIT 2

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

September 06, 2016

A-12-656710-B Wynn Resorts, Limited, Plaintiff(s)
vs.
Kazuo Okada, Defendant(s)

September 06, 2016 4:30 PM Minute Order: Proposed Redaction

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

PARTIES None. Minute order only – no hearing held.
PRESENT:

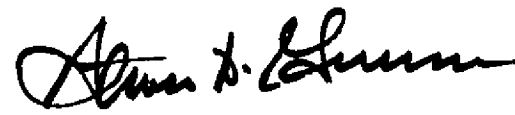
JOURNAL ENTRIES

- The Court reviewed in camera the proposed redaction by Wynn of Elaine Wynn's Motion for Protective Order Regarding Wynn Resorts Violation of the Dodd-Frank and Sarbanes-Oxley Act and Wynn Resorts Opposition to Elaine Wynn's motion for Protective Order, or in the Alternative, Motion for Stay of Discovery and the submission filed 8/23 (Wynn) and 8/31 (Aruze), APPROVES the redactions for purposes of filing with the Clerk's Office and PERMITS sealing because the information is commercially sensitive, pending hearing on Motion to Seal. Both pleadings should be served in an unredacted and unsealed form upon all counsel for all parties in the litigation who are bound by the stipulated protective order entered in this matter.

CLERK'S NOTE: A copy of the above minute order was distributed via the E-Service Master List. / dr
9-6-16

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

MSRC

WILLIAM R. URGAS, ESQ. #1195

Email: wru@juwww.com

DAVID J. MALLEY, ESQ. #8171

Email: djm@juwww.com

JOLLEY URGAS WOODBURY & LITTLE

3800 Howard Hughes Parkway, 16th Floor

Las Vegas, NV 89169

Telephone: (702) 699-7500

Facsimile: (702) 699-7555

JOHN B. QUINN, ESQ.*

Email: johnquinn@quinnemanuel.com

MICHAEL T. ZELLER, ESQ.*

Email: michaelzeller@quinnemanuel.com

SUSAN R. ESTRICH, ESQ.*

Email: susanestrich@quinnemanuel.com

MICHAEL L. FAZIO, ESQ.*

Email: michaelfazio@quinnemanuel.com

QUINN EMANUEL URQUHART & SULLIVAN, LLP

865 S. Figueroa Street, 10th Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

Facsimile: (213) 443-3100

* *pro hac vice* admitted

Attorneys for Counterdefendant/Counterclaimant/Cross-Claimant

ELAINE P. WYNN

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual, ARUZE
USA, Inc., a Nevada corporation,
UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

Defendant.

AND ALL RELATED CLAIMS

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

**ELAINE P. WYNN'S MOTION TO SEAL
HER 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 AND EXHIBITS**

Date:

Time:

ELECTRONIC FILING CASE

1 Elaine P. Wynn (“Ms. Wynn”) moves the Court for an order to seal her Motion for
2 Protective Order Regarding Wynn Resorts’ Violations of the Dodd-Frank & Sarbanes-Oxley Act
3 on Order Shortening Time, or in the Alternative Motion for Stay of Discovery Pending Resolution
4 of the Motion and/or Writ Petition if the Motion is Denied and exhibits (the “Motion”). The
5 information sought to be sealed contains information one or more parties believes to be sensitive,
6 confidential information creating a compelling interest in protecting this document from
7 widespread dissemination to the public. Ms. Wynn requests that the motion remain sealed for a
8 reasonable time until the Court rules upon this Motion.


9 This Motion is made and based on Rule 3(1) of the Nevada Supreme Court’s Rules
10 Governing Sealing and Redacting Court Records, the attached Memorandum of Points and
11 Authorities, all pleadings and documents on file, and any oral argument the Court may choose to
12 hear.

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Dated: August 8, 2016

JOLLEY URGAL WOODBURY & LITTLE

By: 

WILLIAM R. URGAL, ESQ. #1195
Email: wru@juwww.com
DAVID J. MALLEY, ESQ. #8171
Email: djm@juwww.com
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
Telephone: (702) 699-7500
Facsimile: (702) 699-7555

QUINN EMANUEL URQUHART & SULLIVAN, LLP
JOHN B. QUINN, ESQ.*
Email: johnquinn@quinnemanuel.com
MICHAEL T. ZELLER, ESQ.*
Email: michaelzeller@quinnemanuel.com
SUSAN R. ESTRICH, ESQ.*
Email: susanestrich@quinnemanuel.com
MICHAEL L. FAZIO, ESQ.*
Email: michaelfazio@quinnemanuel.com
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100
**pro hac vice admitted*

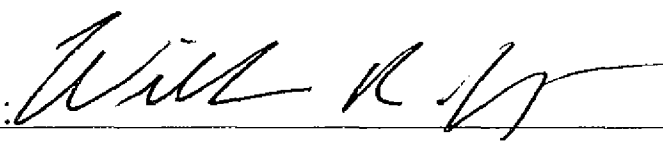
Attorneys for Counterdefendant/
Counterclaimant/Crossclaimant
ELAINE P. WYNN

1 NOTICE OF MOTION

2 PLEASE TAKE NOTICE that the undersigned will bring the foregoing ELAINE P. WYNN'S
3 MOTION TO SEAL HER MOTION FOR PROTECTIVE ORDER REGARDING WYNN
4 RESORTS' VIOLATIONS OF THE DODD-FRANK AND SARBANES-OXLEY ACT ON ORDER
5 SHORTENING TIME, OR IN THE ALTERNATIVE MOTION FOR STAY OF DISCOVERY
6 PENDING RESOLUTION OF THE MOTION AND/OR WRIT PETITION IF THE MOTION IS
7 DENIED AND EXHIBITS on for hearing before the above-entitled Court on the 9 day of
8 Sept., 2016, at the hour of In Chambers .m. of said day in Dept. XI or as
9 soon thereafter as counsel may be heard.
10

11
12 Dated: August 8, 2016

JOLLEY URGAL WOODBURY & LITTLE

13
14 By: 
15 WILLIAM R. URGAL, ESQ. #1195
16 Email: wru@juww.com
17 DAVID J. MALLEY, ESQ. #8171
18 Email: djm@juww.com
19 3800 Howard Hughes Parkway, 16th Floor
20 Las Vegas, Nevada 89169
21 Telephone: (702) 699-7500
22 Facsimile: (702) 699-7555
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

QUINN EMANUEL URQUHART &
SULLIVAN, LLP
JOHN B. QUINN, ESQ.*
Email: johnquinn@quinnemanuel.com
MICHAEL T. ZELLER, ESQ.*
Email: michaelzeller@quinnemanuel.com
SUSAN R. ESTRICH, ESQ.*
Email: susanestrich@quinnemanuel.com
MICHAEL L. FAZIO, ESQ.*
Email: michaelfazio@quinnemanuel.com
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100
**pro hac vice admitted*

Attorneys for Counterdefendant/
Counterclaimant/Crossclaimant
ELAINE P. WYNN

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Nevada Supreme Court enacted specific rules governing the sealing and redacting of
3 court records. Pursuant to Rule 3(1) of the Nevada Supreme Court’s Rules Governing Sealing and
4 Redacting Court Records (“SRCR”), “[a]ny person may request that the court seal or redact court
5 records for a case that is subject to these rules by filing a written motion” The Court may
6 order the records redacted or sealed provided that “the court makes and enters written findings that
7 the specific sealing or redaction is justified by identified compelling privacy or safety interests that
8 outweigh the public interest in access to the court record,” which includes findings that “[t]he
9 sealing or redaction furthers . . . a protective order entered under NRCP 26(c)” SRCR 3(4).

10 The Motion discusses confidential whistleblower communications or potential future
11 whistleblower communications protected from disclosure by the Dodd-Frank Wall Street Reform
12 and Consumer Protection Act, the Sarbanes-Oxley Act of 2002, the Securities Exchange Act of
13 1934, federal public policy and regulations promulgated thereunder, and Nevada’s statutory
14 privilege applicable to communications with the Gaming Control Board, NRS 463.120(4)(c) . The
15 Motion also discusses prior motions filed under seal in this action. Finally, the Motion attaches
16 Confidential and Highly Confidential exhibits, including deposition transcripts from this action.

17 In accordance with Sections 4 and 6 of the Protective Order entered by this Court on
18 February 13, 2013 (the “Protective Order”), the parties may designate certain information
19 disclosed in this action as Confidential that “constitutes, reflects, or discloses nonpublic
20 information, trade secrets, know-how, or other financial, proprietary, commercially sensitive,
21 confidential business, marketing, regulatory, or strategic information.” (*Id.* at 2-4.) Additionally,
22 in accordance with Sections 5 and 6 of the Protective Order, the parties may designate certain
23 information disclosed in this action as Highly Confidential that is “extremely sensitive, highly
24 confidential, nonpublic information, consisting either of trade secrets or proprietary or other highly
25 confidential business financial, regulatory, private, or strategic information.” (*Id.* at 3-4.)

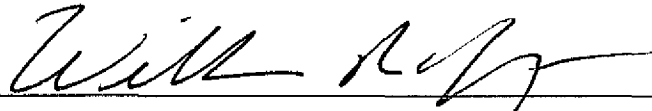
26 Pursuant to SRCR 3, the Court should allow Ms. Wynn to file the Motion under seal.
27
28

1 CONCLUSION

2 Based on the foregoing, Ms. Wynn respectfully requests that this Court allow her to file the
3 Motion under seal.

4
5 Dated: August 8, 2016

JOLLEY URGAL WOODBURY & LITTLE

6
7 By: 
8 WILLIAM R. URGAL, ESQ. #1195
9 Email: wru@juww.com
10 DAVID J. MALLEY, ESQ. #8171
11 Email: djm@juww.com
12 3800 Howard Hughes Parkway, 16th Floor
13 Las Vegas, Nevada 89169
14 Telephone: (702) 699-7500
15 Facsimile: (702) 699-7555

16 QUINN EMANUEL URQUHART &
17 SULLIVAN, LLP
18 JOHN B. QUINN, ESQ.*
19 Email: johnquinn@quinnemanuel.com
20 MICHAEL T. ZELLER, ESQ.*
21 Email: michaelzeller@quinnemanuel.com
22 SUSAN R. ESTRICH, ESQ.*
23 Email: susanestrich@quinnemanuel.com
24 MICHAEL L. FAZIO, ESQ.*
25 Email: michaelfazio@quinnemanuel.com
26 865 S. Figueroa Street, 10th Floor
27 Los Angeles, California 90017
28 Telephone: (213) 443-3000
Facsimile: (213) 443-3100
*pro hac vice admitted

Attorneys for Counterdefendant/
Counterclaimant/Crossclaimant
ELAINE P. WYNN

1 CERTIFICATE OF SERVICE

2 I hereby certify that on August 8, 2016, I caused the foregoing ELAINE P. WYNN'S
3 MOTION TO SEAL HER MOTION FOR PROTECTIVE ORDER REGARDING WYNN
4 RESORTS' VIOLATIONS OF THE DODD-FRANK AND SARBANES-OXLEY ACT ON
5 ORDER SHORTENING TIME, OR IN THE ALTERNATIVE MOTION FOR STAY OF
6 DISCOVERY PENDING RESOLUTION OF THE MOTION AND/OR WRIT PETITION IF
7 THE MOTION IS DENIED AND EXHIBITS to be served as follows:

8 [X] by the Court's ECF System through Wiznet:

9 Bryce K. Kunimoto, Esq.
Brian G. Anderson, Esq.
10 J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
11 Holland & Hart LLP
9555 Hillwood Drive, Second Floor
12 Las Vegas, Nevada 89134

13 Richard A. Wright, Esq.
Wright Stanish & Winckler
14 300 S. 4th Street, Suite 701
Las Vegas, Nevada 89101

15 Benjamin B. Klubes, Esq.
16 Joseph J. Reilly, Esq.
Buckley Sandler LLP
17 1250 24th Street NW, Suite 700
Washington, DC 20037

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

20 James J. Pisanelli, Esq.
Todd L. Bice, Esq.
21 Debra Spinelli, Esq.
Jarrod L. Rickard, Esq.
22 Pisanelli Bice, LLC
400 S. Seventh Street, Suite 300
23 Las Vegas, Nevada 89101

24 Paul K. Rowe, Esq.
Grant R. Mainland, Esq.
25 Bradley R. Wilson, Esq.
Wachtell, Lipton, Rosen & Katz
26 51 West 52nd Street
New York, New York 10019

1 Robert L. Shapiro, Esq.
2 Glaser Weil, et al.
3 10250 Constellation Blvd., 19th Floor
4 Los Angeles, California 90067

5 and

6 Mitchell J. Langberg, Esq.
7 Brownstein Hyatt Farber Schreck, LLP
8 100 North City Parkway, Suite 1600
9 Las Vegas, NV 89106

10 Attorneys for Wynn Resorts, Limited
11 Linda Chen, Russell Goldsmith,
12 Ray R. Irani, Robert J. Miller,
13 John A. Moran, Marc D. Schorr,
14 Alvin V. Shoemaker, Kimmarie
15 Sinatra, D. Boone Wayson and
16 Allan Zeman

17 Donald J. Campbell, Esq.
18 J. Colby Williams, Esq.
19 Campbell & Williams
20 700 S. 7th Street
21 Las Vegas, Nevada 89101

22 Attorneys for Stephen A. Wynn

23 Melinda Haag, Esq.
24 James N. Kramer, Esq.
25 The Orrick Building
26 405 Howard Street
27 San Francisco, California 94105-2669

28 Attorneys for Kimmarie Sinatra



An Employee of JOLLEY URGAL
WOODBURY & LITTLE

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELAINE P. WYNN

Appellant,

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,

Respondents.

and

WYNN RESORTS LIMITED, A
NEVADA CORPORATION

Real Party In Interest

Electronically Filed
Dec 06 2016 01:46 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.: 71432

District Court Case No.:
A-12-656710-B

**REPLY IN SUPPORT OF MOTION TO DESIGNATE THE ARUZE
PARTIES AS REAL PARTIES IN INTEREST**

HOLLAND & HART LLP
J. Stephen Peek, Esq. (1758)
Bryce K. Kunimoto, Esq. (7781)
Robert J. Cassity, Esq. (9779)
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Telephone No. (702) 669-4600

MORRIS LAW GROUP
Steve Morris, Esq. (1543)
Rosa Solis-Rainey, Esq. (7921)
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

BUCKLEY SANDLER LLP
David S. Krakoff, Esq.
(Admitted Pro Hac Vice)
Benjamin B. Klubes, Esq.
(Admitted Pro Hac Vice)
Adam Miller, Esq.
(Admitted Pro Hac Vice)
1250 24th Street NW, Suite 700
Washington DC 20037
Telephone No. (202) 349-8000

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

Aruze USA, Inc., Universal Entertainment Corp., and Kazuo Okada (the "Aruze Parties") respectfully submit this Reply in Support of the Motion to Designate the Aruze Parties as Real Parties in Interest (the "Motion") regarding Elaine Wynn's Petition for Writ of Prohibition or, in the Alternative, Mandamus (the "Petition").

I. INTRODUCTION

The Aruze Parties demonstrated in their Motion that they have a material interest in the outcome of the Petition and should be granted status as real parties in interest. Wynn Resorts' Opposition incorrectly argues that the Aruze Parties should not be granted real party status because their rights are not implicated by the district court's order.¹ The argument ignores the fact that Ms. Wynn's Petition specifically seeks to prevent the Aruze Parties from obtaining discovery of factual information highly relevant to their claims. Whether or not Ms. Wynn is deemed a "whistleblower" under the federal statutes under which she seeks shelter, the facts underlying her allegations are subject to discovery under NRCP 26. The Aruze Parties are entitled to this discovery, which the Petition seeks to prevent, and thus have a significant interest in the outcome of Ms. Wynn's Petition.

¹ Notably, Ms. Wynn did not oppose the Aruze Parties' Motion, which seems an implicit acknowledgment that the Aruze Parties have a material interest in the outcome of the Petition. Furthermore, Wynn Resorts did not oppose the portion of the Motion seeking an extension of time to Answer.

Wynn Resorts' claim that the Aruze Parties should be denied participation in this writ proceeding because they did not participate in the motion practice underlying the Petition not only lacks merit, it is disingenuous. Wynn Resorts and Ms. Wynn prevented the Aruze Parties' participation and improperly refused to serve the Aruze Parties with the briefs underlying the motion practice until ordered to do so by the Court. *See Exs. 1–5, infra*. Indeed, it was not until after the Petition was filed that the district court ordered Wynn Resorts and Ms. Wynn to serve the Aruze Parties with the underlying briefs.

The Aruze Parties should not be excluded from participation in this proceeding. They respectfully ask that the Court grant their Motion and permit the concurrently-submitted Answer to be filed and considered.

I. ARGUMENT

A. Whether or Not Ms. Wynn Is Deemed a Whistleblower, She Is Not Immune from Discovery.

Ms. Wynn is asking this Court to *create* a whistleblower privilege shielding her from discovery, not only from Wynn Resorts, but also from the Aruze Parties. *See* Pet. at 58. But as the Aruze Parties' concurrently-submitted Answer explains, the law does not support this novel proposition. Assuming a non-employee who failed to exhaust administrative remedies qualifies for whistleblower protection, such protection does not extend to providing that person with immunity from discovery. Further, Ms. Wynn's Petition presents this Court with issues of first

impression regarding the applicability and scope of the whistleblower statutes, yet offers an incomplete examination of the law. The Court should allow the Aruze Parties to be heard on these matters and to offer relevant analysis that will assist this Court in deciding these complex issues of first impression.

B. The Aruze Parties Were Mistakenly Excluded from the Underlying Proceedings.

Wynn Resorts disingenuously argues that because the Aruze Parties did not participate in the motion practice underlying the challenged orders, they should continue to be kept in the dark. But what Wynn Resorts fails to disclose to this Court is that the Aruze Parties were improperly excluded from participating in the underlying motion practice. **Exs. 1–5, *infra*.** On August 8, 2016, Elaine Wynn filed a Motion to Seal her Motion for Protective Order and the related exhibits, and alternatively, sought a Stay of Discovery Pending writ review ("Motion to Seal"). *See Exhibit 1.* The Motion to Seal was the Aruze Parties' first and only indication that Ms. Wynn had filed a motion regarding alleged securities violations by Wynn Resorts. On August 11, 2016, the district court heard the Motion for Protective Order but did not rule on it; instead, it ordered a limited deposition of Ms. Wynn. 1 PA 80. However, because the district court believed that "[t]his deposition appears to relate to the motion to disqualify and the related issues," it decided "to preclude [the Aruze Parties'] attendance at that deposition" *See Wynn Resorts' Opp., Ex. 2 at 97.*

The Aruze Parties certainly "challenged the exclusion," Opp. at 3, and on September 6, 2016, the district court agreed that the Aruze Parties should be served with certain briefs that had been withheld, including briefing on Ms. Wynn's Motion for Protective Order. *See* **Exhibit 2**, 9/6/16 Minute Order; *see also* **Exhibit 3**, 9/20/16 Order memorializing decision in minute order. On the same day, the district court ruled on Ms. Wynn's Motion for Protective Order and found that Ms. Wynn was not entitled to protections under SOX or Dodd-Frank. *Id.*

Nonetheless, Wynn Resorts and Ms. Wynn continued to purposefully exclude the Aruze Parties from the proceedings by not serving their briefs. In response, the Aruze Parties filed a motion to compel service of fifteen (15) briefs, several of which related to the Dodd-Frank and SOX allegations. *See* **Exhibit 4**, **9/23/16** Motion to Compel. As of the filing of the Motion to Compel, the September 20 Order requiring service had not been complied with. *See id.* at 4 n.4. On September 27, 2016, the district court granted the Motion to Compel. *See* **Exhibit 5**, 10/12/16 Order Granting Motion to Compel, at 2-3.

Consideration of the full history of the underlying proceedings demonstrates that Wynn Resorts is flat wrong in suggesting the Aruze Parties refused to participate below. *See* Opp. at 2. In fact, the district court has since admitted it "was clearly mistaken" in excluding the Aruze Parties from participating in Ms.

Wynn's deposition.² The Aruze Parties respectfully request that this Court remedy this issue by granting the Motion and designating the Aruze Parties as Real Parties in Interest.

C. Wynn Resorts' Answer Will Not Adequately Represent the Aruze Parties' Interests.

Wynn Resorts' Answer will not adequately represent the Aruze Parties' interests. Wynn Resorts has demonstrated its desire to exclude the Aruze Parties from obtaining any information about Ms. Wynn's complaints to the audit committee. Wynn Resorts opposes the Aruze Parties' participation in this writ proceeding because it does not want the Aruze Parties to have access to discovery from Ms. Wynn relating to the securities violations that she apparently disclosed. But these facts would be highly probative of the Aruze Parties' claims, including their claim that Wynn Resorts and Stephen Wynn remove directors for improper purposes and offer false, pretextual reasons for doing so.

III. CONCLUSION

For the foregoing reasons as well as the record before the Court, the Aruze Parties respectfully request to be designated as real parties in interest for purposes of the Petition under NRAP 21.

² See 2 PA 275 ("I did limit, though, Mr. Peek's participation in the deposition of Ms. Wynn related to those particular issues because of the overlapping privilege issues that I perceived might occur in the deposition. But after reading portions of the transcript, *I was clearly mistaken.*" (emphasis added)).

DATED: December 5, 2016

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
Steve Morris, Esq. (1543)
Rosa Solis-Rainey, Esq. (7921)
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

J. Stephen Peek, Esq. (1758)
Bryce K. Kunimoto, Esq. (7781)
Robert J. Cassity, Esq. (9779)
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

David S. Krakoff, Esq.
(*Admitted Pro Hac Vice*)
Benjamin B. Klubes, Esq.
(*Admitted Pro Hac Vice*)
Adam Miller, Esq.
(*Admitted Pro Hac Vice*)
BuckleySandler LLP
1250 24th Street NW, Suite 700
Washington DC 20037

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

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the following document: **REPLY IN SUPPORT OF MOTION TO DESIGNATE THE ARUZE PARTIES AS REAL PARTIES IN INTEREST** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

James J. Pisanelli, Esq. #4027
Todd L. Bice, Esq. #4534
Debra L. Spinelli, Esq. #9695
PISANELLI BICE PLLC
400 S. 7th St. #300
Las Vegas, NV 89101

Attorneys for Wynn Resorts, Limited,

**SERVED VIA HAND DELIVERY
ON DECEMBER 6, 2016**
The Honorable Elizabeth Gonzalez
Eighth Judicial District Court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

Daniel F. Polsenberg, Esq.
Marla J. Hudgens, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER
CHRISTIE LLP
3993 Howard Hughes Pkwy Ste 600
Las Vegas, NV 89169

John B. Quinn, Esq.
Michael T. Zeller, Esq.
Ian S. Shelton, Esq.
QUINN EMANUEL URQUHART &
SULLIVAN LLP
865 S. Figueroa Street, Tenth Floor
Los Angeles, CA 90017

Attorneys for Elaine P. Wynn

Dated this 5th day of December, 2016.

/s/ PATRICIA FERRUGIA