

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Petitioners,

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,
DEPT. XI,

Respondent,

and

KAZUO OKADA, UNIVERSAL
ENTERTAINMENT CORP.
AND ARUZE USA, INC.,

Real Parties in Interest.

Case No.

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Nov 04 2016 11:04 a.m.
Elizabeth A. Brown

**APPENDIX TO PETITION FOR
WRIT OF PROHIBITION OR
ALTERNATIVELY MANDAMUS**

VOLUME IV OF VII

DATED this 3rd day of November, 2016.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd 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 **APPENDIX IN SUPPORT OF PETITIONER WYNN RESORTS LIMITED'S PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY MANDAMUS** properly addressed to the following:

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/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC


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:	TRANSCRIPTION BY:
JILL HAWKINS	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

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

APPEARANCES:

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MICHAEL ZELLER, ESQ.

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

2 (Court was called to order)

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

5 THE COURT: Did you get promoted?

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

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

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

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

15 THE COURT: And the multiple briefings.

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

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

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

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

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

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

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

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

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

25 Most recently the Court has asked us and we have

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

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

8 MR. PEEK: You are correct.

9 THE COURT: Okay.

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

1 somehow implicate that litigation.

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

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

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

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

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

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

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

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

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

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

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

24 MR. PEEK: Certainly.

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

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

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

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

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

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

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

19 THE COURT: Okay.

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

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

3 MR. PEEK: Correct.

4 THE COURT: I understand.

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

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

9 MR. PEEK: Nothing, Your Honor.

10 THE COURT: All right. Ms. Spinelli.

11 MS. SPINELLI: Thank you, Your Honor.

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

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

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

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

4 THE COURT: And that process is ongoing --

5 MS. SPINELLI: It is.

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

8 MS. SPINELLI: Similar, yes. Yes.

9 THE COURT: All right.

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

16 THE COURT: Okay. Thank you.

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

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

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

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

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

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

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

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

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

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

9 THE COURT: Hold on a second.

10 (Pause in the proceedings)

11 THE COURT: Okay. Keep going.

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

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

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

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

4 MS. SPINELLI: That's exactly right.

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

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

8 THE COURT: I remember.

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

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

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

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

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

20 THE COURT: Seventy-nine?

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

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

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

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

11 THE COURT: It wasn't obvious.

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

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

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

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

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

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

1 THE COURT: Two questions.

2 MS. SPINELLI: Sure.

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

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

9 THE COURT: Why?

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

14 THE COURT: Correct. Not privileged. Protected.

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

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

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

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

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

13 THE COURT: Okay.

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

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

17 MR. PEEK: Yes, Your Honor.

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

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

24 MS. SPINELLI: Which documents, Your Honor?

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

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

2 MS. SPINELLI: Right.

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

5 MS. SPINELLI: Right.

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

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

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

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

14 THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

19 How long do you need to do that?

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

1 re-review the entire production there.

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

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

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

14 MR. PEEK: Sixty days.

15 MS. SPINELLI: Sixty days.

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

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

19 MR. PEEK: Okay.

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

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

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

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

1 -- I wrote request a new motion, because this one I think
2 we're done with, okay.

3 MR. PEEK: Understood.

4 THE COURT: So now you tell me why you think 60 days
5 is wrong.

6 MS. SPINELLI: Can I ask two points of
7 clarification? Because you might have questions of them, too,
8 Your Honor. It's just --

9 THE COURT: Sure.

10 MS. SPINELLI: -- when you mentioned documents for a
11 business purpose, that they have to be produced, and then you
12 said we didn't have to produce documents with Okada's name on
13 it, if there's an overlap, does it fall into the first or the
14 second category?

15 THE COURT: You may redact Mr. Okada's name, but not
16 redact the other information.

17 MS. SPINELLI: Okay. So anybody else's name but Mr.
18 Okada's.

19 THE COURT: If it falls within my constraint that it
20 was a -- was forwarded, sent, or authored by a non-Macau
21 citizen as part of the business.

22 MS. SPINELLI: Okay. And one other question. When
23 you said within 10 days we must provide --

24 THE COURT: Within 10 days of the entry of the
25 order.

1 MS. SPINELLI: -- thank you -- must provide the
2 consent list, but also who we contacted but did not consent,
3 and you said those who we had not contacted.

4 THE COURT: Any you were not able to contact.
5 Because you told me you had some people you contacted that did
6 not consent and others that you were unable to reach, I think
7 is what you said.

8 MS. SPINELLI: Right. That's right. Thank you,
9 Your Honor.

10 THE COURT: And so I want the identification of
11 those categories of people so if a further outreach needs to
12 occur I can identify and make that determination.

13 MS. SPINELLI: And we can produce that to Your Honor
14 and the other parties highly confidential?

15 THE COURT: Yes.

16 MS. SPINELLI: Okay.

17 THE COURT: All right. Now, Mr. Peek, tell me why
18 60 days is too long?

19 MR. PEEK: Well, I guess I can only go back to
20 December 18th of 2012. The Court may recall December 18th of
21 2012.

22 THE COURT: What was that guy's name who went
23 gardening?

24 MR. PEEK: Mr. Fleming.

25 THE COURT: Mr. Fleming.

1 MR. PEEK: But he wasn't implicated in December 18th
2 of 2012. Mr. Lackey was here that day, Your Honor. But the
3 Court will recall that it ordered Sands China Limited to
4 produce a similar collection, in fact probably even more than
5 Wynn Resorts is required to produce under this order on or
6 before January 4th.

7 THE COURT: Yeah. But that was the --

8 MR. PEEK: During a --

9 THE COURT: That was the third time I'd order them
10 to produce.

11 MR. PEEK: I understand, Your Honor. We're dealing
12 -- we're dealing really with a third time here, as well, Your
13 Honor. But, be that as it may, we know that it is an effort
14 that can be undertaken and can be done in a very -- in a much
15 shorter period of time than 60 days.

16 THE COURT: Yes. She gave me her wish list.

17 MR. PEEK: She gave you her wish list. So that's
18 point number one. So I just want to remind the Court that we
19 did it during a Christmas holiday in Macau, so that was, let's
20 see, 13 business days -- or 13 days plus 4 is 17 days. We did
21 it in 17 days --

22 THE COURT: And it still wasn't very good.

23 MR. PEEK: -- with two holidays, New Years Eve --

24 THE COURT: And remember it still wasn't very good.

25 MR. PEEK: Respectfully, Your Honor --

1 MR. PISANELLI: That was because the citizens did
2 the review.

3 MR. PEEK: They may all think that is humorous
4 behind me, but we did, we produced documents.

5 MR. PISANELLI: A secretary review.

6 THE COURT: And they did produce documents --

7 MR. PEEK: We did produce documents.

8 THE COURT: -- and I understand that there was a lot
9 of work that went into that, and I'm not here to readdress the
10 reasons as to why I gave that short time.

11 MR. PEEK: I'm not, either. I just point out that
12 it's --

13 THE COURT: I am trying to find a reasonable time
14 frame to permit Wynn to do what I have just tasked them with,
15 which shouldn't take that much time.

16 MR. PEEK: Thank you.

17 THE COURT: All right.

18 MR. PEEK: So that's part one of my concern, Your
19 Honor.

20 The other one that is of concern to me is, if I
21 understand the Court, it said, if Wynn reasonably believes
22 that a production of a document unredacted might somehow
23 provide Mr. Okada with an opportunity to seek or pursue
24 litigation in Macau --

25 THE COURT: Let me stop you so there's no

1 misunderstanding.

2 MR. PEEK: Thank you. That's why I'm trying to --

3 THE COURT: Okay. Wait. Because apparently I
4 misspoke. Given Mr. Okada's lawsuit in Macau and the fact he
5 is not a plaintiff in this action seeking affirmative relief
6 from the Court, I have not made a ruling that he has waived
7 the protections of the Macau Data Privacy Act, which he has
8 apparently raised even though he is not a citizen of Macau.
9 For that reason to the extent that the personal information
10 being redacted by Wynn is Mr. Okada --

11 MR. PEEK: Of Mr. Okada.

12 THE COURT: -- they maintain the redaction of Mr.
13 Okada.

14 MR. PEEK: Okay.

15 THE COURT: So the information may still be utterly
16 worthless, but --

17 MR. PEEK: But it is only of Mr. Okada.

18 THE COURT: Correct.

19 MR. PEEK: So all other names would have to be
20 produced in an unredacted form.

21 THE COURT: Or if it does not have a non-Macanese
22 recipient on the email. To the extent that the email is
23 between a Macanese citizen and another Macanese citizen I have
24 not at this time decided to go beyond the ruling I've made
25 about outside of Macau people.

1 So what my intention is, I'm going to get the
2 supplement from Ms. Spinelli, you're going to look at it,
3 you're still going to have a number of documents that you
4 think are problematic. I am then going to go through the
5 laborious process of comparing the partial and total
6 duplicates that have been provided by Wynn to make a
7 determination as to whether under the facts of this case and
8 the document that has been submitted you necessarily need that
9 document for your claims and defenses and whether I'm going to
10 order that it be produced in spite of the Macau Data Privacy
11 Act.

12 MR. PEEK: So let me see if I understand that
13 correctly, Your Honor, because I'm -- if I'm hearing you.
14 That you're going to conduct a review of these 18 boxes --

15 THE COURT: No. Not yet. I'm going to wait till
16 Ms. --

17 MR. PEEK: Okay. Well, at some time after the
18 supplement occurs --

19 THE COURT: It's not going to be 18 anymore.

20 MR. PEEK: Okay. Well, that's my concern, is that
21 what you're going to receive is a supplement, and that
22 supplement should provide the following category of documents,
23 all documents that went to a non-Macanese individual.

24 THE COURT: Those are going to be out of the boxes.
25 Those are going to be produced in an unredacted form --

1 MR. PEEK: Out of the boxes.

2 THE COURT: -- even if there are Macanese --

3 MR. PEEK: Ms. Spinelli --

4 THE COURT: -- wait -- even if there are Macanese
5 citizens that are on that email.

6 MR. PEEK: I understand.

7 THE COURT: Okay.

8 MR. PEEK: Ms. Spinelli asked for some clarification
9 about whether it was for a business purpose. It doesn't have
10 to be for a business purpose. If there was an email that went
11 outside of Macau to Hong Kong, the United States of a personal
12 nature, not necessarily a business nature, it has lost any
13 protection. For example, for Alan Zieman, whom we know to be
14 a Hong Kong resident, whom we know to be, as we identified --
15 I can't remember the name of his company, Your Honor, but it's
16 identified.

17 THE COURT: No. It's in your briefs, though.

18 MR. PEEK: It's identified. You know what I'm
19 talking about.

20 THE COURT: I do.

21 MR. PEEK: There may have been something that was
22 non business. That still has lost any protection and must be
23 produced.

24 MS. SPINELLI: Mr. Zieman consented, Your Honor.

25 MR. PEEK: So --

1 THE COURT: Arguably it is an example. It would
2 have. However, as I have said with Ms. Wynn and I said with
3 Mr. Jacobs in the other case, to the extent there is personal
4 information of a medical nature, about the kids --

5 MR. PEEK: That's different.

6 THE COURT: -- about the education I'm not going to
7 order that be produced.

8 MR. PEEK: That's different.

9 THE COURT: And I do not know that at this point.

10 MR. PEEK: That's different. Okay. So --

11 THE COURT: Which is why I used the "business."
12 Because arranging a dinner for other people that are going to
13 be visiting is a business purpose.

14 MR. PEEK: Understood.

15 THE COURT: That's not a personal purpose.

16 MR. PEEK: I now understand, Your Honor.

17 THE COURT: Okay.

18 MR. PEEK: So I'm a little bit clearer on that. So,
19 again, getting sort of back to that category -- because I know
20 that of the 2,000-plus documents that have been redacted, if I
21 understand the Court, some universe of that may exist in the
22 U.S., we'll get those in the supplement.

23 THE COURT: Some universe of it does --

24 MR. PEEK: Some universe may exist in Hong Kong.
25 We'll get that.

1 THE COURT: -- it does exist in the U.S.

2 MR. PEEK: We know. Okay. We'll get that. What
3 I'm concerned about is so then I -- once that supplement
4 occurs that will leave a universe of redacted documents still
5 existing that they're not producing. Is that -- is what the
6 Court is --

7 THE COURT: There may be some documents that remain
8 as redacted because they either have Mr. Okada's name on them
9 or because they are exclusively between Macanese citizens.

10 MR. PEEK: Understood. May just be some internal
11 emails.

12 THE COURT: And at that point in time, after I get
13 down to that group which I hope is a much smaller group, I
14 will then go through the boxes, once I get the identification
15 of what they are, and not have all 18 to review.

16 MR. PEEK: And you will determine whether or not, as
17 I suggested, the reason why you want to see them in camera is
18 whether they have any evidentiary value because of their
19 redactions.

20 THE COURT: Correct.

21 MR. PEEK: Okay.

22 THE COURT: That's the general plan. But I need Ms.
23 Spinelli to do her part so I can then hopefully limit half or
24 so of the documents that are in the boxes I've got.

25 MR. PEEK: And you understand that you will only get

1 redacted documents. You will not get unredacted documents to
2 review?

3 THE COURT: We'll see.

4 MR. PEEK: Because their position is you can't take
5 any of that out of Macau.

6 THE COURT: They have given me -- and the reason I
7 made the statement about it appears that they are acting at
8 least in this point in good faith because of the partial and
9 total duplicates they have provided gives me a great ability
10 to look beyond some of the redactions. How's that?

11 MR. PEEK: I understand that you haven't found yet
12 that they have not acted in good faith, but --

13 THE COURT: Correct.

14 MR. PEEK: -- I would disagree.

15 THE COURT: I may find that some day --

16 MR. PEEK: Yeah.

17 THE COURT: -- but I haven't found it yet.

18 MR. PEEK: Given what I have seen today, Your Honor,
19 I wouldn't share the Court's belief of that. But we'll --

20 THE COURT: Okay.

21 MR. PEEK: There'll be another -- visit you on
22 another day on that.

23 THE COURT: Yes. With new briefing.

24 MR. PEEK: With new briefing.

25 THE COURT: Yes.

1 MR. PEEK: Understood. New briefing.

2 THE COURT: We're not going to --

3 MR. PEEK: Understood, Your Honor. Thank you.

4 THE COURT: Okay. Ms. Spinelli, you've got 30 days.
5 While you tell me why that's impossible let me step out of the
6 room to see what Dan needs.

7 (Pause in the proceedings)

8 THE COURT: Now you can tell me why it's impossible.

9 MS. SPINELLI: The last three times, Your Honor,
10 that we went to Macau -- we work, as you know, with our
11 vendor, FTI. In order to get their people to Macau to set up
12 all the equipment it took two to three weeks to do that. And
13 with all -- being candid, it also involved our review team.
14 So that might not be necessary here. But I know the IT to go
15 set it up, we actually set up a whole review room. So I think
16 I need at least two to three weeks to get that process started
17 before my team can travel to Macau to go through the
18 documents. If that happens, I'm sure that there is something
19 we could do with FTI. I'm not sure, but I could try to narrow
20 down in order to respond to Your Honor's order. But I do
21 think -- when I was saying 60 days I actually thought that I
22 was being quite good, having been there several times myself,
23 unlike some of the other people. So I do know that it takes a
24 little bit of time and then the documents need to be produced
25 here -- brought to the United States, produced here. And it

1 does take time even though everybody wants it to happen
2 quickly. But the rest of the case is stayed anyway, so there
3 really no harm to the Okada parties at this point in time. I
4 think 60 days is actually perfect.

5 THE COURT: Thirty days after the entry of the
6 order.

7 Okay. Anything else on these issues?

8 MS. SPINELLI: Your Honor, I think we're going to
9 seek a stay. Can I at least have 10 days to decide whether
10 we're going to seek a stay on some of the issues with my team?

11 THE COURT: How about we get the order, because you
12 can't go up till I have a written order, and then you ask me
13 for the stay then.

14 MS. SPINELLI: We'll do that.

15 THE COURT: But I've got to have an order before you
16 go up.

17 MS. SPINELLI: Okay. Perfect, Your Honor. Thank
18 you.

19 THE COURT: All right. Anything else that involves
20 Mr. Peek here? These are the issues I think arguably involve
21 Mr. Peek, so while he's still here in his advocate role let me
22 go through what I think the other items on the agenda are.

23 I have a motion to redact Wynn Resorts Limited's
24 motion to compel Elaine Wynn's answer to deposition questions,
25 to extend deposition time, for sanctions on an OST, and to

1 seal Exhibit 1; I have a motion to redact Wynn Resorts
2 Limited's motion to preserve highly confidential designation
3 of testimony, application for OST, and seal Exhibits 1
4 through 4; motion to seal Wynn Resorts Limited's response
5 memorandum to Wynn Resorts waiver arguments and opposition to
6 Elaine Wynn's motion requiring Wynn Resorts reciprocal
7 compliance with protocol and for orders requiring turnover of
8 privileged matter, injunctive relief, production, and other
9 appropriate relief and appendix thereto; Elaine Wynn's motion
10 to seal her status report regarding proposed ESI protocol for
11 July 21st hearing; Elaine Wynn's motion to seal her reply in
12 support of memorandum for Wynn Resorts' waiver arguments and
13 motion requiring Wynn Resorts' reciprocal compliance with
14 protocol, blah, blah, blah; motion to redact certain portions
15 of Wynn Resorts Limited's ex parte application for a TRO;
16 motion for preliminary injunction; motion for sanctions for
17 violation of protective order; Elaine Wynn's motion to seal
18 her opposition to Wynn's Limited ex parte application for TRO;
19 motion for preliminary injunction and motion for sanctions;
20 and the motion to redact certain portions of Wynn Resorts
21 Limited's motion for limited and specific relief related to
22 the protective order with respect to confidentiality and seal
23 Exhibit 1.

24 I received no oppositions to any of those motions to
25 seal. They generally appeared to me to be narrowly tailored

1 to protect only the information that was confidential. And
2 for those that relate to the Elaine Wynn issues of privilege
3 and disqualification of the Quinn Emanuel firm they've not
4 been served on the Okada parties. So I haven't received
5 objections. Does anybody object to the sealing of those
6 documents?

7 Mr. Peek.

8 MR. PEEK: I do, Your Honor.

9 THE COURT: All right.

10 MR. PEEK: But I guess because I haven't the
11 document it's a difficult task for me to be able to really
12 articulate reasons.

13 THE COURT: Can you go to the mike. Because while
14 we can generally hear you, it's better if you're at --

15 MR. PEEK: I'm coming to the microphone, Your Honor.

16 THE COURT: Thank you.

17 MR. PEEK: So some of the documents I didn't -- I
18 was in fact served, so I have seen of the requests for
19 redaction, and they seem to comport to the standard of the
20 rule. But others, of course, since I haven't seen them, I
21 don't know what it is they seek to redact. So that's
22 troubling to me, and I -- so I'm opposing it. But I -- when
23 you say, what is the basis, well, the basis is I cannot see
24 the document to be able to formulate a proper argument to the
25 Court.

1 I know that the Court seems to be of the view that
2 the Aruze parties are not entitled to be present in the
3 courtroom when arguments of disqualification occur.

4 THE COURT: I didn't say you weren't allowed to be
5 in the courtroom when those arguments occurred.

6 MR. PEEK: Okay. So -- because I -- because I'm
7 going to --

8 THE COURT: I said as an advocate.

9 MR. PEEK: As -- okay.

10 THE COURT: Which means I might move you behind the
11 bar to a more comfy chair with Mr. Malley and let him sit up
12 where you were.

13 MR. PEEK: I can appreciate that, Your Honor. But I
14 may have something to say in that process, and I'll -- if I'm
15 behind the bar, I can still come before the bar. So that's
16 part one.

17 Part two, what troubles me -- and you saw this in a
18 notice of submission that the Court received from Ms. Spinelli
19 of the motion for protective order that Elaine Wynn filed
20 about four weeks ago. You remember we had a hearing on
21 August 11th and you remember --

22 THE COURT: She said August 8th.

23 MR. PEEK: About four weeks ago. And you remember
24 that on August 11th we had a hearing, and at that hearing what
25 the Court said was, you, Wynn Resorts, may make redactions,

1 how long will it take you; we'll have it by Friday. We got --
2 we still haven't received it. What Ms. Spinelli did is ignore
3 the Court's order and submit to the Court the redactions that
4 she wants the Court to approve. She's seeking the imprimatur
5 of the Court, as opposed to complying with what the Court
6 said, which was, give this -- make your redactions, give them
7 to Mr. Peek and then Mr. Peek can address me if he feels that
8 you have been improper in your redactions. I want that
9 motion.

10 THE COURT: Okay. So you still don't have it?

11 MR. PEEK: I still don't have it. And the Court
12 will recall -- and I guess I'll have to do this, and that may
13 -- that's the subject of another motion, which is Elaine
14 Wynn's deposition was taken, we certainly weren't provided a
15 copy. I think the Court said I needed to make a motion for
16 that purpose.

17 There are a number of other pleadings that have now
18 been submitted or filed by Elaine Wynn and the Wynn parties on
19 which we're still not yet served. One of them we sequestered
20 yesterday after having some dialogue with the Court. But I --

21 THE COURT: Dialogue being conference call?

22 MR. PEEK: That was the conference call we had at
23 4:10, Your Honor.

24 THE COURT: Not that I was speaking to you guys in
25 other fashion.

1 MR. PEEK: But my point is, Your Honor, I'm trying
2 to -- I'm trying go get to being served with all these
3 documents, as opposed to having them withheld from me.

4 MR. POLSENBERG: The record should reflect he nodded
5 in the affirmative.

6 MR. PEEK: I don't know what's going on, Your Honor,
7 so my apologies.

8 THE COURT: I have some cases, not this one, where
9 sometimes people think that conversations occur that all the
10 people are not involved in. And so when you say, Judge, we
11 had dialogue with you, I need to clarify that that dialogue we
12 were having yesterday was part of the conference call we had
13 at about 4:10 yesterday afternoon.

14 MR. PEEK: Right.

15 THE COURT: That was on the record.

16 MR. PEEK: With all the parties.

17 THE COURT: Well, with everybody --

18 MR. PEEK: Yes.

19 THE COURT: -- who wanted to call in.

20 MR. PEEK: So my point is, Your Honor, this needs to
21 stop. This notion that the Aruze parties are not a party in
22 this proceeding and are not entitled to receive pleadings
23 related to the disqualification, that has to stop. Because
24 those motions, if they are disclosing privileged information,
25 which I don't believe they are, because I cannot believe that

1 Wynn Resorts has been filing a motion with respect to
2 disqualification in which they reveal to the Elaine Wynn
3 parties or Elaine Wynn is now revealing its privileged
4 information. So we are entitled to receive that, Your Honor.
5 And that practice ought to stop now.

6 THE COURT: Okay. Ms. Spinelli.

7 MS. SPINELLI: Your Honor, we submitted a notice of
8 submission on August 23rd, and it had the documents that Your
9 Honor directed us to produce in redacted form for the Okada
10 parties. It was Elaine Wynn's motion for protective order
11 filed August 8th and our opposition filed August 11th. And
12 what we did was, because it contained information related to
13 Ms. Wynn's whistleblower allegations, I contacted Ms. Wynn's
14 counsel with my proposed redactions because one of the briefs
15 was hers. This is information she's claiming a
16 confidentiality protection over. And I was told, you guys
17 have put all this information out in the public that's
18 attached to my in-camera submission, Your Honor, and therefore
19 we disagree that if you put these pleadings to Mr. Okada or
20 other third parties you're violating her whistleblower rights
21 yet again to the extent they exist. And so what we did to
22 protect our rights from this argument was to provide it to
23 Your Honor and completely candid with the Okada parties on
24 what we did. No one violated your order, Your Honor. We're
25 just making sure that if Ms. Wynn believes she has this

1 whistleblower protection that is protected until decided by
2 the Court, which the Court has said she will decide in the
3 future. So that is why we submitted them to Your Honor and
4 didn't give them to --

5 THE COURT: Probably the nearer future than the
6 later, given what I've seen from the deposition stuff.

7 MR. PEEK: I can't hear you, Your Honor.

8 THE COURT: I said probably the nearer future,
9 rather than later, given what's happening in the depositions.

10 MS. SPINELLI: And so, Your Honor, that's why we
11 wanted to give it to you, as opposed to giving it to Okada
12 right off. And you'll see we were actually very narrow in our
13 descriptions -- in our redactions of what was already in the
14 public record from the hearings that the Court had not sealed
15 because Elaine Wynn didn't ask it to be sealed. So it was
16 information that was already in the public record. Happy to
17 give it to the Okada parties. We just didn't want to run a
18 risk of being accused again of violating Ms. Wynn's rights.
19 So that is what we did, Your Honor. It wasn't a purposeful
20 violation of your order, and it wasn't an affront to Mr. Peek.

21 I was told yesterday that there was going to be a
22 motion filed related to the demand that Mr. Peek keeps orally
23 making to this Court for the unredacted documents, and at that
24 point in time we'll be able to explain to him how Ms. Wynn was
25 at one point in time in our privilege and therefore the

1 information that we're exchanging in some of these briefs
2 relates to a joint defense agreement that Mr. Okada is not
3 privy to and his counsel is not privy to. And that's kind of
4 where we are.

5 THE COURT: Okay. So I am going to continue all of
6 the motions to redact or seal for two weeks to what I believe
7 is our next regularly scheduled hearing, which would be on
8 September 15th.

9 Right?

10 THE CLERK: Yes, Your Honor.

11 MR. PEEK: You mean the status hearing, Your Honor?

12 THE COURT: Is that okay?

13 MR. PEEK: Yes, Your Honor. That's fine.

14 THE COURT: All right.

15 MR. PEEK: That'll give us time.

16 THE COURT: And if you're going to file a motion,
17 you need to file it soon so I can get on this.

18 MR. PEEK: A motion with respect to certainly the
19 Elaine Wynn deposition?

20 THE COURT: To a modification of the position I've
21 taken to try and protect the privilege issues that are alleged
22 to have been seen by Quinn Emanuel and now result in their
23 arguable disqualification, which I'm trying to get through
24 some day.

25 MR. PEEK: Okay. So I haven't seen an order, Your

1 Honor, that says I'm not entitled to that.

2 THE COURT: No. Nobody ever did an order.

3 MR. PEEK: Nobody -- well, there'd been no order
4 from the Court that I have seen, either, allowing --

5 THE COURT: I've been waiting for somebody to give
6 it to me.

7 MR. PEEK: -- allowing them to engage in this
8 process of not serving us. I've objected to it. There's been
9 no order by the Court.

10 THE COURT: So, Ms. Spinelli, you'll get that order
11 over today or tomorrow; right?

12 MS. SPINELLI: I will.

13 MR. PEEK: And what's the order --

14 THE COURT: Not tomorrow.

15 MR. PEEK: What's the order, Your Honor? What is
16 the Court's order so that I can --

17 THE COURT: I have previously said, Mr. Peek, that
18 for issues which solely relate to the disqualification of the
19 Quinn Emanuel firm because they reviewed privileged
20 information of Wynn that was provided to them by --

21 MR. PEEK: That they claim they did.

22 THE COURT: -- Elaine Wynn. It's an allegation.
23 It's only an allegation at this point. That to the extent
24 that it relates to those issues I have tried to limit the
25 further dissemination of that privileged information and in a

1 conference call we had I think it was in June I made an order
2 that you not be -- your side not be served with that material
3 in the interim. I have not, to the best of my knowledge, seen
4 a written order.

5 MR. PEEK: I have not, Your Honor. So that's why --

6 THE COURT: That was where it came from.

7 MR. PEEK: So if I'm going to seek relief, I guess,
8 from that order, I need to see the order. And if I need to do
9 it in the next two weeks --

10 THE COURT: And so the information that related to
11 the TROs I do not think falls within the scope of what I had
12 said, which is why I'm continuing these motions, rather than
13 granting any of them at this point.

14 MR. PEEK: So --

15 MS. SPINELLI: Your Honor, it might very well be
16 that the information on the TROs is not -- has been given to
17 him.

18 THE COURT: I don't know.

19 MS. SPINELLI: Yeah. They're like 10 motions. Not
20 all of them -- or filings. Not all of them relate to this
21 issue. Some of them --

22 MR. PEEK: Is there some that have --

23 MS. SPINELLI: He can't even articulate which ones.
24 So I think continuing it is perfect and we'll be able to
25 narrow it down in a meet and confer.

1 THE COURT: Maybe the two of you could talk or at
2 least email each other back and forth.

3 MR. PEEK: We'd be happy to talk, Your Honor.
4 That's what -- we have a meet and confer.

5 So let me see if I can understand -- I don't know if
6 you can hear me.

7 THE COURT: Ms. Winn, can you hear him?

8 THE COURT RECORDER: Go over there, please.

9 MR. PEEK: Thank you.

10 THE COURT: Thank you, Mr. Peek. Because Jill would
11 have just told you to move.

12 MR. PEEK: Yeah. I understand. And I know there's
13 no microphone over there where I was seated.

14 So with respect to at least the issues related to
15 the letter and the violation and the TRO Ms. Spinelli is
16 right. We have some, but not all of those, because there
17 certainly is the issue that we dealt with yesterday in the
18 4:10 p.m. conference call. There's some issues -- some other
19 pleadings that we did not receive. We'll deal with those, as
20 well, Your Honor, as the disqualification issues, as well.

21 But what I want to understand, though, is do I get
22 the motion that sought protective order relief that Elaine
23 Wynn filed on or about August 8th and that Ms. Spinelli says
24 that she out of an abundance of caution submitted to the Court
25 to protect concerns that she had that Elaine Wynn may somehow

1 use it against her.

2 THE COURT: Does Elaine Wynn's counsel object to
3 providing Elaine Wynn's motion to modify the protective order
4 to the Aruze parties?

5 MR. ZELLER: We do, Your Honor.

6 THE COURT: Okay. So we're going to deal with --

7 MR. PEEK: So they objected. Is there an
8 articulated basis, Your Honor, for that? There has to be an
9 articulated basis, and there has to be a reason, Your Honor,
10 that the Court should even grant that relief at all, as
11 opposed to just, oh, we don't think they should have it.

12 THE COURT: Okay.

13 MR. PEEK: We dealt with this on August 11th. They
14 didn't say anything then.

15 THE COURT: I've been dealing with it since June.

16 MR. PEEK: This is a different issue. This is the
17 audit.

18 THE COURT: It's slightly overlapping.

19 MR. POLSENBERG: Judge, I think you already granted
20 us the relief. If he wants to lift it, I think he needs to
21 make a motion. We can take it up in two weeks.

22 THE COURT: But here's the problem. I don't have an
23 order.

24 MR. POLSENBERG: Yeah.

25 THE COURT: And I usually get orders. Sometimes I

1 don't get orders right away, but I usually get orders. I
2 don't have an order from this. I need an order from this. I
3 intend it to originally relate only to the issues of the
4 disqualification, not to the other issues. And so I am not
5 able necessarily to discern what is and is not being served on
6 the Aurze parties, which is why I am in this quandary.
7 Because I have granted you certain relief, Mr. Polsenberg --
8 MR. POLSENBERG: Yeah.
9 THE COURT: -- but the issues related to the TRO and
10 sanctions was not part of that. I did limit, though, Mr.
11 Peek's participation in the deposition of Ms. Wynn related to
12 those particular issues because of the overlapping privilege
13 issues that I perceived might occur in the deposition. But
14 after reading portions of the transcript, I was clearly
15 mistaken.
16 MR. PEEK: Not surprised, Your Honor.
17 Your Honor, it seems to me that --
18 MR. POLSENBERG: Which we can take up in a minute.
19 But the -- if we have a minute left when we're done with this.
20 But I think -- and you know what, two weeks ago I
21 probably could have argued it, but I can't argue it right now,
22 because --
23 THE COURT: I'm not trying to make you argue it
24 right now. What I'm trying to say is I need an order.
25 MS. SPINELLI: You'll get it, Your Honor.

1 MR. PEEK: Don't you need a motion, Your Honor?
2 THE COURT: No. I made the order already in June.
3 MR. PEEK: That has to do with the disqualification.
4 Now we're dealing with a separate issue.
5 THE COURT: I made an order on that, as well, when
6 we were all here in open court.
7 MR. POLSENBERG: Yes.
8 MS. SPINELLI: Before the deposition, yes.
9 THE COURT: I did for the deposition, Mr. Peek.
10 MR. PEEK: For the deposition, yes. But not the
11 motion.
12 THE COURT: That is correct. So --
13 MR. POLSENBERG: I raised at the time that I did not
14 serve Mr. Peek because I thought there were privilege issues
15 involved.
16 MR. PISANELLI: He just complained that we violated
17 the order that he says now doesn't exist.
18 MS. SPINELLI: And there's a motion to seal, Your
19 Honor. So it is pending. There's a motion pending that
20 hasn't been granted yet.
21 THE COURT: Well, but motions to seal do not
22 preclude the parties in the action from receiving service.
23 MS. SPINELLI: Understood. And that's why --
24 THE COURT: Okay.
25 MS. SPINELLI: -- some of the motions say it's under

1 the protective order, and some say it relates to the
2 whistleblower protection that there hasn't been a written
3 opposition to.

4 THE COURT: Okay.

5 MR. PEEK: Your Honor, there's been no motion that
6 I've seen that says motion to prohibit service or motion to
7 deny service, or whatever you want to call it, on the Aruze
8 parties. There's been no motion to that effect. I agree that
9 in a conference call with respect to disqualification the
10 Court did say that we would not be involved in that. And
11 you're going to get that order.

12 THE COURT: Maybe.

13 MR. PEEK: Maybe. And I need to seek relief, I
14 guess, from that order, and I will. Now we're dealing with a
15 separate issue which has to do with the so-called
16 whistleblower motion that they sought -- from which they
17 sought relief on August 8th, the Court heard it on August --
18 I've not seen that. Yes, there was a motion to redact, a
19 motion to seal, but I can't respond to a motion to redact and
20 a motion to seal on a motion that I haven't seen.

21 MR. POLSENBERG: Your Honor, if we haven't moved, I
22 so move. And we can --

23 THE COURT: So, Mr. Polsenberg, after our
24 conversation at the last hearing I granted you certain relief
25 related to the TRO/preliminary injunction, deposition issue.

1 MR. POLSENBERG: Indeed.

2 THE COURT: I need you to as closely as you can
3 parrot what I said during that hearing in an order --

4 MR. POLSENBERG: Very good.

5 THE COURT: -- so that I can sign it.

6 Once that is signed, Mr. Peek, I will have more
7 clarification on this issue. I do not recall saying the
8 briefing would not be served upon you, but Mr. Polsenberg may
9 be able to refresh my memory.

10 MR. PEEK: Your Honor, at that hearing you said to
11 the Wynn parties, tell me what you want to redact and then I'm
12 ordering you to give it to Mr. Peek. That's what you said on
13 August 11th.

14 THE COURT: And I'm waiting to give it to you. I
15 don't know what --

16 MR. PEEK: But now you're getting -- now you're
17 saying that --

18 THE COURT: No. Mr. Polsenberg has said he thinks
19 something that was in the motion was privileged. You're
20 referring to attorney-client privilege or some other
21 protection?

22 MR. POLSENBERG: Let me point out that while some
23 state law protections may substantively be different from some
24 privileges, I am using privilege procedurally to mean all of
25 them.

1 THE COURT: Okay.

2 MR. POLSENBERG: Now, I realize when we actually

3 address --

4 MR. PEEK: They need to make the motion.

5 MR. POLSENBERG: Mr. Peek.

6 THE COURT: Hold on.

7 MR. POLSENBERG: When we actually address the issues

8 and you said we go through certain steps, they'll move to

9 compel, we'll oppose it, we can address the substantive

10 application of all those various laws. But when I say

11 privilege I mean all of it.

12 THE COURT: So you're including in your term

13 "privilege" --

14 MR. POLSENBERG: Sarbanes-Oxley.

15 THE COURT: -- just the whistleblower stuff, too?

16 MR. POLSENBERG: No. We've got some issues that are

17 attorney-client, we've got some that are work product, we have

18 some that are state law gaming protections.

19 THE COURT: Okay.

20 MR. POLSENBERG: I also think that there is a public

21 policy state law privilege that applies, but I don't really

22 think it's much different from my Sarbanes-Oxley argument.

23 MR. PEEK: Your Honor, I've not seen that motion,

24 and it is their burden when they claim privilege --

25 THE COURT: Mr. Polsenberg --

1 MR. PEEK: -- to make that motion.

2 MR. POLSENBERG: That was --

3 THE COURT: Wait. Mr. Polsenberg, can you tell me
4 which of the motions to seal that is?

5 MR. POLSENBERG: No.

6 THE COURT: Mr. Malley?

7 MR. PEEK: Your Honor, there is a motion to seal
8 that -- the brief, and it did just say generally gaming law
9 privilege, Sarbanes-Oxley, and Dodd-Frank. That was submitted
10 on or about August 8th with that brief of the motion for
11 protective order.

12 THE COURT: It may be the motion to seal that is on
13 for September 9th. I am going to move the motions to seal
14 that are on September 2, September 9, and September 16 to the
15 oral calendar on September 15th so that we can try and resolve
16 all of these issues when we come back. Because, Mr. Peek, I
17 am not trying to exclude you from any of the discussions other
18 than the attorney-client privilege issues related to the Quinn
19 Emanuel firm. And the reason I excluded you from the
20 deposition of Ms. Wynn in preparation for my preliminary
21 injunction hearing and potential contempt proceedings is
22 because I mistakenly believed attorney-client would be at
23 issue in those depositions.

24 MR. PEEK: Thank you, Your Honor.

25 THE COURT: So I need an order.

1 MR. POLSENBERG: Very good. And as long as we all
2 understand my objection is a little broader than your --
3 THE COURT: It is.
4 MR. POLSENBERG: Yes.
5 THE COURT: And so we're going to address what
6 apparently is hopefully briefed in your motion to seal.
7 MR. POLSENBERG: Or we may have to --
8 MR. ZELLER: Supplement.
9 THE COURT: Which is why I moved it to the oral
10 calendar so you all now can look on September 16th and see how
11 many they are to figure out which ones you've got a concern
12 with.
13 MR. POLSENBERG: I caught that one.
14 THE COURT: Yeah, you caught that part. I shifted
15 the responsibility of that.
16 MR. POLSENBERG: Thank you.
17 THE COURT: Mr. Peek, anything else?
18 (Pause in the proceedings)
19 THE COURT: Okay. Next motion. Who wants to get
20 up? I've got a pile.
21 MR. PISANELLI: Your Honor, we have 14 minutes of
22 the 90 left for about six motions.
23 THE COURT: Yeah. But they're not nearly as
24 complex.
25 MS. SPINELLI: They gave me the hard one.

1 THE COURT: Ms. Spinelli had the very difficult one
2 for the day, which is why I started with that one, because I
3 really needed to get [inaudible]. The rest of you are just
4 fighting over what's happening between two people who getting
5 along so they're divorced and now they can't get along
6 anymore, and it's flowing over into my discovery process. And
7 if it didn't involve attorney-client privilege issues, I would
8 be conducting the deposition in open court and ruling on the
9 conduct on a question-by-question basis. However, given the
10 nature of some of the information, I can't do that. So I'm
11 looking for solutions, and I'm happy to talk to you guys
12 today.

13 MR. PISANELLI: Before we get to that, because we
14 are so limited time, Your Honor, it makes sense to me that we
15 deal with the motion concerning the appointment of a special
16 master. With each passing day we are very concerned that
17 Quinn Emanuel is continuing to violate our rights, and we
18 don't want to just wait and have then disqualified 10 times
19 over.

20 THE COURT: I didn't require a special master be
21 appointed. I had certain conditions --

22 MR. PISANELLI: That's what our motion --

23 THE COURT: -- under which it was. So your request
24 for an appointment of special master is different than what
25 we'd talked about before. And so let me ask a question of

1 this side of the room before you start arguing, Mr. Bice.

2 MR. BICE: All right. Thank you.

3 THE COURT: Have you identified who the third party

4 is who's going to do the review for you so you do not receive

5 further tainting?

6 MR. ZELLER: We have, Your Honor.

7 THE COURT: Who is that third party?

8 MR. ZELLER: That is Justice Rose. And we are

9 finalizing hopefully today --

10 THE COURT: Bob Rose?

11 MR. ZELLER: Yes.

12 THE COURT: Can I see you guys in my office.

13 (Court recessed at 11:16 a.m., until 11:19 a.m.)

14 THE COURT: I'm on my criminal case. I'm

15 multitasking.

16 MR. BICE: Your Honor --

17 THE COURT: Mr. Bice, good morning. How are you

18 today?

19 MR. BICE: Well, I'm fine. Obviously frustrated

20 with the amount of time to address this issue. Your Honor --

21 THE COURT: You can always come back after lunch.

22 MR. BICE: I'm going to be quick as I can, Your

23 Honor.

24 Here's the disconnect. The disconnect is that their

25 definition of a third party is somebody who is an agent of

1 Elaine Wynn. That's the problem here. And the other
2 disconnect is -- I mean, with all due respect, Mr. Polsenberg
3 is a third party under their definition, as is Mr. Urga and as
4 is Mr. Zeller and their firms. They're third parties, because
5 they have a contract with Elaine Wynn, Elaine Wynn's paying
6 them. This definition of -- their definition of a third party
7 is --

8 THE COURT: I'm going to stop you.

9 (Pause in the proceedings)

10 THE COURT: Are we ready? Mr. Bice, sorry for the
11 interruption, but I had to deal with that issue.

12 MR. BICE: Understood, Your Honor. My point --

13 MR. POLSENBERG: Do you have time?

14 THE COURT: I've got to go twist arms of pro bono
15 lawyers at noon at McDonald Carano, which is still on the
16 corner of Sahara and Rancho, so I've got 15 minutes, and then
17 we can start back up at 1:15, if you want.

18 MR. BICE: Our point, Your Honor, is this definition
19 of what they are claiming as a third party to review documents
20 is not a third party at all, it is simply a different set of
21 agents for Elaine Wynn notwithstanding the reference to former
22 retired Justice Rose. They're still going to have Elaine
23 Wynn's lawyers, whether they're admitted in this case or not,
24 they're going to be Elaine Wynn's lawyers, looking at
25 potentially our privileged documents. That is a problem.

1 We have proposed that a special master be appointed,
2 and, as I understand it, they have declined that. And then
3 one has to ask the fair question of why would you decline that
4 if you're claiming that you're going to appoint a retired
5 judge to do it yourself, why are you declining to have a
6 special master appointed. And I think that their obvious
7 reason is because they want it to be someone who is answerable
8 to and not answerable to the Court. And that is a fundamental
9 problem.

10 This is completely different than what we did in
11 Jacobs and Sands. Recall what we did in Jacobs versus Sands
12 is we deposited all the documents. We agreed because it was
13 our privilege --

14 THE COURT: Well, actually it was Mr. Campbell who
15 agreed.

16 MR. BICE: No. This was -- Mr. Campbell was out
17 long before this process was implemented, Your Honor. This is
18 something that we had set up, and we negotiated this agreement
19 with Munger Tolles & Olson at that point, who was representing
20 Sands. And what ultimately we did there, the documents got
21 deposited, Your Honor, we then used search terms to cull out
22 Mr. Jacobs's potentially privileged and confidential and
23 private information. Those search terms were agreed to, and
24 in fact that was the process that happened.

25 Once those documents were culled, Your Honor, they

1 were not reviewed. They were simply set aside, they were
2 sequestered by Advance Discovery, they were not reviewed. And
3 then Sands' counsel was allowed to review all the remaining
4 documents, everything else on the system.

5 THE COURT: And that was Ms. Glaser; right?

6 MR. BICE: And they -- well, I believe she was out
7 by that point in time, as well, because MTO had come in and
8 replaced them. And then MTO had handled that process until
9 they departed, and then Mr. Jones and Mr. Peek were involved
10 thereafter. But --

11 THE COURT: I remember the process occurring earlier
12 than your firm being involved, but it may have occurred in a
13 two-step process.

14 MR. BICE: Certainly this process of the review of
15 Mr. Jacobs's documents that were deposited with Advance
16 Discovery was the process that we handled, because we
17 negotiated that process with MTO at the time.

18 THE COURT: Okay.

19 MR. BICE: Obviously pursuant to a Court order.

20 What they are proposing is fundamentally different.
21 They're saying, well, we're not going to pull out Ms. Wynn's
22 alleged privileged communications by the use of search terms
23 and only look at those, we're going to look at everything that
24 Elaine Wynn took from Wynn Resorts. That includes,
25 apparently, drives that she copied during the litigation when

1 she signed written acknowledgements that wasn't allowed and
2 another -- at a minimum one other employee that they
3 surreptitiously copied without ever disclosing to anyone.

4 There is no debate that within those documents are
5 going to be information that is privileged to Wynn Resorts.
6 And under the law Ms. Wynn and Ms. Wynn's agents -- I don't
7 care what title she slaps on them, who it is she wants to
8 appoint as her agent to review company records, there is no
9 law that allows her to do that. This is unquestionably
10 nothing but -- whatever the labels they want to slap on it, it
11 is unquestionably what amounts to a private so-called taint
12 team that is answerable to Ms. Wynn.

13 THE COURT: So what you're really asking me to do,
14 Mr. Bice, if I can cut to the chase --

15 MR. BICE: Yep.

16 THE COURT: -- not that I won't give you more time
17 if you need it -- is that I appoint whoever the third party is
18 that Ms. Wynn selects to do this review as a special master
19 subject to the Court's order.

20 MR. BICE: No.

21 THE COURT: Why not?

22 MR. BICE: I'm asking you to appoint a special
23 master, and it's not someone who they've already been having
24 ex parte communications with, because parties are not allowed
25 to ex parte communications with a special master.

1 THE COURT: Parties have ex parte communications
2 with special masters all the time.

3 MR. BICE: Only pursuant -- with the Court's
4 permission on scheduling issues and the like. They have been
5 having communications about what they want to claim privilege
6 over, what they're going to review, et cetera. If it's a
7 special master, Your Honor, it's a special master, it's
8 somebody answerable to the Court, not somebody selected by Ms.
9 Wynn. It's somebody selected by the Court. So that's our
10 problem.

11 Yes, does a special master have to be appointed?
12 Because of her commingling -- according to her at least, her
13 commingling of documents into the process, into our data, and
14 she says, I need to cull that out but I want to cull it not by
15 using search terms, I want to cull it out by reviewing all of
16 the documents, including all of the otherwise privileged
17 information that my counsel isn't allowed to review, so I'm
18 going to just hire a separate set of lawyers and I'm going to
19 call them somebody different and claim that they're allowed to
20 do it. There is no law anywhere that allows that process. As
21 we have pointed out to you, the only time it has been allowed
22 is in the rare circumstances of criminal prosecutions where
23 the government has seized large volumes of data pursuant to a
24 lawful search warrant or a seizure order court approved, and
25 then the government has to figure out some way to cull the

1 process. And even the Federal Courts have said that process
2 of allowing these taint teams is very, very, problematic and
3 very suspect. And in fact every case we cite cites the most
4 common example where it broke down, and that was the Manuel
5 Noreaga prosecution. And the courts have pointed out that the
6 so-called taint team violated the rules because they're
7 answerable to the very same people that are involved in the
8 case. And who is this supposed private taint team answerable
9 to? It's answerable to Elaine Wynn because it's not a special
10 master of the Court, it's her own agents.

11 And so with that, Your Honor, I will turn it over,
12 because I think the appointment of a true special master, not
13 somebody who Elaine Wynn has already been in communications
14 with, will also address this deposition question, which I will
15 turn over to Mr. Pisanelli.

16 THE COURT: Well, and that was sort of my hope
17 today, was to discuss the two things together if we were going
18 to get to that point.

19 MR. BICE: And I think that if the special master,
20 which is what we are asking the Court to ultimately do, I
21 think that will address that issue.

22 MR. PISANELLI: Would you like me to address that
23 now so that they can have one response?

24 THE COURT: No, I don't want you to address. I want
25 to go to Mr. Zeller.

1 MR. PISANELLI: All right.

2 MR. ZELLER: The problem, Your Honor, is this is not
3 a proposal that we have made. This is a Court order. The
4 Court has already entered the order of the protocol. Going
5 back to the June hearing, we have been discussing this, and
6 they had plenty of time to argue, object, make any of these
7 kinds of concerns. They weeks and months to raise it. They
8 did not do so. The protocol that was entered by the Court
9 with Wynn Resorts, and it was their own language, makes it
10 very clear we can have a third-party designee do the review.
11 That's going to be walled off. The idea somehow -- I mean,
12 you know, it would be one thing if they had proposed a special
13 master at the very beginning. But what now this threatens to
14 do is basically now prolong the process even longer, because
15 we'll undoubtedly have weeks of argument over who this -- who
16 this special master is supposed to be. They're going to
17 object -- I understand in the Jacobs case it took forever for
18 the parties even to agree on who the vendor was. At least we
19 didn't have that disagreement here. But I --

20 THE COURT: Okay. Anything else you want to tell
21 me?

22 MR. ZELLER: -- think the Court should stick with
23 its order.

24 THE COURT: So assume you don't go with Justice Rose
25 and you pick a different person. Is there anybody else who

1 works in the same office with him, like Larry Leavitt, Phil
2 Pro, those kind of guys, that you've talked to, Mr. Urga?

3 MR. URGa: Your Honor, we have talked to them. And,
4 contrary to the speculation by Mr. Bice, I have not talked to
5 anybody and told them what they're supposed to be doing. I'm
6 just trying to find somebody to make sure they don't have a
7 conflict. So I -- Judge Pro probably can't do it, because he
8 sits on the Gaming Commission.

9 THE COURT: Gaming Commission, yeah.

10 MR. URGa: So we've talked to Judge -- to the
11 handler, to the special -- we haven't even talked to them.

12 THE COURT: So you're just talking to the admin
13 people at JAMS?

14 MR. URGa: Yes.

15 THE COURT: Okay. I mean, that's how bad that it
16 is.

17 THE COURT: So let me just make a suggestion.

18 MR. URGa: Judge -- I'm sorry, Your Honor. Go
19 ahead.

20 THE COURT: My suggestion would be that we might be
21 better served to have a special master related to these issues
22 given the problems that came at the deposition. And I want
23 you to think about over the lunch hour if we are better served
24 having the same person handle those deposition issues and sit
25 and monitor your deposition as is going to do the privilege

1 review.

2 MR. URGAS: That will take us a lot longer to find,
3 because everybody that is good and independent has a very busy
4 schedule. So that is one of the issues. But we will talk
5 about it over the lunch hour.

6 THE COURT: So I want you to talk about it over the
7 lunch time, because I'm going to break now to go over to twist
8 arms. By the way, thank you all of you, except Mr. Campbell,
9 who's let me come twist arms at his firm.

10 MR. CAMPBELL: Your Honor --

11 THE COURT: I haven't gotten to do pro bono at your
12 firm because you don't have enough people for me to come over
13 and twist arms.

14 MR. CAMPBELL: We just give you a ton of money.

15 MR. URGAS: I tried that before, and it didn't work.

16 THE COURT: Yeah.

17 MR. URGAS: Your Honor, I know we have to set it up
18 with you, too, and --

19 THE COURT: It's all right. You're on it. You're
20 on the schedule.

21 MR. URGAS: I know.

22 THE COURT: So I want you to think about that
23 process, because that may solve problems. And that was why
24 when I was reading this together I did Mr. Peek first, because
25 he was a discrete issue, and all of your other issues here

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. URGAS: 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

1 reviewed, nothing has been provided by Advance Discovery to
2 anybody. So I think it goes back to the Court's point about
3 we should meet and confer to determine what the next steps
4 are, how we're going to handle it, and then the appointment of
5 the special master.

6 MS. SPINELLI: Perfect. That was [inaudible] status
7 quo remain.

8 THE COURT: I'm so glad you guys were able to have
9 an intelligent conversation.

10 MR. POLSENBERG: You know, I thought -- I thought we
11 resolved it. I didn't realize it would take so long.

12 THE COURT: Welcome to Business Court, Mr.
13 Polsenberg.

14 MR. POLSENBERG: Thank you, Your Honor.

15 THE COURT: Are we going to talk further about the
16 deposition, or are you going to include the description as
17 part of the scope of this issue for the special master?

18 MR. PISANELLI: Well, both. Right?

19 THE COURT: I'm listening.

20 MR. POLSENBERG: Yeah, we are.

21 THE COURT: Yeah, we are what?

22 MR. POLSENBERG: Including the deposition as part
23 of --

24 MR. PISANELLI: But also has his motion. He wants
25 to talk to me about his motion.

1 MR. POLSENBERG: I have somewhere I need to be on
2 Sunday. Just as long as we realize that.

3 THE COURT: Yeah. Get you there.

4 MR. POLSENBERG: Your Honor, forgive me, but I don't
5 understand why we're hearing the motion?

6 THE COURT: I'm waiting for Mr. Pisanelli to tell me
7 what he thinks we haven't covered, and then I'm going to tell
8 him whether I think we've covered it already or whether I need
9 to hear from your side.

10 MR. POLSENBERG: Okay.

11 THE COURT: But I want to let him tell me he thinks
12 we've missed, because there may be something that was really
13 obvious that I missed because that's how life is sometimes.

14 MR. PISANELLI: And, of course, maybe it's really
15 obvious and I'm the only one who's missed it. But as I'm
16 hearing the debate, we have a process put in place for the
17 continuation of the deposition, hopefully with a better
18 product and result than we got the first time. That does now,
19 however, address what the rules will be on a going-forward
20 basis for this deposition. In other words, it would seem to
21 me if I'm the special master first thing I would want to do as
22 it relates to this deposition is read this briefing, read the
23 transcript, and hear what Your Honor had to say about it,
24 rather than say that we're starting --

25 THE COURT: Generally when I appoint a special

1 master, Mr. Pisanelli, I expect them to be bound by the order
2 that I enter that gives them specific guidance as to what is
3 expected of them. If what you're asking me is is there some
4 rules related to the whistleblower status and Ms. Wynn's
5 refusal to participate in the deposition to some degree, I'm
6 not characterizing how big it is, I am not making that
7 decision today.

8 MR. PISANELLI: No. That's not what I'm asking at
9 all, Your Honor.

10 THE COURT: Okay.

11 MR. PISANELLI: So our motion was based upon the
12 simple concept -- let me put this up just so you can see.

13 THE COURT: You have the easel? I know you wanted
14 an easel. I can't read that.

15 MR. PISANELLI: I know that. You wouldn't read it
16 on an easel, either. May I approach? That's what it is.

17 THE COURT: Counsel, you're welcome to all move over
18 and look, if you want. This is Court's Exhibit 1. This is a
19 list of Elaine Wynn's refusal to and instructions not to
20 answer at the deposition.

21 MR. PISANELLI: It's a demonstrative, Your Honor.
22 It's not actual evidence.

23 THE COURT: Dulce's going to mark it as Court's
24 Exhibit 1 so if anybody ever wants to know what Mr. Pisanelli
25 handed me and I've now handed to Dulce --

1 MR. POLSENBERG: Your Honor, before Mr. Peek looks
2 at it I need to make sure that it's something Mr. Peek can
3 see.

4 MR. PEEK: Your Honor, he doesn't have a right --
5 this is an open court.

6 THE COURT: It is open court.

7 MR. PEEK: It's an open court, Your Honor. Mr.
8 Polsenberg doesn't have the right to do that, respectfully.

9 MR. POLSENBERG: I have the right to object.

10 MR. PEEK: He can object, but this is open court.

11 THE COURT: It is an open court. Anybody in the
12 world can come sit in my courtroom anytime they want and watch
13 whatever they want.

14 MR. PEEK: So may I have the Court's exhibit, Your
15 Honor, to look at?

16 THE COURT: Yeah.

17 MR. PEEK: Thank you.

18 THE COURT: You're welcome to borrow mine.

19 MR. PEEK: Thank you.

20 (Pause in the proceedings)

21 THE COURT: This is part of why people frequently
22 agree to go to arbitration, so that their dirty laundry does
23 not get aired in courts of law. This is not necessarily
24 privileged. I understand you think it's confidential or
25 highly confidential, but this is a listing of instances where

1 a question was asked and the witness didn't answer for one of
2 many reasons.

3 MR. ZELLER: Yes, Your Honor. But the Court is
4 aware that there is an automatic 20-day provision where it's
5 highly confidential. You'll also recall on occasions which I
6 even attempted to say what occurred, what was asked even when
7 there was no answer at say Kim Sinatra's deposition --

8 THE COURT: So do you want me to seal the court
9 exhibit? Is that what you're asking me to --

10 MR. ZELLER: I think it should be taken down.

11 THE COURT: No.

12 MR. ZELLER: It's a violation of the protective
13 order.

14 THE COURT: Mr. Zeller, no. So if you'd like me to
15 seal Court's Exhibit 1, which is going to stay here after that
16 board leaves, then I will seal Court's Exhibit 1 if they're
17 asking me, because you haven't yet had a chance to review and
18 make a confidential or highly confidential designation.

19 MR. ZELLER: Yes.

20 THE COURT: Okay. So, Dulce, can you seal Court's
21 Exhibit 1 pending the parties' decision as to whether under
22 their stipulated protective order they're going to identify
23 anything as confidential or highly confidential.

24 MR. PEEK: It's only sealed from the public --

25 THE COURT: Right.

1 MR. PEEK: -- not from the parties.

2 THE COURT: Well, that's going to go in a sealed

3 envelope in the vault. That's how --

4 MR. PEEK: Parties are entitled to have it, though?

5 THE COURT: I haven't said that yet. But haven't

6 not said that yet.

7 MR. PEEK: Thank you.

8 THE COURT: So I have a chart that's being used for

9 illustrative purposes; right?

10 MR. PISANELLI: Yes.

11 THE COURT: Okay.

12 MR. PISANELLI: And so you know, on the highly

13 confidential issue the mandatory period expired already. They

14 haven't designated anything.

15 MR. ZELLER: That's not correct. It expires on

16 Tuesday.

17 MR. PISANELLI: It expired two days ago. But

18 whatever.

19 THE COURT: You guys can fight over how to count

20 days, and if you want to hire somebody, Tom Beatty is the one

21 who counts days best in town.

22 MR. PISANELLI: We used to have an associate who

23 wrote his paper in law school on counting days in a rule, an

24 entire thesis on that. Can you imagine? He should have been

25 discovery commissioner.

1 So, in any event, on this debate of whether it's
2 highly confidential or whether Mr. Peek gets to insert his
3 discovery requests into this debate, these are a list of
4 subject matters just like we would be looking at in a
5 privilege log and giving you our frustration of what happened
6 in this deposition. That's what we're talking about here.

7 THE COURT: Okay.

8 MR. PISANELLI: So the long and short of it is, Your
9 Honor --

10 THE COURT: I gathered the frustration by the tone
11 of your brief.

12 MR. PISANELLI: Yeah. She -- Ms. Wynn intentionally
13 and unilaterally obfuscated many, many of these topics by
14 appointing herself as the judge of what she would testify to
15 or not. And counsel participated in that obfuscation, both
16 actively and passively. The active part was the coaching,
17 which we pointed out to you, and the assertion of privilege.
18 We've heard some argument and debate about privilege, how that
19 was supposed to be a full brief before you, and that's not
20 what we're complaining about, Judge. We're not talking about
21 the privilege of whether she has one because she used the
22 company computers, we're talking about assertion of a
23 privilege as a way to obfuscate a deposition on questions
24 like, did you tell a third party; objection, attorney-client
25 privilege if you told the government. We know that there's no

1 good-faith foundation for an assertion of that sort, so that's
2 part of our frustration.

3 The other part of the frustration, of course, was
4 the passive participation of Quinn Emanuel in this type of
5 obfuscation. We know from the Luinguisa [phonetic] case, Your
6 Honor, that that under Nevada law, even though this was the
7 United States District Court interpreting Nevada law is very,
8 very clear of what the obligation of an attorney in Nevada is
9 when they are representing a client who is violating discovery
10 rules. Court there said, quote, "It is not enough for an
11 attorney to refrain from instructing a client not to answer.
12 In fulfilling his or her duties the attorney as an officer of
13 the court must take some affirmative step to ensure the
14 deponent complies with the deposition rules."

15 You saw, if you had the opportunity to read through
16 the transcript, Your Honor, not only did counsel sit there
17 silently as Ms. Wynn acted like the judge and her own special
18 master, I even prompted, Mr. Zeller, are you going to do
19 something about this, please, Mr. Zeller, are you going to
20 instruct her that she has to answer my questions. And it was
21 either, you have her answer, or silence, or, I'm not going to
22 talk about during this deposition.

23 So I don't know what the motivation was. I don't
24 know. There's a lot of different theories we can come up
25 with. But what is clear is that we had counsel in the room

1 witnessing their client abusing the rules of discovery and
2 nothing happened about it.

3 So, Your Honor, we see in the opposition some
4 arguments about scope. Let me take a few minutes to talk
5 about that. Recall that this Court denied Elaine Wynn's
6 motion for a protective order. She came in here saying that
7 she shouldn't be deposed because she's being outed, their
8 word, as a whistleblower. And the Court said that that was an
9 issue for another day, full briefing not on order shortening
10 time and we're going to talk about Sarbanes-Oxley, et cetera.
11 But Your Honor was very clear that what we needed was the
12 factual background of the nature of the information and what
13 was done with the information, the sources of the information,
14 et cetera. Mr. Zeller was none too happy when Your Honor was
15 describing what it was that was going to happen at the
16 deposition, but you were very clear with it, and the record is
17 very clear. You said, we're going to have this deposition and
18 it's going to apply to all of the hearings that are coming up,
19 the preliminary injunction hearing, the sanctions hearing, and
20 the disqualification hearing, all three of them.

21 THE COURT: But that's all it's supposed to cover.

22 MR. PISANELLI: That's right. But now in connection
23 with all three of those in order to find out, for instance, on
24 the privilege issue for disqualification we needed to know
25 what information she possessed, when -- what was the source of

1 that information, and what did she do with it, in other words,
2 who did she tell. Same analysis goes for this Sarbanes-Oxley
3 issue. Without addressing whether she gets that protection or
4 not, whether there even is one for a nonemployee or not, we
5 still needed the foundational questions of who she spoke to,
6 what the source of her information was, what she did with the
7 information, the timing of the information, the timing of her
8 relationship with the company, all of those foundational
9 questions. And you'll see from the chart that I've given you
10 she was simply saying no to all of those foundational
11 questions. Same on confidentiality. How can we possibly know
12 whether she is giving away confidential information either in
13 the letters to Ernst & Young or otherwise? How can we know if
14 she was outed if we don't know what information she possesses,
15 what the source of the information was, and what she did with
16 it? Those were the three themes on the three different
17 topics, basically the same filter for the three different
18 hearings that we used in our applying our analysis and
19 examination for Ms. Wynn.

20 Now, in the motion we have a lot of attention spent
21 to pointing out what a jerk I am, how I conducted myself in
22 other depositions, and how I conducted myself in this
23 deposition. But the most important thing that I looked for in
24 this opposition, this debate, was what are they really
25 complaining about by way of scope in this deposition.

1 Because, recall, Your Honor, again, I don't know if you read
2 the entire tsp, I can't recall -- and I read the transcript as
3 recently again as last night. I can't recall more than two
4 times Mr. Zeller saying that my question was beyond the scope.
5 And whether it was or it wasn't is not my point here. But he
6 objected twice, to two questions, and we are not even moving
7 on those particular issues. We are moving predominantly on
8 the misbehavior and the obfuscation of Ms. Wynn. You can, as
9 Your Honor knows as well as anybody, sit in a deposition on
10 your hands, have nothing to say, let the witness run wild or
11 even answer the questions, and then come in here complaining
12 that somehow Pisanelli was outside the bounds of what the
13 scope was for determining her information, her sources of
14 information, and her disclosure of information. So those
15 really are, I would say, untimely and hollow complaints, since
16 we didn't hear anything during the deposition.

17 So the law is worthy of just a couple of highlights
18 here in this debate. Ms. Wynn came in, as I said, and
19 appointed herself as the authority in the room. We know, Your
20 Honor, that -- and this is a quote from the GMAC case we have
21 in our papers -- quote, "The rules do not permit a deponent to
22 interpose objections himself. They do not permit evasive or
23 uncooperative answers merely because a deponent is
24 dissatisfied with a question." Isn't that the only issue we
25 need to know of just how out of control Ms. Wynn was and how

1 silent her lawyer was when she was making thing choices on her
2 own? That is part of our frustration that led to the tone of
3 our brief.

4 The other issue of law that governs what we're doing
5 here, of course, is Rule 30(d)(1), which says very clearly,
6 and the key word is the first word, "Instructing a deponent
7 not to answer shall only be allowed when necessary to preserve
8 a privilege, to enforce a limitation directed by the court, or
9 to file a motion at paragraph (3)." So instructing the
10 witness is the first thing we look for. That didn't happen.
11 She was doing it on her own. And then we would have looked,
12 even if there was an instruction, was it an instruction on a
13 privilege? Most of the time not, except for some frivolous
14 ones in connection with third-party disclosures. And even
15 then, as I just said, instructions to enforce a limitation,
16 that's the scope debate, those came up in the opposition,
17 those didn't come up in a deposition.

18 So, Your Honor, the consequences are simple, all
19 right. We're not asking to strike her answer at this point,
20 we're not asking for anything that's draconian. We're asking
21 Your Honor to take a look at these all foundational questions
22 so that we can have a fulsome debate on this Dodd-Frank,
23 Sarbanes-Oxley issue and so we can have a fulsome debate on
24 whether she obtains any privilege for the information she
25 wrongfully copied when she was in the offices, both her hard

1 drives and at least one other employee, to see if there is any
2 privilege that she can assert from using the company computers
3 for her own personal information, including communicating with
4 her lawyers. I can't have that fulsome debate with you unless
5 and until I get all of the foundational questions from her,
6 including who her lawyers are. And just because someone has
7 the Esquire at the end of their business card doesn't mean
8 they're acting as a lawyer. I need to know all the members of
9 this team so that when I finally do get a privilege log I can
10 challenge it with some level of education and information.
11 Saying no to the most basic foundational questions was
12 abusive. She shouldn't have been saying no in the first
13 place. Her lawyers should have been speaking up.

14 And so we're asking for the very simple order as we
15 go in with the special master is to say that the topics like
16 the ones in your hand right now are to be answered because
17 they are foundational, they are not going to the heart of any
18 particular privilege or statutory right not to answer. And we
19 ask Your Honor again to modify how much time we have left of
20 the three and a half hours we used. An extraordinary amount
21 of it was wasted on me doing an analysis, offering questions
22 only to get this stonewall, trying to push her, trying to
23 persuade her lawyer, trying to come at it another angle only
24 to get stonewalled. My valuable time, only seven hours, was
25 eaten up by obfuscation, and it shouldn't count against me.

1 We should start this deposition anew, and it should be on Ms.
2 Wynn's dime that we have to start anew, not on our clients.
3 And so we'd ask for an award of attorneys' fees, as well.

4 THE COURT: Okay. Mr. Polsenberg, did you want to
5 say anything?

6 MR. POLSENBERG: Yes. Thank you, Your Honor. I
7 think one of the -- before I get to the substantive, let's go
8 over form in a deposition. I think what Mr. Pisanelli is
9 arguing is that Mr. Zeller should have instructed her not to
10 answer. At one point --

11 THE COURT: Or instructed her it's not appropriate
12 to not answer at this stage.

13 MR. POLSENBERG: I understand. But I think the
14 places where she -- look, where she didn't answer where she
15 was talking about fear of retaliation, that's my Sarbanes-
16 Oxley, Dodd-Franks argument. And they may disagree with it,
17 but that doesn't mean --

18 THE COURT: The attorney who referred her to Quinn
19 Emanuel is our Sarbanes-Oxley?

20 MR. POLSENBERG: No. The column that says for fear
21 of retaliation.

22 THE COURT: No. I've got -- that one's in the for
23 fear of retaliation column.

24 MR. POLSENBERG: Well, I --

25 THE COURT: Who the attorney was that referred her

1 to Quinn Emanuel.

2 MR. POLSENBERG: Yeah. Well, that -- no. The
3 privilege that was asserted there, there was a privilege
4 asserted there, and that was attorney-client privilege. And I
5 agree. That is attorney-client privilege. I don't think they
6 get to know the role of each lawyer on the team. I don't
7 think -- and this is the debate I've had a lot of times with
8 Judge Herndon. You don't get to know the circumstances where
9 somebody referred you to a lawyer, because then you find out
10 what the legal problem is that the person had. You don't get
11 to know what every lawyer is doing, because maybe what that
12 lawyer is doing is something even lawyers unrelated to this
13 case they don't get to know the role of those lawyers. But
14 this is my -- these are my privilege arguments. And for them
15 -- they're coming in here now in the middle of the deposition
16 and saying, okay, overrule all of Dan's legal arguments about
17 attorney-client and about Sarbanes-Oxley and Dodd-Franks.

18 THE COURT: So how am I going to ultimately be able
19 to evaluate your claim that testimony related to her
20 investigation, communications, and then her subsequent
21 comments to either Ernst & Young or some other entity -- how
22 am I going to ever find out the factual basis if I let her
23 tell me she's not going to tell them anything because she's
24 afraid somebody will retaliate against those people?

25 MR. POLSENBERG: Well, she -- yeah. She has said --

1 THE COURT: So how am I ever going to get it? So
2 I'm never going to get it, so I should just skip ahead and do
3 your motion and say, Ms. Wynn, you're not entitled to any
4 protection, or, Ms. Wynn, you are entitled to some protection
5 and this is the limit?

6 MR. POLSENBERG: Two parts.

7 THE COURT: Because if she's going to be this
8 noncooperative --

9 MR. POLSENBERG: Well, if you want us to assert the
10 privilege -- if she's saying, look, I fear retaliation, and at
11 one point Jim turns to Mike and says, are you going to
12 instruct her to answer. And in fact what we're thinking is we
13 don't need to instruct her to answer. The question is whether
14 we need to instruct her not to answer when she has already
15 said she's not going to answer. These are issues that we
16 think the privilege applies to.

17 Now, Mr. Pisanelli says that I had frivolous
18 objections on third-party disclosure. That is my Sarbanes-
19 Oxley argument. I mean, I've said that before when we were in
20 here. Ms. Wynn is saying that she didn't get this information
21 that she turned over to the audit committee and to Ernst &
22 Young from highly confidential discovery material in this
23 case.

24 THE COURT: Correct.

25 MR. POLSENBERG: She's said that she --

1 THE COURT: That's what she's saying.

2 MR. POLSENBERG: Right. And she's saying she got it
3 from the Gaming Control Board testimony and she got it from
4 talking with people. And that was -- and she even explained
5 that that was the new development, that she had read this
6 testimony. Even though the testimony wasn't new, it was new
7 to her. So that's --

8 THE COURT: And that was Mr. Poster's testimony
9 before Gaming Control.

10 MR. POLSENBERG: Yes. And so now -- so what they
11 want to know is who the people are that she talked to. And I
12 think that's privileged, first point.

13 THE COURT: So basically you believe that it's
14 appropriate for her not to have to answer most of the
15 questions that were posed by Mr. Pisanelli that she chose not
16 to answer because of your legal assertion that you are making
17 that that is protected communication or information?

18 MR. POLSENBERG: Right.

19 THE COURT: Okay.

20 MR. POLSENBERG: And I talked to Counsel before -- I
21 couldn't make the depo, because I was in Dallas. But I talked
22 to Counsel before this, and we went over what things we were
23 going to object to and instruct her not to answer. And she
24 chose not to answer. The fact that we didn't say, okay -- and
25 we're going on and also saying --

1 THE COURT: So then the deposition is a waste of
2 time, and I just need to have a hearing without a factual
3 basis and make a determination as to whether it applies or
4 not.

5 MR. POLSENBERG: That is kind of what I said last
6 time.

7 THE COURT: I know. But I didn't realize we would
8 have a witness who took upon themselves.

9 MR. POLSENBERG: Look, if I were there, I'd have
10 objected. She wouldn't have even got the chance to say, I'm
11 not answering because I fear retaliation; because I would have
12 said, no, this is privileged stuff. There are my -- yes, my
13 assertions are broad, which is why I think even before the
14 depo takes place we should address my legal assertions as to
15 what is privileged/protected/not subject to discovery.

16 THE COURT: Okay. So you forced my hand.

17 MR. POLSENBERG: And I don't --

18 THE COURT: It's okay.

19 MR. POLSENBERG: I don't mean it as forcing --

20 THE COURT: It's okay, Mr. Polsenberg.

21 MR. POLSENBERG: I know. But I don't mean it as
22 forcing your hand. I honestly --

23 THE COURT: It's okay. I --

24 MR. POLSENBERG: -- said before --

25 THE COURT: My preference is because of the way the

1 Nevada Supreme Court deals with issues related to privilege
2 that you guys take writs on, to make sure the record they have
3 before them is a good record.

4 MR. POLSENBERG: Yeah.

5 THE COURT: I'm not going to get a good record here
6 from the witness in the deposition.

7 MR. POLSENBERG: No. Because my argument is all
8 these predicate questions -- and I understand why Counsel's
9 asking them and I understand his argument, but I think even
10 those questions are subject --

11 THE COURT: All right. I understand what you're
12 saying.

13 MR. POLSENBERG: Yeah.

14 THE COURT: So are you going to file another brief,
15 or are we going to rely on what you filed already?

16 MR. POLSENBERG: I think I have to file another
17 brief.

18 THE COURT: And when are you going to do that?
19 Because this has got to be decided soon, and I am not going to
20 do it on an OST, which means I'm going to set it today before
21 you leave out of this room.

22 MR. POLSENBERG: Okay.

23 MR. PISANELLI: So here's our issue.

24 THE COURT: I'm not going to make you waste your
25 time anymore. Sorry.

1 MR. PISANELLI: What do you mean?

2 THE COURT: I'm not going to make you go back to the

3 deposition and waste your time until I rule on this issue.

4 MR. PISANELLI: On whether she has protections under

5 Sarbanes-Oxley, et cetera?

6 THE COURT: And was [inaudible] and

7 [unintelligible].

8 MR. PISANELLI: Okay. You know, I do think,

9 however, Your Honor, as we move forward in this case and on

10 this process that we have a Court order that she's obligated

11 to answer these foundational questions. Because you know how

12 this is going to become circular, that there can't be a

13 sanction against her, there can't be any adverse rulings

14 against her because she never violated a Court order. That

15 was the point of bringing this to you now, so that the next

16 session of the deposition would not be wasteful. But if I

17 can --

18 THE COURT: I've decided that the next session of

19 deposition is going to be wasteful, so I'm going to do the

20 determination on the scope, and then I'm going to let you do

21 that deposition, and we're going to do it fairly quickly.

22 So how many days do you need on Swarovski?

23 MR. PISANELLI: Three.

24 THE COURT: And which three days did you want?

25 MR. PISANELLI: I thought we sent that already.

1 Did we send that?

2 THE COURT: I know. This is why I'm asking you. I
3 set you to start on September 26th at 1:00 o'clock. If you're
4 telling me you're going to be done on September 28, then I'm
5 going to see Ms. Wynn in a hearing for the preliminary
6 injunction and disqualification issues on 9/29 and 9/30.

7 MR. POLSENBERG: Judge, I'm sorry. I hate to sound
8 like Mr. Peek, but I'm having trouble hearing.

9 THE COURT: 9/29 and 9/30.

10 MR. POLSENBERG: And that's on what?

11 THE COURT: I haven't decided yet. I'm trying to
12 negotiate with him on dates on another case.

13 MR. POLSENBERG: Very good. Thank you, Your Honor.

14 MR. PISANELLI: I'm fine with that. I have learned
15 a long time ago you tell a lawyer be done by this time and the
16 lawyer's going to be done by that time, so --

17 THE COURT: Well, you and Mr. Bailey are pretty good
18 about doing it. I'm not worried about you guys.

19 So then I'm going to pencil in.

20 All right. Mr. Polsenberg, my goal is to have these
21 issues decided and Ms. Wynn complete her deposition in the
22 near term. I have three weeks plus a few to get everything
23 ready. So you want to file a supplement to the brief you've
24 already filed and characterize it a new brief, or are you just
25 going to call it a supplement? It was your motion for

1 protective order I think we called it before.

2 MR. POLSENBERG: I'd rather do a new one.

3 THE COURT: And when are you going to file it? I
4 have my 2016 calendar here, and I've got a date I'm shooting
5 for to have everything done. You don't get holidays.

6 MR. POLSENBERG: I only work on days that end in Y.
7 How much time do you want to give me, Your Honor?

8 THE COURT: None.

9 MR. POLSENBERG: Okay. Can we compromise on the
10 12th, then?

11 THE COURT: No. That's too late. Because if you do
12 that, then I don't get full briefing on the opposition. And
13 while I'm willing to give you less time on your reply brief, I
14 am not willing to sacrifice the time Mr. Bice and Mr. Pisanelli
15 are going to take on the opposition.

16 MR. POLSENBERG: I understand that, you know. But
17 I'm juggling you and Judge Sturman at the same time, Judge.
18 And I really apologize. It's not your problem, but --

19 THE COURT: Well, we both know that my issue's going
20 to Carson City, so you want to make sure that mine gets done.

21 MR. POLSENBERG: I'm pretty sure about the other
22 one, too.

23 (Pause in the proceedings)

24 MR. POLSENBERG: Judge, just --

25 THE COURT: Can you hit the 8th?

1 MR. POLSENBERG: Oh, no. I'm in trial on a motion
2 to strike my answer in another case. And we're in that day.
3 THE COURT: Can we go with your brief you've already
4 filed?
5 MR. POLSENBERG: Not that we fine-tuned this issue.
6 THE COURT: I don't know that we have fine-tuned it,
7 Mr. Polsenberg.
8 Mr. Bice.
9 MR. BICE: What additional evidence is there? There
10 is --
11 THE COURT: Well, there -- I don't know that there
12 is any additional evidence, because she's not answered the
13 questions.
14 MR. BICE: Exactly.
15 THE COURT: Which means I don't get to any evidence.
16 MR. BICE: So why do we need to have extra briefs
17 filed? There is nothing else to address. We know what the
18 state of her answers are. She's not willing to answer even
19 whether she spoke to her gardener or not. So we know what her
20 position is. We've briefed you on what the law is.
21 MR. POLSENBERG: Do you want me to go just with the
22 reply that I asked for last time?
23 THE COURT: Sure.
24 MR. POLSENBERG: But then I -- and then when do you
25 want to have the hearing?

1 THE COURT: So if that's -- are you going to need a
2 supplemental opposition?

3 MR. PISANELLI: If the reply's going to raise
4 something new.

5 THE COURT: No, no. This comes before the reply.

6 MR. BICE: We want to file a supplemental
7 opposition, because we essentially got I think a day or two
8 the last time, yes.

9 THE COURT: Okay. And can you do that --

10 MR. POLSENBERG: Wait. Wait.

11 THE COURT: Can you do that by the 7th?

12 MR. BICE: By the 7th? Yes.

13 THE COURT: And, Mr. Polsenberg, can you give me a
14 reply by the 14th? It's after your 12th you asked for.

15 MR. POLSENBERG: So we're not going to actually
16 address these issues, we're going to address my broader-based
17 issues? I'm good with that, Judge.

18 THE COURT: I've decided to give up on trying to
19 have a good factual-based record for the Nevada Supreme Court.

20 MR. POLSENBERG: Honestly? I think that's
21 appropriate.

22 MR. PISANELLI: There's a lot of good stuff.

23 THE COURT: I am sure they will send it back for me
24 to make an additional factual inquiry like they did in
25 CityCenter and like they did in Jacobs. But that's okay.

1 So you're going to get me a reply brief on the 14th?
2 MR. POLSENBERG: Yes, Your Honor.
3 THE COURT: Okay. Can we have an argument on the
4 20th?
5 MR. BICE: Looks like we could. Anybody else have a
6 problem with that date?
7 MR. CAMPBELL: I just want to say something before
8 it's all done. That's the one thing I want to do.
9 MR. PISANELLI: What time on the 20th?
10 THE COURT: 8:30.
11 MR. POLSENBERG: I have a motion for new trial at
12 8:30.
13 THE COURT: Is that that Alverson Taylor case you're
14 trying to straighten out?
15 MR. POLSENBERG: I already had that one. This is
16 another one.
17 If we could do it later in the day, I can do it.
18 THE COURT: Can you do it at 1:00?
19 MR. POLSENBERG: Yeah.
20 THE COURT: Okay.
21 MR. POLSENBERG: Thank you, Your Honor.
22 THE COURT: All right. Wait. I'm not done. Can
23 Ms. Wynn agree to make herself available for deposition if I
24 order the deposition to be taken at the time of the September
25 20th hearing on either September 22 or September 23rd?

1 MR. POLSENBERG: With the understanding that if --
2 THE COURT: I may not order her to have her
3 deposition taken. If I order it, I may order some
4 restrictions to the scope of her testimony.
5 MR. POLSENBERG: Got it.
6 THE COURT: I may order that there is no
7 restriction. But I won't know till we have the hearing on
8 September 20th at 1:00 o'clock.
9 MR. POLSENBERG: I understand that. But also
10 realize if I disagree I'll probably be asking for --
11 THE COURT: I know what you're going to ask me.
12 You're going to ask me if you can have a stay, and I'm going
13 to say, give me an order, and you're going to say, it'll be
14 here in about an hour, and I'll say then ask me for a stay
15 when you give me the order.
16 MR. POLSENBERG: Except for the in here within an
17 hour stuff. I'm not sure --
18 MR. PISANELLI: So here's my problem.
19 THE COURT: You've got lots of problems today.
20 MR. PISANELLI: I do. I do.
21 THE COURT: And I'm trying to get you to take the
22 deposition before you start the Swarovski thing so that I can
23 then have time for you to have taken the deposition and
24 someone on your team to have digested it and decided whether
25 additional briefing is due before I see you for the hearing on

1 the injunctive relief issue and sanction issues on September
2 29 and 30th. I do have a plan.

3 MR. PISANELLI: Yeah. I can tell. And you are
4 addressing, you know, what's in my head about completing my
5 deposition on these topics that touch on all of those
6 hearings. Because even if they're correct that Sarbanes-Oxley
7 gives them some protection --

8 THE COURT: Right.

9 MR. PISANELLI: -- this is from a person who openly
10 testified she's not an employee. But that's a debate for
11 another day. I still have topics on the privilege.

12 THE COURT: Right. So we're not fighting about
13 that. So the question is --

14 MR. POLSENBERG: But she just testified she is.

15 THE COURT: Wait. Stop.

16 MR. POLSENBERG: Thank you, Your Honor.

17 THE COURT: So what's going to happen is I'm going
18 to either tell you get to take her depo before our hearing on
19 the 29th and 30th, you get to take her depo and there is no
20 restriction except your time limit --

21 MR. PISANELLI: Yeah.

22 THE COURT: -- or you get to take her depo but you
23 are not permitted to ask in the following categories.

24 MR. PISANELLI: Okay. I was more concerned --

25 THE COURT: And then you're going to show up, and

1 she's going to be available one of those two days, and you're
2 going to take a depo for a day, and then you're going to be
3 done, and then I'm going to have an evidentiary hearing the
4 next week.

5 MR. PISANELLI: Okay.

6 MR. POLSENBERG: On?

7 MR. URGAS: That day, is that seven hours?

8 THE COURT: I have -- yes, it is seven hours.

9 I am going to have an evidentiary hearing on the
10 injunctive relief issues that have already been raised for the
11 violation of the protective order and on issues related to the
12 extent we're ready, and I don't know that we will be, to the
13 disqualification. Because I'm going to break them up because
14 of the way we've postured this. I don't think we're going to
15 be ready on the disqualification, but if it is, we'll have the
16 hearing then, too. But I don't think we'll be ready.

17 MR. POLSENBERG: There's a chance. We'll give it a
18 shot.

19 THE COURT: Okay.

20 MR. POLSENBERG: I agree, but I see where you're
21 going.

22 THE COURT: So I've got a couple other motions on.
23 Let me go through them and see if we've covered them.

24 Somebody wants me to modify the protective order so
25 that it is clear that Ms. Wynn is not being precluded from

1 discussing information that is not confidential, highly
2 confidential, or may be marked as confidential. My intention
3 was never to exclude her from discussing anything that is not
4 confidential, highly confidential, or in a deposition which
5 may be designated as confidential or highly confidential.
6 That was the reason I specifically included depositions in my
7 language. You're right, it may be inartful. But because of
8 the mechanism that has been set up under this stipulated
9 protective order for the designation of confidential and
10 highly confidential testimony there is a lag period between
11 the time the deposition is taken and that designation has to
12 be made. So that was why I specifically said that if you want
13 to talk about some specific language changes, I'm happy to,
14 but I don't really think it needs it.

15 MR. PISANELLI: Then I'll sit down.

16 MR. PEEK: Your Honor, that raises the question is
17 that we submitted a proposed order to you shortening all of
18 those time frames.

19 MR. PISANELLI: That's a different issue.

20 MR. POLSENBERG: Different issue.

21 MR. PEEK: Well, not entirely different.

22 THE COURT: It's a corollary issue. But --

23 MR. PEEK: Corollary issues.

24 MR. POLSENBERG: Yeah. Let me stick to this issue.

25 MR. PEEK: So, Your Honor, I just --

1 THE COURT: We'll come back to that in a minute. I
2 will write down "Peek depo time issues."
3 Okay. Mr. Polsenberg, you were talking.
4 MR. POLSENBERG: Thank you, Your Honor. Is this the
5 motion regarding the TRO, or the protective =
6 THE COURT: Elaine Wynn's motion for protective
7 order, in the alternative for preliminary injunction to
8 prevent -- oh, no. That's -- no. It's a different one.
9 I'm on Elaine Wynn's motion to modify, clarify, or,
10 in the alternative, stay the Court's TRO dated August 12th.
11 MR. POLSENBERG: Yeah. So this is the one having to
12 do with paragraph 4 with the release of any information.
13 THE COURT: And I did not mean all.
14 MR. POLSENBERG: Okay. And I figured you didn't,
15 and I've made motions to clarify in front of you before where
16 you've said, no, here's what I mean, and the problem goes
17 away.
18 THE COURT: I just told you what I mean. Yeah.
19 MR. POLSENBERG: Thank you, Your Honor.
20 THE COURT: Did what I say make sense?
21 MR. POLSENBERG: Yes.
22 THE COURT: And my problem is and the way I worded
23 it the way I did is because of this lag time on the
24 depositions.
25 MR. POLSENBERG: That's cool. Your Honor, I have a

1 really long argument on that. Can I make it anyway?

2 THE COURT: No.

3 MR. POLSENBERG: Oh. If I give it to Mr. Pisanelli,
4 can he read it?

5 THE COURT: Yes. I'm sure he would enjoy that.

6 MR. PISANELLI: I'm not the reader in the group.

7 THE COURT: Okay. Let's go to your one that you
8 have a concern about the Wynn parties reviewing the computer
9 information that Ms. Wynn had on her computers at the office.

10 MR. ZELLER: Right. And just briefly, Your Honor.

11 THE COURT: Can't we have this be part of what the
12 special master does?

13 MR. ZELLER: As long as everyone agrees the status
14 quo will be maintained. They've said that they've sequestered
15 this information.

16 THE COURT: That's what they've told us.

17 MR. ZELLER: Well, but then we sent letters after
18 the Court's waiver ruling asking them to confirm, and we
19 didn't get a response. Which is what prompted the motion.

20 THE COURT: Because you guys don't talk to each
21 other.

22 MR. ZELLER: We tried, Your Honor. We tried.

23 THE COURT: You know, I'm going to make a special
24 sessions where you guys are going to come in and I'm going to
25 fix you brownies and root beer floats and you're going to have

1 to do what my DAs and my PDs do, and you're going to act like
2 you care about each other for a couple hours, and then you're
3 going to go away and fight again the next day. Because it's
4 just --

5 MR. ZELLER: I understand, Your Honor. We felt like
6 we had to protect our client because we were not getting a
7 response. If it is --

8 THE COURT: I have not currently said that
9 information is required to be deposited for Advance Discovery,
10 but I have been advised that that information is being
11 maintained. Is that still correct, Mr. Pisanelli?

12 MR. BICE: That is --

13 MR. ZELLER: So they're not reviewing it or using it
14 in the interim. That was our concern.

15 THE COURT: I've already had that commitment from
16 them, and I don't need any more once they commit to me.

17 MR. ZELLER: Well --

18 MR. BICE: We had this agreement with MTO three
19 years ago, Your Honor.

20 MR. ZELLER: Well, the concern was is that because
21 the Court had made the ruling on waiver and said it was going
22 to wait, however, to determine the scope of that ruling on a
23 case-by-case -- on a document-by-document basis. So we wanted
24 to make sure that Wynn Resorts did not interpret as
25 authorization for them to review Elaine Wynn's potentially

1 privileged information. That's what prompted our question.
2 We just unfortunately did not get answered, and that's what
3 prompted our motion.

4 THE COURT: Well, you know, if you guys would ask
5 more than the afternoon before you filed a motion, we'd
6 probably get more answers. But it's not just you. It's you
7 and you and you and you.

8 Okay. So if we could go to what I believe -- is
9 that your last motion that was on today, or do we have a
10 preserve highly confidential designation of testimony?

11 MR. PISANELLI: We do.

12 THE COURT: Maddox, Turik, and Poster.

13 MR. PISANELLI: Your Honor, this is a strange motion
14 to us. We told you a long time ago that it was our
15 expectations to do two things to the best of our ability. One
16 is to provide complete transparency to our auditors in light
17 of the investigation that Elaine Wynn has instigated, and the
18 second is to follow your orders. And so when we have
19 information that is designated as highly confidential we came
20 to you asking for permission to do it without being prejudiced
21 by having any of the protections afforded by that designation
22 waived or lost, et cetera.

23 Elaine Wynn on the one hand says she wants to
24 instigate investigations and claims that we are somehow
25 inhibiting them, and then complains that we've actually come

1 to you to ask for permission to do so. We've seen an opposite
2 strategy at play in this case, and that is wreak havoc and ask
3 for forgiveness later. That's not our style, and that's not
4 what we're going to do.

5 So we've come to you. We've shown you -- Your Honor
6 has even said, if it's confidential give it to EY, no
7 problems, nothing's lost -- that's what I understood -- but if
8 it's highly confidential --

9 THE COURT: But they're going to disclose. If they
10 have to disclose, they'll disclose, because they have
11 different responsibilities than we do, and we cannot force
12 them to abide by our protective order.

13 MR. PISANELLI: And I understand that. But I want
14 to make sure that I'm doing everything -- you know, basically
15 serving these two masters, you being one of them and our
16 obligation to cooperate with our auditors being the other.
17 And so the was the point of this. Elaine Wynn coming in and
18 complaining that we want to give them highly confidential
19 information doesn't make any sense unless the real strategy
20 here is to strip the highly confidential information of its
21 protections because we gave it to the auditor and then the
22 press release will start cranking up again from her team. So
23 I can't understand why in the world they'd be objecting to it.

24 THE COURT: So why would I treat this differently
25 than the last time, which is it maintains whatever protection

1 that it has but Ernst & Young gets to do whatever they're
2 going to do with it?

3 MR. PISANELLI: Because they have to.

4 THE COURT: Because they're the independent auditors
5 and that's their job.

6 MR. PISANELLI: And that's what our expectation was.
7 We just wanted to make sure, as I said, two things, I was
8 complying with your order and that there would be no argument
9 that by giving them the highly confidential information that
10 somehow we are violating an order or that it loses its
11 designation. Remember, Your Honor, there's been -- here's a
12 fundamental disagreement I think we have in this debate.
13 Again I'm having a hard time following Elaine Wynn's position.
14 But they seem to take the position that we can do whatever we
15 want with deposition testimony that we've designated highly
16 confidential. I don't know that that's true. We don't own
17 deposition testimony. No party owns deposition testimony.
18 It's created as a byproduct of this litigation. And so when
19 information is out there that we think is harmful to us that
20 we have some rights under the protective order, then we
21 designate it. That's how it works. But we don't get to just
22 do whatever we want, just like she doesn't get to do whatever
23 she wants. So all we've done is come to you for permission to
24 cooperate with EY and not be prejudiced by that cooperation.
25 That's it.

1 THE COURT: All right. So my ruling's the same as
2 it was the last time, unless you have something else to say,
3 Mr. Zeller.

4 MR. ZELLER: Yes. That's right. This is just a
5 rehash of what it was before.

6 THE COURT: Isn't it nice that you can anticipate I
7 will be consistent?

8 MR. ZELLER: Yeah. Exactly. And just to be clear,
9 however, there is a secondary issue here, which is that they
10 have asked the Court to designate and approve as highly
11 confidential examine excerpts of depositions that clearly do
12 not deserve that treatment. The Court has already expressed
13 concern about overdesignation previously. When the Court
14 looks -- and I'm not going to talk about them, because they're
15 claiming that they're highly confidential. If the Court looks
16 at, for example, what they're trying to designate from Poster,
17 it doesn't even remotely meet the standards. And it's just
18 another example of overdesignation. There is absolutely no
19 reason why that should be designated as confidential, let
20 alone highly confidential.

21 THE COURT: Okay. Well, today's not the day to
22 resolve whether it's confidential or highly confidential. I
23 understand your position.

24 Is there anything else on your stuff, or can I just
25 give you a time to report back to me on the special master

1 issue?

2 MR. PISANELLI: That motion granted?

3 THE COURT: Yes, but not the way you wanted. It's
4 motion granted, but I can't preclude Ernst & Young from
5 whatever use they're going to make of the materials.

6 MR. PISANELLI: I understand that. I just want to
7 make sure, as I said --

8 THE COURT: So let's track the language of whatever
9 the order was I gave last time.

10 MR. PISANELLI: In other words, giving it to Ernst &
11 Young still maintains all protections?

12 THE COURT: Does not strip it of the protections.

13 MR. PISANELLI: Right.

14 THE COURT: But that doesn't mean Ernst & Young
15 can't disclose it wherever it goes.

16 MR. PISANELLI: Understood.

17 THE COURT: Just like the special master reviewing
18 Elaine Wynn's arguably privileged material will not strip it
19 of privilege.

20 Okay. Mr. Peek.

21 MR. PEEK: Your Honor, I just have a question. The
22 hearing on the 20th is on Elaine Wynn's motion for protective
23 order that was filed but not served on the Aruze parties on
24 August 8th to which there will now be a supplemental
25 opposition to which there will be a reply. Am I understanding

1 that correctly that's at 1:00 o'clock?

2 THE COURT: It is. Because I'm in a trial. So I'm
3 going to go late with my jury, and then I'm going to do it at
4 1:00 o'clock, and they're going to have a half hour total.

5 MR. PEEK: The reason I'm asking is I have a
6 deposition that day. I understand that I don't have a dog in
7 that fight, but I certainly want to be part of it. So I just
8 want to make sure whether if I can't cover it somebody else --

9 THE COURT: Break your deposition to go back at
10 1:30.

11 MR. PEEK: Thank you, Your Honor.

12 THE COURT: Okay. When are you going to meet and
13 confer about the special master issues?

14 MR. URGAS: It'll have to be next week.

15 MR. PISANELLI: We'll be ready as early as Tuesday.

16 THE COURT: So here's what I would suggest, because
17 sometimes this works with you guys. It's only worked once. I
18 have this really cool room in the back hallway that I can have
19 you go adjourn to for a half hour or so to see if, given the
20 experience that all of you have had over the years in having
21 special masters appointed, you can get the deal points down,
22 not agree who the special master is, but see if you can reach
23 an agreement on scope, see if you can reach agreement on
24 timing.

25 Why are you looking at me that way?

1 MR. BICE: You gave us 10 minutes?
2 MR. POLSENBERG: They have a really nice room.
3 THE COURT: You can have as many minutes as you
4 want.
5 MR. BICE: Sure, we can do that. We can do that
6 now.
7 THE COURT: Do you want to do it now?
8 MR. POLSENBERG: Judge, you mean do it now?
9 THE COURT: Yes, Mr. Polsenberg, now.
10 MR. BICE: Yeah. Why not?
11 MR. POLSENBERG: No.
12 MS. SPINELLI: He said he didn't have to go anywhere
13 until Sunday.
14 MR. POLSENBERG: Yeah, but --
15 MR. PEEK: We all heard that, Your Honor.
16 MS. SPINELLI: [Inaudible].
17 MR. POLSENBERG: I know that. I know that. You
18 admit that. But there are people I have to talk to before
19 this.
20 THE COURT: So why don't you take a 10-minute break,
21 talk to your team members to make sure nothing you're going to
22 say is --
23 MR. POLSENBERG: Judge, you really don't trust me to
24 meet with them next week?
25 THE COURT: It's not you.

1 MR. URGAS: It's going to be the two of us.
2 MR. POLSENBERG: The two of us.
3 THE COURT: You've got a whole team.
4 MR. POLSENBERG: Okay.
5 THE COURT: You've got a whole team.
6 MR. URGAS: It's the two of us that are going to be
7 meeting.
8 THE COURT: And if I wait to let you meet on
9 Tuesday, I lose three days, three and a half days in a very
10 tight time frame that I currently have with a hearing I'm
11 going to do on 9/29 and 9/30.
12 MR. POLSENBERG: If you think you don't trust me,
13 you can trust Bill Urga.
14 THE COURT: Do you know how slow -- okay, wait. Do
15 you know how hard it was to get Dan to bill anybody and the
16 process that the managing partner had to go through to get Dan
17 to --
18 MR. POLSENBERG: This is privileged information,
19 Your Honor.
20 THE COURT: -- actually bill a client?
21 MR. POLSENBERG: But I've been in therapy.
22 THE COURT: And you're better?
23 MR. POLSENBERG: Better at that.
24 THE COURT: So he's got lots of issues. And, no, I
25 don't trust him to be quick. Although he's better than he

1 used to be, I think.

2 MR. POLSENBERG: I'm way better. No. I'll make
3 arrangements with them right now for what day we're going to
4 meet.

5 THE COURT: I'd really rather you sooner, rather
6 than later, because of the hearing I've got set September 29th
7 and September 30th.

8 (Off-record colloquy)

9 THE COURT: All right. Do you guys want to take
10 advantage of my little room, you want to meet in the hallway?

11 MR. POLSENBERG: I have to talk to some people.

12 THE COURT: Then go take a 10-minute break.

13 MR. POLSENBERG: But I'll be happy to meet with them
14 right now and pick a time next week to meet.

15 (Off-record colloquy)

16 THE COURT: Mr. Campbell, you said there was
17 something you wanted to say before you all left.

18 MR. CAMPBELL: Your Honor, it's already been
19 resolved.

20 THE COURT: Isn't that nice.

21 MR. CAMPBELL: No need to trouble the Court with it.

22 MR. URGAS: We took care of Don's problem.

23 THE COURT: Okay. Have a good Labor Day weekend.

24 Goodbye.

25 THE PROCEEDINGS CONCLUDED AT 2:18 P.M.

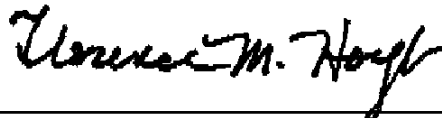
CERTIFICATION

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

AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

9/3/16

DATE