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IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS, LIMITED,

Petitioner,

vs.

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

Respondent,

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

Real Parties in Interest.

Case No. 73949

Electronically Filed
Sep 12 2017 10:24 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**WYNN RESORTS, LIMITED'S
MOTION TO FILE PAGES 76-254,
552-571, 584-755, 765-786, 809-939,
AND 934-1018 OF ITS APPENDIX
UNDER SEAL AND TO REDACT
PORTIONS OF ITS PETITION
FOR WRIT OF PROHIBITION OR
ALTERNATIVELY MANDAMUS**

I. INTRODUCTION

Pursuant to Part VII of the Supreme Court Rules Governing Sealing and Redacting Court Records, Petitioner Wynn Resorts, Limited ("Wynn Resorts") hereby moves this Court to seal pages 76-254, 552-571, 584-755, 765-786, 809-939, and 934-1018 of its Appendix and redact portions of its Petition for Writ of Prohibition or Mandamus (the "Petition"). The Appendix contains briefing with either sealed or redacted filings, deposition transcripts and exhibits that were protected in the District Court pursuant to the Protective Order with Respect to Confidentiality entered by the District Court on February 14, 2013 pursuant to Nevada Rule of Civil Procedure 26(c). In addition, the Petition quotes and summarizes either sealed or redacted filings, deposition transcripts, and exhibits protected pursuant to the same Protective Order.

1 **II. ANALYSIS**

2 Part VII of the Supreme Court Rules provides that records submitted to this
3 Court may be submitted in redacted or sealed form, subject to further order. The
4 Court will keep the documents redacted or under seal if there is an appropriate basis
5 under SRCR 3(4). SRCR 3(4) permits the sealing or redaction of the record when
6 justified by compelling privacy or safety interests that outweigh the public interest
7 in access to the court record. Furthermore, the public interest in privacy
8 outweighs the public interest in open court records when the sealing or redaction
9 furthers a protective order entered under NRCP 26(c). SRCR 3(4)(b).

10 Here, after briefing from the parties, the District Court entered a
11 Protective Order with Respect to Confidentiality under NRCP 26(c) (the
12 "Protective Order"). (Ex. 1.) Pursuant to the Protective Order, the parties are
13 permitted to designate materials that contain "information that constitutes, reflects,
14 or discloses nonpublic information, trade secrets, know-how, or other financial,
15 proprietary, commercially sensitive, confidential business, marketing, regulatory,
16 or strategic information (regarding business plans or strategies, technical data, and
17 nonpublic designs)" as Confidential. (*Id.* ¶¶ 2-3.) Additionally, the Protective Order
18 includes designation of materials as Highly Confidential if "the disclosure of which
19 would create a substantial risk of competitive, business, or personal injury to the
20 Producing Party." (*Id.* ¶ 5.) And, information that is designated as Confidential or
21 Highly Confidential may be filed with the Court and kept under seal and/or
22 redacted upon motion of the filing party. (*Id.* ¶ 9.)

23 Wynn Resorts and Real Parties in Interest, Kazuo Okada, Aruze USA, Inc.,
24 and Universal Entertainment Corp., have designated certain materials as
25 Confidential or Highly Confidential in accordance with the Protective Order.
26 Moreover, the parties have filed certain pleadings under seal and/or in redacted
27 form in accordance with the Protective Order. To present this issue to the Court,
28

1 however, it is necessary to present the unredacted and unsealed versions of this
2 material to the Court, and to redact or seal certain portions of the writ or appendix
3 that quote or summarize material designated as Confidential or
4 Highly Confidential in accordance with the Protective Order. Thus, to avoid
5 running afoul of the Protective Order, Wynn Resorts seeks an order allowing it to
6 file the Petition in redacted form and to submit the unredacted writ for this Court's
7 consideration under seal. Wynn Resorts also seeks an order allowing it to file pages
8 76-254, 552-571, 584-755, 765-786, 809-939, and 934-1018 of its Appendix, which
9 contain the unredacted versions of the materials under seal.

10 Specifically, Wynn Resorts seeks to file the following documents contained in
11 its Appendix under seal:

- 12 (a) Minutes of a Special Meeting of the Board of Directors of
13 Wynn Resorts, Limited dated February 18, 2012 (App. Vol I-II,
14 0076-0254);
- 15 (b) Defendants' Motion to Set a Date Certain on Production of
16 Pre-Redemption Freeh Documents Withheld As Attorney-Client
17 Privileged; *Ex Parte* Application for Order Shortening Time and Order
18 Thereon (App. Vol III-IV, 0584-0755);¹
- 19 (c) Wynn Resorts, Limited's Opposition to Motion to Set a Date Certain on
20 Production of Pre-Redemption Freeh Documents (App. Vol IV,
21 0765-0786);²
- 22
23

24
25 ¹ The publicly filed (redacted) version of this document is also included in the
26 Appendix. (*See* App. Vol IV, 0756-0764.)

27 ² The publicly filed (redacted) version of this document is also included in the
28 Appendix. (*See* App. Vol IV, 0787-0808.)

- 1 (d) Appendix to Wynn Resorts, Limited's Opposition to Motion to Set a
2 Date Certain on Production of Pre-Redemption Freeh Documents
3 (App. Vol IV, 0809-0939);³
4 (e) Defendants' Reply in Support of Motion to Set a Date Certain on
5 Production of Pre-Redemption Freeh Documents (App. Vol V,
6 0984-1018);⁴
7 (f) Excerpts from Volume I of Governor Miller's Deposition Transcript,
8 February 9, 2016 (App. Vol III, 0556-0560);
9 (g) Excerpts from Volume I of D. Boone Wayson's Deposition Transcript,
10 February 16, 2016 (App. Vol III, 0566-0571);
11 (h) Excerpts from Volume I of Russell Goldsmith's Deposition Transcript,
12 February 19, 2016 (App. Vol III, 0561-0565); and
13 (i) Excerpts from Volume I of Alvin Shoemaker's Deposition Transcript,
14 January 28, 2016 (App. Vol III, 0552-0555).

15 The discussion that follows demonstrates how each document listed herein
16 furthers the purpose and intent of the district court's Protective Order, and identifies
17 either the date the document was filed under seal in the district court or that the
18 document was designated Confidential or Highly Confidential under the
19 District Court's Protective Order.

20 (a) *Minutes of a Special Meeting of the Board of Directors of*
21 *Wynn Resorts, Limited dated February 18, 2012.*

22 The Minutes of a Special Meeting of the Board of Directors of Wynn Resorts,
23 Limited dated February 18, 2012 (the "Minutes") are presented in Volumes I and II
24

25 ³ The publicly filed (redacted) version of this document is also included in the
26 Appendix. (See App. Vol IV, 0940-0983.)

27 ⁴ The publicly filed (redacted) version of this document is also included in the
28 Appendix. (See App. Vol V, 1019-1040.)

1 of the Appendix, 0076-0254. Wynn Resorts designated the Minutes Confidential.
2 Accordingly, Wynn Resorts requests that the Minutes, presented in Volumes I and II,
3 0076-0254 of the Appendix, be sealed.

4 **(b) *Defendants' Motion to Set a Date Certain on Production of***
5 ***Pre-Redemption Freeh Documents Withheld As Attorney-Client***
6 ***Privileged; Ex Parte Application for Order Shortening Time and***
7 ***Order Thereon.***

8 Defendants' Motion to Set a Date Certain on Production of Pre-Redemption
9 Freeh Documents Withheld As Attorney-Client Privileged; *Ex Parte* Application for
10 Order Shortening Time and Order Thereon (the "Motion") is presented in
11 Volumes III and IV of the Appendix, 0584-0755. Defendants filed a motion to seal
12 Exhibit A to the Motion. *See* Mot. to Seal Ex. A to Defs.' Mot. to Set a Date Certain
13 on Produc. of Pre-Redemption Freeh Docs. Withheld as Attorney-Client Privileged;
14 *Ex Parte* Appl. for OST & Order Thereon electronically filed Aug. 8, 2017.

15 Although the motion to seal was set to be heard on August 25, 2017, the
16 District Court has not yet entered an order on that motion to seal. Accordingly,
17 Wynn Resorts requests that the Motion presented in Volumes III and IV, 0584-0755
18 of the Appendix, be filed under seal pending the District Court's order. The publicly
19 filed version of the Motion is set forth in Volume IV of the Appendix, 0756-0764.

20 **(c) *and (d): Wynn Resorts, Limited's Opposition to Motion to Set a Date***
21 ***Certain on Production of Pre-Redemption Freeh Documents and***
22 ***Appendix to Wynn Resorts, Limited's Opposition to Motion to Set a***
23 ***Date Certain on Production of Pre-Redemption Freeh Documents.***

24 Wynn Resorts, Limited's Opposition to Motion to Set a Date Certain on
25 Production of Pre-Redemption Freeh Documents (the "Opposition") is presented in
26 Volume IV of the Appendix, 0765-0786, and the appendix to the Opposition is
27 presented in Volume IV of the Appendix, 0809-0939. Wynn Resorts filed a motion
28 to seal/redact on August 24, 2017. *See* Mot. to (1) Redact Wynn Resorts, Ltd.'s Opp'n
to Mot. to Set a Date Certain on Produc. of Pre-Redemption Freeh Docs. & (2) Seal

1 Exs. 1-14 & 16 Thereto; and *Ex Parte* Application for an OST, electronically filed
2 Aug. 24, 2017.

3 Although the motion to seal/redact was set to be heard on August 25, 2017, the
4 District Court has not yet entered an order on the motion to seal/redact. Wynn Resorts
5 requests that the full Opposition and the appendix, Volume IV, 0765-0786
6 and 0809-0939, be filed under seal. The publicly filed version of the Opposition and
7 appendix are set forth in Volume IV of the Appendix, APP_0787-0808
8 and 0940-0983.

9 ***(e) Defendants' Reply in Support of Motion to Set a Date Certain on***
10 ***Production of Pre-Redemption Freeh Documents.***

11 Defendants' Reply in Support of Motion to Set a Date Certain on Production
12 of Pre-Redemption Freeh Documents (the "Reply") is presented in Volume V,
13 APP_0984-1018 of the Appendix. Defendants redacted portions of the Reply, and
14 submitted certain exhibits to the Reply under seal.

15 Although Defendants' motion to seal/redact is not on file, the district court
16 issued its oral order granting Defendants' motion to seal/redact on August 25, 2017.
17 *See* Volume V, 1122. The District Court has not yet entered an order on the motion
18 to seal/redact. Wynn Resorts requests that the full Reply be filed under seal,
19 consistent with the District Court's oral order. The publicly filed version of the Reply
20 is set forth in Volume V of the Appendix, 1019-1040.

21 ***(f)-(i): Deposition Excerpts.***

22 Excerpts from deposition transcripts are set forth in the Appendix as follows:
23 excerpts from Volume I of Governor Miller's Deposition Transcript, February 9, 2016
24 (App. Vol III, 0556-0560); excerpts from Volume I of D. Boone Wayson's Deposition
25 Transcript, February 16, 2016 (App. Vol III, 0566-0571); excerpts from Volume I of
26 Russell Goldsmith's Deposition Transcript, February 19, 2016 (App. Vol III,
27 0561-0565); and excerpts from Volume I of Alvin Shoemaker's Deposition
28

1 Transcript, January 28, 2016 (App. Vol III, 0552-0555). The Wynn Parties have
2 designated portions of these deposition excerpts Confidential or Highly Confidential,
3 which have been either accepted by the Okada Parties or approved by the
4 District Court. Accordingly, Wynn Resorts requests that Volume III, 0556-0560,
5 0566-0571, 0561-0565, and 0552-0555 be filed under seal.

6 **III. CONCLUSION**

7 Based upon the foregoing, Wynn Resorts respectfully requests that this Court
8 permit it to file the Petition in redacted form and to submit the unredacted Petition
9 under seal. Wynn Resorts also respectfully requests an order allowing it to file pages
10 76-254, 552-571, 584-755, 765-786, 809-939, and 934-1018 of its Appendix under
11 seal.

12 DATED this 11th day of September, 2017.

13 PISANELLI BICE PLLC

14
15 By: /s/ Debra L. Spinelli
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18 Debra L. Spinelli, Esq., Bar No. 9695
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21 Attorneys for Petitioner Wynn Resorts, Limited
22
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 11th day of September, 2017, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **WYNN RESORTS, LIMITED'S MOTION TO FILE PAGES 76-254, 552-571, 584-755, 765-786, 809-939, AND 934-1018 OF ITS APPENDIX UNDER SEAL AND TO REDACT PORTIONS OF ITS PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY MANDAMUS** properly addressed to the following:

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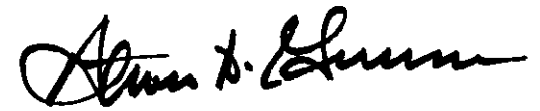
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EXHIBIT 1



CLERK OF THE COURT

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18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 WYNN RESORTS, LIMITED, a Nevada
21 Corporation,
22 **Plaintiff,**
23 vs.
24 KAZUO OKADA, an individual, ARUZE
USA, INC., a Nevada corporation, and
25 UNIVERSAL ENTERTAINMENT CORP.,
a Japanese corporation,
26 **Defendants.**
27 **AND ALL RELATED CLAIMS**
28

Case No.: A-12-656710-B
Dept. No.: XI
WYNN PARTIES' PROPOSED
PROTECTIVE ORDER WITH
RESPECT TO CONFIDENTIALITY

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

1 The Wynn Parties hereby propose that the handling of confidential material in these
2 proceedings shall be governed by the provisions set forth below:

3 1. **Applicability of this Protective Order:** Subject to Section 20 below, this
4 Protective Order does not and will not govern any trial proceedings in this action but will
5 otherwise be applicable to and govern the handling of documents, depositions, deposition
6 exhibits, interrogatory responses, responses to requests for admissions, responses to requests for
7 production of documents, and all other discovery obtained pursuant to Nevada Rules of Civil
8 Procedure or other legal process by or from, or produced on behalf of, a party or witness in
9 connection with this action (this information hereinafter shall be referred to as "Discovery
10 Material"). As used herein, "Producing Party" or "Disclosing Party" shall refer to the parties and
11 nonparties that give testimony or produce documents or other information in connection with this
12 action; "Receiving Party" shall refer to the parties in this action that receive such information, and
13 "Authorized Recipient" shall refer to any person or entity authorized by Sections 10 and 11 of this
14 Protective Order to obtain access to Confidential Information, Highly Confidential Information,
15 or the contents of such Discovery Material.

16 2. **Designation of Information:** Any Producing Party may designate Discovery
17 Material that is in its possession, custody, or control produced to a Receiving Party as
18 "Confidential" or "Highly Confidential" under the terms of this Protective Order if the Producing
19 Party in good faith reasonably believes that such Discovery Material contains nonpublic,
20 confidential information as defined in Sections 4 and 5 below.

21 3. **Exercise of Restraint and Care in Designating Material for Protection:** Each
22 Producing Party that designates information or items for protection under this Protective Order
23 must take care to limit any such designation to specific material that qualifies under the
24 appropriate standards. Indiscriminate designations are prohibited.

25 4. **Confidential Information:** For purposes of this Protective Order, "Confidential
26 Information" means any Protected Data (as defined below) or any information that constitutes,
27 reflects, or discloses nonpublic information, trade secrets, know-how, or other financial,
28 proprietary, commercially sensitive, confidential business, marketing, regulatory, or strategic

1 information (regarding business plans or strategies, technical data, and nonpublic designs), the
2 disclosure of which the Producing Party believes in good faith might reasonably result in
3 economic or competitive, or business injury to the Producing Party (or its affiliates, personnel, or
4 clients) and which is not publicly known and cannot be ascertained from an inspection of publicly
5 available sources, documents, material, or devices. Confidential Information shall also include
6 sensitive personal information that is not otherwise publicly available, such as home addresses;
7 social security numbers; dates of birth; employment personnel files; medical information; home
8 telephone records/numbers; employee disciplinary records; family court documents sealed by the
9 family court pursuant to NRS 125.110 or designated Confidential by agreement of the parties to
10 the family court proceedings at issue; wage statements or earnings statements; employee benefits
11 data; tax records; and other similar personal financial information. A party may also designate as
12 "CONFIDENTIAL" compilations of publicly available discovery materials, which would not be
13 known publicly in a compiled form.

14 (a) Protected Data. The term "Protected Data" shall refer to any information
15 that a party believes in good faith to be subject to federal, state or foreign data protection laws or
16 other privacy obligations. Protected Data constitutes highly sensitive materials requiring special
17 protection. Examples of such laws include, but are not limited to, the Macau Personal Data
18 Protection Act ("MDPA"), Macao Special Administrative Region Law n.º 16/2001 ("Judicial
19 system for operating games of fortune in casinos"), and other state, federal, and/or foreign law(s)
20 that impose special protections.

21 5. **Highly Confidential Information:** For purposes of this Protective Order, Highly
22 Confidential Information is any Protected Data and/or Confidential Information as defined in
23 Section 4 above that also includes (a) extremely sensitive, highly confidential, nonpublic
24 information, consisting either of trade secrets or proprietary or other highly confidential business,
25 financial, regulatory, private, or strategic information (including information regarding business
26 plans, technical data, and nonpublic designs), the disclosure of which would create a substantial
27 risk of competitive, business, or personal injury to the Producing Party, and/or (b) nonpublic
28 documents or information reflecting the substance of conduct or communications that are the

1 subject of state, federal, or foreign government investigations. Certain Protected Data may
2 compel alternative or additional protections beyond those afforded Highly Confidential
3 Information, in which event the parties shall meet and confer in good faith, and, if unsuccessful,
4 the party seeking any greater protection shall move the Court for appropriate relief. A party may
5 re-designate material originally "CONFIDENTIAL" as "HIGHLY CONFIDENTIAL" by giving
6 notice of such a re-designation to all parties.

7 **6. Designating Confidential Information or Highly Confidential Information.** If
8 any party in this action determines in good faith that any information, documents, things, or
9 responses produced in the course of discovery in this action should be designated as Confidential
10 Information or Highly Confidential Information (the "Designating Party"), it shall advise any
11 party receiving such material of this fact, and all copies of such document, things, or responses, or
12 portions thereof deemed to be confidential shall be marked "CONFIDENTIAL" or "HIGHLY
13 CONFIDENTIAL" (whether produced in hard copy or electronic form) at the expense of the
14 designating party and treated as such by all parties. A Designating Party may inform another
15 party that a document is Confidential or Highly Confidential by providing the Bates number of
16 the document in writing. If Confidential or Highly Confidential Information is produced via an
17 electronic form on a computer readable medium (*e.g.*, CD-ROM), other digital storage medium,
18 or via Internet transmission, the Producing Party or Designating Party shall affix in a prominent
19 place on the storage medium or container file on which the information is stored, and on any
20 container(s) for such medium, the legend "Includes CONFIDENTIAL INFORMATION" or
21 "Includes HIGHLY CONFIDENTIAL INFORMATION." Nothing in this section shall extend
22 confidentiality or the protections associated therewith to any information that does not otherwise
23 constitute "Confidential Information" or "Highly Confidential Information" as defined in Sections
24 4 and 5 herein.

25 **7. Redaction Allowed:** Any Producing Party may redact from the documents or
26 things it produces matter that the Producing Party claims is subject to the attorney-client privilege,
27 the work product doctrine, a legal prohibition against disclosure, or any other privilege from
28 disclosure. Any Producing Party also may redact information that is both personal and

1 nonresponsive, such as a social security number. A Producing Party may not withhold
2 nonprivileged, responsive information solely on the grounds that such information is contained in
3 a document that includes privileged information. The Producing Party shall mark each redaction
4 with a legend stating "REDACTED," and include an annotation indicating the specific reason for
5 the redaction (e.g., "REDACTED—Work Product"). All documents redacted based on attorney
6 client privilege or work product immunity shall be listed in an appropriate log in conformity with
7 Nevada law and Nevada Rule of Civil Procedure 26(b)(5). Where a document consists of more
8 than one page, the page on which information has been redacted shall so be marked. The
9 Producing Party shall preserve an unredacted version of such document. In addition to the
10 foregoing, the following shall apply to redactions of Protected Data:

11 (a) Any party may redact Protected Data that it claims, in good faith, requires
12 protections under the terms of this Protective Order.

13 (b) Protected Data shall be redacted from any public filing not filed under seal.

14 (c) The right to challenge and the process for challenging redactions shall be
15 the same as the right to challenge and the process from challenging the designation of
16 Confidential Information or Highly Confidential Information.

17 **8. Use of Confidential Information or Highly Confidential Information.** Except
18 as provided herein, Confidential Information and Highly Confidential Information designated or
19 marked shall be maintained in confidence, used solely for the purposes of this action, to the extent
20 not otherwise prohibited by an order of the Court, shall be disclosed to no one except those
21 persons identified herein in Sections 10 and 11, and shall be handled in such manner until such
22 designation is removed by the Designating Party or by order of the Court. Confidential or Highly
23 Confidential information produced by another party shall not be used by any Receiving Party for
24 any commercial, competitive or personal purpose. Nothing in this Protective Order shall govern
25 or restrict a Producing Party's use of its own Confidential or Highly Confidential Information in
26 any way.

27 **9.** Once the Court enters this Protective Order, a party shall have thirty (30) days to
28 designate as Confidential or Highly Confidential any documents previously produced in this

1 action, which it can do by stamping "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on the
2 document, or informing the other parties of the Bates-numbers of the documents so designated.

3 **10. Use of Confidential Information and Highly Confidential Information in**
4 **Depositions.** Counsel for any party shall have the right to disclose Confidential or Highly
5 Confidential Information at depositions, provided that such disclosure is consistent with this
6 Protective Order, including Sections 10 and 11. Any counsel of record may request that all
7 persons not entitled under Sections 10 or 11 of this Protective Order to have access to
8 Confidential Information or Highly Confidential Information leave the deposition room during the
9 confidential portion of the deposition. Failure of such other persons to comply with a request to
10 leave the deposition shall constitute substantial justification for counsel to advise the witness that
11 the witness need not answer the question where the answer would disclose Confidential
12 Information or Highly Confidential Information. Additionally, at any deposition session, (1) upon
13 inquiry with regard to the content of any discovery material(s) designated or marked as
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY;"
15 (2) whenever counsel for a party deems that the answer to a question may result in the disclosure
16 or revelation of Confidential or Highly Confidential Information; and/or (3) whenever counsel
17 for a party deems that the answer to any question has resulted in the disclosure or revelation of
18 Confidential or Highly Confidential Information, counsel to any party may designate portions of a
19 deposition transcript and/or video of any deposition (or any other testimony) as containing
20 Confidential or Highly Confidential Information in accordance with this Order by a statement on
21 the record during the deposition or by notifying all other parties in writing, within thirty (30)
22 calendar days of receiving the transcript or video that it contains Confidential or Highly
23 Confidential Information and designating the specific pages, lines, and/or counter numbers as
24 containing Confidential or Highly Confidential Information. If a designation is made via a
25 statement on the record during a deposition, counsel must follow up in writing within thirty (30)
26 calendar days of receiving the transcript or video, identifying the specific pages, lines, and/or
27 counter numbers containing the Confidential or Highly Confidential Information. If no
28 confidentiality designations are made within the thirty calendar (30) day period, the entire

1 transcript shall be considered nonconfidential. During the thirty (30) day period, the entire
2 transcript and video shall be treated as Confidential Information (or Highly Confidential
3 Information). All originals and copies of deposition transcripts that contain Confidential
4 Information or Highly Confidential Information shall be prominently marked "CONFIDENTIAL"
5 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on the cover thereof and, if and
6 when filed with the Court, the portions of such transcript so designated shall be filed under seal.
7 Counsel must designate portions of a deposition transcript as "CONFIDENTIAL" or "HIGHLY
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY" within thirty calendar (30) days of receiving
9 the transcript. Any DVD or other digital storage medium containing Confidential or Highly
10 Confidential deposition testimony shall be labeled in accordance with the provisions of
11 Section 6.

12 **11. Persons Authorized to Receive Confidential Information.** Confidential
13 Information produced pursuant to this Protective Order may be disclosed or made available only
14 to the Court, its employees, other court personnel, any discovery referee, mediator or other
15 official who may be appointed by the Court, and to the persons below:

16 (a) A party, or officers, directors, employees, and agents of a party deemed
17 necessary by counsel to aid in the prosecution, defense, or settlement of this action;

18 (b) Counsel for a party (including in house attorneys, outside attorneys
19 associated with a law firm(s) of record, and paralegal, clerical, and secretarial staff employed by
20 such counsel);

21 (c) Persons retained by a party to provide litigation support services
22 (photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing, storing,
23 retrieving data in any form or medium, etc.);

24 (d) Consultants or expert witnesses (together with their support staff) retained
25 for the prosecution or defense of this litigation, provided that such an expert or consultant is
26 not a current employee of a direct competitor of a party named in this action; (fn)

27 (e) Court reporter(s) and videographers(s) employed in this action;

28 (f) Any authors or recipients of the Confidential Information;

(fn) A party may seek leave of court to provide information to a consultant employed by a competitor

1 (g) A witness at any deposition or other proceeding in this action, who shall
2 sign the Confidentiality Agreement attached as "Exhibit A" to this Protective Order before being
3 shown a confidential document; and

4 (h) Any other person as to whom the parties in writing agree or that the Court
5 in these proceedings so designates.

6 Any person to whom Confidential Information is disclosed pursuant to subparts (a)
7 through (g) hereinabove shall be advised that the Confidential Information is being disclosed
8 pursuant to an order of the Court, that the information may not be disclosed by such person to any
9 person not permitted to have access to the Confidential Information pursuant to this Protective
10 Order, and that any violation of this Protective Order may result in the imposition of such
11 sanctions as the Court deems proper. Any person to whom Confidential Information is disclosed
12 pursuant to subpart (c), (d), (g) or (h) of this section shall also be required to execute a copy of the
13 form Exhibit A. The persons shall agree in writing to be bound by the terms of this Protective
14 Order by executing a copy of Exhibit A (which shall be maintained by the counsel of record for
15 the party seeking to reveal the Confidential Information) in advance of being shown the
16 Confidential Information. No party (or its counsel) shall discourage any persons from signing a
17 copy of Exhibit A. If a person refuses to execute a copy of Exhibit A, the party seeking to reveal
18 the Confidential Information shall seek an order from the Court directing that the person be bound
19 by this Protective Order. In the event of the filing of such a motion, Confidential Information
20 may not be disclosed to such person until the Court resolves the issue. Proof of each written
21 agreement provided for under this Section shall be maintained by each of the parties while this
22 action is pending and disclosed to the other parties upon good cause shown and upon order of the
23 Court.

24 **12. Persons Authorized to Receive Highly Confidential Information.** "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" documents and information may be used only
26 in connection with this case and may be disclosed only to the Court and the persons listed in
27 subsections (b) to (e) and (g) to (h) of Section 10 above, but shall not be disclosed to a party, or
28 an employee of a party, unless otherwise agreed or ordered. With respect to sub-section (f), the

1 parties will consider disclosure of Highly Confidential Information to an author or recipient
2 on a case by case basis. Any person to whom Highly Confidential Information is disclosed
3 pursuant to sub-sections (c), (d), (g) or (h) of Section 10 above shall also be required to execute a
4 copy of the form Exhibit A.

5 **13. Filing of Confidential Information or Highly Confidential Information With**
6 **Court.** Any party seeking to file or disclose materials designated as Confidential Information or
7 Highly Confidential Information with the Court in this Action must seek to file such Confidential
8 or Highly Confidential Information under seal pursuant to Rule 3 of the Nevada Rules for Sealing
9 and Redacting Court Records. The Designating Party will have the burden to provide the Court
10 with any information necessary to support the designation as Confidential Information.

11 **14. Notice to Nonparties.** Any party issuing a subpoena to a nonparty shall enclose a
12 copy of this Protective Order and advise the nonparty that it may designate any Discovery
13 Material it produces pursuant to the terms of this Protective Order, should the nonparty producing
14 party wish to do so. This Order shall be binding in favor of nonparty designating parties to the
15 maximum extent permitted by law. Any nonparty invoking the Protective Order shall comply
16 with, and be subject to, all applicable sections of the Protective Order.

17 **15. Knowledge of Unauthorized Use or Possession.** If a party receiving Confidential
18 Information or Highly Confidential Information learns of any possession, knowledge, use or
19 disclosure of any Confidential Information or Highly Confidential Information in violation of the
20 terms of this Protective Order, the Receiving Party shall immediately notify in writing the party
21 that produced the Confidential Information or Highly Confidential Information. The Receiving
22 Party shall promptly furnish the Producing Party the full details of such possession, knowledge,
23 use or disclosure. With respect to such unauthorized possession, knowledge, use or disclosure the
24 Receiving Party shall assist the Producing Party in remedying the disclosure (*e.g.*, by retrieving
25 the Confidential Information from an unauthorized recipient) and/or preventing its recurrence.

26 **16. Copies, Summaries or Abstracts.** Any copies, summaries, abstracts or exact
27 duplications of Confidential Information or Highly Confidential Information shall be marked
28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" and shall be

1 considered Confidential Information or Highly Confidential Information subject to the terms and
2 conditions of this Protective Order. Attorney-client communications and attorney work product
3 regarding Confidential Information or Highly Confidential Information shall not be subject to this
4 section, regardless of whether they summarize, abstract, paraphrase, or otherwise reflect
5 Confidential Information or Highly Confidential Information.

6 **17. Information Not Confidential.** The restrictions set forth in this Protective Order
7 shall not be construed to apply to any information or materials that:

8 (a) Were lawfully in the Receiving Party's possession prior to such
9 information being designated as Confidential or Highly Confidential Information in this action,
10 and that the Receiving Party is not otherwise obligated to treat as confidential;

11 (b) Were obtained without any benefit or use of Confidential or Highly
12 Confidential Information from a third party having the right to disclose such information to the
13 Receiving Party without restriction or obligation of confidentiality;

14 (c) Were independently developed after the time of disclosure by persons who
15 did not have access to the Producing Party's Confidential or Highly Confidential Information;

16 (d) Have been or become part of the public domain by publication or
17 otherwise and not due to any unauthorized act or omission on the part of a Receiving Party; or

18 (e) Under law, have been declared to be in the public domain.

19 **18. Challenges to Designations.** Any party may object to the designation of
20 Confidential Information or Highly Confidential Information on the ground that such information
21 does not constitute Confidential Information or Highly Confidential Information by serving
22 written notice upon counsel for the Producing Party within sixty (60) calendar days of the date
23 the item(s) was designated, specifying the item(s) in question and the grounds for the objection.
24 If a party objects to the designation of any materials as Confidential Information or Highly
25 Confidential Information, the party challenging the designation shall arrange for an EDCR 2.34
26 conference to be held within ten (10) calendar days of service of a written objection to the
27 designation to attempt to informally resolve the dispute. If the parties cannot resolve the matter,
28 the party challenging the designation may file a motion with the Court to resolve the dispute.

1 Such motions must be filed within ten (10) calendar days of the EDCR 2.34 conference. This
2 Protective Order will not affect the burden of proof on any such motion, or impose any burdens
3 upon any party that would not exist had the Protective Order not been entered; as a general
4 matter, the burden shall be on the person making the designation to establish the propriety of the
5 designation. Any contested information shall continue to be treated as confidential and subject to
6 this Protective Order until such time as such motion has been ruled upon.

7 **19. Use in Court.** If any Confidential Information or Highly Confidential Information
8 is used in any pretrial Court proceeding in this action, it shall not necessarily lose its confidential
9 status through such use, and the party using such information shall take all reasonable steps
10 consistent with the Nevada Supreme Court Rules Governing Sealing and Redacting Court
11 Records to maintain its confidentiality during such use.

12 **20. No Waiver.** This Protective Order is entered solely for the purpose of facilitating
13 the exchange of documents and information among the parties to this action without involving the
14 Court unnecessarily in the process. Nothing in this Protective Order, nor the production of any
15 information or document under the terms of this Protective Order, nor any proceedings pursuant
16 to this Protective Order shall be deemed to be a waiver of any rights or objections to challenge the
17 authenticity or admissibility of any document, testimony or other evidence at trial. Additionally,
18 this Protective Order will not prejudice the right of any party or nonparty to oppose production of
19 any information on the ground of attorney-client privilege; work product doctrine or any other
20 privilege or protection provided under the law.

21 **21. Reservation of Rights.** The parties each reserve the right to seek or oppose
22 additional or different protection for particular information, documents, materials, items or things.
23 This Stipulation shall neither enlarge nor affect the proper scope of discovery in this Action. In
24 addition, this Stipulation shall not limit or circumscribe in any manner any rights the Parties (or
25 their respective counsel) may have under common law or pursuant to any state, federal, or foreign
26 statute or regulation, and/or ethical rule.

27 **22. Inadvertent Failure to Designate.** The inadvertent failure to designate
28 information produced in discovery as Confidential or Highly Confidential shall not be deemed, by

1 itself, to be a waiver of the right to so designate such discovery materials as Confidential
2 Information or Highly Confidential Information. Within a reasonable time of learning of any
3 such inadvertent failure, the Producing Party shall notify all Receiving Parties of such inadvertent
4 failure and take such other steps as necessary to correct such failure after becoming aware of it.
5 Disclosure of such discovery materials to any other person prior to later designation of the
6 discovery materials in accordance with this section shall not violate the terms of this Protective
7 Order. However, immediately upon being notified of an inadvertent failure to designate, all
8 parties shall treat such information as though properly designated, and shall take any actions
9 necessary to prevent any future unauthorized disclosure, use, or possession.

10 **23. No Waiver of Privilege:** Disclosure (including production) of information after
11 the parties' entry of this Protective Order that a party or nonparty later claims was inadvertent and
12 should not have been disclosed because of a privilege, including, but not limited to, the
13 attorney-client privilege or work product doctrine ("Privileged Information"), shall not constitute
14 a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product, or
15 other ground for withholding production as to which the Disclosing or Producing Party would be
16 entitled in this action.

17 **24. Effect of disclosure of Privileged Information:** The Receiving Party hereby
18 agrees to promptly return, sequester, or destroy any Privileged Information disclosed or produced
19 by Disclosing or Producing Party upon request by Disclosing or Producing Party regardless of
20 whether the Receiving Party disputes the designation of Privileged Information. The Receiving
21 Party may sequester (rather than return or destroy) such Privileged Information only if it contends
22 that the information itself is not privileged or otherwise protected and it challenges the privilege
23 designation, in which case it may only sequester the information until the claim of privilege or
24 other protection is resolved. If any party disputes the privilege claim ("Objecting Party"), that
25 Objecting Party shall object in writing by notifying the Producing Party of the dispute and the
26 basis therefore. The parties thereafter shall meet and confer in good faith regarding the disputed
27 claim within seven (7) court days after service of the written objection. In the event that the
28 parties do not resolve their dispute, the Objecting Party may bring a motion for a determination of

1 whether a privilege applies within ten (10) court days of the meet and confer session, but may
2 only contest the asserted privileges on ground other than the inadvertent production of such
3 document(s). In making such a motion, the Objecting Party shall not disclose the content of the
4 document(s) at issue, but may refer to the information contained on the privilege log. Nothing
5 herein shall relieve counsel from abiding by applicable ethical rules regarding inadvertent
6 disclosure and discovery of inadvertently disclosed privileged or otherwise protected material.
7 The failure of any party to provide notice or instructions under this Paragraph shall not constitute
8 a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product, or
9 other ground for withholding production as to which the Disclosing or Producing Party would be
10 entitled in this action.

11 **25. Inadvertent Production of Non-Discoverable Documents.** If a Producing Party
12 inadvertently produces a document that contains no discoverable information, the Producing Party
13 may request in writing that the Receiving Party return the document, and the Receiving Party will
14 return the document. A Producing Party may not request the return of a document pursuant to
15 this section if the document contains any discoverable information. If a Producing Party
16 inadvertently fails to redact personal information (*e.g.*, a social security number), the Producing
17 Party may provide the Receiving Party a substitute version of the document that redacts the
18 personal information, and the Receiving Party shall return the original, unredacted document to
19 the Producing Party.

20 **26. Return of Information.** Within thirty (30) calendar days after the final
21 disposition of this action, all Confidential Material and/or Highly Confidential Material produced
22 by an opposing party or nonparty (including, without limitation, any copies, extracts or
23 summaries thereof) as part of discovery in this action shall be destroyed by the parties to whom
24 the Confidential Material and/or Highly Confidential Material was produced, and each counsel
25 shall, by declaration delivered to all counsel for the Producing Party, affirm that all such
26 Confidential Material and/or Highly Confidential Material (including, without limitation, any
27 copies, extracts or summaries thereof) has been destroyed; provided, however, that each counsel
28 shall be entitled to retain pleadings, motions and memoranda in support thereof, declarations or

1 affidavits, deposition transcripts and videotapes, or documents reflecting attorney work product or
2 consultant or expert work product, even if such material contains or refers to Confidential
3 Material and/or Highly Confidential Material, but only to the extent necessary to preserve a
4 litigation file with respect to this action.

5 **27. Attorney's Fees.** Nothing in this Protective Order is intended to either expand or
6 limit a prevailing party's right under the Nevada Rules of Civil Procedure or other applicable state
7 or federal law to pursue costs and attorney's fees incurred related to confidentiality designations
8 or the abuse of the process described herein.

9 **28. Injunctive Relief and Sanctions Available for Unauthorized Disclosure or Use**
10 **of Confidential Information or Highly Confidential Information.** The Parties and/or
11 nonparties shall not utilize any Confidential Information and/or Highly Confidential Information
12 for their own personal and/or business advantage or gain, aside from purpose(s) solely related to
13 the instant litigation. The Parties and nonparties acknowledge and agree that unauthorized use
14 and/or disclosure of Confidential Information and/or Highly Confidential Information beyond this
15 litigation shall subject the offending party or nonparty to sanctions contemplated in
16 NRCPP 37(b)(2)(A)-(D), up to and including entry of judgment against the offending party in
17 circumstances involving willful disobedience with this order. Further, the Parties and/or
18 nonparties receiving or being given access to Confidential Information and/or Highly Confidential
19 Information acknowledge that monetary remedies would be inadequate to protect each party in
20 the case of unauthorized disclosure or use of Confidential Information or Highly Confidential
21 Information that the Receiving Party only received through discovery in this action and that
22 injunctive relief would be necessary and appropriate to protect each party's rights in the event
23 there is any such unauthorized disclosure or use of Confidential Information or Highly
24 Confidential Information. The availability of injunctive relief to protect against the unauthorized
25 disclosure or use of Confidential Information or Highly Confidential Information shall not be
26 exclusive.

27 **29. Other Actions and Proceedings.** If a Receiving Party (a) is subpoenaed in
28 another action, investigation, or proceeding, (b) is served with a demand in another action,

1 investigation, or proceeding, or (c) is served with any legal process by one not a party to this
2 Protective Order, seeking materials which were produced or designated as Confidential of Highly
3 Confidential pursuant to this Protective Order, the Receiving Party shall give prompt actual
4 written notice by electronic transmission to counsel of record for such Producing Party within
5 five (5) business days of receipt of such subpoena, demand or legal process, or such shorter notice
6 as may be required to provide other parties with the opportunity to object to the immediate
7 production of the requested discovery materials to the extent permitted by law. The burden of
8 opposing enforcement of the subpoena shall fall upon the party or nonparty who produced or
9 designated the Discovery Material as Confidential or Highly Confidential Information. Unless
10 the party or nonparty who produced or designated the Confidential or Highly Confidential
11 Information obtains an order directing that the subpoena not be complied with, and serves such
12 order upon the Receiving Party prior to production pursuant to the subpoena, the Receiving Party
13 shall be permitted to produce documents responsive to the subpoena on the subpoena response
14 date. Compliance by the Receiving Party with any order directing production pursuant to a
15 subpoena of any Confidential or Highly Confidential Information shall not constitute a violation
16 of this Protective Order. Nothing in this Protective Order shall be construed as authorizing a
17 party to disobey a lawful subpoena issued in another action.

18 **30. Execution in Counterparts.** This Protective Order may be signed in counterparts,
19 and a fax or "PDF" signature shall have the same force and effect as an original ink signature.

20 **31. Order Survives Termination.** This Protective Order shall survive the termination
21 of this action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of
22 information disclosed hereunder.

23 DATED this 7th day of February 2013.

DATED this 7th day of February, 2013.

24 PISANELLI BICE PLLC

CAMPBELL & WILLIAMS

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and
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DATED this 7th of day of February, 2013.

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ORDER

IT IS SO ORDERED.

DATED: February 13, 2013



THE HONORABLE ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

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EXHIBIT A

CONFIDENTIALITY AGREEMENT

I, _____ do hereby acknowledge and agree, under penalty of perjury, as follows:

1. I have read the Stipulated Confidentiality Agreement and Protective Order ("the Protective Order") entered in *Wynn Resorts, Limited v. Kazuo Okada, et al.*, Eighth Judicial District Court Case No. A-12-656710-B on _____, _____, and I fully understand its contents.

2. I hereby agree and consent to be bound by the terms of the Protective Order and to comply with it in all respects, and to that end, I hereby knowingly and voluntarily submit and subject myself to the personal jurisdiction of the Eighth Judicial District Court of Nevada so that the said court shall have the power and authority to enforce the Protective Order and to impose appropriate sanctions upon me for knowingly violating the Protective Order, including punishment for contempt of court for a knowing violation of the Protective Order.

3. I understand that by signing this instrument, I will be eligible to receive "Confidential Information" and/or "Highly Confidential Information" under the terms and conditions of the Protective Order. I further understand and agree that I must treat any "Confidential Information" and/or "Highly Confidential Information" in accordance with the terms and conditions of the Protective Order, and that, if I should knowingly make a disclosure of any such information in a manner unauthorized by the Protective Order, I will have violated a court order, will be in contempt of court, and will be subject to punishment by the court for such conduct.

DATED: _____

(Signature)

(Printed Name)

(Address)