IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

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

Real Parties in Interest.

Supreme Court No. 74500

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

DEFENDANTS' OPPOSITION TO WYNN RESORTS LIMITED'S EMERGENCY MOTION FOR STAY UNDER NRAP 27(e) PENDING WRIT REVIEW OF OCTOBER 31, 2017 ORDER

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

Steve Morris (Nev. Bar. #1543)
Rosa Solis-Rainey (Nev. Bar #7921)
Akke Levin (Nev. Bar. #9102)
MORRIS LAW GROUP
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101
Telephone No. (702) 474-9400

KEMP, JONES & COULTHARD, LLP
Randall Jones (Nev. Bar #1927)
Mark M. Jones (Nev. Bar. #267)
Ian P. McGinn (Nev. Bar. #12818)
3800 Howard Hughes Pkwy # 1700
Las Vegas, NV 89169
Telephone No. (702) 385-6000

BUCKLEY SANDLER LLP
David S. Krakoff
(*Admitted Pro Hac Vice*)
Benjamin B. Klubes
(*Admitted Pro Hac Vice*)
Adam Miller
(*Admitted Pro Hac Vice*)
1250 24th Street NW, Suite 700
Washington DC 20037
Telephone No. (202) 349-8000
Attorneys for Universal Entertainment Corp. and Aruze USA, Inc.

Universal Entertainment Corp., Aruze USA, Inc., and Kazuo Okada (collectively referred to as "Defendants") submit this opposition to Wynn Resorts, Limited's ("WRL's") Emergency Motion for Stay Under NRAP 27(e) Pending Writ Review of October 31, 2017 Order (the "Motion").

I. ARGUMENT

WRL commenced this strike lawsuit nearly six years ago. Since then the Defendants have been struggling to obtain their day in court to present their case for recovery of the tremendous losses WRL needlessly inflicted on Defendants. Although WRL was the first to rush to court, filing its initial complaint at 2:14 am on February 19, 2012, WRL's strategy over the last six years has been to create delay after delay to deny Defendants a fair and timely resolution of this lawsuit on its merits. But the day of reckoning is now at hand. Fact discovery has closed. Expert discovery is well underway, and is the principal task to be completed by the parties between now and trial. Trial is set to begin on April 16, 2018. This "emergency motion" to stay seeks to vacate the trial date that the district court set after years of intensely contested pretrial proceedings and is another unwarranted effort by WRL to perpetuate delay and deny the Defendants their day in court. This writ petition is WRL's 8th and the instant motion is its 20th motion to stay. The Court should not indulge WRL's efforts to prevent justice from being done, starting in April 2018.

WRL's "emergency" motion seeks to stay not just the District Court's well-considered 27-page, 151-paragraph Findings of Fact and Conclusions of Law entered after a seven-day evidentiary hearing on Defendants' Motion for Sanctions ("Sanctions Order" or "Order"), but the entire case and is wholly without merit. Despite claims of an "emergency," WRL waited three weeks from the date of the Order to file this writ petition. There is no "emergency." The Sanctions Order should not be stayed, let alone the entire case. The Court should deny the requested stay. It is based on a procedurally frivolous filing derived from a writ petition that simply reargues issues already decided against WRL by this Court. As shown below, the four *Hansen* factors all weigh against imposing a stay. *Hansen v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). As an initial matter, WRL's Petition lacks any merit. WRL seeks writ review of issues this Court considered and decided last year, including that WRL can be compelled to produce documents from its Macau-based subsidiary over Macau law to the contrary. *See* Sec. A, *infra*. It also seeks writ review of adverse trial inferences, when such review would be premature and these inferences are not properly the subject of a writ. *Id.* Moreover, WRL will face no irreparable harm and the object of the Petition will not be defeated by denying a stay. *See* Sec. B, *infra*. Instead, it is only Defendants who will be harmed by a further stay through the delay of their trial date. *See* Sec. C, *infra*.

A. The Petition Lacks Merit

The stay should be denied first and foremost because WRL is unlikely "to prevail on the merits." *Hansen*, 116 Nev. at 657, 6 P.3d at 986. The Sanctions Order, which was entered after more than two years of litigation and a seven-day evidentiary hearing, imposes adverse evidentiary inferences at trial if WRL fails to produce the same documents it has refused to produce for more than two years, despite five court orders directing it to do so. Ord. ¶¶ 140-150. Far from presenting "a substantial case on the merits," as is required before a stay can be imposed, WRL's Petition will fail on the merits. *Hansen*, 116 Nev. at 658, 6 P.3d at 987.

As an initial matter, this Court already rejected WRL's argument that it should not be forced "to comply with the November 1, 2016 discovery order compelling the production of documents in the possession of . . . Wynn Macau in a manner that exceeded the bounds of Macau law." Mot. at 3. Specifically, this Court determined almost a year ago that WRL must produce the documents over WRL's objection that foreign law precludes their production. *See* December 20, 2016 Order Denying Pet. for Writ of Prohibition or Mandamus, Case No. 71638, at 1-2 ("[P]etitioner's overarching argument is that complying with the district court's order would require petitioner to violate foreign international privacy statutes and a contract with a foreign government. However, in *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, this court held that 'the mere presence of a foreign

international privacy statute itself does not preclude Nevada courts from ordering parties to comply with Nevada discovery rules . . . .' "). As a result, WRL's current Petition lacks any merit to the extent it asks this Court to once again review the same question.

WRL also claims that its Petition presents a "serious legal question" based on a "distinction between this matter and *Las Vegas Sands*" in that Wynn Macau is not a party to this action whereas Sands China was a party in *Las Vegas Sands*. Mot. at 4. Again, this Court has already addressed WRL's exact claim about the purported distinction with *Sands*: "[A]lthough we recognize petitioner's stance that the district court compelled its nonparty subsidiary to comply with the discovery order, in our view, the district court directed petitioner to exercise control over its subsidiary to the extent necessary for petitioner to comply with the discovery order." Ord. Denying Petition (Dec. 20, 2016) at 2.

Moreover, WRL's Petition lacks merit to the extent it seeks writ review of the evidentiary inferences granted Defendants at trial. Extraordinary writ review is just that—extraordinary. *Hickey v. Eighth Judicial Dist. Ct.*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989) ("[M]andamus and prohibition are extraordinary remedies, and the decision of whether a petition will be entertained lies within the discretion of this court."). Writ review is not a proper vehicle for challenging routine evidentiary rulings in the months before trial, and it certainly is not a

vehicle for challenging routine evidentiary rulings that can be remedied on post-judgment appeal. *Id.* ("Neither mandamus nor prohibition will issue . . . where the petitioner has a plain, speedy and adequate remedy, such as an appeal, in the ordinary course of law."); *Mitchell v. Eighth Judicial Dist. Ct.*, 131 Nev. Adv. Op. 21, 348 P.3d 675, 677 (2015) (no writ review of rulings that "can be adequately reviewed on appeal from the eventual final judgment."). The Sanctions Order is nothing more than a routine evidentiary ruling—it imposes evidentiary sanctions for WRL's violation of discovery orders—and if the sanctions were improper (they were not) and have any effect on the verdict at trial, WRL has an adequate remedy in a post-judgment appeal. If WRL is allowed to seek writ review of the Sanctions Order, it sets a precedent for parties to seek writ review of every evidentiary ruling in a case, including every ruling on a motion in *limine* (and in this case alone, there will likely be dozens of motions in *limine*). If that were the law, no case would ever proceed to trial in a reasonably timely fashion, and every case would become laden with multiple writ proceedings before this Court on routine evidentiary issues.

This Court has also held that writ review is only warranted to address "discovery order[s] that require[] disclosure of privileged information" and "blanket discovery orders without regard to relevance." *Clark Cnty. Liquor &*

Gambling Licensing Bd. v. Clark, 102 Nev. 654, 659-60, 730 P.2d 443, 447 (1986). Neither circumstance is presented here.

Furthermore, writ review here is premature because the parties have not yet determined the specific impact of the adverse inferences. Instead, WRL should be required to wait until after trial, when the parties will have litigated jury instructions concerning the scope of the adverse inferences. This approach gives the trial court—which is deeply familiar with the record—an opportunity to further delineate the scope of the adverse inferences through the jury instructions. If necessary, WRL can then seek relief from this Court through a post-judgment appeal founded on a properly developed record.

B. No Stay Should be Imposed Because the Object of the Petition Will Not be Defeated and WRL Faces No Irreparable Harm.

Moreover, the stay should be denied because "the object of the appeal or writ petition will [not] be defeated if the stay is denied," and WRL faces no irreparable harm without it. *Hansen*, 116 Nev. at 657, 6 P.3d at 986; *Vanguard Piping Sys., Inc. v. Eighth Judicial Dist. Ct.*, 129 Nev. Adv. Op. 63, 309 P.3d 1017, 1019 (2013) (no writ review unless "order could result in irreparable prejudice"). The Sanctions Order imposes adverse evidentiary inferences *at trial*, which is still five months away. The Sanctions Order has no impact on any of the expert discovery or other pretrial activities that are currently ongoing. As such, there is no basis to stay the Sanctions Order, let alone the entire case, because the adverse

inferences will only be implemented at trial. If this Court finds, contrary to the Sanctions Order, that WRL's refusal to produce documents in violation of multiple court orders was not sanctionable, then the parties can implement that ruling at trial without any need for a stay.[1]

WRL claims the object of its Petition will be defeated and it will be harmed without a stay because there are "impending deadlines to 'purge' certain evidentiary sanctions"—that is, deadlines by which WRL has to confirm it is not producing the documents at issue. Mot. at 4. For WRL to claim it still needs more time to decide whether it will comply with the orders requiring production is disingenuous. WRL has made clear for over two years that it will never produce the documents, despite three orders from the District Court and two orders from this Court directing it to do so. It has spent millions of dollars in fees and litigated nearly ten rounds of briefing over its decision to refuse to produce the documents. The whole purpose of the 7-day evidentiary hearing was to determine whether WRL would face any consequences for its brazen refusal to produce the documents despite five court orders requiring it to do so over a two-year period. For WRL to claim that the Sanctions Order should be stayed because it needs more time to decide whether it

[1] *Mikohn Gaming* illustrates those narrow circumstances not present here in which a stay of the entire case is warranted. That case dealt with appellate review of a district court's refusal to compel arbitration, and the question of whether the parties would have to pursue litigation or arbitration really did affect the entire case. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 250, 89 P.3d 36, 37-38 (2004). By contrast here, the Sanctions Order has no impact on any of the expert discovery that is ongoing.

will produce the documents is nothing but a transparent stall tactic that should not be countenanced.

WRL also claims the object of the Petition will be defeated and it will be harmed without a stay because under the Sanctions Order, Defendants can take additional depositions if WRL produces new documents. Mot. at 4. But WRL will not be producing any more documents, and Defendants will not have an opportunity to take additional depositions under the Sanctions Order, with or without a stay. Regardless, even if Defendants are allowed to take additional depositions, WRL would not suffer irreparable harm because additional depositions would only occasion expenditure of additional attorney fees. It is indisputable that incurring additional attorneys' fees does not constitute irreparable harm. *See, e.g.*, *Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 39 ("[L]itigation costs, even if potentially substantial, are not irreparable harm.").

WRL further claims the object of the Petition will be defeated and it will be harmed without a stay because Defendants will use the evidentiary sanctions in dispositive and pre-trial motions. Mot. at 4-5. But the object of WRL's Petition—reversing the Sanctions Order—would not be defeated even if Defendants use the evidentiary sanctions in dispositive or pre-trial motions, and even if the District Court relies on the sanctions in ruling on those motions (two big "ifs"). Instead, any such rulings from the District Court could be reconsidered as needed. If WRL's

standard—that any ruling that could be used against it in dispositive motions constitutes irreparable harm to warrant a stay—was the right one, then every ruling unfavorable to it constitutes irreparable harm. This is not the law.

Finally, WRL claims the object of the Petition will be defeated and it will be harmed without a stay because WRL will be "forced to address [Defendants'] request for attorney's fees and costs." Mot. at 5. WRL's claim makes no sense. WRL would experience no harm whatsoever, let alone irreparable harm, by Defendants filing a request for attorney's fees.[2]

C. A Continued Stay Would Cause Defendants Irreparable Harm.

The stay should also be denied because Defendants will suffer irreparable harm if it is granted. We are almost at the sixth anniversary of the improper redemption, and Defendants have yet to see their day in court. WRL's overall litigation strategy of creating delay after delay, in terms of Defendants' access to documents, to witnesses, to information, and now in terms of the trial date, is likely unprecedented. On the road to the Sanctions Order, Defendants were forced to:

- Litigate ***five*** motions, including three before the District Court and two before this Court, over a two year period;

- Conduct months-long discovery in advance of the evidentiary hearing, including testimony from multiple 30(b)(6) witnesses, dozens of interrogatories and requests for production, and multiple rounds of briefing of discovery disputes;

[2] Defendants would repay any fee award granted by the District Court in the event the Sanctions Order is reversed.

- Conduct an evidentiary hearing lasting seven days, requiring opening and closing statements, testimony from multiple witnesses traveling from Japan and Macau, hundreds of exhibits, and multiple rounds of briefing, costing both sides millions of dollars.

For WRL to now say Defendants "cannot point to any harm" from a stay of the Sanctions Order, let alone a stay of the entire case, is meritless. This is not a "mere delay in pursuing discovery and litigation," Mot. at 5 (quoting *Mikohn Gaming*)—this is WRL's strategy of substantially delaying Defendants from finally having their day in court against a case WRL filed.

D. The Balance of Factors Weighs in Favor of Defendants.

Finally, the stay should be denied because the balance of factors strongly favors Defendants. *See Hansen*, 116 Nev. at 658, 6 P.3d at 987 (stay should be denied unless "balance of equities weighs heavily in favor of granting a stay"). Without a doubt, the potential harm to the Defendants far outweighs any possible harm to WRL, and any harm to WRL is reparable. Staying the entire case cuts off Defendants' access to justice in a case that has been pending against them for almost six years and does no harm to WRL that cannot be remedied before trial or on post-judgment appeal. Instead, granting a stay would reward WRL for its primary litigation tactic, that of creating further delays.[3]

[3] At the end of its Motion, WRL seeks to exclude from any stay its purportedly forthcoming writ petition on the District Court's ruling on WRL's Motion for Summary Judgment. Mot. at 6. WRL's request is meritless. To the extent any stay is imposed—and it should not be for the reasons set forth herein—WRL should not be allowed any self-serving carve-out.

II. CONCLUSION

Based on the forgoing, Defendants ask that this Court deny any stay of either the Sanctions Order or the entire case, and that the parties instead be allowed to continue with expert discovery and proceed to trial.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
Steve Morris (Nev. Bar #1543)
Rosa Solis-Rainey (Nev. Bar #7921)
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

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

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

KEMP JONES & COULTHARD, LLP
Randall Jones (Nev. Bar #1927)
Mark M. Jones (Nev. Bar. #267)
Ian P. McGinn (Nev. Bar. #12818)
3800 Howard Hughes Pkwy # 1700
Las Vegas, NV 89169

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

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Morris Law Group, that in accordance therewith, I caused a copy of DEFENDANTS' OPPOSITION TO WYNN RESORTS LIMITED'S EMERGENCY MOTION FOR STAY UNDER NRAP 27(e) PENDING WRIT REVIEW OF OCTOBER 31, 2017 ORDER to be served via Electronic Mail unless otherwise indicated below:

James J. Pisanelli Todd L. Bice Debra Spinelli PISANELLI BICE PLLC 400 South 7th Street, Suite 300 Las Vegas, NV 89101 T: 702.214.2100 *Attorneys for Wynn Resorts, Limited, Real Party in Interest, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman*	Melinda Haag James N. Kramer ORRICK, HERRINGTON & SUTCLIFFE 405 Howard Street San Francisco, CA 94105 *Attorneys for Kimmarie Sinatra*
Donald J. Campbell J. Colby Williams CAMPBELL & WILLIAMS 700 South 7th Street Las Vegas, Nevada 89101 Telephone: 702.382.5222 *Attorneys for Stephen A. Wynn*	Richard A. Wright WRIGHT STANISH & WINCKLER 300 South Fourth Street, Suite 701 Las Vegas, NV 89101 *Attorney for Defendants/ Counterclaimants Kazuo Okada, Aruze USA, Inc. and Universal Entertainment Corporation*

Daniel F. Polsenberg Joel D. Henriod Lewis Roca Rothgerber Christie 3993 Howard Hughes Parkway Suite 600 Las Vegas, Nevada 89169 William R. Urga David J. Malley JOLLEY URGA WOODBURY & LITTLE 3800 Howard Hughes Parkway 16th Floor Las Vegas, Nevada 89169 Mark E. Ferrario Tami D. Cowden GREENBERG TRAURIG, LLP 3773 Howard Hughes Parkway Suite 400 North Las Vegas, NV 89169 James M. Cole Scott D. Stein SIDLEY AUSTIN LLP 1501 K. Street N.W. Washington, DC 20005 *Attorneys for Petitioner Elaine P. Wynn*	HAND DELIVERY ON 11/22/17 Judge Elizabeth Gonzalez Eighth Judicial District Court of Clark County, Nevada Regional Justice Center 200 Lewis Avenue Las Vegas, NV 89155

DATED this 22nd day of November, 2017

By: /s/ Rosa Solis-Rainey