

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JOHN B. QUINN, an individual,  
MICHAEL T. ZELLER, an individual,  
MICHAEL L. FAZIO, an individual,  
and IAN S. SHELTON, an individual,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
in and for the County of Clark; and THE  
HONORABLE ELIZABETH  
GONZALEZ,  
District Judge,

Respondents.

and

KIMMARIE SINATRA, an individual,  
WYNN RESORTS, LIMITED,  
a Nevada Corporation, and  
ELAINE P. WYNN, an individual,

Real Parties in Interest.

Supreme Court Case No.

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

Electronically Filed  
Nov 21 2017 01:27 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITION FOR WRIT OF PROHIBITION OR,  
IN THE ALTERNATIVE, WRIT OF MANDAMUS**

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**PETITIONERS' APPENDIX – VOLUME 4**

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RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of November, 2017.

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 21<sup>st</sup> day of November, 2017, a copy of the foregoing **PETITIONERS' APPENDIX – VOLUME 4** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex).

Participants in the case who are registered with Eflex will be served by the Eflex system and other parties, listed below, who are not registered with the Eflex system will be served with a sealed copy of the forgoing via regular U.S. Mail.

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Honorable Elizabeth Gonzalez  
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EIGHTH JUDICIAL DISTRICT COURT  
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By: /s/ Beau Nelson  
An Employee of McDonald Carano LLP

1           156. Mr. Wynn breached his fiduciary duties to Ms. Wynn by taking actions to eliminate  
2 her voice in the management of Wynn Resorts and to dilute her role as a minority shareholder by  
3 making sure that Ms. Wynn was ousted from the Board. Among other things, Mr. Wynn, in  
4 conspiracy with Ms. Sinatra and Wynn Resorts generated false, pretextual, and post hoc reasons for  
5 not renominating and reelecting Ms. Wynn to the Board and thereby ensured that she would not be  
6 reelected and created a tone at the top that punished Ms. Wynn for legitimate inquiry into the  
7 Company's management and operations.

8           157. Mr. Wynn willfully and knowingly acted to damage Ms. Wynn's interests by  
9 eliminating her minority shareholder's voice in the management of Wynn Resorts. He did so with  
10 malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.

11           158. As a result of Mr. Wynn's breaches of fiduciary duty, Ms. Wynn has been damaged  
12 in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an  
13 award of punitive damages.

14                                   **FOURTEENTH CAUSE OF ACTION**

15                                   **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

16                                   **(Against Wynn Resorts)**

17           159. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 and paragraphs  
18 152 to 158 above.

19           160. Mr. Wynn, as a director and controlling shareholder of Wynn Resorts, owed  
20 fiduciary duties to Ms. Wynn, a fellow director and minority shareholder of Wynn Resorts. Mr.  
21 Wynn's fiduciary obligations to Ms. Wynn were independent of any obligations under the January  
22 2010 Stockholders Agreement.

23           161. Mr. Wynn breached his fiduciary duties, as set forth in paragraphs 152 to 158 above.

24           162. Wynn Resorts knowingly participated in and substantially assisted Mr. Wynn's  
25 breaches of fiduciary duties owed to Ms. Wynn as explained above in paragraphs 62-66, including  
26 without limitation by:

- 27                   (i) conceiving and implementing a scheme to have Ms. Wynn removed from the  
28 Board, contrary to Mr. Wynn's fiduciary duty to Ms. Wynn;

- (ii) intentionally acting and conspiring with Mr. Wynn to oust Ms. Wynn from the Board of Directors, including by recommending against her renomination at the Committee and then at the Board level;
- (iii) actively soliciting investors and encouraging them to vote against Ms. Wynn;
- (iv) knowingly and intentionally reducing the size of Board by one seat with the intent to ensure Ms. Wynn was not renominated to the Board;
- (v) conceiving and approving a press release written by the Company's public relations department stating that Mr. Wynn's comments that "he did not agree with the Board's decision not to renominate Ms. Wynn" should not be misconstrued and that he had great respect for the care the Board took in making its decision not to renominate her; and
- (vi) knowingly and intentionally voting to cancel Mr. Okada's shares with the intent to prevent those shares from being voted in favor of Ms. Wynn.

163. Wynn Resorts willfully and knowingly acted to damage Ms. Wynn's interests. They did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.

164. As a result of Wynn Resorts' aiding and abetting of Mr. Wynn's breaches of fiduciary duty, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.

#### **FIFTEENTH CAUSE OF ACTION**

#### **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

#### **(Against Kimmarie Sinatra)**

165. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66.

166. Mr. Wynn, as a director and controlling shareholder of Wynn Resorts, owed fiduciary duties to Ms. Wynn, a fellow director and minority shareholder of Wynn Resorts. Mr. Wynn's fiduciary obligations to Ms. Wynn were independent of any obligations under the January 2010 Stockholders Agreement.

167. Mr. Wynn breached his fiduciary duties, as set forth in paragraphs 152 to 158 above.

168. Ms. Sinatra knowingly participated in and substantially assisted Mr. Wynn's breaches of fiduciary duties owed to Ms. Wynn as explained above in paragraphs 62 to 66, including without limitation by:

- (i) conceiving and implementing a scheme to have Ms. Wynn removed from the Board, contrary to Mr. Wynn's fiduciary duty to Ms. Wynn;

- (ii) intentionally concealing misconduct by Mr. Wynn that should have been disclosed the Board, and could have exposed the Company to liability, or other losses, putting the interests of Mr. Wynn ahead of those of shareholders;
- (iii) promoting and enforcing a tone at the top that punished proper inquiry into corporate governance decisions and Company activities;
- (iv) putting the interests of Mr. Wynn ahead of all others, including by manipulating the Board and its members, including without limitation by:
  - (a) failing to truthfully tell Ms. Wynn about the circumstances surrounding the 2005 payment when asked about it by Ms. Wynn and instead misrepresenting that it had been appropriately handled, when in fact company counsel at the time had been not been properly informed, among other reasons;
  - (b) falsely telling the Board that a proxy statement that had been issued would have to be amended and reissued because of conduct by Ms. Wynn; and
  - (c) misrepresenting to the Board and others the reason for the Company's COO's departure, as if it were nothing more than a decision to retire, and claiming he was retiring when he in fact was terminated for his connections to illegal gambling;
- (v) engineering and assisting in the execution of a scheme to ensure Mr. Okada's redeemed shares were cancelled in an intentional effort to ensure they were not voted in favor of Ms. Wynn; and
- (vi) acting knowingly and intentionally to advance Mr. Wynn's scheme to oust Ms. Wynn from the Board in violation of his fiduciary duties.

169. Ms. Sinatra willfully and knowingly acted to damage Ms. Wynn's interests. She did so with malice, oppression, and fraud, and in conscious disregard of Ms. Wynn's rights.

170. As a result of Ms. Sinatra's aiding and abetting of Mr. Wynn's breaches of fiduciary duty, Ms. Wynn has been damaged in an amount to be proved at trial. Ms. Wynn is entitled to an award of said damages, as well as an award of punitive damages.

#### **SIXTEENTH CAUSE OF ACTION**

#### **PERMANENT INJUNCTIVE RELIEF**

171. Ms. Wynn re-alleges the allegations set forth in paragraphs 1 to 66 above.

172. To enforce the judicial declarations Ms. Wynn seeks in paragraphs 67 to 135 and to secure her rights declared thereunder, Ms. Wynn further seeks an injunction that enjoins Mr. Wynn from instructing Wynn Resorts not to register shares sold or transferred by or otherwise prevent the

1 Transfer, as defined in the January 2010 Stockholders Agreement, of shares by Ms. Wynn, and that  
2 provides such other injunctive relief against Mr. Wynn and/or Aruze that the Court deems necessary  
3 and appropriate to enforce the declaratory relief granted.

4 **DEMAND FOR JURY TRIAL**

5 Ms. Wynn hereby demands trial by jury pursuant to Nevada Rule of Civil Procedure 38(b).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Ms. Wynn demands judgment against Mr. Wynn, Wynn Resorts, Aruze,  
8 and Ms. Sinatra as follows:

9 1. A declaration that Ms. Wynn's contractual duties under the January 2010  
10 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders  
11 Agreement is subject to rescission and is rescinded because the redemption of Aruze's stock  
12 frustrated the principal purpose of the January 2010 Stockholders Agreement and its predecessor  
13 agreements (*i.e.*, the April 2002 Stockholders Agreement and the 2006 Amendment);

14 2. A declaration that the restrictions on alienability as set forth in paragraph 75 above  
15 are unenforceable as an unreasonable restraint on alienation in violation of public policy and  
16 statutes;

17 3. A declaration that that the restrictions are unenforceable as an unlawful forfeiture in  
18 violation of public policy;

19 4. A declaration that the restrictions are voidable by Ms. Wynn because she made a  
20 unilateral mistake (known to Mr. Wynn) as to a fundamental assumption, or assumptions based on  
21 which she agreed to the restrictions;

22 5. A declaration that that Ms. Wynn's contractual duties under the January 2010  
23 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders  
24 Agreement is subject to rescission and is rescinded because of failures of consideration and/or  
25 performance;

26 6. Judgment in favor of Ms. Wynn and against Mr. Wynn based on Mr. Wynn's  
27 fraudulent inducement and a declaration that the restrictions are voidable by Ms. Wynn because Mr.  
28

1 Wynn made false representations to Ms. Wynn with the intention to induce her to enter into and to  
2 consent to the formation of the January 2010 Stockholders Agreement;

3 7. If Aruze successfully obtains a discharge of its obligations under the January 2010  
4 Stockholders Agreement, a declaration that Ms. Wynn's contractual duties under the January 2010  
5 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders  
6 Agreement is subject to rescission and is rescinded;

7 8. Judgment in favor of Ms. Wynn and against Mr. Wynn based upon Mr. Wynn's  
8 breaches of contract, and a declaration that Ms. Wynn's contractual duties under the January 2010  
9 Stockholders Agreement are discharged or, alternatively, that the January 2010 Stockholders  
10 Agreement is subject to rescission and is rescinded because Mr. Wynn materially breached the  
11 agreement;

12 9. Judgment in favor of Ms. Wynn and against Mr. Wynn based upon Mr. Wynn's  
13 breach of the implied covenant of good faith and fair dealing, and a declaration that Ms. Wynn's  
14 contractual duties under the January 2010 Stockholders Agreement are discharged or, alternatively,  
15 that the January 2010 Stockholders Agreement is subject to rescission and is rescinded because Mr.  
16 Wynn materially breached the implied covenant of good faith and fair dealing;

17 10. An order compelling Mr. Wynn to comply with the January 2010 Stockholders  
18 Agreement, including without limitation his obligations to assure the nomination and election of  
19 Ms. Wynn to the Board of Directors;

20 11. Judgment in favor of Ms. Wynn and against Wynn Resorts based on Wynn Resorts'  
21 intentional interference with the January 2010 Stockholders Agreement;

22 12. Judgment in favor of Ms. Wynn and against Ms. Sinatra based on Ms. Sinatra's  
23 intentional interference with the January 2010 Stockholders Agreement;

24 13. Judgment in favor of Ms. Wynn and against Mr. Wynn based on Mr. Wynn's  
25 breaches of fiduciary duty;

26 14. Judgment in favor of Ms. Wynn and against Wynn Resorts based on Wynn Resorts'  
27 aiding and abetting of Mr. Wynn's breaches of fiduciary duty;

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15. Judgment in favor of Ms. Wynn and against Ms. Sinatra based on Ms. Sinatra's aiding and abetting of Mr. Wynn's breaches of fiduciary duty.

16. Preliminary and/or permanent injunctions as the Court deems necessary and appropriate to enforce the declarations prayed for, including an injunction that prohibits Mr. Wynn from instructing Wynn Resorts not to register shares sold or transferred by or otherwise to prevent the Transfer, as defined in the January 2010 Stockholders Agreement, of shares by Ms. Wynn, as well as such other injunctive relief against Mr. Wynn and/or Aruze that the Court deems necessary and appropriate;

17. For compensatory damages in an amount to be proved at trial;

18. For punitive and exemplary damages in a sum sufficient to punish Mr. Wynn, Wynn Resorts, and Ms. Sinatra, and to deter similar wrongdoing by others; and

19. Costs of suit and such other relief as the Court deems just and proper.

Dated: May 17, 2017

GREENBERG TRAURIG, LLP

By /s/ Mark E. Ferrario

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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 17<sup>th</sup> day of May, 2017, I caused a true and correct copy of the forgoing *First Amended Answer of Elaine P. Wynn to Aruze and Universal's Fourth Amended Counterclaim, Sixth Amended Counterclaim and Crossclaim of Elaine P. Wynn* to be filed and served via the Court's e-filing system upon the parties listed below. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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# EXHIBIT 16



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21 *Counsel for Counter-Defendant/Counter-*  
22 *Claimant/Cross-Claimant Elaine P. Wynn*  
23 *\*admitted pro hac vice*

24 **DISTRICT COURT**

25 **CLARK COUNTY, NEVADA**

26 WYNN RESORTS, LIMITED, a Nevada  
27 corporation,

28 Plaintiff,

vs.

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

Defendant.

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

**ORDER GRANTING AND DENYING  
ELAINE P. WYNN'S MOTION TO  
COMPEL WYNN RESORTS,  
LIMITED, STEPHEN A. WYNN,  
KIMMARIE SINATRA, AND MARC  
SCHORR TO RESPOND TO WRITTEN  
DISCOVERY REQUESTS**

Page 1 of 4

LV 420932541v1

1 AND ALL RELATED CLAIMS

2  
3 Elaine P. Wynn's Motion to Compel Wynn Resorts, Limited, Stephen A. Wynn,  
4 Kimmarie Sinatra, and Marc Schorr to Respond to Written Discovery Requests on OST came  
5 on for hearing on June 5, 2017 ("Motion"). William J. Urga, Esq., of Jolley Urga Woodbury &  
6 Little, Mark E. Ferrario, Esq., of Greenberg Traurig, LLP, and Scott D. Stein, Esq. of Sidley  
7 Austin, LLP appeared on behalf of Counterdefendant/Counterclaimant/Crossclaimant Elaine P.  
8 Wynn ("Ms. Wynn"). James J. Pisanelli, Esq., Todd L. Bice, Esq., and Debra L. Spinelli, Esq.,  
9 of Pisanelli Bice, PLLC, appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts,  
10 Limited ("Wynn Resorts") and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani,  
11 Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra,  
12 D. Boone Wayson, and Allan Zeman (together, with Wynn Resorts, the "Wynn Parties").  
13 Robert J. Cassity, Esq., of Holland & Hart LLP, and David S. Krakoff, Buckley Sandler, LLP  
14 appeared on behalf of Defendant Kazuo Okada ("Okada") and  
15 Defendants/Counterclaimants/Counterdefendants Aruze USA, Inc. ("Aruze USA") and  
16 Universal Entertainment Corp. ("Universal") (collectively the "Okada Parties"). Donald J.  
17 Campbell, Esq., and J. Colby Williams, Esq., of Campbell & Williams, appeared on behalf of  
18 Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn").

19 The Court having considered the Motion and the Oppositions, as well as the arguments  
20 of counsel presented at the hearing, and good cause appearing therefor,

21 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is  
22 GRANTED IN PART AND DENIED IN PART as follows:

23 IT IS FURTHER ORDERED THAT Stephen A. Wynn shall provide full and complete  
24 answers to Requests for Production to Stephen A. Wynn, Nos. 21-42, 53-58, 61-64, 81-92, 94-  
25 95.

26 IT IS FURTHER ORDERED THAT Wynn Resorts shall provide full and complete  
27 answers to Requests for Production to Wynn Resorts, Ltd., Nos. 26, 29, 32, 35, 53-58, 73-74,

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93, 95-96, 99, 101-110, 112-119, 124-127, and to Requests for Admissions to Wynn Resorts, Ltd., Nos. 3-10.

IT IS FURTHER ORDERED that Wynn Resorts shall not be required to respond to Requests for Production Nos. 92 and 94.

IT IS FURTHER ORDERED THAT Kimmarie Sinatra shall provide full and complete answers to Requests for Production to Kimmarie Sinatra, Nos. 1-2, 4-10, 24, 25, 27 to Kimmarie Sinatra.

IT IS FURTHER ORDERED THAT Marc D. Schorr shall provide full and complete answers to Requests for Production to Marc. D. Schorr, Nos. 1-17, 20, 22-23 to Marc. D. Schorr.

IT IS FURTHER ORDERED that Stephen A. Wynn shall not be required to respond to Requests for Production Nos. 79 and 80.

IT IS FURTHER ORDERED that Stephen A. Wynn, Wynn Resorts, Kimmarie Sinatra, and Marc D. Schorr shall produce the documents subject to this order by July 26, 2017. **BO**

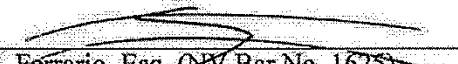
IT IS SO ORDERED.

DATED: July 12, 2017

  
THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

GREENBERG TRAURIG, LLP

By:   
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Tami D. Cowden, Esq. (NV Bar No. 8994)  
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*Counsel for Counter-Defendant/  
Counter-Claimant/Cross-Claimant Elaine P. Wynn*

# EXHIBIT 17

*Steven D. Grierson*

DISTRICT COURT  
CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED,

Plaintiff(s),

vs

KAZUO OKADA, ET AL,

Defendant(s).

Case No. 12 A 656710  
Coordinated W/13 A 678658  
Dept. No. XI

ELECTRONIC FILING CASE

AND ALL RELATED CROSSCLAIMS.

**4<sup>th</sup> AMENDED BUSINESS COURT SCHEDULING ORDER**

This 4<sup>th</sup> AMENDED BUSINESS COURT SCHEDULING ORDER AND TRIAL SETTING ORDER ("Scheduling Order") is entered following the Hearing conducted on 07/24/17. This Order may be amended or modified by the Court upon good cause shown.

**IT IS HEREBY ORDERED** that the parties will comply with the following deadlines:

Initial Expert Disclosures are Due	09/01/17
Close of Fact Discovery	11/03/17
Initial Expert Reports are Due	11/03/17
Rebuttal Expert Reports are Due	12/08/17
Close of Expert Discovery	01/19/18
Dispositive Motions are to be filed by	01/12/18
Motions in Limine are to be filed by	02/09/18

DATED this 8<sup>th</sup> day of August, 2017.

*Elizabeth Gonzalez*  
ELIZABETH GONZALEZ, DISTRICT JUDGE

CLERK OF THE COURT

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Certificate of Service

I hereby certify, that on the date filed, this Order was served on the parties identified on Wiznet's e-service list.

  
Dan Kutinac



# EXHIBIT 18

*Steven D. Grierson*

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*Counsel for Counterdefendant/Counterclaimant/Cross-Claimant Elaine P. Wynn*  
*\*admitted pro hac vice*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**WYNN RESORTS, LIMITED**, a Nevada  
corporation,

Plaintiff,

vs.

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

Defendants.

**AND ALL RELATED CLAIMS**

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

**ORDER DENYING WYNN RESORTS,  
LIMITED'S MOTION TO DISMISS  
THE ELEVENTH AND FOURTEENTH  
CAUSES OF ACTION AND KIM-  
MARIE SINATRA'S MOTION TO DIS-  
MISS THE TWELFTH AND FOUR-  
TEENTH CAUSES OF ACTION IN  
ELAINE P. WYNN'S SIXTH  
AMENDED COUNTERCLAIM AND  
CROSSCLAIM**

08-15-17P01:56 RCVD

Order Denying WRL and Sinatra Motions to Dismiss (final)

Case Number: A-12-656710-B

0261

PA000738

Hearing Date: July 10, 2017  
Hearing Time: 8:00 a.m.

Wynn Resorts, Limited's Motion to Dismiss the Eleventh and Fourteenth Causes of Action in Elaine P. Wynn's Sixth Amended Counterclaim and Crossclaim and Joinder in Motion to Dismiss by Kimmarie Sinatra; and Kimmarie Sinatra's Motion to Dismiss the Twelfth and Fourteenth Causes of Action in Elaine P. Wynn's Sixth Amended Counterclaim and Crossclaim and Joinder in Motion to Dismiss of Wynn Resorts, Limited (together the "Motions"), both filed on June 5, 2017, came before this Court in the above-captioned action on July 10, 2017. James J. Pisanelli, Esq., Todd L. Bice, Esq., and Debra L. Spinelli, Esq., of PISANELLI BICE PLLC, appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (collectively the "Wynn Parties"). Donald J. Campbell, Esq. and J. Colby Williams, Esq., of CAMPBELL & WILLIAMS, appeared on behalf of Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). David J. Malley, Esq., of JOLLEY URGAS WOODBURY & LITTLE, Mark E. Ferrario, Esq., of GREENBERG TRAURIG, LLP, and James M. Cole, Esq. of SIDLEY AUSTIN LLP, appeared on behalf of Counterdefendant/Counterclaimant/Crossclaimant Elaine P. Wynn ("Ms. Wynn"). Robert J. Cassity, Esq., of HOLLAND & HART LLP, appeared on behalf of Defendant Kazuo Okada ("Okada") and Defendants/Counterclaimants/Counterdefendants Aruze USA, Inc. ("Aruze USA") and Universal Entertainment Corp. ("Universal") (collectively the "Okada Parties"). and David Krakoff, Esq., and Benjamin Klubes, Esq., of BUCKLEY SANDLER LLP, appeared on behalf of Defendants/Counterclaimants/Counterdefendants Aruze USA and Universal.

The Court having considered the Motion, Ms. Wynn's Combined Opposition filed on June 22, 2017, Wynn Resorts' Reply and Joinder filed on July 3, 2017, and Kimmarie Sinatra's Reply and Joinder filed on July 3, 2017, as well as the arguments of counsel presented at the hearing, and good cause appearing therefor,

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motions are DE-  
2 NIED.

3 IT IS SO ORDERED.

4  
5 DATED: AUG. 17, 2017

6  
7 THE HONORABLE ELIZABETH GONZALEZ  
8 EIGHTH JUDICIAL DISTRICT COURT  
9 JW

9 Respectfully submitted by:

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Shoemaker, Kimmarie Sinatra, D. Boone Wayson  
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15 Attorneys for Universal and Aruze USA

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# EXHIBIT 19



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*Counsel for Counterdefendant/CountecClaimant/Cross-Claimant Elaine P. Wynn*  
*\*admitted pro hac vice*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
corporation,

Plaintiff,

vs.

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

Defendants.

**AND ALL RELATED CLAIMS**

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

**ORDER DENYING THE WYNN PARTIES' JOINT MOTION TO STAY DISCOVERY ON AND SEVER ELAINE P. WYNN'S CROSSCLAIMS AND ORDER SHORTENING TIME**

Hearing Date: July 24, 2017  
Hearing Time: 8:00 a.m.

08-15-17P01:56 RCVD

Order Denying Wynn Parties' Motion to Sever and Stay (pb redlines)594569

Case Number: A-12-656710-B

1 Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants Linda Chen,  
2 Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V.  
3 Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman and Counterdefend-  
4 ant/Crossdefendant Stephen A. Wynn (collectively the "Wynn Parties") Joint Motion to Stay Dis-  
5 covery on and Sever Elaine P. Wynn's Crossclaims and Order Shortening Time (the "Motion").  
6 filed on June 20, 2017, came before this Court in the above-captioned action on July 24, 2017.<sup>1</sup>  
7 James J. Pisanelli, Esq., Todd L. Bice, Esq., and Debra L. Spinelli, Esq., of PISANELLI BICE PLLC,  
8 appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts, Limited and Counterdefendants  
9 Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr,  
10 Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman. James N Kramer,  
11 Esq., of ORRICK, HERRINGTON & SUTCLIFFE LLP appeared on behalf of Crossdefendant  
12 Kimmarie Sinatra. J. Colby Williams, Esq., of CAMPBELL & WILLIAMS, appeared on behalf of  
13 Counterdefendant/Cross-defendant Stephen A. Wynn ("Mr. Wynn"). Mark E. Ferrario, Esq., of  
14 GREENBERG TRAUIG, LLP, Daniel R. Polsenberg, Esq. of LEWIS ROCA ROTHGERBER CHRISTIE  
15 LLP, David J. Malley, Esq., of JOLLEY URGAS WOODBURY & LITTLE, appeared on behalf of  
16 Counterdefendant/Counterclaimant/Crossclaimant Elaine P. Wynn ("Ms. Wynn"). J. Stephen  
17 Peek, Esq. and Robert J. Cassity, Esq., of HOLLAND & HART LLP, appeared on behalf of Defend-  
18 ant Kazuo Okada ("Okada"). David Krakoff, Esq. and Laurie R. Randell, Esq. of BUCKLEY  
19 SANDLER LLP and J. Randall Jones, Esq. of KEMP, JONES & COULTHARD LLP appeared on be-  
20 half of and Defendants/Counterclaimants/Counterdefendants Aruze USA, Inc. ("Aruze USA")  
21 and Universal Entertainment Corp. ("Universal").

22 The Court having considered the Motion; Ms. Wynn's Opposition filed on June 23,  
23 2017; the Reply filed on June 23, 2017; Elaine P. Wynn's Status Report Re: Withdrawal of  
24 Petition for Writ of Prohibition, or in the Alternative, Mandamus, Filed in Nevada Supreme  
25 Court Case No. 71432, filed on June 28, 2017; the Wynn Parties' Status Report Related to

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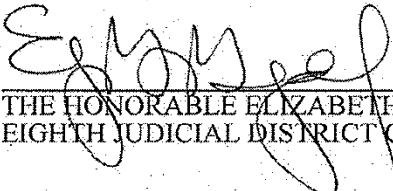
26  
27 <sup>1</sup> The Motion also came on for hearing on June 26, 2017.  
28

1 Continued Hearing on Motion to Sever/Stay and Elaine Wynn's Status Report Re: Withdrawal  
2 of Petition, filed on June 29, 2017; the Declaration of Todd L. Bice, filed on June 29, 2017;  
3 Elaine P. Wynn's Response to Wynn Resorts' Status Report, filed on July 29, 2017; and Okada,  
4 Aruze USA, and Universal's Opposition filed on July 7, 2017; as well as the arguments of  
5 counsel presented at the hearings, and good cause appearing therefor.

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is DE-  
7 NIED.

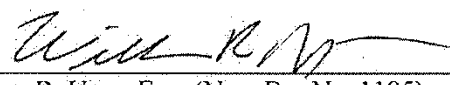
8 IT IS SO ORDERED.

9  
10 DATED: AUG. 17, 2017

  
THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT

13  
14 Respectfully submitted by:

15 JOLLEY URGAL WOODBURY & LITTLE

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Russell Goldsmith, Ray R. Irani, Robert J. Miller,  
22 John A. Moran, Marc D. Schorr, Alvin V.  
Shoemaker, Kimmarie Sinatra, D. Boone Wayson  
23 and Allan Zeman

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27 By: \_\_\_\_\_  
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1 \*Admitted Pro Hac Vice  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
Corporation,

Plaintiff,

vs.

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

Defendants.

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

**KIMMARRÉ SINATRA'S ANSWER TO  
ELAINE P. WYNN'S SIXTH AMENDED  
COUNTERCLAIM AND CROSSCLAIM;  
COUNTERCLAIM AND CROSSCLAIM  
OF KIMMARRÉ SINATRA**

**AND ALL RELATED CLAIMS.**

Kimmaré Sinatra ("Ms. Sinatra"), for her Answer to the Sixth Amended Counterclaim and Crossclaim filed by Elaine P. Wynn ("Ms. Wynn"), hereby responds as follows:

**ANSWER**

Except where otherwise admitted, Ms. Sinatra generally denies all of the allegations contained in the Sixth Amended Counterclaim and Crossclaim, including the headings contained therein, which are repeated below solely for ease of reference. Ms. Sinatra is not required to

1 respond, and does not respond, to the claims that were not asserted against her, including the First,  
2 Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Thirteenth,  
3 Fourteenth, and Sixteenth Causes of Action.

4 **I. Introduction**

5 1. The allegations in paragraph 1 contain multiple legal conclusions to which no  
6 response is required. To the extent any response is required, Ms. Sinatra denies the allegations in  
7 paragraph 1.

8 2. Ms. Sinatra denies the allegations contained in paragraph 2.

9 3. Ms. Sinatra denies the allegations contained in paragraph 3.

10 4. The allegations in paragraph 4 contain multiple legal conclusions to which no  
11 response is required. To the extent any response is required, Ms. Sinatra denies the allegations in  
12 paragraph 4.

13 5. The allegations in paragraph 5 contain multiple legal conclusions to which no  
14 response is required. To the extent any response is required, Ms. Sinatra denies the allegations in  
15 paragraph 5.

16 6. The allegations in paragraph 6 contain multiple legal conclusions to which no  
17 response is required. To the extent any response is required, Ms. Sinatra denies the allegations in  
18 paragraph 6.

19 7. The allegations in paragraph 7 contain multiple legal conclusions to which no  
20 response is required. To the extent any response is required, Ms. Sinatra denies the allegations in  
21 paragraph 7.

22 8. Ms. Sinatra denies the allegations contained in paragraph 8.

23 9. Ms. Sinatra admits that Ms. Wynn is nearly a 10 percent shareholder of Wynn  
24 Resorts (the "Company"), that she no longer sits on the Company's Board of Directors (the  
25 "Board"), that she is a sophisticated business woman, and that Ms. Wynn's stock in the Company  
26 is subject to voting and transfer restrictions as set forth in the January 2010 Stockholders  
27 Agreement. Except as otherwise admitted or averred, Ms. Sinatra denies the allegations contained  
28 in paragraph 9.

1 **II. Case Designation**

2 10. The allegations in paragraph 10 contain multiple legal conclusions to which no  
3 response is required.

4 **III. The Parties**

5 11. Ms. Sinatra is without sufficient basis to form a belief as to the truth or falsity of the  
6 allegations contained in paragraph 11 and, therefore, denies them.

7 12. On information and belief, Ms. Sinatra admits the allegations contained in  
8 paragraph 12.

9 13. Ms. Sinatra admits the allegations contained in paragraph 13.

10 14. On information and belief, Ms. Sinatra admits the allegations contained in  
11 paragraph 14.

12 15. On information and belief, Ms. Sinatra admits that Aruze USA, Inc. ("Aruze") is a  
13 company organized and existing under the laws of Nevada, has been controlled by Kazuo Okada  
14 and is the entity Mr. Okada has used to hold shares in Wynn Resorts. Except as otherwise  
15 admitted or averred, Ms. Sinatra is without sufficient basis to form a belief as to the truth or falsity  
16 of the allegations contained in paragraph 15 and, therefore, denies them.

17 **IV. General Allegations**

18 16. Ms. Sinatra admits that Ms. Wynn and Stephen A. Wynn ("Mr. Wynn") have been  
19 married, divorced and remarried and divorced a second time. Except as otherwise admitted or  
20 averred, Ms. Sinatra is without sufficient basis to form a belief as to the truth or falsity of the  
21 allegations contained in paragraph 16 and, therefore, denies them.

22 17. On information and belief, Ms. Sinatra admits that Mr. Wynn did not contest that  
23 Ms. Wynn was entitled to 50 percent of the stock he held in the Company at the time of their  
24 divorce, and that the stock was subject to the same or similar restrictions to which Ms. Wynn  
25 agreed. Except as otherwise admitted or averred, Ms. Sinatra is without sufficient basis to form a  
26 belief as to the truth or falsity of the allegations contained in paragraph 17 and, therefore, denies  
27 them.

28 18. Ms. Sinatra is without sufficient basis to form a belief as to the truth or falsity of the

1 allegations contained in paragraph 18 and, therefore, denies them.

2 19. On information and belief, Ms. Sinatra admits the allegations contained in  
3 paragraph 19.

4 **A. The Creation of Wynn Resorts**

5 20. On information and belief, Ms. Sinatra admits that, in April 2000, Mr. Wynn  
6 formed Valvino Lamore, LLC ("Valvino"), a Nevada limited liability company, that Valvino  
7 acquired the former Desert Inn Resort & Casino in June 2000, and that Wynn Las Vegas was later  
8 developed on the former Desert Inn site. Except as otherwise admitted, Ms. Sinatra denies the  
9 allegations in paragraph 20.

10 21. On information and belief, Ms. Sinatra admits that Aruze USA, Inc. ("Aruze")  
11 contributed \$260 million to Valvino in October 2000 and became a member of Valvino. Except as  
12 otherwise admitted, Ms. Sinatra denies the allegations in paragraph 21.

13 22. On information and belief, Ms. Sinatra admits the allegations contained in  
14 paragraph 22.

15 23. On information and belief, Ms. Sinatra admits the allegations contained in  
16 paragraph 23.

17 24. On information and belief, Ms. Sinatra admits the allegations contained in  
18 paragraph 24.

19 25. On information and belief, Ms. Sinatra admits the allegations contained in  
20 paragraph 25.

21 26. On information and belief, Ms. Sinatra admits the allegations contained in  
22 paragraph 26.

23 **B. The 2002 and 2006 Stockholders Agreements**

24 27. On information and belief, Ms. Sinatra avers that Mr. Wynn, Aruze, and Baron  
25 Asset Fund entered into the April 2002 Stockholders Agreement, that the agreement was amended  
26 in November 2006, and that Mr. Wynn, Aruze, and Ms. Wynn entered the Amended and Restated  
27 Stockholders Agreement in early January 2010. Except as otherwise admitted or averred, Ms.  
28 Sinatra denies the allegations in paragraph 27.

1           28.    Ms. Sinatra admits that the April 2002 Stockholders Agreement referenced in  
2 paragraph 28 sets forth various terms among stockholders, and refers to such agreement for a full  
3 and accurate statement of the terms thereof. Ms. Sinatra denies any allegation or characterization  
4 inconsistent with the April 2002 Stockholders Agreement, which speaks for itself. Except as  
5 otherwise admitted or averred, Ms. Sinatra denies the allegations contained in paragraph 28.

6           29.    Ms. Sinatra admits that the April 2002 Stockholders Agreement referenced in  
7 paragraph 29 sets forth various terms among stockholders, and refers to such agreement for a full  
8 and accurate statement of the terms thereof. Ms. Sinatra denies any allegation or characterization  
9 inconsistent with the April 2002 Stockholders Agreement, which speaks for itself. Except as  
10 otherwise admitted or averred, Ms. Sinatra denies the allegations contained in paragraph 29.

11          30.    Ms. Sinatra admits that the April 2002 Stockholders Agreement referenced in  
12 paragraph 30 sets forth various terms among stockholders, and refers to such agreement for a full  
13 and accurate statement of the terms thereof. Ms. Sinatra denies any allegation or characterization  
14 inconsistent with the April 2002 Stockholders Agreement, which speaks for itself. Except as  
15 otherwise admitted or averred, Ms. Sinatra denies the allegations contained in paragraph 30.

16          31.    Ms. Sinatra admits that the March 15, 2005 Form 10-K filing referenced in  
17 paragraph 31 sets forth various statements and refers to such filing for a full and accurate statement  
18 of the contents thereof. Ms. Sinatra denies any allegation or characterization inconsistent with the  
19 March 15, 2005 Form 10-K filing, which speaks for itself. Except as otherwise admitted or  
20 averred, Ms. Sinatra denies the allegations contained in paragraph 31.

21          32.    Ms. Sinatra admits that the March 15, 2005 Form 10-K filing referenced in  
22 paragraph 32 sets forth various statements and refers to such filing for a full and accurate statement  
23 of the contents thereof. Ms. Sinatra denies any allegation or characterization inconsistent with the  
24 March 15, 2005 Form 10-K filing, which speaks for itself. Except as otherwise admitted or  
25 averred, Ms. Sinatra denies the allegations contained in paragraph 32.

26          33.    Ms. Sinatra admits that Mr. Wynn and Aruze executed an Amendment to the April  
27 2002 Stockholders Agreement on or about November 8, 2006. Except as otherwise admitted, Ms.  
28 Sinatra denies the allegations in paragraph 33.

1           34. Ms. Sinatra admits that the November 2006 Amendment to the April 2002  
2 Stockholders Agreement referenced in paragraph 34 sets forth various terms among stockholders,  
3 and refers to such agreement for a full and accurate statement of the terms thereof. Ms. Sinatra  
4 denies any allegation or characterization inconsistent with the November 2006 Amendment to the  
5 April 2002 Stockholders Agreement, which speaks for itself. Except as otherwise admitted, Ms.  
6 Sinatra denies the allegations contained in paragraph 34.

7           **C. Division of the Wynn Shares**

8           35. On information and belief, Ms. Sinatra admits the allegations contained in the first  
9 sentence of paragraph 35. The allegations contained in the second sentence of paragraph 35 are  
10 legal conclusions to which no response is required. To the extent any response is required, Ms.  
11 Sinatra denies the allegations contained in the second sentence of paragraph 35.

12           36. Ms. Sinatra admits that Mr. Wynn's shares in the Company were subject to the  
13 April 2002 Stockholders Agreement, as amended, that Mr. Wynn could not convey any stock to  
14 Ms. Wynn free of the restrictions imposed by such agreement. Except as otherwise admitted, Ms.  
15 Sinatra is without sufficient basis to form a belief as to the truth or falsity of the allegations  
16 contained in paragraph 36 and, therefore, denies them.

17           37. Ms. Sinatra is without sufficient basis to form a belief as to the truth or falsity of the  
18 allegations contained in paragraph 37 and, therefore, denies them.

19           38. On information and belief, Ms. Sinatra admits that Ms. Wynn would separately own  
20 nearly 10 percent of the stock in the Company following her divorce with Mr. Wynn, and avers  
21 that the parties' Marital Settlement Agreement sets forth various terms between Mr. Wynn and Ms.  
22 Wynn, including Ms. Wynn's service on the Company's Board, and refers to such agreement for a  
23 full and accurate statement of the terms thereof. Ms. Sinatra denies any allegation or  
24 characterization inconsistent with the Marital Settlement Agreement, which speaks for itself.  
25 Except as otherwise admitted or averred, Ms. Sinatra denies the allegations contained in paragraph  
26 38.

27           39. Ms. Sinatra admits that Ms. Wynn signed the January 2010 Stockholders  
28 Agreement. Except as otherwise admitted, Ms. Sinatra denies the allegations contained in

1 paragraph 39.

2 **D. The January 2010 Stockholders Agreement**

3 40. Ms. Sinatra admits that Mr. Wynn, Ms. Wynn, and Aruze signed the January 2010  
4 Stockholders Agreement. Except as otherwise admitted, Ms. Sinatra denies the allegations  
5 contained in paragraph 40.

6 41. Ms. Sinatra admits that the January 2010 Stockholders Agreement referenced in  
7 paragraph 41 sets forth various terms, and refers to such agreement for a full and accurate  
8 statement of the terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent  
9 with the January 2010 Stockholders Agreement, which speaks for itself.

10 42. Ms. Sinatra admits that the January 2010 Stockholders Agreement referenced in  
11 paragraph 42 sets forth various terms, and refers to such agreement for a full and accurate  
12 statement of the terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent  
13 with the January 2010 Stockholders Agreement, which speaks for itself.

14 43. Ms. Sinatra admits that the January 2010 Stockholders Agreement referenced in  
15 paragraph 43 sets forth various terms, and refers to such agreement for a full and accurate  
16 statement of the terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent  
17 with the January 2010 Stockholders Agreement, which speaks for itself.

18 44. Ms. Sinatra admits that the January 2010 Stockholders Agreement referenced in  
19 paragraph 44 sets forth various terms, and refers to such agreement for a full and accurate  
20 statement of the terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent  
21 with the January 2010 Stockholders Agreement, which speaks for itself.

22 45. Ms. Sinatra admits that the January 2010 Stockholders Agreement referenced in  
23 paragraph 45 sets forth various terms, and refers to such agreement for a full and accurate  
24 statement of the terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent  
25 with the January 2010 Stockholders Agreement, which speaks for itself.

26 46. Ms. Sinatra admits that the January 2010 Stockholders Agreement referenced in  
27 paragraph 46 sets forth various terms, and refers to such agreement for a full and accurate  
28 statement of the terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent

1 with the January 2010 Stockholders Agreement, which speaks for itself.

2 47. Ms. Sinatra admits that the January 2010 Stockholders Agreement referenced in  
3 paragraph 47 sets forth various terms, and refers to such agreement for a full and accurate  
4 statement of the terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent  
5 with the January 2010 Stockholders Agreement, which speaks for itself.

6 **E. WYNN RESORTS' REDEMPTION OF ARUZE'S STOCK**

7 48. Ms. Sinatra admits that Wynn Resorts, on behalf of its Compliance Committee,  
8 retained Louis Freeh ("Mr. Freeh") and his firm to conduct an investigation. Except as otherwise  
9 admitted, Ms. Sinatra denies the allegations contained in paragraph 48.

10 49. Ms. Sinatra admits that Mr. Freeh made a presentation on February 18, 2012 to the  
11 Company's Board, that following Mr. Freeh's presentation the Company's Board adopted a  
12 resolution finding Aruze, Kazuo Okada ("Mr. Okada"), and Universal Entertainment Corporation  
13 to be Unsuitable Persons under the Company's Second Amended and Restated Articles of  
14 Incorporation (the "Articles"), and that the Company redeemed Aruze's shares in the Company in  
15 accordance with the provisions of the Articles. Except as otherwise admitted, Ms. Sinatra denies  
16 the allegations contained in paragraph 49.

17 50. The allegations in paragraph 50 contain multiple legal conclusions to which no  
18 response is required. To the extent any response is required, Ms. Sinatra denies the allegations in  
19 paragraph 50.

20 **F. Mr. Wynn's Abandonment of His Promises to Ms. Wynn and Pattern of**  
21 **Reckless Behavior**

22 51. Ms. Sinatra denies the allegations contained in paragraph 51.

23 52. On information and belief, Ms. Sinatra admits that Mr. Wynn reached a settlement  
24 using his personal funds with a former Company employee referenced in paragraph 52, and avers  
25 that Ms. Wynn was aware of this fact since at least 2009. Except as otherwise admitted or averred,  
26 Ms. Sinatra denies the allegations contained in paragraph 52.

27 53. Ms. Sinatra is without sufficient basis to form a belief as to the truth or falsity of the  
28 allegations contained in paragraph 53 and, therefore, denies them.



1           54. Ms. Sinatra admits that Marc Schorr ("Mr. Schorr") was a former director on the  
2 Company's Board, that Mr. Schorr was the former Chief Operating Officer of Company. Except  
3 as otherwise admitted, Ms. Sinatra denies the allegations contained in paragraph 54.

4           55. Ms. Sinatra admits that Tim Poster ("Mr. Poster") formerly held a position in casino  
5 marketing, that Mr. Poster was thereafter promoted to the position of Chief Operating Officer of  
6 Wynn Las Vegas, and that Mr. Poster resigned from the position of Chief Operating Officer while  
7 undergoing a licensing investigation by the Nevada Gaming Control Board in connection with his  
8 ownership interest in a non-Wynn Resorts gaming venture. Except as otherwise admitted, Ms.  
9 Sinatra denies the allegations contained in paragraph 55.

10          56. Ms. Sinatra admits that Mr. Schorr's departure from the Company was publicly  
11 disclosed in a filing with the Securities and Exchange Commission, and that he was subsequently  
12 hired as a consultant for Wynn Resorts. Except as otherwise admitted, Ms. Sinatra denies the  
13 allegations contained in paragraph 56.

14          57. Ms. Sinatra admits that the Company's publicly filed proxy statement for 2009  
15 disclosed she was paid \$10.4 million, including nearly \$7 million in deferred option awards.  
16 Except as otherwise admitted, Ms. Sinatra denies the allegations contained in paragraph 57.

17          58. Ms. Sinatra admits that the March 2014 Proxy Statement referenced in paragraph  
18 58 sets forth various terms, and refers to such agreement for a full and accurate statement of the  
19 terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent with the March  
20 2014 Proxy Statement, which speaks for itself. Ms. Sinatra admits that Mr. Wynn's compensation  
21 package was restructured in 2014, that Mr. Wynn initially requested that any additional shares he  
22 received as compensation not be subject to the restrictions contained in the 2010 Stockholders  
23 Agreement, and avers that Ms. Wynn refused this request and told other company directors that  
24 she needed to maintain this position as leverage in her lawsuit against Mr. Wynn. Except as  
25 otherwise admitted or averred, Ms. Sinatra denies the allegations contained in paragraph 58.

26          59. Ms. Sinatra denies the allegations contained in paragraph 59.

27          60. Ms. Sinatra admits that Mr. Wynn is free to support whatever candidate or party he  
28 chooses. Except as otherwise admitted, Ms. Sinatra denies the allegations contained in paragraph

1 60.

2 61. Ms. Sinatra admits that the votes of the Company's Board have been mostly  
3 unanimous. Except as otherwise admitted, Ms. Sinatra denies the allegations contained in  
4 paragraph 61.

5 G. Mr. Wynn's Disregard of His Agreement and of His Repeated Assurances to  
6 Engineer Elaine Wynn's Removal from the Board of the Company She Built

7 62. Ms. Sinatra denies the allegations contained in paragraph 62.

8 63. Ms. Sinatra admits that the Nominating and Corporate Governance Committee  
9 ("NCGC") of the Company voted to recommend that Ms. Wynn not be renominated to the Board,  
10 that the NCGC voted to recommend that the Board be decreased by one, and that NCGC voted to  
11 recommend that only directors J. Edward Virtue ("Mr. Virtue") and John J. Hagenbuch ("Mr.  
12 Hagenbuch") be renominated. Except as otherwise admitted, Ms. Sinatra denies the allegations  
13 contained in paragraph 63.

14 64. Ms. Sinatra admits that the Company's Board voted in favor of reducing the size of  
15 the Board by one, that the Board voted in favor of renominating Mr. Virtue and Mr. Hagenbuch to  
16 the Board, and that Mr. Wynn voted against reducing the size of the Board by one. Except as  
17 otherwise admitted, Ms. Sinatra denies the allegations contained in paragraph 64.

18 65. Ms. Sinatra admits that Ms. Wynn filed the preliminary proxy statement referenced  
19 in paragraph 65, that the Company's management responded thereto, that Mr. Wynn was  
20 interviewed on the Charlie Rose Show on April 15, 2015, that Ms. Wynn issued a press release  
21 thanking Mr. Wynn for his endorsement, and that the Company issued a press release on April 16,  
22 2015, all of which speak for themselves. Except as otherwise admitted, Ms. Sinatra denies the  
23 allegations contained in paragraph 65.

24 66. Ms. Sinatra is without sufficient basis to form a belief as to the truth or falsity of the  
25 allegation that Ms. Wynn was the only director who wanted to stay on the Board who was not  
26 renominated and reelected, and otherwise denies the allegations contained in paragraph 66.

27 ///

1 **V. Claims for Relief**

2 **TWELFTH CAUSE OF ACTION**

3 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**  
4 **(Against Kimmarré Sinatra)**

5 146. Ms. Sinatra repeats and realleges the responses set forth in paragraphs 1 through 66  
6 above.

7 147. Ms. Sinatra admits that the January 2010 Stockholders Agreement referenced in  
8 paragraph 147 sets forth various terms, and refers to such agreement for a full and accurate  
9 statement of the terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent  
10 with the January 2010 Stockholders Agreement, which speaks for itself. Except as otherwise  
11 admitted, Ms. Sinatra denies the allegations contained in paragraph 147.

12 148. Ms. Sinatra admits that the January 2010 Stockholders Agreement referenced in  
13 paragraph 148 sets forth various terms, and refers to such agreement for a full and accurate  
14 statement of the terms thereof. Ms. Sinatra denies any allegation or characterization inconsistent  
15 with the January 2010 Stockholders Agreement, which speaks for itself. Except as otherwise  
16 admitted, Ms. Sinatra denies the allegations contained in paragraph 148.

17 149. The allegations contained in paragraph 149 are legal conclusions to which no  
18 response is required. To the extent a response is required, Ms. Sinatra denies the allegations.

19 150. Ms. Sinatra denies the allegations contained in paragraph 150.

20 151. Ms. Sinatra denies the allegations contained in paragraph 151.

21 **FIFTEENTH CAUSE OF ACTION**

22 **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
23 **(Against Kimmarré Sinatra)**

24 165. Ms. Sinatra repeats and realleges the responses set forth in paragraphs 1 through 66  
25 above.

26 166. Ms. Sinatra admits that Ms. Wynn was a director and minority shareholder of Wynn  
27 Resorts. Except as otherwise admitted, allegations contained in paragraph 166 are legal  
28 conclusions to which no response is required. To the extent a response is required, Ms. Sinatra

1 denies the allegations.

2 167. The allegations contained in paragraph 167 are legal conclusions to which no  
3 response is required. To the extent a response is required, Ms. Sinatra denies the allegations.

4 168. The allegations contained in paragraph 168 are legal conclusions to which no  
5 response is required. To the extent a response is required, Ms. Sinatra denies the allegations.

6 169. Ms. Sinatra denies the allegations contained in paragraph 169.

7 170. Ms. Sinatra denies the allegations contained in paragraph 170.

8 **DEMAND FOR JURY TRIAL**

9 Insofar as Ms. Wynn seeks a jury trial on her claims against Ms. Sinatra arising out of the  
10 January 2010 Stockholders Agreement, it is improper as the parties waived their right to a jury  
11 trial in connection with any such action, suit, or proceeding.

12 **AFFIRMATIVE DEFENSES**

13 Ms. Sinatra asserts the following affirmative defenses:

14 **FIRST AFFIRMATIVE DEFENSE**

15 The Sixth Amended Crossclaim fails to state a claim upon which relief can be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 The Sixth Amended Crossclaim is barred in whole or part because Mr. Wynn allegedly  
18 had no intention of performing under the January 2010 Stockholders Agreement irrespective of  
19 Ms. Sinatra's alleged interference.

20 **THIRD AFFIRMATIVE DEFENSE**

21 The Sixth Amended Crossclaim is barred in whole or part because Ms. Sinatra did not  
22 proximately cause the alleged breach of the January 2010 Stockholders Agreement by Mr. Wynn.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 The Sixth Amended Crossclaim is barred in whole or part because the alleged underlying  
25 breach of fiduciary claim against Mr. Wynn is addressed by obligations in the January 2010  
26 Stockholders Agreement.

27 **FIFTH AFFIRMATIVE DEFENSE**

28 The Sixth Amended Crossclaim is barred in whole or part because aiding and abetting

1 breach of fiduciary claims are only viable against a defendant who does not owe fiduciary duties  
2 to the plaintiff.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 The Sixth Amended Crossclaim is barred in whole or part because Ms. Wynn disavows  
5 the validity of the January 2010 Stockholders Agreement and any claim for interference of such  
6 agreement must fail.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 The Sixth Amended Crossclaim is barred in whole or part by the doctrine of waiver.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 The Sixth Amended Crossclaim is barred in whole or part by the doctrine of laches.

11 **NINTH AFFIRMATIVE DEFENSE**

12 The Sixth Amended Crossclaim is barred in whole or part by the applicable statute of  
13 limitations.

14 **TENTH AFFIRMATIVE DEFENSE**

15 The Sixth Amended Crossclaim is barred in whole or part by the various doctrines of  
16 consent.

17 **ELEVENTH AFFIRMATIVE DEFENSE**

18 The Sixth Amended Crossclaim is barred in whole or part by the doctrine of election of  
19 remedies.

20 **TWELFTH AFFIRMATIVE DEFENSE**

21 The Sixth Amended Crossclaim is barred in whole or part by the doctrines of ripeness and  
22 standing.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 The alleged breaches and alleged misrepresentations set forth in the Sixth Amended  
25 Crossclaim, if any, are not material.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 The Sixth Amended Crossclaim is barred in whole or part by the doctrine of futility.

28 **FIFTEENTH AFFIRMATIVE DEFENSE**

1 The Sixth Amended Crossclaim is barred in whole or part by the doctrine of unclean  
2 hands.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 The Sixth Amended Crossclaim is barred in whole or part as Ms. Sinatra has complied  
5 with all express and implied obligations contained in the contracts at issue and the corporate  
6 governance documents of the Company.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 The Sixth Amended Crossclaim is barred in whole or part by the doctrine of the business  
9 judgment rule.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 The Sixth Amended Crossclaim is barred in whole or part because Ms. Sinatra's actions or  
12 omissions were legally justified and/or privileged and, thus, cannot give rise to any liability on the  
13 part of Ms. Sinatra.

14 Ms. Sinatra hereby gives notice that she intends to rely upon any other defense and/or  
15 remedy that may become available or appear during the proceedings in this case and hereby reserves  
16 the right to amend this Answer to assert any such defense and/or remedy.

17 WHEREFORE, Ms. Sinatra respectfully prays as follows:

- 18 1. That Ms. Wynn take nothing by way of her Sixth Amended Crossclaim;  
19 2. That the Court enter judgment for Ms. Sinatra in the amount of all attorney's fees  
20 and costs incurred herein; and  
21 3. For any and all other relief deemed just and proper under the circumstances.  
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1 **III. Jurisdiction and Venue**

2 3. Ms. Wynn is a citizen of the State of Nevada.

3 4. Venue is properly vested in this District because the process abused by Defendant  
4 as alleged hereinbelow were legal proceedings instituted in this District.

5 **IV. General Allegations**

6 5. In February 2012, Wynn Resorts initiated an action against Kazou Okada  
7 ("Okada"), Aruze USA, Inc. ("Aruze") and Universal Entertainment Corp. ("Universal") in this  
8 District (the "Underlying Actions"). Generally, the action pertained to Okada's role as a member  
9 of the Wynn Resorts Board of Directors and certain actions taken by the Board of Directors,  
10 including the redemption of Wynn Resorts stock previously owned by Aruze USA, Inc.

11 6. Aruze and Universal asserted certain counterclaims against Wynn Resorts,  
12 members of its Board of Directors (which included Ms. Wynn) and Ms. Sinatra.

13 7. In early 2012, Ms. Wynn filed certain counterclaims and crossclaims in the  
14 Underlying Action. Included were claims in which she sought to avoid her obligations under a  
15 2010 stockholders agreement entered into between Ms. Wynn, Mr. Wynn and Aruze (the "2010  
16 Stockholders Agreement").

17 8. In 2015, Ms. Wynn's term as a member of the Board of Directors ended when the  
18 shareholders of the corporation declined to vote her to another term.

19 9. For the four year period between early 2012 until early 2016, Ms. Wynn conducted  
20 her litigation in a manner that was generally consistent with the alignment of the parties in the  
21 Underlying Action. Ms. Wynn voted in favor of the redemption of the Aruze stock and other  
22 matters relating to Aruze and Okada. Therefore, as to the claims asserted by Aruze and Universal,  
23 her interests are aligned with Wynn Resorts and she defended those claims accordingly.

24 **A. The Abuse of Legal Process Begins As Quinn Emanuel Joins As Ms. Wynn's**  
25 **Counsel**

26 10. In early 2016, Ms. Wynn's prior out-of-state counsel withdrew from the lawsuit and  
27 Quinn Emanuel became her lead counsel.

28 11. At that time, Ms. Wynn began her campaign to abuse the legal process as against



1 Ms. Sinatra for the purposes, among others, of extracting a settlement from Mr. Wynn, Wynn  
2 Resorts and Ms. Sinatra that could not be achieved in court, to intimidate and embarrass Mr.  
3 Wynn, Wynn Resorts and Ms. Sinatra, to create potential conflicts between them, and to  
4 intentionally jeopardize their case against Okada, Aruze and Universal.

5 12. The intent to abuse the process was made clear almost as soon as Quinn Emanuel  
6 joined the case.

7 13. On February 12, 2016, Quinn Emanuel contacted Mr. Wynn's attorney and made an  
8 unabashed threat on behalf of Ms. Wynn: either accept a "settlement proposal" or Ms. Wynn  
9 would amend her pleadings to add tort claims against Wynn Resorts and Ms. Sinatra. To add to  
10 the threat, Quinn Emanuel identified specific accusations Ms. Wynn would make in the amended  
11 pleading.

12 14. Ms. Sinatra is informed and believes, and thereon alleges, Ms. Wynn intended and  
13 hoped that the nature of the accusations would cause Mr. Wynn, Wynn Resorts and Ms. Sinatra to  
14 make a settlement decision not based on the merits of any claim, but based upon the fear of such  
15 accusations being made public. Further, Ms. Wynn knew some of the accusations to be false.

16 15. Ms. Wynn, through her counsel, insisted that Mr. Wynn, Wynn Resorts and Ms.  
17 Sinatra could only avoid the filing of the threatened pleadings if Mr. Wynn would: 1) agree to  
18 release Ms. Wynn from the transfer restrictions contained in the 2010 stockholders agreement, 2)  
19 cause the company to terminate Ms. Sinatra, and 3) cause the company to separate the CEO and  
20 Chairman of the Board positions.

21 16. Obviously, other than her efforts to avoid the transfer restrictions on her stock, Ms.  
22 Wynn could not accomplish any of her other demands through litigation. And, of course, no claim  
23 needed to be asserted against anyone other than Mr. Wynn to accomplish that.

24 17. Having made the above-referenced threats and demands, Quinn Emanuel provided  
25 Mr. Wynn's counsel with Ms. Wynn's draft amended pleading. Quinn Emanuel stated that Ms.  
26 Wynn intended to immediately file the pleading with a motion for leave to amend her operative  
27 counterclaims.

28 18. In the draft amended pleading, Ms. Wynn included allegations that she knew to be

1 false. The draft amended pleading also included other serious allegations that had nothing to do  
2 with Ms. Wynn's claims.

3 19. On March 10, 2016, Ms. Wynn initiated legal process against Wynn Resorts and  
4 Ms. Sinatra by filing a motion for leave to file amended crossclaims and counterclaims. The  
5 proposed pleading included the threatened tort claims against Wynn Resorts and Ms. Sinatra,  
6 though some of the scurrilous accusations had been removed.

7 20. Ms. Wynn did not care whether the new claims were factually or legally tenable  
8 because they were not asserted for the purposes of resolving a legitimate legal dispute, but for the  
9 ulterior proposes alleged herein.

10 21. On March 27, 2016, before filing the amended pleading and making her allegations  
11 public, Ms. Wynn, through Quinn Emanuel, again offered to settle the case. This time, she added  
12 another extortionate option. Mr. Wynn could accept the prior proposal or he could agree to  
13 purchase all of Ms. Wynn's stock in Wynn Resorts at a premium of almost 50% – at the time,  
14 nearly \$500 million more than the *market* value of Ms. Wynn's transfer restricted stock. In other  
15 words, Ms. Wynn gave Mr. Wynn, Wynn Resorts and Ms. Sinatra one last chance to avert the  
16 publicity of Ms. Wynn's scurrilous allegations by agreeing to terms which were unavailable to Ms.  
17 Wynn in court. Again, Ms. Wynn's extortionate demands were not met.

18 B. Ms. Wynn Files Her Amended Pleading Asserting Unmeritorious Claims  
19 Against Wynn Resorts and Ms. Sinatra, And Continues to Abuse the Legal  
20 Process

21 22. On March 28, 2016, Ms. Wynn filed her amended pleading which included the  
22 legally untenable tort claims against Wynn Resorts and Ms. Sinatra, as well as several factual  
23 allegations that had nothing to do with Ms. Wynn's claims and some of which she knew to be false  
24 (the "New Claims").

25 23. Immediately upon filing the New Claims, and again under the perceived protection  
26 of privilege, Ms. Wynn issued a press release announcing that she had done so. The press release  
27 detailed some of the allegations (including some she knew to be false) and accused Wynn Resorts  
28 and Ms. Sinatra of wrongful conduct.

1           24.     The tactic of using press releases and other publicity to do what cannot be  
2 accomplished in court was not an unusual event for cases on which Quinn Emanuel serve as  
3 counsel. Indeed, Quinn Emanuel attorneys have been sanctioned for such conduct at least once in  
4 the past. Ms. Sinatra is informed and believes, and thereon alleges, that Ms. Wynn was aware of  
5 Quinn Emanuel's reputation in this regard and hired them, at least in part, for that reason.

6           25.     Ms. Wynn repeated this tactic more than once – using the legal process to give her  
7 the perceived protection of privilege so that she could issue press releases designed to embarrass,  
8 inconvenience and/or intimidate Mr. Wynn, Wynn Resorts and/or Ms. Sinatra in order to leverage  
9 a settlement on terms unavailable in the course of litigation.

10          26.     For example, on April 19, 2016, Quinn Emanuel filed a motion to compel the  
11 further deposition of one of Wynn Resorts' board members, former Governor Robert Miller. Ms.  
12 Wynn did not even wait to learn the outcome of that motion. The very next day, Ms. Wynn issued  
13 a press release announcing the fact that she had filed the motion. However, again under the  
14 perceived cover of privilege, Ms. Wynn used the opportunity to reiterate the facts, some of which  
15 she knew to be untrue, contained in her prior press release and to repeat her allegations of  
16 wrongdoing against Wynn Resorts and Ms. Sinatra.

17          27.     Additionally, Ms. Wynn began to multiply the proceedings and continued to abuse  
18 the legal process in furtherance of their improper purposes. Between March 11, 2016 and May 2,  
19 2016, Ms. Wynn and Quinn Emanuel noticed more than a dozen depositions in the case, including  
20 one person who had already been deposed by her prior counsel. Ms. Sinatra is informed and  
21 believes, and thereon alleges, that most, if not all these depositions were noticed for the improper  
22 purposes alleged hereinabove and not for the purpose of accomplishing any legitimate purpose of  
23 the litigation.

24          28.     During the same time period, Ms. Wynn filed multiple motions to compel,  
25 including two additional people who had already been deposed in the case. Ms. Sinatra is  
26 informed and believes, and thereon alleges, that these motions were made for the improper  
27 purposes alleged hereinabove, and not for the purpose of accomplishing any legitimate purpose of  
28 the litigation.

1 **V. CLAIM FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

3 **(Abuse of Process)**

4 29. Ms. Sinatra reincorporates by reference each and every one of the allegations set  
5 forth in Paragraphs 1 through 28.

6 30. Ms. Wynn instituted, maintained, and conducted legal processes against Ms. Sinatra  
7 as alleged hereinabove with improper motives and ulterior purposes including, but not limited to,  
8 extracting a settlement from Mr. Wynn, Wynn Resorts and Ms. Sinatra that could not be achieved  
9 in court, to intimidate and embarrass Mr. Wynn, Wynn Resorts and Ms. Sinatra, to create potential  
10 conflicts between them, and to intentionally jeopardize their case against Okada, Aruze and  
11 Universal.

12 31. Ms. Wynn engaged in multiple willful acts in the use of the legal process not proper  
13 in the regular conduct of the proceeding, as alleged hereinabove, including, but not limited to, the  
14 making of extortionate settlement offers both before and after initiating legal process, propounding  
15 an unreasonable amount of discovery and filing motions for the purpose of coercing a settlement,  
16 and filing the claims, propounding discovery and filing motions against Wynn Resorts and/or Ms.  
17 Sinatra in order to orchestrate and gain favorable publicity in the hope of coercing a settlement,  
18 and obtaining confidential information through the discovery process and providing it to third  
19 parties to cause harm to Wynn Resorts.

20 32. As a direct and proximate result of Ms. Wynn's tortious conduct, Ms. Sinatra has  
21 suffered harm including harm to reputation, attorneys' fees, mental anguish and other direct,  
22 incidental, consequential and/or general damages in an amount to be proven at trial, but in excess  
23 of \$10,000.

24 33. In committing the acts alleged herein, Ms. Wynn is guilty of oppression, fraud, and  
25 malice toward Ms. Sinatra. As such, Ms. Sinatra is entitled to recover punitive damages from Ms.  
26 Wynn.

27 34. As a result of the acts of Ms. Wynn, Ms. Sinatra has been compelled to hire the  
28 services of an attorney for the protection of her interests.

1 WHEREFORE, Ms. Sinatra prays for judgment against Ms. Wynn as follows:

- 2 1. For compensatory and special damages, in excess of \$10,000, in an amount to be  
3 determined at trial;
- 4 2. For punitive damages;
- 5 3. For an award of reasonable costs and attorneys' fees;
- 6 4. For prejudgment and post-judgment interest on the foregoing sums at the highest  
7 rate permitted by law; and
- 8 5. For any and all additional relief that the Court deems just and proper.

9 DATED this 7<sup>th</sup> day of September, 2017.

10  
11 ORRICK, HERRINGTON & SUTCLIFFE LLP

12 By: /s/ Melinda Haag  
13 Melinda Haag (*pro hac vice admitted*)  
14 James N. Kramer (*pro hac vice admitted*)  
15 ORRICK, HERRINGTON & SUTCLIFFE LLP  
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17 San Francisco, California 94105

18 -and-

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24 Las Vegas, Nevada 89101

25 Attorneys for Kimmarré Sinatra  
26  
27  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of ORRICK, HERRINGTON & SUTCLIFFE LLP, and that on this 7<sup>th</sup> day of September, 2017, I caused to be electronically filed and served through the Court's e-service/e-filing system true and correct copies of the foregoing document to the interested parties listed below:

**KIMMARIE SINATRA'S ANSWER TO ELAINE P. WYNN'S SIXTH AMENDED COUNTERCLAIM AND CROSSCLAIM; COUNTERCLAIM AND CROSSCLAIM OF KIMMARIE SINATRA**

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Alvin V. Shoemaker, Kimmarie Sinatra, D.  
Boone Wayson, and Allan Zeman*

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

18 Executed on September 7, 2017 at San Francisco, California.

20 /s/ Lenny T. Patts  
21 An employee of ORRICK, HERRINGTON  
22 & SUTCLIFFE LLP  
23  
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26  
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28

# EXHIBIT 21





1 **MTD**  
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22 *Counsel for*  
23 *Counter-Defendant/Counter-Claimant/Cross-Claimant*  
24 *Elaine P. Wynn*  
25 *\*admitted pro hac vice*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

20 WYNN RESORTS, LIMITED, a Nevada  
21 Corporation,  
22  
23 Plaintiffs,  
24 vs.  
25 KAZUO OKADA, an individual, ARUZE  
26 USA, Inc., a Nevada corporation,  
27 UNIVERSAL ENTERTAINMENT  
28 CORPORATION, a Japanese corporation,  
Defendants.

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

**ELAINE P. WYNN'S MOTION TO  
DISMISS KIMMARIE SINATRA'S  
COUNTERCLAIM AND CROSSCLAIM**

Date of Hearing:  
Time of Hearing:

GREENBERG TRAUERIG, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002

1 ARUZE USA, INC., a Nevada corporation,  
2 UNIVERSAL ENTERTAINMENT  
3 CORPORATION, a Japanese corporation,

4 Counterclaimants.

5 vs.

6 WYNN RESORTS, LIMITED, a Nevada  
7 Corporation, STEPHEN A. WYNN, an  
8 individual, KIMMARIE SINATRA, an  
9 individual, LINDA CHEN, an individual, RAY  
10 R. IRANI, an individual, RUSSELL  
11 GOLDSMITH, an individual, ROBERT J.  
12 MILLER, an individual, JOHN A. MORAN, an  
13 individual, MARC D. SCHORR, an individual,  
14 ALVIN V. SHOEMAKER, an individual, D.  
15 BOONE WAYSON, an individual, ELAINE P.  
16 WYNN, an individual, ALLAN ZEMAN, an  
17 individual,

18 Counterdefendants.

19 ELAINE P. WYNN, an individual,

20 Counterclaimant and  
21 Crossclaimant,

22 vs.

23 STEPHEN A. WYNN, an individual, WYNN  
24 RESORTS, LIMITED, a Nevada Corporation,  
25 KIMMARIE SINATRA, an individual,

26 Crossdefendants,

27 ARUZE USA, INC., a Nevada Corporation,

28 Counterdefendant.

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Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002

1 Elaine P. Wynn ("Ms. Wynn"), by and through her attorneys, hereby moves this Court  
2 pursuant to NRCP 12(b)(5), for an order dismissing Kimmarie Sinatra's Counterclaim and  
3 Crossclaim.

4 This Motion is made and based upon the attached Memorandum of Points and Authorities,  
5 all pleadings and documents on file, and any oral argument the Court may choose to hear.

6 Dated this 2<sup>nd</sup> day of October, 2017

7 GREENBERG TRAUIG, LLP

8 By: /s/ Mark E. Ferrario

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10 TAMI D. COWDEN, ESQ. #8994

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**NOTICE OF MOTION**

To: All Interested Parties; and

To: Their Counsel of Record;

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Elaine P. Wynn's Motion to Dismiss Kimmarie Sinatra's Counterclaim and Crossclaim, on for hearing in Department XI of the above-entitled Court on the 6 day of November, 2017 at 8:00 a.m. or as soon thereafter as counsel may be heard.

DATED this 2<sup>nd</sup> day of October, 2017.

GREENBERG TRAURIG, LLP

By: /s/ Mark E. Ferrario

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Attorneys for Counterdefendant/  
Counterclaimant/Cross-claimant  
ELAINE P. WYNN

**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

Ms. Sinatra's abuse of process counterclaim is nothing more than a series of collateral attacks on the Court's oversight of this case, masquerading as a cause of action against Ms. Wynn. In 2016, Ms. Wynn amended her pleadings to add counterclaims against Mr. Wynn, Ms. Sinatra, and Wynn Resorts arising out of their successful scheme to oust her from the board of the company she co-founded. Since that time, the defendants have taken every conceivable step to avoid litigating those claims on the merits and to, instead, multiply proceedings—submitting motions to dismiss and endless additional filings in this Court and in the Nevada Supreme Court, resisting discovery, walking out of depositions, suing Ms. Wynn in another forum, and so on. This Court has seen through these efforts and has, for example, *denied* motions to dismiss Ms. Wynn's counterclaims from each of the defendants and has generally *granted* Ms. Wynn's requests to pursue discovery in the face of defendants' efforts to stonewall her.

Remarkably, however, Ms. Sinatra—but not Mr. Wynn or Wynn Resorts—has now lodged a counterclaim against Ms. Wynn for “abuse of process,” in pursuing claims this Court has held Ms. Wynn may pursue, and seeking discovery to which this Court has held Ms. Wynn is entitled. To try to obscure that undeniable reality, Ms. Sinatra also maintains that Ms. Wynn's counterclaims and discovery requests—again, counterclaims and discovery requests on which this Court has generally ruled *for Ms. Wynn*—were all made for the allegedly improper purpose of seeking certain settlement terms.

Ms. Sinatra's claim is legally and factually meritless. There is nothing remotely improper, much less tortious, about bringing viable claims that a court declines to dismiss; about making offers to settle those claims; or about pursuing discovery in furtherance of those claims. While Ms. Sinatra is undoubtedly frustrated that the Court has allowed Ms. Wynn to seek to hold her accountable for her conduct, an abuse of process claim against Ms. Wynn is not a legally supported vehicle for Ms. Sinatra to vent her frustrations with this Court's rulings or its handling of Ms. Wynn's claims.

**BACKGROUND**

Ms. Sinatra's abuse of process claim centers around Ms. Wynn's decision to bring counterclaims against Mr. Wynn, Ms. Sinatra, and Wynn Resorts after they engineered a plan to remove Ms. Wynn from the Wynn Resorts board. Despite the rhetoric in Ms. Sinatra's pleading, however, it alleges few concrete facts, with most allegations made vaguely and on information and belief. *See, e.g.*, Counterclaim and Crossclaim of Kimmarré Sinatra (CC) ¶¶ 14, 24, 27-28.

The allegations seem to assert two ways in which Ms. Wynn purportedly misused the legal process. First, Ms. Sinatra alleges that Ms. Wynn should not have brought her counterclaims at all. In Ms. Sinatra's words, Ms. Wynn should not have "initiated legal process against Wynn Resorts and Ms. Sinatra" by "fil[ing] [an] amended pleading which included ... legally untenable tort claims." CC ¶¶ 19, 22, 31. Never mind that this Court rejected Ms. Sinatra's argument that Ms. Wynn's claims are "legally untenable" when the Court denied motions to dismiss from Ms. Sinatra and her co-defendants. *See* 8/23/17 Order Denying Wynn Resorts, Limited's Motion to Dismiss the Eleventh and Fourteenth Causes of Action and Kimmarré Sinatra's Motion to Dismiss the Twelfth and Fourteenth Causes of Action in Elaine P. Wynn's Sixth Amended Counterclaim and Crossclaim.

Second, Ms. Sinatra alleges that Ms. Wynn "abuse[d] the legal process" by "propounding discovery and filing motions" that included a motion to compel additional deposition time with Governor Miller and with "two additional people who had already been deposed." CC ¶¶ 26-28, 31. Although the complaint does not identify them, as best Ms. Wynn can tell, those "two additional people" were James Stern and John Strzemp. Here, too, the Court's subsequent decisions are irreconcilable with Ms. Sinatra's assertions of impropriety: for example, the Court *granted* Ms. Wynn's motion to compel additional time with Mr. Stern. *See* 4/15/16 Order Granting Elaine P. Wynn's Motion to Compel Deposition of James C. Stern on Order Shortening Time. Similarly, the Court has routinely granted motions from all parties, including Wynn Resorts, for additional deposition time with previously-deposed witnesses, including Governor Miller, where good cause exists. *See, e.g.*, 8/1/16 Order Granting Defendants' Motion to Compel Further Deposition of Gov. Robert J. Miller; 7/28/17 Order Granting Wynn Resorts, Limited's Motion to Compel Responses to

1 Questions and for Further Deposition of Kazuo Okada and Aruze 30(b)(6) Designee on Order  
2 Shortening Time.<sup>1</sup>

3 Ms. Sinatra's complaint goes on to allege that Ms. Wynn's supposedly "willful" and "not  
4 proper" acts were carried out with "improper motives and ulterior purposes." CC ¶¶ 30-31. Ms.  
5 Sinatra alleges that Ms. Wynn filed claims and sought discovery "for the purposes of ... extracting a  
6 settlement from Mr. Wynn, Wynn Resorts and Ms. Sinatra that could not be achieved in court, to  
7 intimidate and embarrass Mr. Wynn, Wynn Resorts and Ms. Sinatra, to create potential conflicts  
8 between them, and to intentionally jeopardize their case against Okada, Aruze and Universal." *Id.*  
9 ¶¶ 11, 30. Much of the alleged conduct behind these assertions took place before Ms. Wynn filed  
10 her counterclaims—that is, before there was any use of legal process at all. *See, e.g., id.* ¶¶ 13-15.  
11 Moreover, little of the alleged conduct relates to Ms. Sinatra specifically. Instead, the complaint  
12 alleges that most of the purported conduct was directed at "Mr. Wynn, Wynn Resorts and Ms.  
13 Sinatra"—and where the complaint singles out any one of those three parties, the alleged conduct  
14 complained of was directed at Mr. Wynn alone, not Ms. Sinatra. *See, e.g., id.* ¶¶ 15, 21 (describing  
15 pre-suit settlement demands allegedly made of "Mr. Wynn"). Indeed, nowhere does Ms. Sinatra's  
16 pleading allege facts to establish how she might be "intimidate[d] or "embarrass[ed]" by the filing  
17 of Ms. Wynn's counterclaims. *Id.* ¶¶ 11, 25, 30. Apart from the counterclaims themselves, the only  
18 direct connection to Ms. Sinatra appears to be the allegation that one of Ms. Wynn's pre-litigation  
19 settlement offers included a request that Ms. Sinatra be terminated. *Id.* ¶ 15.<sup>2</sup>

#### 20 LEGAL STANDARD

21 The Nevada Rules of Civil Procedure provide that a complaint should be dismissed for,  
22 among other things, "failure to state a claim upon which relief can be granted." Nev. R. Civ. P.

23  
24 <sup>1</sup> The complaint also alleges the "making of extortionate settlement offers" as an improper act  
25 done through the use of the legal process, CC ¶ 31, but Ms. Wynn's settlement offers made outside  
26 of any court proceeding are not "process." *See, e.g., Land Baron Inv. v. Bonnie Springs Family LP*,  
356 P.3d 511, 520 (Nev. 2015) (actions that are not "founded upon court authority" or that courts are  
27 not "involved in" do not constitute "legal process"). The alleged settlement offers, accordingly, are  
28 relevant if at all only to Ms. Wynn's alleged purposes or motives. CC ¶ 30; *infra* § I.A.

<sup>2</sup> For reasons explained below, any allegations as to Mr. Wynn or Wynn Resorts cannot be  
maintained in a suit brought only by Ms. Sinatra.

12(b)(5). Although the Court must “accept all factual allegations in the complaint as true” and “draw every fair inference in favor of the non-moving party,” *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217 (2000), a motion to dismiss should be granted when the plaintiff “could prove no set of facts, which, if true, would entitle [her] to relief,” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008).

### **ARGUMENT**

#### **I. MS. SINATRA’S ABUSE OF PROCESS ALLEGATIONS FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

“[B]ecause of the potential chilling effect on the right of access to the court, abuse of process claims are heavily disfavored.” *N. Las Vegas Redevelopment Agency v. Skyview Corp.*, 2015 WL 13066381, at \*6 (Nev. Dist. Ct. Jan. 22, 2015). Such a claim requires plaintiffs to prove “(1) an ulterior purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding.” *LaMantia v. Redisi*, 118 Nev. 27, 30 (2002). Because Ms. Sinatra’s counterclaim does not adequately plead facts that, even if true, would satisfy either element, it should be dismissed.

##### **A. Ms. Sinatra Fails To Plead Any Willful Act In The Use Of The Legal Process Not Proper In The Regular Conduct Of The Proceeding.**

The Court can begin and end its analysis with the second element of an abuse of process claim because nothing Ms. Wynn allegedly did “in the use of the legal process” could possibly be characterized as “not proper in the regular conduct of the proceeding.” The pleadings identify three categories of allegedly improper acts: (1) “making of extortionate settlement offers both before and after initiating legal process,” (2) “filing the claims,” *i.e.*, her counterclaims against Mr. Wynn, Ms. Sinatra, and Wynn Resorts, and (3) “propounding an unreasonable amount of discovery.” CC ¶ 31. None of these constitute “a willful act in the use of the legal process not proper in the regular conduct of the proceeding,” and they are absolutely privileged. That conclusion is amply supported by the case law.

##### **1. Settlement Demands.**

To start, Ms. Sinatra’s allegations of settlement offers and other pre-suit conduct are irrelevant because they concern acts that occurred “before [Ms. Wynn] initiat[ed] the legal process”



1 by filing her counterclaims. *Id.* Abuse of process claims concern only “the improper use *after*  
2 *issuance*” of legal process. *Kopff v. World Research Grp., LLC*, 519 F. Supp. 2d 97, 99 (D.D.C.  
3 2007); *see also Nevada Credit Rating Bureau, Inc. v. Williams*, 88 Nev. 601, 606 (1972) (“The  
4 action for abuse of process hinges on the misuse of regularly issued process, in contrast to malicious  
5 prosecution which rests upon the wrongful issuance of process.”); Restatement (Second) of Torts §  
6 682 (1977), Reporter’s Note (“Crux of action is improper use of process after it is issued.”). Put  
7 simply, “[t]here is no abuse of process where a plaintiff approaches a defendant with  
8 a settlement demand or offer prior to proceeding with litigation.” *Malibu Media, LLC v. Doe 1*, No.  
9 12-cv-1195, 2013 WL 5603275, at \*3 (D. Md. Oct. 10, 2013); *Hampton v. Nustar Mgmt. Fin. Grp.*,  
10 No. 05-cv-0824, 2007 WL 119146, at \*3 (D. Nev. Jan. 10, 2007) (“the complaining party must  
11 include some allegation of abusive measures taken *after the filing of the complaint* in order to state a  
12 claim”) (emphasis added). All of the settlement offers alleged by Ms. Sinatra were made *before* Ms.  
13 Wynn ever invoked the legal process by filing her counterclaims. *See* CC ¶¶ 13-15, 21-22.  
14 Although the pleading summarily alleges that Ms. Wynn also made settlement offers “after  
15 initiating legal process,” *id.* ¶ 31, not a single such offer is alleged anywhere in the complaint. And  
16 because conduct that occurred before any legal process began cannot constitute acts done “in the use  
17 of the legal process,” these allegations cannot support Ms. Sinatra’s claim.

## 18 2. Filing of Claims.

19 Ms. Sinatra’s contention that Ms. Wynn abused the legal process by filing her  
20 counterclaims, which Ms. Sinatra continues to insist are “legally untenable,” *id.* ¶¶ 22, 31, does not  
21 support a claim for abuse of process. Nevada law is clear that “filing a complaint does not constitute  
22 abuse of process.” *Land Baron Inv.*, 356 P.3d at 520; *see also Childs v. Selznick*, 281 P.3d 1161  
23 (Nev. 2009) (unpublished) (same). It necessarily follows, then, that filing a complaint *that survives*  
24 *a motion to dismiss*—as Ms. Wynn’s counterclaims have—also cannot constitute abuse of process.  
25 By definition, asserting viable claims cannot be an act “so lacking in justification as to lose its  
26 legitimate function as a reasonably justifiable litigation procedure.” *Momot v. Mastro*, No.  
27 09-cv-00975, 2010 WL 2696635, at \*4 (D. Nev. July 6, 2010).

1 A party's decision to assert viable claims, moreover, does not transform into "a willful act ...  
2 not proper in the regular conduct of the proceeding" simply because the claims are filed in an effort  
3 to prompt settlement. Courts applying Nevada law have thus found no improper conduct when suit  
4 was filed "to obtain a settlement," *Hampton*, 2007 WL 119146, at \*3, or even when suit was  
5 allegedly filed "without probable cause for the ... claims," *Ralphaelson v. Ashtonwood Stud*  
6 *Assocs., L.P.*, No. 08-cv-1070, 2009 WL 2382765, at \*3-4 (D. Nev. July 31, 2009), or to "coerce an  
7 unjust settlement," *Momot*, 2010 WL 2696635, at \*5. Indeed, the only time Nevada courts have  
8 entertained abuse of process claims premised on the contention that a party improperly brought suit  
9 in order to pursue a settlement was when the party did so "knowing that there was *no basis* for the  
10 claim," *Bull v. McCuskey*, 96 Nev. 706, 707 (1980) (emphasis added), or "wrongfully charged [the  
11 party] with a criminal violation and then attempted to use the prosecution as a bargaining tool,"  
12 *Posadas v. City of Reno*, 109 Nev. 448, 457 (1993). Moreover, in both *Bull* and *Posadas*, liability  
13 was not tied to the acts of filing a complaint or charges alone, because the allegedly tortious  
14 settlement demands continued after the proceedings were filed and after process was initiated.

15 Nothing like that is going on here. The Court's decision to *deny* motions to dismiss Ms.  
16 Wynn's claims demonstrates unequivocally that those claims were adequately pled and had a legal  
17 basis. See, e.g., *Am. Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 102 Nev. 601, 605 (1986)  
18 (reversing abuse of process judgment after finding the defendant's contract interpretation "was  
19 reasonable" and so it "was justified in filing its complaint for declaratory relief"); *E. Sav. Bank, FSB*  
20 *v. Papageorge*, 31 F. Supp. 3d 1, 19-20 (D.D.C. 2014) (dismissing abuse of process claim that was  
21 "predicated upon an assertion that ... litigation" was a "sham" or "objectively baseless" when  
22 defendant's "lawsuit ... survived a motion to dismiss before it was settled"). And Ms. Sinatra does  
23 not and could not allege—except in the most conclusory fashion—that Ms. Wynn's claims have "no  
24 basis" in fact. The most Ms. Sinatra alleges is that Ms. Wynn knew that "some" of the allegations in  
25 her counterclaim were "false." CC ¶¶ 14, 18, 22-23. But Ms. Sinatra (a) does not identify any such  
26 "false" allegation, (b) does not allege any facts to support the conclusory statement of falsity, and (c)  
27 by asserting that only "some" allegations were false, concedes that "some" were also true. As such,

28

1 Ms. Sinatra has failed to plead that Ms. Wynn's counterclaims against her have "no basis." *Contra.*  
2 *Bull*, 96 Nev. at 707.

3 **3. Discovery Demands.**

4 The only alleged conduct that occurred both after the legal process began and separately  
5 from the mere filing of viable counterclaims is Ms. Wynn's purportedly "unreasonable amount of  
6 discovery." But allegations about motions to compel depositions that were granted or efforts to  
7 pursue discovery in support of claims that have survived a motion to dismiss does not constitute  
8 "use of the legal process not proper in the regular conduct of the proceeding." The Ninth Circuit's  
9 decision in *Blue Goose Growers, Inc. v. Yuma Groves, Inc.*, 641 F.2d 695 (9th Cir. 1981), is  
10 instructive.<sup>3</sup> That case affirmed the dismissal of a complaint alleging abuse of process that, much  
11 like Ms. Sinatra's, claimed three allegedly improper acts: (1) "[defendant's] threat during early  
12 discussions to file a lawsuit if certain business information was not disclosed by [plaintiff]," (2) "the  
13 initiation of the litigation itself," and (3) "an extensive discovery request for business records ...  
14 following initiation of the lawsuit." *Id.* at 697. "[N]one of these acts constituted a sufficient 'wilful  
15 act' to support a claim for abuse of process," and the discovery request was "simply a proper request  
16 seeking information relevant to ... claims in the underlying suit." *Id.* The same is true here—Ms.  
17 Sinatra alleges nothing "unreasonable" or improper about Ms. Wynn's discovery requests.

18 **4. Absolute Litigation Privilege.**

19 If more were needed, Ms. Sinatra's allegations are also barred by Nevada's absolute  
20 litigation privilege. That privilege is "quite broad," applies to both "conduct" and  
21 "communications" made during the litigation process, "even if known to be false," and includes  
22 "communications preliminary to a proposed judicial proceeding." *Bullivant Houser Bailey PC v.*  
23 *Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 128 Nev. 885, 381 P.3d 597  
24 (2012). Because Ms. Sinatra's allegations about (1) settlement communications, (2) filing  
25 counterclaims, and (3) discovery pursuits, all fit comfortably within those parameters, they cannot,

26  
27 <sup>3</sup> Although *Blue Goose* was decided under Arizona law, Arizona's tort elements are the same as  
28 Nevada's, and *Blue Goose* has been cited approvingly by at least one court applying Nevada law.  
*See Laxalt v. McClatchy*, 622 F. Supp. 737, 751-52 (D. Nev. 1985)

1 “as a matter of law, ... constitute the basis of” an abuse of process claim. *Id.* at \*2-3. That is yet  
2 another reason for dismissal.

3 \* \* \*

4 In sum, Ms. Sinatra has failed to allege any conduct that would establish the second element  
5 of an abuse of process claim. “[F]iling a lawsuit and performing ordinary acts in the regular course  
6 of the legal proceedings is not abuse of process even if the goals of the lawsuit are nefarious and  
7 improper.” *Rusakiewicz v. Lowe*, 556 F.3d 1095, 1104 (10th Cir. 2009). And because none of Ms.  
8 Sinatra’s allegations identify any cognizable “willful act in the use of the legal process not proper in  
9 the regular conduct of the proceeding,” *LaMantia*, 118 Nev. at 30, she “could prove no set of facts,  
10 which, if true, would entitle [her] to relief,” *Buzz Stew*, 124 Nev. at 228. Dismissal is therefore  
11 appropriate.

12 **B. Ms. Sinatra Fails To Plead Any Ulterior Purpose Other Than Resolving A**  
13 **Legal Dispute.**

14 Ms. Sinatra’s counterclaim fails for another, independent reason: she does not plead “an  
15 ulterior purpose by [Ms. Wynn] other than resolving a legal dispute.” *LaMantia*, 118 Nev. at 30.

16 The pleading alleges four “improper motives and ulterior purposes”: (1) “extracting a  
17 settlement from Mr. Wynn, Wynn Resorts and Ms. Sinatra that could not be achieved in court,”  
18 including “caus[ing] the company to terminate Ms. Sinatra,” “caus[ing] the company to separate the  
19 CEO and Chairman of the Board positions,” and proposing that Mr. Wynn buy Ms. Wynn’s stock at  
20 a premium; (2) “to intimidate and embarrass Mr. Wynn, Wynn Resorts and Ms. Sinatra”; (3) “to  
21 create potential conflicts between them”; and (4) “to intentionally jeopardize their case against  
22 Okada, Aruze and Universal.” CC ¶¶ 11, 15-16, 21, 30. These allegations fall short for several  
23 reasons.

24 To begin with, none of Ms. Wynn’s allegedly improper motives is cognizable in its own  
25 right or can support an abuse of process claim. The focus of the complaint is on one motive in  
26 particular—namely, that Ms. Wynn improperly pursued settlement terms, including Ms. Sinatra’s  
27 termination, that could not be obtained through a judgment entered in litigation. *See, e.g.*, CC at 15  
28 (highlighting twice in bold, underline, and italics the alleged request that Ms. Sinatra lose her job);

1 *id.* ¶¶ 15-16. Even taking that allegation as true, however, there was nothing wrong or actionable  
2 about such a motive. The whole point of settlement is resolving a legal dispute; seeking settlement  
3 of viable claims (as Ms. Wynn's are) thus is not an "ulterior purpose ... *other than* resolving a legal  
4 dispute." *LaMantia*, 118 Nev. at 30 (emphasis added). No doubt that is why courts in Nevada have  
5 held that "maintaining a lawsuit for the ulterior purpose of continuing litigation as a lever to obtain a  
6 settlement is not an improper motive and would not demonstrate any ulterior purpose other than  
7 resolution or settlement of the suit which is an acceptable use of process." *Hampton*, 2007 WL  
8 119146, at \*3.

9 Not only that, but asking for settlement terms that a court itself might not be able to  
10 order—including asking that an alleged tortfeasor be terminated—does not represent an improper  
11 motive or purpose that could give rise to an abuse of process claim. Such demands are actually quite  
12 common. In *Russell v. Risher*, therefore, the court ordered dismissal of an abuse of process claim  
13 alleging that the "plaintiff demanded something ([the defendant's] resignation) which she was not  
14 entitled to demand," observing succinctly that "[i]t is not unusual for plaintiffs, in the negotiation  
15 stage, to demand more than they are entitled to receive." 249 S.E.2d 908, 909 (S.C. 1978).  
16 Similarly, it is not unusual for a plaintiff to demand as a part of settlement talks that the defendant  
17 issue a public apology, even though courts are generally not empowered to forcibly order apologies.  
18 See *Woodruff v. Ohman*, 29 F. App'x 337, 346 (6th Cir. 2002). But "[n]o case law suggests a  
19 request for an apology is an abuse of process." *Wooleyhan v. Cape Henlopen Sch. Dist.*, No.  
20 10-cv-153, 2011 WL 1875710, at \*16 (D. Del. May 17, 2011). And in *Rusakiewicz*, the Tenth  
21 Circuit made clear that settlement terms seeking prospectively to "forestall future tortious conduct  
22 of the same sort for which the lawsuit seeks [past] damages" is "not unusual" and does not support  
23 an abuse of process claim. 556 F.3d at 1104-05. Authorities like these nullify Ms. Sinatra's claim  
24 that there was any actionably improper purpose behind the alleged request by Ms. Wynn—one of  
25 the largest shareholders of Wynn Resorts—that the company which she co-founded fire a general  
26 counsel who has engaged in repeated improper conduct in violation of her fiduciary duties.

27 The other three allegedly "ulterior purposes" are equally deficient. The claims about a  
28 motive to intimidate or embarrass are doubly flawed. First, Ms. Sinatra has no right to make such

1 assertions because, generally speaking, plaintiffs do not have standing or the right to bring abuse of  
2 process claims when the alleged wrongdoing was directed at someone else. *See, e.g., Balzer v. Cty.*  
3 *of Kern*, 57 F.3d 1076 (9th Cir. 1995) (unpublished) (a business owner did not have standing to  
4 bring abuse of process claims based upon a fire department's alleged conduct toward her husband  
5 who was an employee); *Meza v. Meza*, No. 12-cv-01777, 2013 WL 2338126 (C.D. Cal. May 25,  
6 2013) (a mother did not have standing to bring abuse of process claims based upon a county's filing  
7 for conservatorship against her daughter because that implicated the daughter's rights). This  
8 commonsense principle ensures that "[a] claim for abuse of process, particularly one which rests  
9 upon an allegation that the complaint was filed for ulterior purposes, does not rest upon *unrelated*  
10 improper acts, but upon improper acts in the prosecution (or lack of prosecution) *of the relevant*  
11 *process.*" *Lehrer v. Connelly*, No. 11-cv-00735, 2012 WL 1032468, at \*4 (D. Nev. Mar. 27, 2012)  
12 (emphases added) (dismissing claim that "at most" alleged abuse of process that "accrued" to others  
13 in another suit as irrelevant to the plaintiff's claims in the current suit). Here, however, there can be  
14 no question that any alleged embarrassment would belong to Mr. Wynn alone, not Ms. Sinatra. *See,*  
15 *e.g., 6ACC ¶ 52* ("Ms. Sinatra acted to protect or advance Mr. Wynn's personal interests" by  
16 concealing allegations of misconduct and associated payments by Mr. Wynn). As a result, Ms.  
17 Sinatra cannot pursue her allegations about embarrassment.

18 Second, the allegations are also ill-pled. There are no factual allegations, for example, to  
19 support the assertion that Ms. Wynn filed suit to "intimidate and embarrass Mr. Wynn, Wynn  
20 Resorts, and Ms. Sinatra," and Ms. Sinatra later concedes that some allegedly "scurrilous" but  
21 unidentified "accusations" were "removed" when the pleading was actually filed. CC ¶ 19. Nor  
22 would any such factual allegations signify a tortious motive: it is routine that parties settle  
23 allegations—confidentially and whether or not the defendants think the allegations are  
24 meritorious—because the would-be defendants "fear ... accusations being made public." CC ¶ 14.  
25 No case supports transforming every such settlement discussion into fodder for an abuse of process  
26 claim.

27 In a similar vein, there are no factual allegations about how or why Ms. Wynn's  
28 counterclaim could have been filed for the purpose of "creat[ing] potential conflicts" between Mr.

1 Wynn, Wynn Resorts and Ms. Sinatra or “jeopardize[ing] their case against Okada, Aruze and  
2 Universal.” *Id.* ¶ 30. As to the former, the only supposed “potential conflicts” would have arisen  
3 out of Ms. Sinatra’s alleged actions to assist Mr. Wynn and not Wynn Resorts—conduct which,  
4 again, this Court has found sufficiently pled to survive a motion to dismiss. As to the latter, the  
5 complaint expressly *refutes* any conclusion of “jeopardizing” the case, as it alleges elsewhere that  
6 Ms. Wynn’s “interests are aligned with Wynn Resorts” “as to the claims asserted by Aruze and  
7 Universal.” *Id.* ¶ 9. In short, these additional “improper motives” are all summarily asserted on  
8 information and belief, and such bald statements do not provide *factual* allegations or any “set of  
9 facts” that could be proven true. *Buzz Stew*, 124 Nev. at 228 (emphasis added); *see also, e.g.,*  
10 *Jafbros, Inc. v. GEICO Indem. Co.*, 127 Nev. 1148 (2011) (unpublished) (affirming dismissal of  
11 complaint despite “conclusory allegations that [defendant’s] actions were willful, malicious,  
12 oppressive, and tortious” because “the factual assertions it included ... do not sustain these  
13 conclusions”).

14 Finally, and in addition to deficiencies with the alleged motives themselves, Ms. Sinatra  
15 nowhere alleges that any of the supposedly “ulterior purposes” was the *primary* purpose for which  
16 Ms. Wynn acted. That is also fatal. It is not enough to allege an “incidental motive of spite or an  
17 ulterior purpose of benefit to the defendant”; the wrongful purpose must have been the defendant’s  
18 primary purpose for invoking the legal process. *See, e.g., Restatement (Second) of Torts* § 682  
19 (1977); *Fire Ins. Exch. v. Efficient Enters., Inc.*, 399 P.3d 333 (Nev. 2017) (tort covers those who  
20 use process “against another *primarily* to accomplish a purpose for which it is not designed”)  
21 (quoting Restatement) (emphasis added); *Hendershott v. Babeu*, No. 14-0158, 2015 WL 1395275,  
22 at \*3 (Ariz. Ct. App. Mar. 24, 2015) (“A claim for abuse of process requires a plaintiff to allege the  
23 defendant used a court process with the primary objective of pursuing an improper motive”);  
24 *Palmer v. Savona*, 623 F. App’x 480, 481 (9th Cir. 2015) (affirming dismissal when plaintiff “failed  
25 to allege facts sufficient to show that defendants’ primary motive ... was improper”). Ms. Sinatra  
26 does not allege that Ms. Wynn’s primary purpose in filing suit or pursuing discovery was, for  
27 example, to get Ms. Sinatra fired or to embarrass anyone. Nor could she: even Ms. Sinatra alleges  
28 that putative improper purposes were just some “among others,” CC ¶¶ 11, 30, and the primary

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1 purpose behind Ms. Wynn's claims was unquestionably to secure redress for the harms she has  
2 suffered from her inability to sell her stock and from being ousted from the board as a result of Mr.  
3 Wynn's enforcement and breach of the Stockholder's Agreement, *see, e.g., id.* ¶ 15 (recognizing  
4 Ms. Wynn's desire to be "release[d] from the transfer restrictions" on her stock). Ms. Sinatra's  
5 failure to allege that Ms. Wynn's allegedly "improper" purposes were also her primary purposes is  
6 dispositive, and her claim should be dismissed for failure to plead any "ulterior purpose ... other  
7 than resolving a legal dispute."

8 **CONCLUSION**

9 For the foregoing reasons, Ms. Sinatra's counterclaim for abuse of process should be  
10 dismissed with prejudice.

11 Dated: October 2, 2017

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12  
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ELAINE P. WYNN



**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D), I certify that on this 2<sup>nd</sup> day of October, 2017, I caused a true and correct copy of the forgoing *Elaine P. Wynn's Motion to Dismiss Kimmarré Sinatra's Counterclaim and Crossclaim* to be filed and served on the parties listed below by causing it to be transmitted by the Court's Odyssey e-service/e-filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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4 Santa Barbara, CA 93101  
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*/s/ Andrea Lee Rosehill*

An Employee of Greenberg Traurig LLP

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of  
3 eighteen years and not a party to the within action; my business address is 865 South Figueroa  
Street, 10th Floor, Los Angeles, California 90017-2543.

4 On October 23, 2017, I served true copies of the following document(s) described as  
5 **APPENDIX OF EXHIBITS IN SUPPORT OF PETITION TO QUASH NON-PARTY**  
6 **ATTORNEY DEPOSITION SUBPOENAS FOR PERSONAL APPEARANCE IN ACTION**  
7 **PENDING OUTSIDE CALIFORNIA, FOR ORDERS STAYING DEPOSITIONS, FOR**  
8 **PROTECTIVE ORDERS, AND FOR SANCTIONS IN THE AMOUNT OF \$10,000** on the  
interested parties in this action as follows:

9 Mitchell J. Langberg  
10 Jonathan C. Sandler  
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Los Angeles, CA 90067  
mlangberg@bhfs.com  
JSandler@BHFS.com

11 *Attorney for Defendants Wynn Resorts and*  
12 *Kim Sinatra*

13  
14 **BY PERSONAL SERVICE:** I caused to be personally served via messenger delivery  
15 service on October 23, 2017 the document(s) to each such person(s) at the address(es) listed below  
their name(s).

16 **BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from  
17 ianshelton@quinnemanuel.com on October 23, 2017, by transmitting a PDF format copy of such  
18 document(s) to each such person at the e mail address listed below their address(es). The  
document(s) was/were transmitted by electronic transmission and such transmission was reported  
as complete and without error.

19 I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct.

21 Executed on October 23, 2017, at Los Angeles, California.

22   
23 Sandra Acosta

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE (NON-CLASS ACTION)  
Case Number \_\_\_\_\_

00171952

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judge indicated below. There is more information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Debre K. Weintraub	1	534	Hon. Elizabeth Allen White	48	506
Hon. Barbara A. Meiers	12	636	Hon. Deirdre Hill	49	509
Hon. Terry A. Green	14	300	Hon. Teresa A. Beaudet	50	508
Hon. Richard Fruin	15	307	Hon. Michael J. Raphael	51	511
Hon. Rita Miller	16	306	Hon. Susan Bryant-Deason	52	510
Hon. Richard E. Rico	17	309	Hon. Howard L. Halm	53	513
Hon. Stephanie Bowick	19	311	Hon. Ernest M. Hiroshige	54	512
Hon. Dalila Corral Lyons	20	310	Hon. Malcolm H. Mackey	55	515
Hon. Robert L. Hess	24	314	Hon. Michael Johnson	56	514
Hon. Yvette M. Palazuelos	28	318	Hon. John P. Doyle	58	516
Hon. Barbara Scheper	30	400	Hon. Gregory Keosian	61	732
<i>f</i> Hon. Samantha Jessner	31	407	Hon. Michael L. Stern	62	600
Hon. Daniel S. Murphy	32	406	Hon. Mark Mooney	68	617
Hon. Michael P. Linfield	34	408	Hon. William F. Fahey	69	621
Hon. Gregory Alarcon	36	410	Hon. Monica Bachner	71	729
Hon. Marc Marmaro	37	413	Hon. Ruth Ann Kwan	72	731
Hon. Maureen Duffy-Lewis	38	412	Hon. Rafael Ongkeko	73	733
Hon. Elizabeth Feffer	39	415	Hon. Michelle Williams Court	74	735
Hon. David Sotelo	40	414	Hon. Gail Ruderman Feuer	78	730
Hon. Holly E. Kendig	42	416			
Hon. Mel Red Recana	45	529	Hon. Steven J. Kleifield	324	CCW
Hon. Frederick C. Shaller	46	500	*Provisionally Complex Non-class Action Cases Assignment is Pending Complex Determination	308	CCW
Hon. Randolph Hammock	47	507			

**\*Complex**

All non-class action cases designated as provisionally complex are forwarded to the Supervising Judge of the Complex Litigation Program located in the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005), for complex/non-complex determination pursuant to Local Rule 3.3(k). This procedure is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the outcome of that assessment, the case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on \_\_\_\_\_ **SHERRI R. CARTER**, Executive Officer/Clerk

By \_\_\_\_\_, Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ian S. Shelton, Esq. (SBN 264863) Quinn Emanuel Urquhart & Sullivan LLP 865 S. Figueroa St., 10th Floor Los Angeles, CA 90017 TELEPHONE NO.: 213-443-3624 FAX NO.: 213-443-3100 ATTORNEY FOR (Name): Petitioners John B. Quinn, Michael T. Zeller, Michael L. F		FOR COURT USE ONLY  <b>CONFORMED COPY</b> <b>ORIGINAL FILED</b> Superior Court Of California County Of Los Angeles  OCT 23 2017  Sherri R. Carter, EXECUTIVE Officer/Clerk By: Marlon Gomez, Deputy  <b>BS171352</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse		
CASE NAME: Wynn Resorts Limited v. Kazuo Okada (Petition to Quash Subpoenas)		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	
<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- |  |  |   |
|--|--|---|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)</b><br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input checked="" type="checkbox"/> Other petition (not specified above) (43) |
|--|--|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 23, 2017

Ian S. Shelton, Esq. (SBN 264863)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)  
**Employment**  
Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

COPY

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3 ianshelton@quinnemanuel.com  
4 865 South Figueroa Street, 10th Floor  
5 Los Angeles, California 90017-2543  
6 Telephone: (213) 443-3000  
7 Facsimile: (213) 443-3100

8 Attorney for Non-Parties John B. Quinn, Michael  
9 T. Zeller, Michael L. Fazio, and Ian S. Shelton

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES

12 WYNN RESORTS, LIMITED *et al.*,

13 Plaintiffs,

14 vs.

15 KAZUO OKADA *et al.*,

16 Defendants.

17 JOHN B. QUINN, MICHAEL T. ZELLER,  
18 MICHAEL L. FAZIO, and IAN S.  
19 SHELTON,

20 Petitioners,

21 vs.

22 WYNN RESORTS, LIMITED *et al.*,

23 Respondents.

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

Honorable Elizabeth Gonzalez  
District Court Judge  
Eighth Judicial District  
Clark County, Nevada

California Superior Court  
Case No.

BS171352

DECLARATION OF MICHAEL L. FAZIO  
IN SUPPORT OF PETITION TO QUASH  
NON-PARTY ATTORNEY DEPOSITION  
SUBPOENAS FOR PERSONAL  
APPEARANCE IN ACTION PENDING  
OUTSIDE CALIFORNIA, FOR ORDERS  
STAYING DEPOSITIONS, FOR  
PROTECTIVE ORDERS, AND FOR  
SANCTIONS IN THE AMOUNT OF  
\$10,000

DECLARATION OF MICHAEL L. FAZIO

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1 March 25, 2016, the Court granted Ms. Wynn's motion for leave to file her Fifth Amended  
2 Counterclaim and Crossclaim, and Ms. Wynn publicly filed it on March 28, 2016.

3  
4 I declare under penalty of perjury under the laws of California that the foregoing is true  
5 and correct.

6 DATED this 23rd day of October, 2017, at Los Angeles, California.

7  
8 By

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10 Michael L. Fazio  
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On October 23, 2017, I served true copies of the following document(s) described as **DECLARATION OF MICHAEL L. FAZIO IN SUPPORT OF PETITION TO QUASH NON-PARTY ATTORNEY DEPOSITION SUBPOENAS FOR PERSONAL APPEARANCE IN ACTION PENDING OUTSIDE CALIFORNIA, FOR ORDERS STAYING DEPOSITIONS, FOR PROTECTIVE ORDERS, AND FOR SANCTIONS IN THE AMOUNT OF \$10,000** on the interested parties in this action as follows:

**Attorney for Defendants Wynn Resorts and Kim Sinatra**

**BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from ianshelton@quinnemanuel.com on October 23, 2017, by transmitting a PDF format copy of such document(s) to each such person at the e mail address listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

Executed on October 23, 2017, at Los Angeles, California.

  
Sandra Acosta

COPY

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Ian S. Shelton (SBN 264863)  
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Telephone: (213) 443-3000  
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Attorney for Non-Parties John B. Quinn, Michael  
T. Zeller, Michael L. Fazio, and Ian S. Shelton

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

RECEIVED  
OCT 23 2017  
FILING WINDOW

WYNN RESORTS, LIMITED *et al.*,

Plaintiffs,

vs.

KAZUO OKADA *et al.*,

Defendants.

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

Honorable Elizabeth Gonzalez  
District Court Judge  
Eighth Judicial District  
Clark County, Nevada

JOHN B. QUINN, MICHAEL T. ZELLER,  
MICHAEL L. FAZIO, and IAN S.  
SHELTON,

Petitioners,

vs.

WYNN RESORTS, LIMITED *et al.*,

Respondents.

California Superior Court  
Case No.

**BS171352**

**[PROPOSED] ORDER IN SUPPORT OF  
PETITION TO QUASH NON-PARTY  
ATTORNEY DEPOSITION SUBPOENAS  
FOR PERSONAL APPEARANCE IN  
ACTION PENDING OUTSIDE  
CALIFORNIA, FOR ORDERS STAYING  
DEPOSITIONS, FOR PROTECTIVE  
ORDERS, AND FOR SANCTIONS IN  
THE AMOUNT OF \$10,000**

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PROPOSED ORDER

Having considered the Petition to Quash Non-Party Attorney Deposition Subpoenas for Personal Appearance in Action Pending Outside California, for Orders Staying Depositions, for Protective Orders, And for Sanctions in the Amount of \$10,000 ("Petition") in the above-referenced proceeding, the briefing of Petitioners and Respondents, all declarations and exhibits thereto, the request for judicial notice, oral argument of the parties if any, and good cause appearing therefor, the Court hereby rules as follows:

Petitioners' Request for Judicial Notice is GRANTED for the reasons set forth therein.

Petitioners' Petition is GRANTED for the reasons set forth therein.

Pursuant to California Code of Civil Procedure §§ 2029.600, 2025.410, and 1987.1, the following four deposition subpoenas for personal appearance in action pending outside California are QUASHED in their entirety:

1. Deposition Subpoena for Personal Appearance in Action Pending Outside California, dated October 12, 2017, and directed to Petitioner Michael T. Zeller. The purported noticed deposition date is October 24, 2017 in Los Angeles County;
2. Deposition Subpoena for Personal Appearance in Action Pending Outside California, dated October 12, 2017, and directed to Petitioner John Q. Quinn. The purported noticed deposition date is October 25, 2017 in Los Angeles County;
3. Deposition Subpoena for Personal Appearance in Action Pending Outside California, dated October 12, 2017, and directed to Petitioner Ian S. Shelton. The purported noticed deposition date is October 26, 2017 in Los Angeles County;
4. Deposition Subpoena for Personal Appearance in Action Pending Outside California, dated October 12, 2017, and directed to Petitioner Michael L. Fazio. The purported noticed deposition date is October 31, 2017 in Los Angeles County (collectively, "Subpoenas") (Shelton Decl., Ex. 1-4.)

Pursuant to Code of Civil Procedure §§ 1987.2 and 2025.410, the Court will also impose sanctions. Because Respondents were not substantially justified in refusing to withdraw the Subpoenas and opposing the Petition, the Court imposes sanctions against them in the amount of

1 \$10,000, which represents less than 25% the attorneys' fees and costs incurred by Quinn Emanuel  
2 in preparing the objections to the Subpoenas, meeting and conferring, and preparing the present  
3 petition.

4 IT IS SO ORDERED.

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7 DATED:

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10 SUPERIOR COURT JUDGE

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1 Respectfully Submitted,  
2 DATED: October 23, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

3  
4  
5   
6 By

7 Ian S. Shelton

8 Attorney for Non-Parties John B. Quinn, Michael  
9 T. Zeller, Michael L. Fazio, and Ian S. Shelton  
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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of  
3 eighteen years and not a party to the within action; my business address is 865 South Figueroa  
Street, 10th Floor, Los Angeles, California 90017-2543.

4 On October 23, 2017, I served true copies of the following document(s) described as  
5 **[PROPOSED] ORDER IN SUPPORT OF PETITION TO QUASH NON-PARTY**  
6 **ATTORNEY DEPOSITION SUBPOENAS FOR PERSONAL APPEARANCE IN ACTION**  
7 **PENDING OUTSIDE CALIFORNIA, FOR ORDERS STAYING DEPOSITIONS, FOR**  
8 **PROTECTIVE ORDERS, AND FOR SANCTIONS IN THE AMOUNT OF \$10,000** on the  
interested parties in this action as follows:

9 Mitchell J. Langberg  
10 Jonathan C. Sandler  
11 Brownstein Hyatt Farber Schreck LLP  
12 2049 Century Park East, Suite 3550  
13 Los Angeles, CA 90067  
14 mlangberg@bhfs.com  
15 JSandler@BHFS.com

16 *Attorney for Defendants Wynn Resorts and*  
17 *Kim Sinatra*

18 **BY PERSONAL SERVICE:** I caused to be personally served via messenger delivery  
19 service on October 23, 2017 the document(s) to each such person(s) at the address(es) listed below  
20 their name(s).

21 **BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from  
22 ianshelton@quinnemanuel.com on October 23, 2017, by transmitting a PDF format copy of such  
23 document(s) to each such person at the e mail address listed below their address(es). The  
24 document(s) was/were transmitted by electronic transmission and such transmission was reported  
25 as complete and without error.

26 I declare under penalty of perjury under the laws of the State of California that the  
27 foregoing is true and correct.

28 Executed on October 23, 2017, at Los Angeles, California.

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Sandra Acosta

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QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Ian S. Shelton (SBN 264863)  
ianshelton@quinnemanuel.com  
865 South Figueroa Street, 10th Floor  
Los Angeles, California 90017-2543  
Telephone: (213) 443-3000  
Facsimile: (213) 443-3100

Attorney for Non-Parties John B. Quinn, Michael  
T. Zeller, Michael L. Fazio, and Ian S. Shelton

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

WYNN RESORTS, LIMITED *et al.*,  
  
Plaintiffs,  
  
vs.  
  
KAZUO OKADA *et al.*,  
  
Defendants.

JOHN B. QUINN, MICHAEL T. ZELLER,  
MICHAEL L. FAZIO, and IAN S.  
SHELTON,  
  
Petitioners,  
  
vs.  
  
WYNN RESORTS, LIMITED *et al.*,  
  
Respondents.

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

Honorable Elizabeth Gonzalez  
District Court Judge  
Eighth Judicial District  
Clark County, Nevada

California Superior Court  
Case No.

BS171852

REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF PETITION TO QUASH  
NON-PARTY ATTORNEY DEPOSITION  
SUBPOENAS FOR PERSONAL  
APPEARANCE IN ACTION PENDING  
OUTSIDE CALIFORNIA, FOR ORDERS  
STAYING DEPOSITIONS, FOR  
PROTECTIVE ORDERS, AND FOR  
SANCTIONS IN THE AMOUNT OF  
\$10,000

CONFORMED COPY  
ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

OCT 23 2017

Sherri H. Carter, Executive Officer/Clerk  
By: Marlon Gomez, Deputy



1 **REQUEST FOR JUDICIAL NOTICE**

2 TO THIS HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 Petitioners and Non-Parties John B. Quinn, Michael T. Zeller, Michael L. Fazio, and Ian S.  
4 Shelton (collectively, "Petitioners"), will, and hereby do, petition the Court to take judicial notice  
5 of certain certified public records of the City of Burbank of the State of California in their entirety,  
6 pursuant to section 452 of the California Evidence Code, and Rules 3.1113(l) and 3.1306(c) of the  
7 California Rules of Court. The Request for Judicial Notice is made in support of Petitioners'  
8 Petition to Quash Non-Party Attorney Deposition Subpoenas for Personal Appearance in Action  
9 Pending Outside California, for Orders Staying Depositions, for Protective Orders, and for  
10 Sanctions.

11 Evidence Code § 452(c) and (d) state: "Judicial notice may be taken of the following  
12 matters to the extent that they are not embraced within Section 451: . . . (c) Official acts of the  
13 legislative, executive, and judicial departments of the United States and of any state of the United  
14 States"; and (d) "Records of (1) any court of this state or (2) any court of record of the United  
15 States or of any state of the United States." The following records fall within section 452, and  
16 Petitioners request that the Court take judicial notice of such records in their entirety:

17 Exhibit	Description	Date
18 1	Deposition Subpoena for Personal Appearance in Action Pending Outside California—John B. Quinn	10/12/17
19 2	Deposition Subpoena for Personal Appearance in Action Pending Outside California—Michael T. Zeller	10/12/17
20 3	Deposition Subpoena for Personal Appearance in Action Pending Outside California—Ian S. Shelton	10/12/17
21 4	Deposition Subpoena for Personal Appearance in Action Pending Outside California—Michael L. Fazio	10/12/17
22 5	Objections to Deposition Subpoena for Personal Appearance in Action Pending Outside California—John B. Quinn	10/19/17
23 6	Objections to Deposition Subpoena for Personal Appearance in Action Pending Outside California—Michael T. Zeller	10/19/17
24 7	Objections to Deposition Subpoena for Personal Appearance in Action Pending Outside California—Ian S. Shelton	10/19/17
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Exhibit	Description	Date
8	Objections to Deposition Subpoena for Personal Appearance in Action Pending Outside California—Michael L. Fazio	10/19/17
9	Meet and Confer Correspondence regarding Objections to Subpoenas	10/19/17
10	Notice of Withdrawal of Munger Tolles & Olson LLP as Counsel for Elaine Wynn	02/02/16
11	Order Granting Elaine P. Wynn Leave to File her Fifth Amended Counterclaim and Crossclaim	03/25/16
12	3 <sup>rd</sup> Amended Scheduling Order	03/02/17
13	Notice of Withdrawal of Quinn Emanuel Urquhart & Sullivan as Counsel for Elaine Wynn	03/09/17
14	Order Granting Elaine P. Wynn Leave to File her Sixth Amended Counterclaim and Crossclaim	05/15/17
15	Elaine P. Wynn's Sixth Amended Counterclaim and Crossclaim	05/17/17
16	Order Granting in Part Elaine P. Wynn's Motion to Compel Responses to Written Discovery Requests from Wynn Resorts and Kim Sinatra	07/13/17
17	4 <sup>th</sup> Amended Scheduling Order	08/10/17
18	Order Denying Kim Sinatra's and Wynn Resorts' Motion to Dismiss	08/23/17
19	Order Denying Kim Sinatra's and Wynn Resorts' Motion to Stay Discovery and Sever Ms. Wynn's Claims	08/23/17
20	Kim Sinatra's Counterclaim and Crossclaim	09/07/17
21	Elaine Wynn's Motion to Dismiss Kim Sinatra's Counterclaim and Crossclaim, and Notice of Hearing	10/04/17

DATED: October 23, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By

Ian S. Shelton

Attorney for Non-Parties John B. Quinn, Michael T. Zeller, Michael L. Fazio, and Ian S. Shelton

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of  
3 eighteen years and not a party to the within action; my business address is 865 South Figueroa  
Street, 10th Floor, Los Angeles, California 90017-2543.

4 On October 23, 2017, I served true copies of the following document(s) described as  
5 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITION TO QUASH NON-**  
6 **PARTY ATTORNEY DEPOSITION SUBPOENAS FOR PERSONAL APPEARANCE IN**  
7 **ACTION PENDING OUTSIDE CALIFORNIA, FOR ORDERS STAYING DEPOSITIONS,**  
8 **FOR PROTECTIVE ORDERS, AND FOR SANCTIONS IN THE AMOUNT OF \$10,000** on  
the interested parties in this action as follows:

9 Mitchell J. Langberg  
10 Jonathan C. Sandler  
11 Brownstein Hyatt Farber Schreck LLP  
12 2049 Century Park East, Suite 3550  
13 Los Angeles, CA 90067  
14 mlangberg@bhfs.com  
15 JSandler@BHFS.com


16 *Attorney for Defendants Wynn Resorts and*  
17 *Kim Sinatra*

18 **BY PERSONAL SERVICE:** I caused to be personally served via messenger delivery  
19 service on October 23, 2017 the document(s) to each such person(s) at the address(es) listed below  
20 their name(s).

21 **BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from  
22 ianshelton@quinnemanuel.com on October 23, 2017, by transmitting a PDF format copy of such  
23 document(s) to each such person at the e mail address listed below their address(es). The  
24 document(s) was/were transmitted by electronic transmission and such transmission was reported  
25 as complete and without error.

26 I declare under penalty of perjury under the laws of the State of California that the  
27 foregoing is true and correct.

28 Executed on October 23, 2017, at Los Angeles, California.

29   
30 Sandra Acosta

COPY

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
2 Ian S. Shelton (SBN 264863)  
3 ianshelton@quinnemanuel.com  
4 865 South Figueroa Street, 10th Floor  
5 Los Angeles, California 90017-2543  
6 Telephone: (213) 443-3000  
7 Facsimile: (213) 443-3100

8 Attorney for Non-Parties John B. Quinn, Michael  
9 T. Zeller, Michael L. Fazio, and Ian S. Shelton

CONFIRMED COPY  
ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

OCT 23 2017

Sherri R. Caner, Executive Officer/Clerk  
By: Marlon Gomez, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES

12 WYNN RESORTS, LIMITED *et al.*,

13 Plaintiffs,

14 vs.

15 KAZUO OKADA *et al.*,

16 Defendants.

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

Honorable Elizabeth Gonzalez  
District Court Judge  
Eighth Judicial District  
Clark County, Nevada

17 JOHN B. QUINN, MICHAEL T. ZELLER,  
18 MICHAEL L. FAZIO, and IAN S.  
19 SHELTON,

20 Petitioners,

21 vs.

22 WYNN RESORTS, LIMITED *et al.*,

23 Respondents.

California Superior Court  
Case No.

**BS171352**

**DECLARATION OF IAN S. SHELTON IN  
SUPPORT OF PETITION TO QUASH  
NON-PARTY ATTORNEY DEPOSITION  
SUBPOENAS FOR PERSONAL  
APPEARANCE IN ACTION PENDING  
OUTSIDE CALIFORNIA, FOR ORDERS  
STAYING DEPOSITIONS, FOR  
PROTECTIVE ORDERS, AND FOR  
SANCTIONS IN THE AMOUNT OF  
\$10,000**

**DECLARATION OF IAN S. SHELTON**

I, Ian S. Shelton, state and declare as follows:

1. I am licensed to practice law in the State of California. I am Of Counsel at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Petitioners. I make this declaration based upon personal, firsthand knowledge. If called upon to testify as to the contents of this declaration, I am legally competent to testify to its contents.

2. Petitioners are four attorneys who practice law in the firm of Quinn Emanuel Urquhart & Sullivan LLP ("Quinn Emanuel"). Through these Subpoenas, Respondents Wynn Resorts Limited and Kim Sinatra seek to take the depositions of counsel for their litigation adversary in a Nevada state court action—Elaine Wynn.

3. Quinn Emanuel was Ms. Wynn's trial counsel in the Nevada Action from approximately January 2016 until March 2017, and the subject matter of the depositions relates to Quinn Emanuel's role as Ms. Wynn's counsel during that time period. In particular, Ms. Sinatra seeks to depose Quinn Emanuel attorneys regarding a purported "abuse of process" claim that she belatedly asserted against Ms. Wynn in the Nevada Action on September 7, 2017, and which is subject to a pending motion to dismiss currently set for hearing on November 6, 2017.

4. The Subpoenas subject to this Petition are dated October 12, 2017. Mr. Fazio was personally served with his Subpoena on October 14, 2017. Mr. Shelton and Mr. Quinn were personally served on October 17. Mr. Zeller has not been personally served to date. The unilaterally noticed deposition dates for Mr. Zeller, Mr. Quinn, Mr. Shelton, and Mr. Fazio were October 24, 25, 26, and 31, respectively.

5. On October 19, 2017, Petitioners served their written objections to the Subpoenas on counsel for Wynn Resorts and Ms. Sinatra. True and correct copies of those written objections are included in the appendix of exhibits in support of this Petition as Exhibits 5-8.

6. On October 19, 2017, Petitioners and Respondents conducted a meet and confer, but they were unable to resolve any of the objections. Counsel for Wynn Resorts and Ms. Sinatra disagreed with every objection raised by Petitioners; he also refused to withdraw the Subpoenas. Consequently, I informed counsel for Wynn Resorts and Ms. Sinatra that Petitioners would not

1 appear for deposition and would instead file a petition to quash the Subpoenas in their entirety  
 2 with the Los Angeles Superior Court. A true and correct copy of out meet and confer  
 3 correspondence is included in the appendix of exhibits in support of this Petition as Exhibit 9.

4 7. True and correct copies of the following documents filed or served in the Nevada  
 5 Action, which are subject to judicial notice, are included in the appendix of exhibits in support of  
 6 this Petition:

Exhibit	Description	Date
1	Deposition Subpoena for Personal Appearance in Action Pending Outside California—John B. Quinn	10/12/17
2	Deposition Subpoena for Personal Appearance in Action Pending Outside California—Michael T. Zeller	10/12/17
3	Deposition Subpoena for Personal Appearance in Action Pending Outside California—Ian S. Shelton	10/12/17
4	Deposition Subpoena for Personal Appearance in Action Pending Outside California—Michael L. Fazio	10/12/17
5	Objections to Deposition Subpoena for Personal Appearance in Action Pending Outside California—John B. Quinn	10/19/17
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11	Order Granting Elaine P. Wynn Leave to File her Fifth Amended Counterclaim and Crossclaim	03/25/16
12	3 <sup>rd</sup> Amended Scheduling Order	03/02/17
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14	Order Granting Elaine P. Wynn Leave to File her Sixth Amended Counterclaim and Crossclaim	05/15/17
15	Elaine P. Wynn's Sixth Amended Counterclaim and Crossclaim	05/17/17

Exhibit	Description	Date
16	Order Granting in Part Elaine P. Wynn's Motion to Compel Responses to Written Discovery Requests from Wynn Resorts and Kim Sinatra	07/13/17
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18	Order Denying Kim Sinatra's and Wynn Resorts' Motion to Dismiss	08/23/17
19	Order Denying Kim Sinatra's and Wynn Resorts' Motion to Stay Discovery and Sever Ms. Wynn's Claims	08/23/17
20	Kim Sinatra's Counterclaim and Crossclaim	09/07/17
21	Elaine Wynn's Motion to Dismiss Kim Sinatra's Counterclaim and Crossclaim, and Notice of Hearing	10/04/17

8. I have no personal knowledge of the settlement communications that form the basis of Ms. Sinatra's purported "abuse or process" claim against my former client Ms. Wynn.

9. The district court in Nevada previously granted Respondents leave to depose three of the Quinn Emanuel attorneys who are subject to the present Subpoenas—Mr. Zeller, Mr. Fazio, and Mr. Shelton. Those depositions occurred on February 24 and 27 and March 6, 2017, respectively.

10. I was first licensed to practice law in 2006 in Texas and in 2009 in California. I have been practicing law for approximately eleven years, eight of which have been with Quinn Emanuel. I spent a cumulative total of 46.8 hours preparing the objections to the Subpoenas, engaging in the meet and confer process, and preparing the present Petition, which included significant legal research regarding the various issues raised in the Objections and Petition. This total includes my time preparing the papers supporting the Petition, including the declarations of Mr. Shelton, Mr. Zeller, and Mr. Fazio, the request for judicial notice, the proposed order, and the appendix of exhibits. My current hourly rate for client matters pending in California is \$885. Consequently, the total cost incurred by Quinn Emanuel in connection with responding to these Subpoenas is \$41,418. Strictly for purposes of the sanctions request in this Petition, and despite the fact that Quinn Emanuel is entitled to full recovery of fees and costs at my currently hourly rate, Quinn Emanuel requests sanctions in the amount of \$10,000 from Respondents, which is less than 25% of the fees and costs actually incurred by Quinn Emanuel.

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3 Executed on October 23, 2017, at Los Angeles, California.  
4

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6

7 \_\_\_\_\_  
8 Ian S. Shelton  
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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of  
3 eighteen years and not a party to the within action; my business address is 865 South Figueroa  
Street, 10th Floor, Los Angeles, California 90017-2543.

4 On October 23, 2017, I served true copies of the following document(s) described as  
5 **DECLARATION OF IAN S. SHELTON IN SUPPORT OF PETITION TO QUASH NON-**  
6 **PARTY ATTORNEY DEPOSITION SUBPOENAS FOR PERSONAL APPEARANCE IN**  
7 **ACTION PENDING OUTSIDE CALIFORNIA, FOR ORDERS STAYING DEPOSITIONS,**  
8 **FOR PROTECTIVE ORDERS, AND FOR SANCTIONS IN THE AMOUNT OF \$10,000 on**  
9 **the interested parties in this action as follows:**

10 Mitchell J. Langberg  
11 Jonathan C. Sandler  
12 Brownstein Hyatt Farber Schreck LLP  
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16 JSandler@BHFS.com


17 *Attorney for Defendants Wynn Resorts and*  
18 *Kim Sinatra*

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QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Ian S. Shelton (SBN 264863)  
ianshelton@quinnemanuel.com  
865 South Figueroa Street, 10th Floor  
Los Angeles, California 90017-2543  
Telephone: (213) 443-3000  
Facsimile: (213) 443-3100

Attorney for Non-Parties John B. Quinn, Michael  
T. Zeller, Michael L. Fazio, and Ian S. Shelton

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

WYNN RESORTS, LIMITED *et al.*,  
  
Plaintiffs,  
  
vs.  
  
KAZUO OKADA *et al.*,  
  
Defendants.

---

JOHN B. QUINN, MICHAEL T. ZELLER,  
MICHAEL L. FAZIO, and IAN S.  
SHELTON,  
  
Petitioners,  
  
vs.  
  
WYNN RESORTS, LIMITED *et al.*,  
  
Respondents.

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County Of Los Angeles

OCT 23 2017

Sherri R. Carer, Executive Officer/Clerk  
By: Marlon Gomez, Deputy

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

Honorable Elizabeth Gonzalez  
District Court Judge  
Eighth Judicial District  
Clark County, Nevada

California Superior Court  
Case No.

BS171352

**DECLARATION OF MICHAEL T.  
ZELLER IN SUPPORT OF PETITION TO  
QUASH NON-PARTY ATTORNEY  
DEPOSITION SUBPOENAS FOR  
PERSONAL APPEARANCE IN ACTION  
PENDING OUTSIDE CALIFORNIA, FOR  
ORDERS STAYING DEPOSITIONS, FOR  
PROTECTIVE ORDERS, AND FOR  
SANCTIONS IN THE AMOUNT OF  
\$10,000**

**DECLARATION OF MICHAEL T. ZELLER**

I, Michael T. Zeller, state and declare as follows:

1. I am licensed to practice law in the State of California. I am a Partner at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), counsel for Petitioners. I make this declaration based upon personal, firsthand knowledge. If called upon to testify as to the contents of this declaration, I am legally competent to testify to its contents.

2. Petitioners John B. Quinn, Michael L. Fazio, Ian S. Shelton, and myself are four attorneys who practice law at Quinn Emanuel. Through these Subpoenas, Respondents Wynn Resorts Limited and Kim Sinatra seek to take the depositions of counsel for their litigation adversary in a Nevada state court action—Elaine Wynn.

3. Quinn Emanuel was Ms. Wynn's trial counsel in the Nevada Action from approximately January 2016 until March 2017, and the subject matter of the depositions relates to Quinn Emanuel's role as Ms. Wynn's counsel during that time period. In particular, Ms. Sinatra seeks to depose Quinn Emanuel attorneys regarding a purported "abuse of process" claim that she belatedly asserted against Ms. Wynn in the Nevada Action on September 7, 2017, and which is subject to a pending motion to dismiss currently set for hearing on November 6, 2017.

4. The Subpoenas subject to this Petition are dated October 12, 2017. As of the signing of this Declaration, I have not been personally served with the Subpoena directed to me as of the date I signed this declaration. The unilaterally noticed date for my deposition is October 24, 2017.

5. All settlements communications that Quinn Emanuel had on behalf of Elaine Wynn in the Nevada Action were understood to be confidential and could not be used for any purpose other than in connection with potential resolution of the suit. In particular, during the course of Quinn Emanuel's representation of Ms. Wynn, John Quinn and I had telephone conference with Don Campbell and Colby Williams, who serve as counsel for Steve Wynn in the Nevada Action and were acting as the conduit for settlement communications with all the parties against whom Ms. Wynn was asserting claims. In that call, Mr. Quinn specifically made a condition of any settlement proposals from Ms. Wynn and any settlement discussions that such communications

1 would not and could not be the basis for any allegations or claims. Mr. Campbell and Mr.  
2 Williams explicitly agreed to that condition. It was on that express basis that Mr. Quinn and I  
3 conducted all settlement efforts on behalf of Ms. Wynn.  
4

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

7 DATED this 23rd day of October, 2017, at Los Angeles, California.  
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10 By Michael T. Zeller  
11 Michael T. Zeller  
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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543.

On October 23, 2017, I served true copies of the following document(s) described as  
**DECLARATION OF MICHAEL T. ZELLER IN SUPPORT OF PETITION TO QUASH  
NON-PARTY ATTORNEY DEPOSITION SUBPOENAS FOR PERSONAL  
APPEARANCE IN ACTION PENDING OUTSIDE CALIFORNIA, FOR ORDERS  
STAYING DEPOSITIONS, FOR PROTECTIVE ORDERS, AND FOR SANCTIONS IN  
THE AMOUNT OF \$10,000** on the interested parties in this action as follows:

Mitchell J. Langberg  
Jonathan C. Sandler  
Brownstein Hyatt Farber Schreck LLP  
2049 Century Park East, Suite 3550  
Los Angeles, CA 90067  
mlangberg@bhfs.com  
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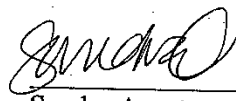
*Attorney for Defendants Wynn Resorts and  
Kim Sinatra*

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 STANLEY MOSK COURTHOUSE

11 WYNN RESORTS, LIMITED *et al.*,

12 Plaintiffs,

13 vs.

14 KAZUO OKADA *et al.*,

15 Defendants.

16 JOHN B. QUINN, MICHAEL T. ZELLER,

17 MICHAEL L. FAZIO, and IAN S.

18 SHELTON,

19 Petitioners,

20 vs.

21 WYNN RESORTS, LIMITED *et al.*,

22 Respondents.

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

Honorable Elizabeth Gonzalez  
District Court Judge  
Eighth Judicial District  
Clark County, Nevada

California Superior Court  
Case No. BS171352

Honorable Samantha P. Jessner (Dept. 31)

**REPLY BRIEF IN SUPPORT OF  
PETITION TO QUASH NON-PARTY  
ATTORNEY DEPOSITION SUBPOENAS  
FOR PERSONAL APPEARANCE IN  
ACTION PENDING OUTSIDE  
CALIFORNIA, FOR ORDERS STAYING  
DEPOSITIONS, FOR PROTECTIVE  
ORDERS**

Hearing Date: November 21, 2017  
Hearing Time: 8:30 a.m.  
Department: 31

1 INTRODUCTION

2 Kim Sinatra opposes the petition to quash on two technical grounds—that the attorney  
3 depositions may proceed because Quinn Emanuel is “former counsel” for Elaine Wynn, and that the  
4 Nevada court has jurisdiction over these California subpoenas. Both arguments are wrong.  
5 “Depositions of opposing counsel are presumptively improper, severely restricted, and require  
6 ‘extremely’ good cause—a high standard.” (*Carehouse Convalescent Hospital v. Superior Court*  
7 (2006) 143 Cal.App.4th 1558, 1562.) The petition to quash should be granted because Ms. Sinatra  
8 does not even attempt to satisfy the three-prong *Carehouse* test for deposing her litigation  
9 adversary’s trial attorneys.

10 Failure to satisfy any of the *Carehouse* factors is “sufficient to defeat the attempted attorney  
11 deposition[s]” at the outset. (*Carehouse*, 143 Cal.App.4th at p. 1563.) In seeking to avoid the  
12 *Carehouse* test, which she cannot satisfy, Ms. Sinatra relies on a formulaic distinction between  
13 “current” and “former” attorneys. She argues that because Quinn Emanuel withdrew from its  
14 representation of Elaine Wynn in March 2017, *none* of the protections applicable to the attorney-  
15 client relationship apply, freeing Ms. Sinatra to conduct broad-ranging merits depositions of four  
16 attorneys to bolster her “abuse of process” claim in Nevada. This assertion is meritless. The  
17 protections embedded in California case law (and Nevada case law, for that matter) are designed to  
18 safeguard the attorney-client relationship, and prevent an obvious “chilling effect” on “the truthful  
19 communications from the client to the attorney . . . .” (*Spectra-Physics, Inc. v. Superior Court* (1988)  
20 198 Cal.App.3d 1487, 1494; *accord Club Vista Financial Services, LLC v. Eighth Judicial District*  
21 *Court* (2012) 276 P.3d 246, 249 [“Forcing an opposing party’s trial counsel to personally participate  
22 in trial as a witness ‘has long been discouraged and recognized as disrupting the adversarial nature  
23 of our judicial system.’”] [quoting *Shelton v. American Motors Corp.* (8th Cir. 1986) 805 F.2d 1323,  
24 1327].) This presumption against placing counsel under the microscope of interrogation applies  
25 irrespective of whether the attorney is currently involved in the case, particularly where, as here, the  
26 depositions would cover matters that indisputably arose during Quinn Emanuel’s legal  
27 representation of Ms. Wynn. Ms. Sinatra has offered no compelling justification for overriding the  
28 disfavored practice of taking the deposition of a party’s attorney.

1       Because these attorney subpoenas facially seek to invade the privileges and absolute  
2       protections of Quinn Emanuel’s former client, Ms. Wynn, this Court should issue an order quashing  
3       them in their entirety. The purpose of the stringent *Carehouse* test is to prevent these abusive and  
4       retaliatory attorney depositions from occurring in the first instance. (See *Carehouse*, 143  
5       Cal.App.4th at p. 1563 [three-prong test governs “the propriety of attorney depositions”].)  
6       California courts have quashed attorney subpoenas in these circumstances and this Court should do  
7       the same here. (See *Estate of Ruchti* (1993) 12 Cal.App.4th 1593, 1601 [quashing attorney  
8       deposition]; *Spectra-Physics*, 198 Cal.App.3d at p. 1497-98 [barring attorney deposition: “Given  
9       the strength of the policy considerations against deposing opposing counsel, we conclude that the  
10      showing made by Teledyne up to now simply does not justify this unpalatable procedure which  
11      erodes the adversary system . . . .”].)

12       Ms. Sinatra’s argument that the Nevada court has jurisdiction over this dispute is wrong.  
13      This Court has exclusive and continuing jurisdiction over these California subpoenas issued  
14      pursuant to the Uniform Interstate Depositions and Discovery Act (“UIDDA”), and Petitioners’  
15      objections to them are exclusively governed by California law. (Civ. Proc. Code, § 2029.600.)  
16      There is no basis for this Court to abstain in favor of a court that has no jurisdiction over the  
17      subpoenas. (See *Yelp, Inc. v. Hadeed Carpet Cleaning, Inc.* (2015) 289 Va. 426, 435 [recognizing  
18      well-established rule that “enforcement of a subpoena seeking out-of-state discovery is generally  
19      governed by the courts and the law of the state in which the witness resides or where the documents  
20      are located”].)

21       Because she cannot dispute this Court’s exclusive jurisdiction over the California subpoenas,  
22      Ms. Sinatra tries to sidestep it by invoking Petitioners’ expired *pro hac vice* applications. Ms.  
23      Sinatra does not cite a shred of authority for this argument. An application to appear *as counsel* in  
24      a particular case is not a general consent to be hailed into a foreign court *as a witness* for some  
25      indefinite period of time after withdrawal. Nevada’s own rule governing *pro hac vice* applications  
26      recognizes the limited scope of that jurisdiction. (Nev. Sup. Ct. R. 42(13).)

27       Ms. Sinatra do not even attempt to satisfy the *Carehouse* test, which is similar to the *Club*  
28      *Vista* test adopted by the Nevada Supreme Court. (*Club Vista*, 276 P.3d at p. 249.) Her request for



1 depositions of Quinn Emanuel attorneys who represented Elaine Wynn for over a year would clearly  
2 infringe upon privileged matters—precisely what the prohibition against deposing attorneys is  
3 designed to prevent. Ms. Sinatra does not dispute that the subject matter of her “abuse of process”  
4 claim relates to the claims asserted, discovery propounded, and settlement communications made  
5 by Quinn Emanuel attorneys when they represented Ms. Wynn. The only information that she could  
6 conceivably seek from Quinn Emanuel attorneys will infringe upon the attorney-client privilege and  
7 work product protections, such as Quinn Emanuel’s legal strategy, communications with client,  
8 mental impressions, protected settlement communications, as well the absolute litigation privilege.  
9 Ms. Sinatra does not specifically identify a shred of *non*-privileged information that is uniquely in  
10 the possession of Quinn Emanuel and not accessible from other sources, such as from the parties  
11 themselves, the litigation case file, and Ms. Sinatra’s own attorneys who personally participated in  
12 the settlement discussions. Because Ms. Sinatra has not established the “extremely good cause”  
13 necessary to depose her litigation adversary’s trial counsel, the Court should quash the subpoenas  
14 in their entirety.

## 15 **ARGUMENT**

### 16 **I. MS. SINATRA FAILS TO SATISFY THE STRINGENT TEST GOVERNING** 17 **DEPOSITIONS OF A LITIGATION ADVERSARY’S COUNSEL**

#### 18 **A. The California Superior Court has Exclusive and Continuing Jurisdiction over** 19 **Enforcement of these California Subpoenas**

20 Having served California subpoenas and invoked this Court’s jurisdiction (including her  
21 rejected *ex parte* application to deny the petition and expedite the depositions), Ms. Sinatra now  
22 urge this Court to abstain from adjudicating this dispute on the grounds that this Court lacks the  
23 “historical knowledge of the facts” and “is not familiar with the [*sic*] Ms. Wynn and Petitioners’  
24 misconduct.” (Opp. at 3). Unsurprisingly, the UIDDA does not allow for Ms. Sinatra to run to her  
25 home court in Nevada to enforce California subpoenas against out-of-state residents.<sup>1</sup> In the  
26 interests of comity and protecting their own residents, both California and Nevada (which have

27 <sup>1</sup> If the Court accepted this argument, there would be no need for the UIDDA enacted by 39 states,  
28 including its provision that subpoenas are enforced by the courts and pursuant to the laws where the  
discovery is sought, because the foreign court where the underlying case is pending will always  
have more “historical knowledge” of the case than the enforcing court.

1 enacted the UIDDA) prohibit the forum shopping and gamesmanship that Ms. Sinatra is attempting  
2 to engage in here. (See *Yelp*, 289 Va. 426, 435 [explaining that the UIDDA contemplates that  
3 foreign courts “will respect the territorial limitations of their own subpoena power,” which “furthers  
4 the preservation of comity”].)

5 Ms. Sinatra’s abstention argument seeks to upend blackletter law giving this Court exclusive  
6 jurisdiction to decide a petition to quash California subpoenas, served on California residents, and  
7 governed by California law. (Civ. Proc. Code, §§ 2029.400, 2029.500, 2029.600.) This Court’s  
8 exclusive jurisdiction over the California subpoenas is continuing and applies to all disputes related  
9 to the same foreign proceeding. (Civ. Proc. Code, § 2029.620(a).) At least *six* state supreme courts  
10 have recognized that subpoenas issued under the UIDDA are subject to the exclusive jurisdiction  
11 and law of the state where the discovery is sought—in this case, California. (See *Yelp, Inc.*, 289 Va.  
12 at 435 [citing supreme court cases from Alabama, Louisiana, Colorado, Florida, Mississippi, and  
13 Oklahoma holding that enforcement of foreign subpoenas is subject to the exclusive jurisdiction and  
14 laws of the state where the discovery is sought, and joining in that holding].) Nevada also has  
15 enacted the UIDDA and its law is the same.<sup>2</sup>

16 Unable to dispute that this Court has exclusive jurisdiction over these California subpoenas,  
17 Ms. Sinatra argues that they should be ignored based on the Nevada court’s residual jurisdiction  
18 over Petitioners’ expired *pro hac vice* applications. (Opp. at 3.) But merely because out-of-state  
19 attorneys seek routine court authorization to appear as counsel on behalf of a client does not  
20 constitute a general consent to appear in Nevada—for all purposes and all time—as percipient  
21 witnesses to provide merits testimony regarding pending claims. Nevada’s own rule governing *pro*  
22 *hac vice* applications limit that jurisdiction to Nevada law “governing the conduct of attorneys.”  
23 (Nev. Sup. Ct. R. 42(13).) Indeed, the Nevada Supreme Court has rejected imposing additional  
24 burdens on out-of-state attorneys that “lie[] outside of SCR 42’s requirements.” (See *Imperial*  
25 *Credit Corporation v. Eighth Judicial Dist. Of the State of Nevada* (2014) 130 Nev. Adv. Op. 59,  
26

27 <sup>2</sup> (See Nev. R. Civ. P. 37(a)(1) [“An application for an order to a deponent who is not a party shall  
28 be made to the court in the district where the deposition is being, or is to be, taken.”]; see also NRS  
53.190 [stating that an application to quash a subpoena under the UIDDA “must” be submitted “to  
the court in the county in which discovery is to be conducted”].)

1 331 P.3d 862, 865 [rejecting requirement that out-of-state counsel must be “more capable” of  
2 handling the matter than Nevada local counsel because it had no basis in the language of SCR 42].)  
3 Whatever residual jurisdiction *the court* might have over Quinn Emanuel attorneys who no longer  
4 practice before it does not give *the parties* the unfettered right to compel former attorneys to appear  
5 in Nevada as third-party witnesses, nor does it supersede the laws of California regarding domestic  
6 enforcement of foreign subpoenas. Respondents cite no authority holding otherwise.

7 **B. The *Carehouse* Test Applies to the Depositions of Quinn Emanuel Attorneys**

8 Under the force of well-established precedents strongly disfavoring depositions of attorneys,  
9 Ms. Sinatra attempts to erect an artificial rule: current counsel is generally shielded from subpoenas,  
10 but former counsel is not. To bolster this argument, Ms. Sinatra claims that the *Carehouse* test, “if  
11 it pertains to attorneys in out-of-state cases at all . . . only impacts the deposition of opposing counsel  
12 in the same litigation.” (Opp. at 4). *Carehouse* is so limited, according to Ms. Sinatra, because “the  
13 *Carehouse* case explains that if the deposition of opposing trial counsel were allowed to proceed,  
14 trial counsel would be forced to prepare themselves for the witness box, *rather than preparing the*  
15 *case for trial.*” (*Id.*) (emphasis added). But preserving the time and focus of trial counsel is only  
16 *one* rationale for *Carehouse*’s holding that “[d]epositions of opposing counsel are presumptively  
17 improper, severely restricted, and require “extremely good cause—a high standard.”” (143  
18 Cal.App.4th at p. 1562.) In fact, the very first rationale *Carehouse* highlights is the need to  
19 “[p]revent attorneys from taking undue advantage of their adversary’s industry and efforts.” (*Id.*)  
20 This rationale necessarily applies to both current and former attorneys, both of whom warrant  
21 protection from an adversary seeking to benefit from their confidential communications, strategy  
22 and work product. *Carehouse* noted that “[a]ttorney depositions chill the attorney-client  
23 relationship, impede civility, and easily lend themselves to gamesmanship and abuse,” (*id.* at 1563),  
24 precisely what Ms. Sinatra is seeking to do through these retaliatory depositions of Ms. Wynn’s  
25 former attorneys. Further, *Carehouse* was designed to prevent depositions from being used as a  
26 “potent tool to harass an opponent,” (*id.*), again exactly what Ms. Sinatra is seeking to do through  
27 the cloak of the judicial system.

28 Many courts have rejected such an artificial distinction between current trial counsel and

1 other attorneys. As one district court held, in interpreting the federal three-factor test adopted by  
2 the Nevada Supreme Court, “the concerns articulated by the [test] did not indicate that only attorneys  
3 of record are protected by the standard.” (*Guantanamo Cigar Co. v. Corporacion Habanos, S.A.*  
4 (D.D.C. 2009) 263 F.R.D. 1, 9; see also *Alomari v. Ohio Department of Public Safety* (S.D. Ohio  
5 June 19, 2014) 2014 WL 12651191, at \*6 [denying motion to compel deposition of former counsel].)  
6 These principles apply with equal force here.

7 **C. Ms. Sinatra Cannot Satisfy the *Carehouse* Test**

8 **1. Ms. Sinatra Cannot Show that She has No Other Practicable Means to**  
9 **Obtain Discovery**

10 Ms. Sinatra erroneously claims that she has no other means to obtain non-privileged  
11 discovery “that is critical to her recently asserted counterclaim against Ms. Wynn.” (Opp. at 5). To  
12 bolster this assertion, she alleges *without any substantiation* that “it is believed” that Ms. Wynn has  
13 withheld discoverable, non-privileged communications. (*Id.*) But not only does she fail to offer  
14 any evidence for this speculative assertion, the very allegation proves that she has not satisfied her  
15 *Carehouse* burden. If Ms. Sinatra had any credible basis to believe that a party was improperly  
16 withholding discovery, she could have, and should have, filed a motion to compel, and her failure  
17 to do so shows that she has not exhausted, or even pursued, “other practicable means to obtain  
18 discovery.” (*Carehouse*, 143 Cal.App.4th at p. 1563.)

19 **2. Ms. Sinatra Has Not Demonstrated the Depositions are Crucial**

20 Ms. Sinatra does not even attempt to show that the information she seeks from Quinn  
21 Emanuel attorneys is “crucial to the preparation of the case.” (*Id.*) This omission alone bars the  
22 deposition. Her vague and cursory assertions that “petitioners were all witnesses to conversations,  
23 discussions and written communications that are part of the abuse of process claim” (Opp. at 5),  
24 does not even begin to satisfy her burden of proving that deposing Ms. Wynn’s attorneys is “crucial”  
25 to her case, particularly since all of the objective facts about the litigation—the claims asserted,  
26 discovery propounded, settlement communications, and the complete case file—are already in Ms.  
27 Sinatra’s possession. Indeed, Ms. Sinatra’s own attorneys participated in the settlement  
28 communications that form the basis for her “abuse of process” claim.

1 By way of example, Ms. Sinatra provides no explanation of why other individuals who were  
2 “witnesses to conversations, discussions, and written communications” allegedly at issue cannot  
3 provide the information sought without deposing *four* opposing lawyers. (See *Marco Island*  
4 *Partners v. Oak Dev. Corp.* (N.D. Ill. 1987) 117 F.R.D. 418, 419 [precluding attorney deposition  
5 where defendants did not show the information sought from the attorney could not be obtained from  
6 other sources, including attendees at the negotiations in question].). There is simply no basis to  
7 conclude that it is “crucial” to depose counsel when Ms. Sinatra has all the non-privileged discovery  
8 (or could seek to compel more), and she can question the actual parties in the litigation.

9 **3. Ms. Sinatra Cannot Show the Information is Not Privileged**

10 Ms. Sinatra repeatedly asserts that Quinn Emanuel attorneys “participated in non-privileged  
11 communications.” (Opp. at 5). This is baseless conjecture. She has not identified *any* relevant,  
12 non-privileged information she would solicit from Quinn Emanuel attorneys. She should not be  
13 permitted to pierce the attorney-client relationship based on sheer speculation that there *might be*  
14 non-privileged material she could gather in a deposition; granting such an unsubstantiated request  
15 would effectively gut the protections afforded the attorney-client relationship embodied in  
16 *Carehouse*. Because Ms. Sinatra cannot satisfy any of the *Carehouse* factors, much less all of them,  
17 the petition to quash should be granted. (See *Carehouse*, 143 Cal.App.4th at p. 1563 [“Each of these  
18 prongs poses an independent hurdle to deposing an adversary’s counsel . . . .”].)

19 **II. MS. SINATRA FAIL TO REBUT THAT THE SUBPOENAS WILL INVADE THE**  
20 **ATTORNEY-CLIENT PRIVILEGE AND OTHER PROTECTIONS**

21 Petitioners asserted four privileges or protections that prevent Ms. Sinatra from deposing  
22 Quinn Emanuel attorneys: (1) attorney-client privilege and work product protection; (2) absolute  
23 litigation privilege; (3) *Noerr-Pennington* doctrine and (4) settlement confidentiality. Ms. Sinatra  
24 fail to persuasively rebut any of them.

25 **Attorney-Client Privilege and Work Product Protection.** Ms. Sinatra claims that this  
26 Court should require Petitioners to raise any attorney-client or work product concerns at the  
27 depositions, rather than barring the depositions altogether. Respondents completely ignore that  
28 *Carehouse* presents a threshold standard that must be satisfied before attorney depositions can occur.

1 Respondents clearly fail to meet this burden because they do not, and cannot, establish any relevant,  
2 non-privileged communications the depositions would produce, and their speculation that there  
3 might be non-privileged information they could glean, while Petitioners object to any privileged  
4 discovery, is insufficient. “California does not allow opposing counsel to be deposed simply for  
5 ‘the picking of his brains.’” (*Carehouse*, 143 Cal.App.4th at 1564.) Where a litigant has failed to  
6 satisfy any one of the *Carehouse* requirements for deposing counsel, California courts have not  
7 hesitated to deny the deposition at the outset. (See *Riverside Sheriff’s Ass’n v. County of Riverside*  
8 (2007) 152 Cal.App.4th 414, 424-25 [rejecting argument that defendant should have been permitted  
9 to depose plaintiff’s attorney concerning his fees, noting “the County has not shown it was deprived  
10 of critical information”).

11 Respondents reliance on *Nemirofsky v. Seok Ki Kim* (N.D. Cal. 2007) 523 F.Supp.2d 998 is  
12 similarly misplaced. *Nemirofsky* involved disagreement over settlement proceeds from an earlier  
13 lawsuit. The attorney whose deposition was noticed had represented the plaintiff in the underlying  
14 patent lawsuit. During the resulting litigation between the parties over settlement proceeds, the  
15 district court allowed Nemirofsky to depose defendant’s counsel on non-privileged issues, while  
16 permitting objections based on attorney-client privilege. But the facts of *Nemirofsky* are different  
17 from this case. First, in *Nemirofsky*, defense counsel did not challenge the deposition as duplicative  
18 or overly burdensome, and only lodged objections to particular questions, whereas here Petitioners  
19 have challenged the efficacy of the entire depositions. Moreover, *Nemirofsky* permitted the  
20 deposition of an attorney who had been counsel in a *separate* litigation, whereas here Quinn  
21 Emanuel are former counsel in the *same litigation* in which Ms. Sinatra’s abuse of process claims  
22 are drawn. (See *id.* at 1000-01 (“the proposed deposition is not of opposing counsel, but of former  
23 opposing counsel in a different case...”). Indeed, Ms. Sinatra’s abuse of process claims are based  
24 on the very claims Ms. Wynn originally asserted against her – claims Ms. Wynn’s current counsel  
25 is still prosecuting against Ms. Sinatra, and which recently survived a motion to dismiss. In light of  
26 these distinct differences, *Nemirofsky* offers no basis to overcome the presumption against deposing  
27 counsel established in *Carehouse*.

28 **Noerr-Pennington Doctrine.** With respect to the *Noerr-Pennington* doctrine, Respondents

once again rely improperly on Nevada law. They then cite a string of inapposite cases to claim that “the *Noerr-Pennington* Doctrine does not apply where the underlying claim is based in part on activity that is not protected.” (Opp. at 7). However, in all of these cases, the activity sought to be protected was remote from the traditional petitioning activity protected by *Noerr-Pennington*, and squarely at issue in this case.<sup>3</sup> In short, Respondents offer no basis to disregard the variety of litigation privileges clearly applicable to this case.

**Settlement Confidentiality and Absolute Litigation Privilege.** Respondents attempt to overcome the settlement privilege by relying on Nevada law when, as demonstrated above, California law applies. The cases they do cite are inapposite. *Bull v. McCusky* (1980) 96 Nev. 706, involved a claim by a doctor against a lawyer who was responsible for filing a frivolous lawsuit and did not discuss the settlement privilege or its applicability. Similarly, none of their other cases have any bearing in their arguments concerning the applicability of the settlement privilege.<sup>4</sup> Respondents fail to even address, much less rebut, the cases invoking the absolute litigation privilege in the Petition, which bars Ms. Sinatra’s “abuse of process” claim entirely.<sup>5</sup> (Pet. 12-13).

## CONCLUSION

For the reasons stated, the Court should quash these attorney subpoenas in their entirety.

<sup>3</sup> See *Select Portfolio Servicing v. Valentino*, 875 F.Supp.2d 975, 985-986 (N.D. Cal. 2012) (finding that attorney's fraudulent statements made *after* "the Foreclosure Action was over and the Settlement Agreement in force" was not related to petitioning activity); *eBay, Inc. v. Bidder's Edge, Inc.*, 2000 WL 1863564, at \*2 (N.D. Cal. July 25, 2000) (finding that alleged antitrust violations *other than* filing a lawsuit were not protected by *Noerr-Pennington*); *United Tactical Systems, LLC v. Real Action Paintball, Inc.*, No. 14-CV-04050-MEJ, 2016 WL 524761, at \*7 (N.D. Cal. Feb. 10, 2016) (agreement stifling competition and preventing companies from working with counter-plaintiff which wanted to compete in market went beyond the protected petitioning activities at issue in signing settlement agreement in a separate action); *Theofel v. Farey-Jones*, 359 F.3d 1066, 1073 (9th Cir. 2004) (knowingly serving an invalid subpoena not protected by *Noerr-Pennington*).

<sup>4</sup> *Posadas v. City of Reno*, 96 Nev. 706, 1980 (no discussion of settlement privilege); *Kovacs v. Acosta*, 106 Nev. 57 (1990) (same); *Pellegrino Food Products Co., Inc. v. City of Warren*, 136 F.Supp.2d 391 (W.D. Pa. 2000) (same); *Nienstedt v. Wetzel*, 133 Ariz. 348 (1982) (same).

In relying on *Oren Royal Oaks Venture v. Greenberg, Berhard, et al.* (1986) 42 Cal. 3d 1157 to claim that statements made during settlement discussions “may be used for evidentiary purposed (sic) in determining whether the individual acted with requisite intent,” (Opp. at 6), Respondents rely on inapposite authority. *Oren* did not involve a determination of whether or not depositions of trial attorneys was proper. The limited holding of *Oren* was that “section 47(2) does not prohibit the consideration, for evidentiary purposes, of statements made in the course of settlement negotiations.” (*Id.* at 1170.) In the instant case, assuming that Respondents intend to introduce evidence of Ms. Wynn’s settlement demands in accordance with *Oren*, they fail to explain why they require depositions of Ms. Wynn’s trial attorneys since Ms. Sinatra’s own attorneys were participants in the settlement negotiations at issue.

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DATED: November 14, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By Chris Tayback *CS*  
Christopher Tayback

Attorney for Non-Parties John B. Quinn, Michael  
T. Zeller, Michael L. Fazio, and Ian S. Shelton



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On November 14, 2017, I served true copies of the following document(s) described as **REPLY BRIEF IN SUPPORT OF PETITION TO QUASH NON-PARTY ATTORNEY DEPOSITION SUBPOENAS FOR PERSONAL APPEARANCE IN ACTION PENDING OUTSIDE CALIFORNIA, FOR ORDERS STAYING DEPOSITIONS, FOR PROTECTIVE ORDERS** on the interested parties in this action as follows:

***Attorney for Defendants Wynn Resorts and Kim Sinatra***

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Jan Sheltor

**Ian S. Shelton**

## Ian Shelton

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**From:** DONOTREPLY-CRS@lacourt.org  
**Sent:** Monday, November 20, 2017 10:35 AM  
**To:** Ian Shelton  
**Subject:** Reschedule: BS171352-171026261952 (Post-Confirmation)

The following reservation has been rescheduled by the Court.

Reservation ID: [171026261952](#)  
Case Number: BS171352  
Case Title: WYNN RESORTS ET AL VS KAZUO OKADA ET AL  
Party: QUINN JOHN B. (Petitioner)  
Courthouse: Stanley Mosk Courthouse  
Dept: 31 [View Courtroom Information.](#)  
Reservation Type: **Motion to Quash Supboena**  
Date: 11/22/2017  
Time: 08:30 am

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**From:** Ava M. Schaefer [mailto:AMS@pisanellibice.com]

**Sent:** Monday, November 20, 2017 10:26 AM

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**Subject:** RE: Wynn/Okada: Order on Ms. Sinatra's Motion to Compel Deposition of Quinn Emanuel Attorneys [heard 11/6/17]

Counsel-

We did not receive any redlines to the proposed order on Kimmarie Sinatra's Motion to Compel Deposition of Quinn Emanuel Attorneys (heard 11/6/17). Please let us know when your signed copy is ready for pickup.

Thanks,

**Ava M. Schaefer**

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**From:** Ava M. Schaefer

**Sent:** Tuesday, November 14, 2017 1:00 PM

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**Subject:** Wynn/Okada: Order on Ms. Sinatra's Motion to Compel Deposition of Quinn Emanuel Attorneys [heard 11/6/17]

Counsel-

Attached please find the proposed order on Kimmie Sinatra's Motion to Compel Deposition of Quinn Emanuel Attorneys (heard 11/6/17).

Please send us your redlines by 4 p.m. on Friday, 11/17.

Thanks,

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Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada  
Corporation,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED CLAIMS

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

**ORDER ON KIMMARIE SINATRA'S  
MOTION TO COMPEL DEPOSITION  
OF QUINN EMANUEL ATTORNEYS**

Date of Hearing: November 6, 2017

Time of Hearing: 8:00 a.m.

1 Kimmarie Sinatra's Motion to Compel Deposition of Quinn Emanuel Attorneys on Order  
2 Shortening Time (the "Motion") filed on November 1, 2017, came before this Court in the  
3 above-captioned action on November 6, 2017. James J. Pisanelli, Esq., and Debra L.  
4 Spinelli, Esq., of PISANELLI BICE PLLC, and Mitchell J. Langberg, Esq., of BROWNSTEIN  
5 HYATT FARBER SCHRECK, LLP, appeared on behalf of Plaintiff/Counterdefendant  
6 Wynn Resorts, Limited and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani,  
7 Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra,  
8 D. Boone Wayson, and Allan Zeman (collectively the "Wynn Parties"). J. Colby Williams, Esq.,  
9 of CAMPBELL & WILLIAMS, appeared on behalf of Counterdefendant/Cross-defendant  
10 Stephen A. Wynn ("Mr. Wynn"). William R. Urga, Esq., of JOLLEY URGa WOODBURY  
11 HOLTHUS & ROSE and Mark E. Ferrario, Esq. of GREENBERG TRAURIG, LLP, appeared on  
12 behalf of Counterdefendant/Counterclaimant/Crossclaimant Elaine P. Wynn ("Ms. Wynn").  
13 J. Stephen Peek, Esq. of HOLLAND & HART LLP, appeared on behalf of Defendant  
14 Kazuo Okada ("Okada"). Adam B. Miller, Esq., of BUCKLEY SANDLER LLP and Mark M.  
15 Jones, Esq., of KEMP JONES & COUTHARD LLP, appeared on behalf of Defendants/  
16 Counterclaimants/Counterdefendants Aruze USA ("Aruze") and Universal Entertainment Corp.  
17 ("Universal"). Patricia Lundvall, Esq., of MCDONALD CARANO, appeared on behalf of  
18 specially appearing Quinn Emanuel Urquhart & Sullivan LLP.

19 The Court having considered the Motion, the Opposition filed by Ms. Wynn on  
20 November 3, 2017, the Opposition filed by specially appearing Quinn Emanuel Urquhart &  
21 Sullivan LLP on November 3, 2017, as well as the arguments of counsel presented at the hearing,  
22 and good cause appearing therefor,

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is  
24 GRANTED, such that John Quinn, Michael Zeller, Ian Shelton, and Michael Fazio (the  
25 "Quinn Attorneys") shall each be deposed in Las Vegas, Nevada. The Quinn Attorneys subjected  
26 themselves to this Court's jurisdiction based upon their *pro hac* applications to practice in this  
27 Court for the purposes of this action, each of which were granted.

1 IT IS FURTHER ORDERED that this Order shall be stayed for 10 days from  
2 November 6, 2017, *i.e.*, through November 21, 2017, to permit Quinn Emanuel Urquhart &  
3 Sullivan LLP to file a writ petition with the Nevada Supreme Court.

4 IT IS SO ORDERED.

5 DATED: \_\_\_\_\_

6 \_\_\_\_\_  
7 THE HONORABLE ELIZABETH GONZALEZ  
8 EIGHTH JUDICIAL DISTRICT COURT

9 Respectfully submitted by:

10 PISANELLI BICE PLLC

11 By: \_\_\_\_\_

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