

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN B. QUINN, an individual,
MICHAEL T. ZELLER, an individual,
MICHAEL L. FAZIO, an individual,
IAN S. SHELTON, an individual, and
ELAINE P. WYNN, 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,
and WYNN RESORTS, LIMITED,
a Nevada Corporation,

Real Parties in Interest.

Supreme Court Case No. 74519

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

Electronically Filed
Nov 30 2017 04:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

PETITIONERS' SUPPLEMENTAL APPENDIX

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Attorneys for Specially Appearing Petitioners

Chronological Index to Petitioners' Appendix

Document Description	Date	Vol.	Pages
Stipulation and Order for Entry of Permanent Injunction	3/20/2017	1	PSA000842-PSA000852
Order re: 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 (California Superior Court)	11/22/2017	1	PSA000853-PSA000858
Transcript of November 22, 2017 Hearing (California Superior Court)	11/22/2017	1	PSA000859-PSA000878
Joint Stipulation and Order regarding 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 (California Superior Court)	11/30/2017	1	PSA000879-PSA000882
Order on Kimmarie Sinatra's Motion to Compel Deposition of Quinn Emanuel Attorneys	11/30/2017	1	PSA000883-PSA000887

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Alphabetical Index to Petitioners' Appendix

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Order on Kimmarie Sinatra's Motion to Compel Deposition of Quinn Emanuel Attorneys	11/30/2017	1	PSA000883-PSA000887
Stipulation and Order for Entry of Permanent Injunction	3/20/2017	1	PSA000842-PSA000852
Transcript of November 22, 2017 Hearing (California Superior Court)	11/22/2017	1	PSA000859-PSA000878

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RESPECTFULLY SUBMITTED this 30th 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 30th day of November, 2017, a copy of the foregoing **PETITIONERS' SUPPLEMENTAL APPENDIX** 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.

I hereby further certify that the parties were served via email with a courtesy copy of the **PETITIONERS' SUPPLEMENTAL APPENDIX** on this 30th day of November, 2017 to the email addresses listed below.

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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.

AND ALL RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

**NOTICE OF ENTRY OF STIPULATION
AND ORDER FOR ENTRY OF
PERMANENT INJUNCTION**

Hearing Date: March 17, 2017

Hearing Time: 8:00 a.m.

1 PLEASE TAKE NOTICE that a "Stipulation and Order for Entry of Permanent Injunction"
2 was entered in the above-captioned matter on March 17, 2017, a true and correct copy of which is
3 attached hereto.

4 DATED this 20th day of March, 2017.

5 PISANELLI BICE PLLC

6 By: /s/ Debra L. Spinelli

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19 John A. Moran, Marc D. Schorr, Alvin V.
20 Shoemaker, Kimmarie Sinatra, D. Boone Wayson,
and Allan Zeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 20th day of March, 2017, I caused to be **electronically served through the Court's filing system** true and correct copies of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER FOR ENTRY OF PERMANENT INJUNCTION** to the following:

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/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC


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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,
UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

Defendant.

AND ALL RELATED CLAIMS

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

ELECTRONIC FILING CASE

**STIPULATION AND ORDER FOR
ENTRY OF PERMANENT INJUNCTION**

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Contingent upon the Court vacating, without prejudice, the hearing that commenced on March 13, 2017, Wynn Resorts, Limited ("Wynn Resorts" or "Company"), Elaine P. Wynn ("Ms. Wynn"), and Quinn Emanuel Urquhart & Sullivan ("Quinn Emanuel") (collectively, the "Parties") hereby stipulate and agree to the entry of a permanent injunction for the identification and surrender of Wynn Resorts' Documents. As used herein, the term "Wynn Resorts' Documents" means documents created by or prepared for Wynn Resorts without regard to the privileged or confidential status of such documents, including any duplicates, compilations or summaries of such documents in any form. The term "Wynn Resorts' Documents" does not include Ms. Wynn's, Munger Tolles & Olson ("MTO") or Quinn Emanuel's attorney-client privileged communications or work product, deposition or hearing transcripts, pleadings, motion practice, produced discovery from this action, and/or correspondence between counsel for Ms. Wynn and other counsel in this action. Nothing in this stipulation is intended to modify or relieve any party of the terms or obligations of Court rules, Court directives, or Court orders, including but not limited to the Court's Protocol for Collection, Search and Review of Documents Related to the Motion to Disqualify entered on August 10, 2016 (the "Protocol").

Accordingly, IT IS STIPULATED BY THE PARTIES AND ORDERED BY THE COURT that a permanent injunction be, and hereby is, granted as follows:

1. Within fifteen (15) days of entry of this Order, Ms. Wynn shall identify all hard copy Wynn Resorts' Documents or electronic storage devices in her possession, custody or control that may contain Wynn Resorts' Documents. Ms. Wynn's identification shall include, but is not limited to, the following: (a) Elaine P. Wynn's Apple iPhone 6, 64 GB; (b) Elaine P. Wynn's Apple iPad Air 2, 64 GB; (c) Elaine P. Wynn's Apple MacBook Pro, 256 GB; (d) Elaine P. Wynn's Dell Desktop, One 2330 (Los Angeles); (e) Elaine P. Wynn's Dell Desktop, One 2330 (Sun Valley); and (f) her Dropbox account(s).

2. Within fifteen (15) days of the entry of this Order, Ms. Wynn shall take reasonable efforts to secure MTO's compliance with the terms of this stipulated injunction. If MTO does not agree, Ms. Wynn will inform Wynn Resorts.

3. Within thirty (30) days of entry of this Order, MTO and Quinn Emanuel shall

1 identify all documents, electronic storage devices and datasets in their possession, custody or
2 control that may contain Wynn Resorts' Documents, including any duplicates or copies thereof.
3 Quinn Emanuel's identification shall include, but is not limited to, the following: (1) all
4 Viewpoint databases containing Wynn Resorts' Documents on Quinn Emanuel's servers; (2) all
5 LTAS S Drive folders containing Wynn Resorts' Documents on Quinn Emanuel's servers; (3) all
6 physical media containing Wynn Resorts' Documents in the possession of Quinn Emanuel; (4) all
7 Filesite databases containing Wynn Resorts' Documents on Quinn Emanuel's servers; (5) all
8 Attorney S Drive folders containing Wynn Resorts' Documents on Quinn Emanuel's servers; (6)
9 all email systems containing Wynn Resorts' Documents on Quinn Emanuel's servers; (7) all local
10 computers, shared or attorney network drives containing Wynn Resorts' documents in the
11 possession of Quinn Emanuel; and (8) all hard copy compilations of Wynn Resorts' Documents
12 (e.g., binders) in the possession of Quinn Emanuel. MTO and Quinn Emanuel are not required to
13 individually log the Wynn Resorts' Documents identified in categories (6), (7) and (8) above.

14 4. MTO's and Quinn Emanuel's identification shall identify which electronic storage
15 devices in its possession, identified in response to Paragraph 3 above, contain databases from the
16 MTO Hard Drive, and those which do not. As to Quinn Emanuel, the repositories falling into the
17 former category are anticipated to be categories (1) and (2) identified in Paragraph 3 above, and
18 the repositories falling into the latter category are anticipated to be categories (3), (4), (5), (6), (7)
19 and (8) identified in Paragraph 3 above.

20 5. Except as provided by further order of the Court, Wynn Resorts will not be given
21 access to the Wynn Resorts' Documents in categories (3), (4), (5), (6), (7) and (8) identified in
22 Paragraph 3 above. In the event Quinn Emanuel seeks access to such documents in the
23 possession of Advanced Discovery in the event of a dispute between any Parties to this stipulated
24 injunction, except in the case of emails, the parties agree that Quinn Emanuel can seek relief from
25 the Court, on order shortening time, with at least five judicial days notice. To the extent Quinn
26 Emanuel seeks access to its emails in the possession of Advanced Discovery in the event of a
27 dispute between any Parties to this stipulated injunction, emails without attachments shall be
28 provided to Quinn Emanuel within five (5) days. Emails with attachments shall only be provided

1 after the Protocol is complete, or upon order of the Court.

2 6. As to devices and datasets in categories (4), (5), (6) and (7) set forth in
3 Paragraph 3 above, Quinn Emanuel will query and search through its systems (including email
4 systems) to identify any Wynn Resorts' Documents and provide such documents to Advanced
5 Discovery, but Advanced Discovery will not image those devices and datasets. Quinn Emanuel
6 shall turn over the identified Wynn Resorts' Documents to Advanced Discovery within ninety
7 (90) days of entry of this Order. Quinn Emanuel shall be allowed to use a third-party ESI vendor
8 to turn over such materials in a forensically sound manner. Quinn Emanuel agrees to provide a
9 list of search terms to accomplish the process identified in this Paragraph within five (5) days, and
10 Wynn Resorts agrees to inform Quinn Emanuel of its objections, if any, within five (5) days.¹

11 7. As to the devices and datasets in category (3) set forth in Paragraph 3 above,
12 Quinn Emanuel shall turn over such materials to Advanced Discovery within thirty (30) days of
13 entry of this Order. Advanced Discovery will not image those physical media.

14 8. As to the hard copy Wynn Resorts' Documents in category (8) set forth in
15 Paragraph 3 above, Quinn Emanuel shall destroy such documents. Quinn Emanuel has the
16 option, but is not required, to scan such hard copy documents and provide them to Advanced
17 Discovery in advance of their destruction.

18 9. Within ninety (90) days of entry of this Order, in addition to those devices and
19 datasets already provided to Advanced Discovery, MTO and Quinn Emanuel shall make any
20 devices and datasets available to Advanced Discovery that contain databases from the MTO Hard
21 Drive.

22 10. Quinn Emanuel's and MTO's devices and datasets that contain databases from the
23 MTO Hard Drive shall be subject to the Protocol. Quinn Emanuel's and MTO's other devices
24 and datasets identified in response to Paragraph 3 above shall not be subject to the Protocol.

25 11. Upon completion by Advanced Discovery of the imaging of the devices and
26 datasets from MTO and Quinn Emanuel, MTO and Quinn Emanuel shall delete or destroy the
27 devices and datasets identified in response to Paragraph 3 above, in the manner described in

28 ¹ The term "days" as used in this stipulated injunction refers to calendar days.

1 Paragraph 26 of the Protective Order dated February 14, 2013. This paragraph does not apply to
2 Wynn Resorts' Documents saved in MTO's and Quinn Emanuel's backup systems, which MTO
3 and Quinn Emanuel will not access and will be purged in the ordinary course by operation of
4 those backup systems.

5 12. Wynn Resorts will not be given access to any attorney work product contained
6 within the document review platforms of MTO and Quinn Emanuel, including without limitation
7 any document coding, tagging, comments or similar work product.

8 13. Ms. Wynn shall permit Advanced Discovery to image all devices identified in
9 paragraph 1 herein.

10 14. Ms. Wynn shall also identify in writing to Wynn Resorts, all persons who have
11 had access to Wynn Resorts' Documents through her cloud storage accounts, including without
12 limitation her Dropbox, since February 2012 to the present.

13 15. Advanced Discovery shall forensically image all data collected from Ms. Wynn,
14 per the Protocol. All devices provided by Ms. Wynn will be subject to the Protocol.

15 16. Within thirty (30) days of entry of this Order, Ms. Wynn shall provide to Wynn
16 Resorts a list of all individuals other than MTO or those who are parties to this stipulated
17 injunction to whom she distributed or provided access through cloud storage to Wynn Resorts'
18 Documents, and she will instruct those recipients in writing to destroy the documents and provide
19 certifications under oath from each that they have done so. The destruction shall take place and
20 the certifications of destruction received by Wynn Resorts within forty-five (45) days of entry of
21 this Order. To the extent any individual refuses to provide the certification set forth above, Ms.
22 Wynn will identify that person to Wynn Resorts.

23 17. Within forty-five (45) days of entry of this Order, MTO and Quinn Emanuel shall
24 provide to Wynn Resorts a list of all individuals other than those who are parties to this stipulated
25 injunction to which they distributed Wynn Resorts' Documents. The recipients will be instructed,
26 in writing, to destroy the documents, and each recipient will provide a certification under oath
27 that they have done so. The destruction shall take place and the certifications of destruction
28 received by Wynn Resorts within sixty (60) days of entry of this Order. To the extent any

1 individual refuses to provide the certification set forth above, MTO and Quinn Emanuel will
2 identify that person to Wynn Resorts.

3 18. After the Parties have complied with all provisions of this stipulated injunction,
4 Ms. Wynn, MTO, Quinn Emanuel, and each attorney, paralegal, and/or employee of MTO and
5 QE involved in this case, shall provide written certifications, under oath, that such entities and
6 individuals have complied with the terms of this stipulated injunction, and no other copies of
7 Wynn Resorts' Documents have been made, transferred, given to any third party(s), and/or
8 otherwise exist.

9 19. Ms. Wynn and Quinn Emanuel shall make a written demand on Ronald Durkin
10 demanding that he delete or destroy all Wynn Resorts' Documents in his possession, custody or
11 control. Mr. Durkin will be instructed, in writing, to destroy the documents and provide a
12 certification under oath that he has done so. To the extent Mr. Durkin refuses to do so, Ms. Wynn
13 and Quinn Emanuel will inform Wynn Resorts.

14 20. Once there is a determination by the Special Master identifying Wynn Resorts'
15 documents that Ms. Wynn provided under Paragraph 1 above, Advanced Discovery will delete
16 those Wynn Resorts' Documents from Ms. Wynn's devices.

17 21. The Parties agree that Advanced Discovery will retain forensically sound
18 preservation images or copies of all documents, devices and datasets that it collects in this case
19 from Ms. Wynn, MTO and Quinn Emanuel.

20 22. This injunction shall be binding upon the parties and any of their agents receiving
21 notice hereof.

22 23. Nothing in this stipulated injunction shall constitute a waiver or relinquishment of
23 any other rights, claims, or remedies whatsoever, including, but not limited to, sanctions.

24 24. Nothing in this stipulated injunction is intended to be construed, will be
25 construed, or will be argued as an admission of any violation of the terms or obligations of any
26 Court rules, Court directives, Court orders, or breach of any legal or contractual duty. However,
27 the provisions of this stipulated permanent injunction shall not be construed to restrict the use of
28 any testimony in this proceeding or any other proceeding as allowed by law.

25. Nothing in this stipulated injunction is intended to be construed, will be construed, or will be argued to require Quinn Emanuel to turn over to Advanced Discovery, the Special Master, Wynn Resorts or any other third party the documents or information of any client other than Elaine Wynn.

26. Nothing in this stipulated injunction is intended to be construed, will be construed, or will be argued to waive the attorney-client privilege or work product protection of any party.

27. The parties agree to jointly request that the Court vacate the hearing, without prejudice, that commenced on March 13, 2017.

28. Other than the rights and obligations described herein, each party to this stipulation reserves all other rights.

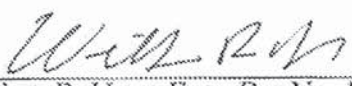
29. To the extent any deadline in this stipulated injunction cannot be met despite the good faith efforts of the parties, including due to technical limitations or difficulties, the parties agree to jointly request a reasonable extension of such deadlines.

30. The Court retains jurisdiction to enforce the terms of this stipulated injunction, and to the extent there is any dispute regarding the implementation of any provision of this stipulated injunction, the Parties shall file a motion for relief from the Court, on order shortening time, with at least five judicial days notice.


Dated this 17th day of March, 2017

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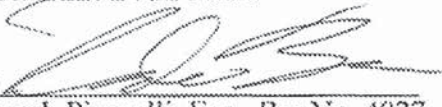
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Dated this 16th day of March, 2017

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

Dated this 16 day of March, 2017

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IT IS SO ORDERED

Dated this 17th day of March, 2017.


THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Superior Court of California
County of Los Angeles
Department 31

FILED
Superior Court of California
County of Los Angeles

NOV 22 2017

Sherri R. Carter, Executive Officer/Clerk
By [Signature] Deputy
Lorena Albino

JOHN B. QUINN, et al.,
Plaintiff,

v.

WYNN RESORTS, LIMITED, et al.,
Defendant(s).

Case No.: BS171352

Hearing Date: November 22, 2017

~~IDENTITATIVE~~ ORDER RE:

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

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 is GRANTED. The subpoenas issued by
Kimmarie Sinatra for the depositions of non-party attorneys John B. Quinn, Michael T. Zeller,
Michael L. Fazio, and Ian S. Shelton are ordered quashed.

Petitioners' request for judicial notice is GRANTED as to Exhibit Nos. 10-21 only.
(Evid. Code § 452(d).) Subpoenas, objections, and letters between the parties are not court
records.

1 This petition arises out of extensive litigation, including multiple counter-claims, in the
2 State of Nevada involving Wynn Resorts. Petitioners seek to quash deposition subpoenas for
3 personal appearance directed to Michael T. Zeller, John Q. Quinn, Ian S. Shelton, and Michael L.
4 Fazio, four attorneys from the law firm Quinn Emanuel Urquhart & Sullivan, LLP who
5 represented Elaine Wynn in the Nevada action from January 2016 through March 2017.

6 Pursuant to CCO § 2029.500, enforcement of out-of-state subpoenas are subject to the
7 same provisions of the Discovery Act. Pursuant to CCP § 2029.600, “[i]f a dispute arises
8 relating to discovery under this article, any request for a protective order or to enforce, quash, or
9 modify a subpoena, or for other relief may be filed in the superior court in the county in which
10 discovery is to be conducted and, if so filed, shall comply with the applicable rules or statutes of
11 this state.” Thus, this court has jurisdiction over the subpoenas at issue.

12 The court “may make an order quashing the subpoena entirely, modifying it, or directing
13 compliance with it upon those terms or conditions as the court shall declare, including protective
14 orders. In addition, the court may make any other order as may be appropriate to protect the
15 person from unreasonable or oppressive demands, including unreasonable violations of the right
16 of privacy of the person.” (CCP § 1987.1.) The court, upon motion reasonably made by the
17 party, may rule upon motions for quashing, modifying or compelling compliance with,
18 subpoenas. (*See e.g. Lee v. Swansboro Country Property Owners Ass’n* (2007) 151 Cal.App.4th
19 575, 582-83.)
20

21 Petitioners contend that Kimmarie Sinatra cannot satisfy the stringent test for deposing an
22 adversary’s counsel. “Attorney depositions chill the attorney-client relationship, impede civility
23 and easily lend themselves to gamesmanship and abuse. Counsel should be free to devote his or
24 her time and efforts to preparing the client’s case without fear of being interrogated by his or her
25

1 opponent. In the highly charged atmosphere of litigation, attorney depositions may serve as a
2 potent tool to harass an opponent. To effectuate these policy concerns, California applies a three-
3 prong test in considering the propriety of attorney depositions. First, does the proponent have
4 other practicable means to obtain the information? Second, is the information crucial to the
5 preparation of the case? Third, is the information subject to a privilege? Each of these prongs
6 poses an independent hurdle to deposing an adversary's counsel; any one of them may be
7 sufficient to defeat the attempted attorney deposition.” (*Carehouse Convalescent Hosp. v.*
8 *Superior Court* (2006) 143 Cal.App.4th 1558, 1563 (internal citations omitted).) “[T]he
9 proponent has the burden of proof to establish the predicate circumstances for the first two
10 prongs.” (*Ibid.*) Nevada has adopted a similar test:

11 To address the difficulties presented by attorney depositions, the Eighth Circuit
12 Court of Appeals has developed a stringent three-factor test under which the party
13 seeking to take the deposition of an opposing party's counsel has the burden of
14 proving that “(1) no other means exist to obtain the information than to depose
15 opposing counsel; (2) the information sought is relevant and nonprivileged; and
16 (3) the information is crucial to the preparation of the case.” *Shelton*, 805 F.2d at
1327 (citations omitted). We agree with the *Shelton* court that, in the absence of
these conditions, a party should not be permitted to depose an opposing party's
attorney, and thus, we adopt this three-factor test.

17 (*Club Vista Financial Servs. v. Dist. Ct.* (2012) 128 Nev. Adv. Op. 21, 276 P.3d 246, 250.) “By
18 establishing this heightened standard when a party is attempting to depose opposing counsel, we
19 advise litigants to resort to alternative discovery methods and discourage endeavors to seek
20 confidential and privileged information. When the facts and circumstances are so remarkable as
21 to allow a party to depose the opposing party's counsel, the district court should provide specific
22 limiting instructions to ensure that the parties avoid improper disclosure of protected
23 information.” (*Ibid.*)

1 In Opposition, Sinatra contends that this test only applies to current opposing counsel.
2 Sinatra provides no authority for this proposition, but rather focuses on a portion of the court's
3 rationale in *Carehouse*, that "[c]ounsel should be free to devote his or her time and efforts to
4 preparing the client's case without fear of being interrogated by his or her opponent."
5 (*Carehouse*, *supra* at 1563.) Nothing in the *Carehouse* decision limits its application to current
6 attorneys' of record. Both *Carehouse* and *Club Vista* cited and relied on *Shelton v. American*
7 *Motors Corp.* (8th Cir. 1986) 805 F.2d 1323 as the leading case involving attorney depositions.
8 While no California Court of Appeal has addressed the issue, various courts around the country
9 have held the above test applies to more than just current counsel of record. (See *Massillon*
10 *Management, LLC v. Americold Realty Trust* (N.D. Ohio, Jan. 21, 2009, No. 5:08CV0799) 2009
11 WL 614831, at *5 (applying test to in-house attorney); *Alomari v. Ohio Department of Public*
12 *Safety* (S.D. Ohio, June 19, 2014, No. 2:11-CV-00613) 2014 WL 12651191, at *7 (same).) In
13 *Massachusetts Mut. Life Ins. Co. v. Cerf* (N.D. Cal. 1998) 177 F.R.D. 472, 481, the court applied
14 *Shelton* to grant a motion for protective order regarding former counsel in an existing case.
15

16 As noted by the court in *Alomari*, *supra* "*Shelton* applies to cases in which allowing an
17 opposing party to depose counsel might expose litigation strategy in the current case." Similarly,
18 "the concerns articulated by the *Shelton* court did not indicate that only attorneys of record are
19 protected by the standard." (*Guantanamo Cigar Co. v. Corporacion Habanos, S.A.* (D.D.C.
20 2009) 263 F.R.D. 1, 9.) The court finds no logical reason not to apply the well-established three-
21 factor test above where, as here, Sinatra seeks to depose those who served as Wynn's former
22 counsel in the action currently pending between the parties. "Taking the deposition of opposing
23 counsel not only disrupts the adversarial system and lowers the standards of the profession, but it
24 also adds to the already burdensome time and costs of litigation. It is not hard to imagine
25

1 additional pretrial delays to resolve work-product and attorney-client objections, as well as
2 delays to resolve collateral issues raised by the attorney's testimony. Finally, the practice of
3 deposing opposing counsel detracts from the quality of client representation." (*Shelton, supra* at
4 1327.)

5 Petitioners note that the subpoenas relate solely to Sinatra's abuse of process claim. In
6 Nevada, "[t]o support an abuse of process claim, a claimant must show (1) an ulterior purpose by
7 the party abusing the process other than resolving a legal dispute, and (2) a willful act in the use
8 of the legal process not proper in the regular conduct of the proceeding." (*Land Baron Inv. v.*
9 *Bonnie Springs Family LP* (2015) 131 Nev. Adv. Op. 69, 356 P.3d 511, 519.)


10 "[T]he proponent has the burden of proof to establish the predicate circumstances for the
11 first two prongs." (*Carehouse, supra* at 1563.) Sinatra fails to meet this burden. Sinatra
12 summarily speculates that the Petitioners were "witness to conversations, discussions, and
13 written communications that are part of the abuse of process claim . . . [and] participated in non-
14 privileged communications and it is believed that some have not been produced or disclosed by
15 Ms. Wynn in the litigation." Sinatra provides no other evidence or argument regarding the
16 necessity of the depositions or her inability to obtain the information sought from other sources.
17 "Because *Shelton* and the related cases require the moving party to *show* or *prove* the relevance
18 and necessity of the testimony sought, this Court finds that plaintiff's conclusory assertions do
19 not meet its burden." (*Guantanamo, supra* at 9.)

20
21 Based on the foregoing, the motion to quash is GRANTED. Sinatra has failed to meet
22 her burden to establish a proper basis for deposing Petitioners, who served as Wynn's trial
23 counsel for over a year in the Nevada action at issue.
24
25

1 Petitioners seek sanctions in the amount of \$10,000.00 pursuant to CCP §§ 2025.410 and
2 1987.2 against Wynn Resorts Limited and Kim Sinatra. Petitioners are not parties to the
3 litigation and were not served with a deposition notice. Therefore, § 2025.410, which applies to
4 deposition notices, not subpoenas, is inapplicable. Section 1987.2 provides "the court may in its
5 discretion award the amount of the reasonable expenses incurred in making or opposing the
6 motion, including reasonable attorney's fees, if the court finds the motion was made or opposed
7 in bad faith or without substantial justification or that one or more of the requirements of the
8 subpoena was oppressive." Based on the court's review of Sinatra's opposition and the
9 subpoenas and the court's analysis set forth herein, the court comfortably finds that the motion
10 was opposed without substantial justification. More specifically, Sinatra proffered no evidence
11 in support of her opposition and provided no specific showing that any information that she
12 sought to obtain from petitioners via the subpoenas was not protected by the attorney-client
13 privilege. Moreover, Sinatra failed to provide the court with any authority for her non-sensical
14 assertion that the *Carehouse* factors do not apply to counsel that are not counsel to parties to the
15 action. The amount of sanctions sought, \$10,000.00 is reasonable, given that it is far less than
16 the attorneys actually billed on this matter. Pursuant to CCP §1987.2, Sinatra and/or her
17 attorneys of record, are ordered to pay sanctions to petitioners in the amount of \$10,000.00
18 within 20 days of the date of this order.

19
20 ^{parties are}
Moving ~~party~~ is ordered to give notice.

21 DATED: November 22, 2017

22
23 
Hon. Samantha P. Jessner
Los Angeles Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 31

HON. SAMANTHA P. JESSNER, JUDGE

WYNN RESORTS, LIMITED, ET AL.,)	
)	
PLAINTIFFS,)	NEVADA DISTRICT COURT
VS.)	CASE NO. A-12-656710-B
)	
KAZUO OKADA ET AL.,)	
)	
DEFENDANTS.)	
<hr/>		
JOHN B. QUINN, MICHAEL T.)	
ZELLER, MICHAEL L. FAZIO, AND)	CALIFORNIA SUPERIOR
IAN S. SHELTON,)	COURT
)	CASE NO. BS171352
PETITIONERS,)	
VS.)	
)	
WYNN RESORTS LIMITED, ET AL.,)	
)	
RESPONDENTS.)	
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, NOVEMBER 22, 2017

APPEARANCES OF COUNSEL:

FOR PETITIONER WYNN RESORTS:

QUINN EMANUEL URQUHART & SULLIVAN LLP
BY: IAN SHELTON, ESQ.
865 SOUTH FIGUEROA STREET, 10TH FLOOR
LOS ANGELES, CALIFORNIA 90017-2543
(213) 443-3000

FOR RESPONDENT KIM SINATRA:

BROWNSTEIN HYATT FARBER SCHRECK LLP
BY: JONATHAN C. SANDLER, ESQ.
BY: MITCHELL J. LANGBERG, ESQ.
2049 CENTURY PARK EAST, SUITE 3550
LOS ANGELES, CALIFORNIA 90067
(310) 500-4631

REPORTED BY: JAMIE ONUKI, CSR NO. 13904
OFFICIAL REPORTER PRO TEMPORE

HEARING

November 22, 2017

1 CASE NUMBERS: A-12-656710-B & BS171352
2 CASE NAME: WYNN RESORTS VS. KAZUO OKADA
3 LOS ANGELES, CA WEDNESDAY, NOVEMBER 22, 2017
4 DEPARTMENT 31 HON. SAMANTHA P. JESSNER, JUDGE
5 REPORTER: JAMIE ONUKI, CSR NO. 13904
6 TIME: 9:36 A.M.
7

8 THE COURT: YOUR APPEARANCES, PLEASE?

9 MR. SHELTON: GOOD MORNING, YOUR HONOR. IAN
10 SHELTON, QUINN EMANUEL, ON BEHALF ^{HEARING} OF ^{November 22, 2017} PETITIONERS.

11 MR. SANDLER: GOOD MORNING, YOUR HONOR.
12 JONATHAN SANDLER ON BEHALF OF KIM SINATRA.

13 MR. LANGBERG: GOOD MORNING, YOUR HONOR.
14 MITCHELL LANGBERG ON BEHALF OF RESPONDENT KIM SINATRA.

15 THE COURT: OKAY. GOOD MORNING TO ALL THREE
16 OF YOU. WILL MR. SANDLER OR MR. LANGBERG BE ADDRESSING
17 THE COURT?

18 MR. LANGBERG: I WILL, YOUR HONOR.

19 THE COURT: OKAY. AND YOU ARE MR. LANGBERG?

20 MR. LANGBERG: I AM, YOUR HONOR.
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21 THE COURT: OKAY. SO I ASSUME ALL THREE OF
22 YOU HAVE HAD TIME TO READ THE TENTATIVE. MR. LANGBERG?

23 MR. LANGBERG: YES, YOUR HONOR.

24 THE COURT: WHAT WOULD YOU -- I GIVE YOU THE
25 FLOOR, SO TO SPEAK.

26 MR. LANGBERG: THANK YOU, YOUR HONOR. I AM
27 STILL REELING A LITTLE BIT. BUT I THINK IT IS VERY
28 IMPORTANT THAT YOU KNOW THAT THERE ARE THINGS THAT

1 OCCURRED PRIOR TO THE REPLY BRIEF BEING FILED THAT ARE
2 CRITICAL THAT WERE NOT INCLUDED, STRANGELY, IN THE REPLY
3 BRIEF, INCLUDING THE FACT THAT THE NEVADA DISTRICT COURT
4 THAT IS OVERSEEING THIS CASE THAT KNOWS THE FACTS AND
5 CIRCUMSTANCES OF THE CASE CONSIDERED THE ISSUE OF QUINN
6 EMANUEL'S DEPOSITION, DETERMINED THAT QUINN EMANUEL'S
7 DEPOSITION, NOTWITHSTANDING THE NEVADA CLUB VISTA
8 FACTORS, SHOULD GO FORWARD, AND ORDERED QUINN EMANUEL
9 TO -- THE QUINN EMANUEL ATTORNEYS TO APPEAR IN NEVADA
10 FOR DEPOSITION FOR THE VERY REASONS THAT ARE SET FORTH
11 HERE.

12 I WILL GIVE YOU THE PROCEDURAL -- HOW THAT HAPPENED
13 PROCEDURALLY IN A MINUTE. BUT THE COURT BASED ITS
14 ASSERTION OF JURISDICTION OVER THEM BASED ON THEIR PRO
15 HAC VICE APPLICATION AND THE ORDER THAT GRANTED THEM IN
16 ITS OVERALL JURISDICTION OVER THEM IN THE CASE. I START
17 THAT WAY SO THAT YOU KNOW -- THAT THE COURT UNDERSTANDS
18 THE FACTS, THE ISSUES IN THIS CASE, THE RELATIVE
19 WEIGHING OF THE NECESSITY FOR DISCOVERY AGAINST THE CLUB
20 VISTA FACTORS IF THEY APPLY TO --

21 THE COURT: COUNSEL, YOU KNOW THAT EVERY TIME
22 YOU SAY SOMETHING LIKE THAT, YOU CONVEY TO ME THAT YOU
23 THINK I DON'T UNDERSTAND WHAT'S GOING ON. OKAY? AND
24 I'M SURE THAT'S NOT YOUR INTENT.

25 MR. LANGBERG: NO, YOUR HONOR. I'M SORRY. I
26 DON'T THINK THAT ANYBODY INFORMED YOU THAT THE COURT IN
27 NEVADA --

28 THE COURT: NO. YOU HAVE SAID NOW IN YOUR

1 PAPERS AND HERE THREE TIMES THAT THIS COURT DOESN'T
2 UNDERSTAND THE FACTS. OKAY. SO AGAIN, I'M NOT
3 ASSIGNING MALINTENT, BUT IT WASN'T THAT DIFFICULT TO GET
4 MY ARMS AROUND THE FACTS AS THEY WERE PRESENTED TO ME.

5 MR. LANGBERG: OKAY, SO FORGIVE ME. I
6 CERTAINLY WASN'T INTENDING --

7 THE COURT: I DIDN'T THINK SO.

8 MR. LANGBERG: OKAY. OUR OPPOSITION PAPERS,
9 BECAUSE OF WHAT WE THOUGHT WAS PROCEDURAL GAME-PLAYING
10 BY THAT FIRM, WERE DRAFTED VERY QUICKLY. AS YOU KNOW,
11 WE TRIED TO -- AND UNDERSTAND WHY THE COURT DIDN'T HEAR
12 IT ON SHORTENED TIME.

13 THE COURT: THAT WAS A NEW DEFINITION OF
14 "SHORTENED TIME," 72 HOURS, WHICH DIDN'T INCLUDE ANY
15 TIME FOR THE COURT TO READ IT.

16 MR. LANGBERG: I COULD TELL YOU STORIES ABOUT
17 TIMES THAT WE HAVE HAD -- ANYWAY, SO INITIALLY, YOU
18 KNOW, THE CALIFORNIA SUBPOENA -- OBVIOUSLY THE COURT
19 KNOWS, THE CALIFORNIA SUBPOENAS WERE ISSUED, AND EIGHT
20 OF NEVADA SUBPOENAS THAT WERE ISSUED FIRST. WE WENT
21 THAT ROUTE, MY CHOICE INITIALLY, RATHER THAN JUST GOING
22 TO NEVADA BECAUSE, FRANKLY, AS A COURTESY AND
23 CONVENIENCE. I LIVE IN CALIFORNIA. THEY WORK IN
24 CALIFORNIA. SO RATHER THAN FIRST GO TO THE NEVADA COURT
25 AND TRY TO HAUL THEM INTO NEVADA FOR DEPOSITIONS, WE DID
26 WHAT WE THOUGHT WAS A ROUTINE MATTER, ISSUED THE
27 SUBPOENAS HERE.

28 WE EXPECTED THAT THEY WOULD HAVE OBJECTIONS AT THE

1 TIME, BECAUSE A LOT OF STUFF WOULD BE PRIVILEGED, AND
2 THEN WE WOULD LITIGATE WHETHER THE PRIVILEGE WAS WAIVED
3 OR APPLIED OR NOT. WE DID IT AS QUICKLY AS WE COULD.
4 THE DISCOVERY CUTOFF, AS YOU KNOW FROM OUR PAPERS,
5 BETWEEN WHEN THIS CLAIM WAS AT ISSUE AND OUR DISCOVERY
6 CUTOFF WAS VERY NARROW. SO WE ISSUED THE SUBPOENAS
7 QUICKLY. AND AS YOU SEE FROM OUR PAPERS, FROM OUR
8 PERSPECTIVE, HAD A VERY DIFFICULT TIME GETTING THE
9 SUBPOENAS SERVED. AND THAT BUMPED US RIGHT AGAINST OUR
10 DISCOVERY CUTOFF.

HEARING

November 22, 2017

11 ONCE IT WAS CLEAR THAT THIS MOTION WOULD NOT BE
12 HEARD UNTIL AFTER OUR DISCOVERY CUTOFF ANYWAY, I WENT TO
13 THE COURT IN NEVADA EXPLAINING THE CIRCUMSTANCES AND
14 ASKED THE COURT TO ASSERT ITS JURISDICTION OVER THEM.
15 AND THE COURT ISSUED THE ORDER, WHICH THEY HAVE TAKEN
16 NEVADA'S EQUIVALENT OF A WRIT ON, AND THAT'S PENDING.
17 SO I ASKED COUNSEL, PRIOR TO THIS HEARING, TO STIPULATE
18 TO PUT THIS HEARING OFF ON THE FOLLOWING TERMS. THE
19 NEVADA COURT WILL DO WHAT IT DOES, THE SUPREME COURT OF
20 NEVADA.

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21 IF THE SUPREME COURT OF NEVADA ISSUES AN ORDER
22 REQUIRING -- LEAVING THE ORDER IN PLACE OR SUMMARILY
23 DENIES THEIR WRIT, THEN THE DEPOSITIONS WILL GO FORWARD
24 IN NEVADA. THERE IS NOTHING TO DO HERE. IF THE COURT
25 DENIES IT, THEN THIS MOTION COULD BE HEARD ON ITS MERITS
26 BUT WITH THE ADDITIONAL FACTS, THAT AT LEAST THE TRIAL
27 COURT THOUGHT THAT IT WAS RELEVANT TESTIMONY. THEY
28 DECLINED THAT. THEY WANTED TO GO FORWARD HERE FOR

1 WHATEVER REASON THEY DID.

2 I THINK IT IS APPROPRIATE, YOUR HONOR, TO PUT THIS
3 MATTER OVER AND ALLOW SUPPLEMENTAL BRIEFING IF THE
4 NEVADA SUPREME COURT DOES NOT ALLOW THE DEPOSITIONS TO
5 GO FORWARD BECAUSE, I THINK, THERE ARE A LOT OF FACTS
6 AND CIRCUMSTANCES THAT ARE RELEVANT TO THE FACTORS. AND
7 FRANKLY, THE SANCTIONS, GIVEN THE INFORMATION I HAVE
8 GIVEN YOU, THAT SHOULD BE ADDRESSED IF, AGAIN, THIS
9 PROCEEDING ISN'T MOOTED BY WHAT HAPPENS IN NEVADA.

10 THE LAST THING I WILL TELL YOU, ^{HEARING} YOUR HONOR, IS I ^{November 22, 2017}
11 UNDERSTAND THE FACTORS. AND I UNDERSTAND -- TYPICALLY
12 IN A CASE WHEN YOU WANT TO SEEK THE DEPOSITION OF AN
13 ATTORNEY, YOU WORK UP YOUR DISCOVERY. KIND OF ALMOST
14 LIKE AN APEX DEPOSITION, RIGHT, YOU GO THROUGH EVERYBODY
15 ELSE. YOU FIND OUT THAT YOU REALLY NEED THE ATTORNEYS,
16 AND THEN YOU HAVE SOMETHING THAT YOU COULD MAKE A
17 SHOWING TO THE COURT WITH.

18 THE COURT: YOU VERY MUCH NARROWED THE
19 ISSUES --

20 MR. LANGBERG: YES, YOUR HONOR.
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21 THE COURT: -- AS TO WHAT YOU BELIEVE BASED
22 UPON THE DISCOVERY THAT YOU HAVE DONE, WHAT YOU BELIEVE
23 IS LEFT IN TERMS OF DISCOVERY.

24 MR. LANGBERG: YES, YES, YOUR HONOR. BUT WHEN
25 THE DEMUR -- SORRY, THEIR VERSION, MOTION TO DISMISS --
26 WHEN THE NEVADA MOTION TO DISMISS WAS NOT DENIED UNTIL
27 AUGUST 17TH, THESE COUNSEL WITH THAT CLIENT BEFORE THEY
28 WERE FORMAL COUNSEL, THEY WAITED THE YEARS BEFORE THEY

1 FILED THE AMENDED COUNTERCLAIMS. BUT WHEN THE
2 COUNTERCLAIM WAS NOT LEFT IN TACT UNTIL AUGUST 17TH, AND
3 WE DIDN'T FILE OUR COUNTERCLAIM FOR ABUSE OF PROCESS
4 UNTIL 20 DAYS LATER, AND THE DISCOVERY CUTOFF IS LESS
5 THAN 30 DAYS LATER -- ON THE ABUSE OF PROCESS CLAIM,
6 YOUR HONOR, THERE WAS NO WAY TO DEVELOP EVIDENCE, OTHER
7 THAN WHAT ONE NATURALLY WOULD THEORIZE BETWEEN A
8 RELATIONSHIP OF AN ATTORNEY AND A CLIENT THAT THERE ARE
9 CERTAINLY ASPECTS OF IT THAT ARE NON-PRIVILEGE.

10 HEARING THERE ARE ASPECTS OF IT THAT November 22, 2017 ARE NOT ABOUT
11 COMMUNICATIONS THAT WE COULD ONLY THEORIZE IT AND MAKE
12 THE BEST SHOWING THAT WE COULD HAVING NOT HAD THE
13 OPPORTUNITY TO DEVELOP ANYTHING IN THE COURSE OF
14 DISCOVERY. SO I HAVE SAID A LOT. I WILL ANSWER ANY
15 QUESTIONS, BUT I WILL SUMMARIZE BY SAYING OUR REQUEST
16 WOULD BE TWOFOLD, YOUR HONOR. ONE IS THAT YOU WITHHOLD
17 JUDGMENT, FOR LACK OF A BETTER WORD, ON THIS MOTION AND
18 PUT THIS OVER UNTIL THE MATTER IS RESOLVED IN NEVADA.

19 IF YOU WON'T, YOUR HONOR, I WOULD ASK YOU, PLEASE,
20 TO RECONSIDER THE SANCTIONS. First Legal Deposition-Calendar@firstlegal.com I HAVE NEVER BEEN
21 SANCTIONED FOR FILING, BASICALLY, A FRIVOLOUS OPPOSITION
22 BEFORE. AND I THINK YOUR HONOR, ON THE CIRCUMSTANCES AS
23 I HAVE EXPLAINED THEM TO YOU, IT IS PRETTY CLEAR THAT WE
24 DID ONLY WHAT WE COULD DO.

25 THE COURT: WELL, YOU MISSTATE THE STANDARD.
26 FRIVOLOUS IS VERY DIFFERENT THAN WITHOUT SUBSTANTIAL
27 JUSTIFICATION.

28 MR. LANGBERG: I AM SORRY, YOUR HONOR. THAT'S

1 NOT ON PURPOSE. MAYBE MY NERVES GOT ME WHEN I --

2 THE COURT: BECAUSE I DON'T BELIEVE THAT IT
3 WAS FRIVOLOUS. BUT I DO BELIEVE THAT THERE WAS NO
4 SUBSTANTIAL JUSTIFICATION, WHICH I THINK I EXPLAINED,
5 BUT ANYWAY. OKAY. I UNDERSTAND WHAT YOUR REQUESTS ARE,
6 AND I UNDERSTAND THE REASONS FOR THE REQUESTS. AND I
7 THANK YOU FOR YOUR ARGUMENT. MR. SHELTON, YOUR
8 RESPONSE?

9 MR. SHELTON: YES, YOUR HONOR. THE COURT'S
10 TENTATIVE RULING IN PETITIONER'S ^{HEARING}VIEW ^{November 22, 2017} IS CORRECT. THIS
11 PETITION ADDRESSES CALIFORNIA SUBPOENAS THAT WERE ISSUED
12 PURSUANT TO CALIFORNIA'S VERSION OF THE UIDDA. SO AS
13 THE COURT RECOGNIZED IN ITS TENTATIVE, THE COURT HAS
14 JURISDICTION OVER THESE SUBPOENAS, AND THE COURT
15 PROPERLY ANALYZED AND QUASHED THESE SUBPOENAS. SO THIS
16 IS A CALIFORNIA MATTER, AND WE THINK THAT THERE IS NO
17 BASIS TO HOLD OVER OR POSTPONE ANY PROCEEDINGS AS TO
18 THESE SUBPOENAS UNTIL THE NEVADA COURT MAKES ITS RULING.
19 THOSE ARE SEPARATE PROCEEDINGS.

20 AND AS COUNSEL MENTIONED, ^{First Legal Deposition-Calendar@firstlegal.com}THE COURT IN NEVADA MADE
21 AN ORAL STATEMENT COMPELLING THESE DEPOSITIONS TO
22 PROCEED. THERE HAS BEEN NO WRITTEN ORDER. AND WE FILED
23 A WRIT PETITION SAYING THE COURT HAD NO JURISDICTION
24 TO DO THAT, AND THAT IS BEFORE THE NEVADA SUPREME COURT.
25 WE HAVE ASKED THE COURT TO STAY THE NEVADA COURT'S
26 ORDER, BUT THAT IS PROCEEDING IN NEVADA. AND THIS
27 MATTER RELATES TO THESE CALIFORNIA SUBPOENAS, SO WE
28 THINK IT IS ENTIRELY APPROPRIATE FOR THE COURT TO

1 EXERCISE ITS JURISDICTION AND ADDRESS THESE SUBPOENAS.

2 AND YOUR HONOR, AS FAR AS THE POINT ABOUT THIS
3 CONCEPT OF APEX DEPOSITIONS AND THEM BEING CRUNCHED FOR
4 TIME, YOUR HONOR MIGHT HAVE SEEN IN THE PAPERS THAT THE
5 FACTS SUPPORTING THIS ABUSE OF PROCESS CLAIM WERE KNOWN
6 TO MS. SINATRA AS OF JUNE OF 2016. THERE WAS NO NEED
7 FOR HER TO WAIT UNTIL A DEMURRER WAS DECIDED AS TO OTHER
8 CLAIMS AND THEN WAIT 20 DAYS TO RESPOND. SHE COULD HAVE
9 FILED HER CLAIM WHENEVER SHE WANTED TO.

10 AND THE FACT THAT THEY WAITED UNTIL THE END OF THE
11 DISCOVERY CUTOFF AND SAID, WELL, NOW OUR HANDS ARE TIED,
12 WE NEED TO DEPOSE MS. WYNN'S ATTORNEYS, THAT IS NOT AN
13 EXIGENCY THAT WE CREATED, AND IT IS ONE THAT WE BELIEVE
14 MS. SINATRA CREATED AND DOESN'T PROVIDE ANY BASIS TO
15 GIVE THEM AN END RUN AROUND THE CLUB VISTA FACTORS.
16 OTHERWISE, YOUR HONOR, UNLESS YOU HAVE QUESTIONS, WE
17 STAND ON THE TENTATIVE.

18 THE COURT: SO MR. LANGBERG, WHEN YOU WERE
19 TALKING ABOUT, SORT OF, THE TIME PRESSURE THAT YOU
20 EXPERIENCED, I DID RECALL THAT THERE WAS AN ARGUMENT
21 MADE.

22 MR. LANGBERG: YES, YOUR HONOR.

23 THE COURT: THAT SHE COULD HAVE -- ONE
24 ARGUMENT THAT I FOUND COMPELLING IS, GENERALLY SPEAKING,
25 AN ABUSE OF PROCESS CAUSE OF ACTION IS, SORT OF,
26 SOMETHING YOU CAN PROVE OFTEN TIMES BASED UPON EVENTS
27 AND PLEADINGS THAT WERE FILED. AND IT IS NOT, SORT OF,
28 OFF -- AGAIN, I STARTED TALKING ABOUT GARDEN-VARIETY AND

1 ABUSE OF PROCESS, NOT SOMETHING THAT ARISES AND FALLS ON
2 WHAT ARE PROBABLY MOSTLY PROTECTED ATTORNEY-CLIENT
3 CONVERSATIONS. SO YOU SEEM TO TAKE THE POSITION THAT
4 YOU HAD A VERY SHORT PERIOD OF TIME --

5 MR. LANGBERG: YES, YOUR HONOR.

6 THE COURT: -- TO FILE THAT CASE. SO WHY
7 DON'T YOU JUST FLESH THAT OUT FOR ME.

8 MR. LANGBERG: SURE, YOUR HONOR. SO MS. WYNN
9 DID FILE HER INITIAL COUNTERCLAIMS AGAINST MS. SINATRA
10 AND OTHERS IN 2016. A MOTION TO DISMISS WAS FILED, AND
11 IT WAS GRANTED. SHE SOUGHT LEAVE TO AMEND THAT IN 2016.
12 IN THE INTERIM, EVIDENCE CAME FORWARD, WHICH WAS
13 PRESENTED BY ANOTHER CLIENT, WYNN RESORTS, THAT CAUSED
14 THE COURT CONCERN THAT MS. WYNN HAD STOLEN TONS -- A
15 LARGE AMOUNT -- BASICALLY COPIED HER COMPUTER HARD
16 DRIVES AND PROVIDED THEM TO HER COUNSEL, WHO ACCESSED
17 THEM.

18 THE CASE, IN ITS ENTIRETY, ALL THE DISCOVERY WAS
19 STAYED WHILE THERE WAS AN EXTENSIVE PROCESS FOR ALMOST A
20 YEAR -- AN EXTENSIVE PROCESS WHEREBY THE COURT
21 CONSIDERED A MOTION TO DISQUALIFY. AND IN FACT, IN THE
22 MIDST OF AN EVIDENTIARY HEARING, COUNSEL WAS TERMINATED,
23 RESIGNED, I DON'T KNOW, BUT IN THE COURSE OF EVIDENTIARY
24 HEARING. WE HAVE DIFFERENT POSITIONS ABOUT WHY THAT
25 OCCURRED AND WHAT THE FACTS OF THE UNETHICAL -- ALLEGED
26 UNETHICAL BEHAVIOR WERE. BUT NONETHELESS, AT THE END OF
27 THE DISCOVERY STAY, MS. WYNN, MONTHS LATER -- MAYBE NOT
28 MONTHS LATER, BUT SOMETIME AFTER THE DISCOVERY STAY, HER

1 NEW COUNSEL RE-FILED THE MOTION FOR LEAVE TO AMEND THE
2 COUNTERCLAIMS AND THEN WAS GIVEN THAT MOTION FOR LEAVE
3 TO AMEND.

4 BUT WE HAD NO RIGHT TO DO DISCOVERY ON THOSE
5 CLAIMS. AND CANDIDLY, YOUR HONOR, IF THAT HAD BEEN LEFT
6 OUT, THERE WOULD HAVE BEEN REALLY NO REASON TO BRING OUR
7 ABUSE OF PROCESS CLAIM AS A COUNTERCLAIM. IT WAS ONLY
8 WHEN THAT CLAIM SURVIVED THE MOTION TO DISMISS THAT IT
9 WAS -- I DON'T MEAN LEGALLY RIGHT, BUT FROM A PRACTICAL
10 PURPOSE RIGHT TO BRING OUR COUNTERCLAIM FOR ABUSE OF
11 PROCESS.

12 I UNDERSTAND, YOUR HONOR, HOW A GARDEN-VARIETY
13 ABUSE OF PROCESS CLAIM WORKS. AND THE MESSAGE THAT I
14 WAS GIVING YOU, AND PERHAPS BEAT A DEAD HORSE WITH AND
15 WAS NOT INTENDED TO SUGGEST ANY DISRESPECT AT ALL WHEN I
16 WAS TALKING ABOUT WHAT THE COURT IN NEVADA CONSIDERED,
17 IS BECAUSE SHE IS FAMILIAR WITH THIS FIVE-YEAR
18 LITIGATION AND EVERYTHING THAT'S HAPPENED AND WHY, IN
19 THIS PARTICULAR CASE, IT IS NOT JUST ABOUT WHAT
20 PLEADINGS WERE FILED BUT WHY THESE ATTORNEYS MIGHT HAVE
21 RELEVANT INFORMATION.

22 THE DISCOVERY TACTICS, THE SETTLEMENT TACTICS,
23 INCLUDING THE DEMAND -- THE EXTORTIONATE DEMAND AS
24 ALLEGED THAT THE GENERAL COUNSEL BE FIRED IN EXCHANGE
25 FOR NOT FILING THIS COUNTERCLAIM AND THINGS OF THAT
26 NATURE, ALL IMPACT OUR ABUSE OF PROCESS CLAIM. AND IT
27 WOULD -- I WOULD BE HAPPY TO, BECAUSE I COULD RATTLE IT
28 OFF FOR AN HOUR, REALLY GIVE YOU ALL OF THESE FACTS,

1 YOUR HONOR.

2 THE COURT: SO LET ME ASK YOU ANOTHER
3 QUESTION. SO FROM WHAT I UNDERSTAND, IF THE NEVADA
4 SUPREME COURT RULES AGAINST THE QUINN EMANUEL FIRM, THEN
5 YOU GET TO TAKE YOUR DEPOSITIONS?

6 MR. LANGBERG: THAT'S CORRECT, YOUR HONOR.

7 THE COURT: ALL RIGHT. OKAY. DOES ANYBODY
8 HAVE ANYTHING ELSE THEY WANT TO SAY?

9 MR. LANGBERG: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: OKAY. I VERY MUCH APPRECIATE YOUR
11 ARGUMENTS, BOTH HERE IN THE COURTROOM AS WELL AS IN YOUR
12 PAPERS. WHILE I DID LEARN ABOUT SOME COURT PROCEEDINGS
13 THAT WERE NOT INCLUDED IN THE PAPERS, THERE IS NOTHING
14 ABOUT THOSE THAT HAS CONVINCED ME THAT THE TENTATIVE IS
15 NOT THE POSITION THAT THE COURT WANTS TO TAKE. SO THE
16 TENTATIVE WILL BECOME THE FINAL. THE MOVING PARTIES ARE
17 ORDERED TO GIVE NOTICE. AND I THANK YOU VERY MUCH, AND
18 I WISH YOU GOOD LUCK WITH THIS LITIGATION.

19 MR. LANGBERG: THANK YOU, YOUR HONOR.

20 MR. SHELTON: THANK YOU, YOUR HONOR. YOUR
21 HONOR, I BELIEVE THE CALENDAR HAD A FOLLOW-UP HEARING ON
22 DECEMBER 4TH.

23 THE COURT: IT IS OFF CALENDAR.

24 MR. SHELTON: OKAY. I JUST WANTED TO MAKE
25 SURE. THANKS.

26 (THE FOLLOWING PROCEEDING CONCLUDED AT 9:52 A.M.)

27


28

HEARING

November 22, 2017

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 31 HON. SAMANTHA P. JESSNER, JUDGE
4
5 WYNN RESORTS, LIMITED, ET AL.,)
6 PLAINTIFFS,) NEVADA DISTRICT COURT
7 VS.) CASE NO. A-12-656710-B
8 KAZUO OKADA ET AL.,)
9 DEFENDANTS.)
10 _____)
11 JOHN B. QUINN, MICHAEL T. HEARING)
12 ZELLER, MICHAEL L. FAZIO, AND) November 22, 2017
13 IAN S. SHELTON,) CALIFORNIA SUPERIOR
14 PETITIONERS,) COURT
15 VS.) CASE NO. BS171352
16 WYNN RESORTS LIMITED, ET AL.,)
17 RESPONDENTS.)
18 _____)

16 I, JAMIE ONUKI, OFFICIAL REPORTER PRO TEMPORE OF
17 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
18 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT I DID
19 CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN AND
20 THAT THE FOREGOING PAGES 1 THROUGH 13, INCLUSIVE,
21 COMPRISE OF A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE
22 PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED
23 CAUSE ON NOVEMBER 22, 2017.

24
25 DATED THIS 27TH DAY OF NOVEMBER, 2017.
26 
27 _____, CSR. NO. 13904
28 JAMIE ONUKI, OFFICIAL REPORTER PRO TEMPORE

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November 22, 2017

First Legal Deposition-Calendar@firstlegal.com
L.A. 855.348.4997

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Superior Court of California
County of Los Angeles

NOV 30 2017

Sherri R. Carter, Executive Officer/Clerk
By Lorena Albino, Deputy

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

**JOINT STIPULATION AND [PROPOSED]
ORDER REGARDING 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 Filed: October 23, 2017
Petition Granted: November 22, 2017

Department: 31

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STIPULATION AND [PROPOSED] ORDER

PSA000879

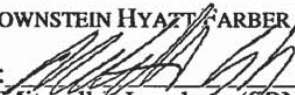
1 subject, until the Nevada Supreme Court decides Petitioners' writ petition and/or motion to extend
2 the district court's stay pending writ petition, both of which were filed on November 21, 2017; and

3 (4) Petitioners will not seek to enforce, execute upon, or collect the \$10,000 sanctions
4 award, conditioned upon and subject to Respondent's compliance with the other terms of this
5 Stipulation; provided, however, that this Stipulation is limited to enforcement of the sanctions
6 award only and does not vacate, modify, or amend the Order, or any portion thereof.

7 IT IS SO STIPULATED.

8
9 DATED this 29th day of November, 2017

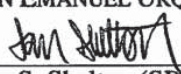
10 BROWNSTEIN HYATT ARBER SCHRECK LLP

11 By: 
12 Mitchell J. Langberg (SBN 171912)
13 2049 Century Park East, Suite 3550
14 Los Angeles, CA 90067

15 *Attorneys for Respondents Kim Sinatra and*
16 *Wynn Resorts Limited*

DATED this 29th day of November, 2017

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By: 
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Los Angeles, CA 90017

Attorneys for Petitioners John B. Quinn,
Michael T. Zeller, Michael L. Fazio, and Ian S.
Shelton

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ORDER

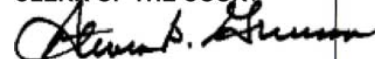
Having reviewed the Stipulation of the Parties, and good cause appearing,

IT IS SO ORDERED.

DATED: November 30, 2017

SAMANTHA P. JESSNER

THE HONORABLE SAMANTHA P. JESSNER
SUPERIOR COURT JUDGE



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Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

DISTRICT COURT

CLARK COUNTY, NEVADA

19 WYNN RESORTS, LIMITED, a Nevada
20 Corporation,

Plaintiff,

21 vs.

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

Defendants.

26 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: November 30th, 2017

6 
THE HONORABLE ELIZABETH GONZALEZ
7 EIGHTH JUDICIAL DISTRICT COURT CR


8 Respectfully submitted by:

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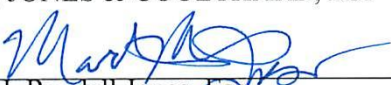
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