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IN THE SUPREME COURT OF THE STATE OF NEVADA

ELAINE P. WYNN,

 Petitioner,

vs.

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

 Respondent,

STEPHEN A. WYNN; WYNN
RESORTS, LIMITED; and
KIMMARIE SINATRA

 Real Parties in Interest.

Case No. 75852
Electronically Filed
Jun 28 2018 12:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION TO UNSEAL
PORTIONS OF APPENDIX
UNDER SEAL**

I. INTRODUCTION

This Court *sua sponte* granted Petitioner Elaine P. Wynn's Motion to File Portions of Appendix under Seal, with its order of May 17, 2018. Real Party in Interest Wynn Resorts, Limited ("Wynn Resorts") hereby moves to unseal, particularly Volume I, pages 1-34, which is Wynn Resorts' opposition brief and related exhibits filed in the District Court. Ms. Wynn justified her motion by asserting that everything in her Appendix is "confidential under the district court's protective order." (Mot. 1.) Respectfully, that assertion is unsupported. Ms. Wynn omitted the fact that many of the documents were never even claimed as confidential under the District Court's Protective Order. And, importantly, the District Court expressly rejected claims of confidentiality for Ms. Wynn's 2009 Notes (Pet. App. Vol. I, 10-14). Indeed, even a superficial review of those notes underscores that there is nothing in them that would constitute confidential information in accordance with

1 this Court's rules governing sealing and redacting of court records. *Id.* Rather,
2 Ms. Wynn simply wants to seal documents because they [REDACTED]

3 [REDACTED]
4 [REDACTED]. There is nothing confidential about these Notes and
5 there was no basis for her motion to seal.

6 **II. BACKGROUND**

7 Ms. Wynn asserts that [REDACTED]
8 [REDACTED] (the "2009 Notes"), [REDACTED], should be
9 sealed. These notes [REDACTED]

10 [REDACTED]
11 [REDACTED] Recall, Ms. Wynn previously sought to shield the 2009 Notes from
12 production in this case, going so far as to seek relief from this Court, asserting
13 privilege/work product protection [REDACTED]
14 [REDACTED]. This Court rejected Ms. Wynn's claims.

15 Ms. Wynn's present petition grows out of her efforts to claim that the
16 2009 Notes contain confidential information that is entitled to protection and sealing.
17 Indeed, her petition claims that even the District Court's transcript addressing her
18 claims of confidentiality must be sealed. Yet, Ms. Wynn makes her pleas for secrecy
19 while simultaneously undertaking a public campaign against Wynn Resorts and
20 several of its board members, claiming that they had exposed the Company to risks
21 by not taking action regarding the allegations against her former husband. [REDACTED]

22 [REDACTED]
23 [REDACTED].
24 Despite claims of confidentiality before the courts, Ms. Wynn has
25 simultaneously undertaken what she characterizes as a "Withhold-the-Vote"
26 campaign, wherein she publicly opposed the re-election of certain Company
27 directors. She cited as justification for this campaign the fact that Wynn Resorts "has
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1 been hit with allegations of sexual harassment by former Chairman of the Board and
2 Chief Executive Officer Stephen A. Wynn. It is the responsibility of the Board to
3 fully investigate the actions of the past" (Pet. App. Vol. I, 17.) She issued public
4 declarations that *she* is the one "committed to ensuring that the Company's Board of
5 Directors, corporate governance, stewardship and oversight are as standard-setting as
6 its resorts." (*Id.* at 25.) Ms. Wynn claims that she is the one "seeking to send a
7 message to the Board that the longstanding legacy directors should step down"
8 (*Id.*) Incredibly, she has made public filings criticizing the directors as having "failed
9 to have risk management and legal compliance protocols in place to detect the alleged
10 improper conduct by former Chairman and CEO, Stephen A. Wynn, and instead seem
11 to have been caught flat-footed when the story broke in a newspaper." (*Id.* at 32.)

12 But as Ms. Wynn knows, [REDACTED]

13 [REDACTED] It is beyond misleading [REDACTED]

14 [REDACTED]. See
15 *Baskin v. Hawley*, 807 F.2d 1120, 1132 (2d Cir. 1986) (It is "fundamental that a
16 person who speaks has a duty to disclose enough to prevent his [or her] words from
17 being misleading a statement disclosing favorable information but omitting all
18 reference to material unfavorable facts breaches that duty."). By trying to seal the
19 2009 Notes, Ms. Wynn simply seeks to [REDACTED]

20 [REDACTED]
21 [REDACTED].
22 [REDACTED] does not constitute
23 a legal basis to seal court records.

24 After all, [REDACTED]

25 [REDACTED] [REDACTED]
26 [REDACTED] The 2009 Notes and discovery in the underlying action [REDACTED]

27 [REDACTED]

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- Ms. Wynn admitted to [REDACTED]
- During [REDACTED]
- Ms. Wynn [REDACTED]
- During [REDACTED]
- Ms. Wynn [REDACTED]

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- At the same time, [REDACTED].
- When Ms. Wynn [REDACTED].
- Ms. Wynn [REDACTED].

(Pet. App. Vol I, 4-6.) Respectfully, there is nothing in the 2009 Notes that is "confidential" and subject to sealing pursuant to this Court's rules. Rather, Ms. Wynn is simply seeking to seal information that [REDACTED]. But of course, Ms. Wynn's [REDACTED] is not grounds for sealing court records.

III. ARGUMENT

Because the public has the right to inspect judicial records, judicial records are "presumptively publicly accessible." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Therefore, it is the burden of the party seeking to have the public records sealed to show that there is a "compelling reason" to have

1 the information withheld from public view. *Id.* "'Every court has supervisory power
2 over its own records and files,' and the decision to allow access to court records is
3 best left to the sound discretion of the court." *Howard v. State*, 128 Nev. Adv. Op. 67,
4 291 P.3d 137, 141 (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598-99
5 (1978)).

6 SRCR 3(4) sets forth the grounds under which this Court may seal or redact
7 the court records. Ms. Wynn claimed that sealing the entirety of her Appendix was
8 appropriate under SRCR 3(4)(b). (Mot. 1.) But Ms. Wynn fails to specifically
9 identify any actual reason that the Appendix as a whole, or the 2009 Notes in
10 particular, should be sealed. Ms. Wynn argues that because Volume 1 of her
11 Appendix contains (some) documents that were filed under seal in the District Court,
12 these documents automatically are entitled to sealing when included in her Appendix.
13 But, that is not the standard governing the sealing of court records. Besides, he
14 District Court expressly rejected her contention that the 2009 Notes were confidential
15 or entitled to sealing.

16 It is Ms. Wynn's obligation, as the party seeking to seal records, to establish
17 good cause for information to be sealed. Relying only on the Protective Order –
18 which the District Court found no longer applies to the 2009 Notes – is ineffective.
19 There is nothing in the 2009 Notes (Pet. App. Vol. I, at 10-14) that qualifies for
20 sealing. Ms. Wynn simply wants to seal materials because they [REDACTED]

21 [REDACTED]
22 [REDACTED]. *See, e.g., Dep't of Econ. Dev. v. Arthur*
23 *Andersen & Co.*, 924 F. Supp. 449, 487 (S.D.N.Y. 1996) ("'Good cause' is not
24 established merely by the prospect of negative publicity. A party seeking to file
25 documents under seal generally must show both that the documents are confidential
26 and that disclosure will result in a 'clearly defined and very serious injury.'") (citations
27 omitted); *Culinary Foods, Inc. v. Raychem Corp.*, 151 F.R.D. 297, 301 (N.D. Ill.)
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1 ("Although the information regarding the hazards of products and the corporation's
2 knowledge of the information may be embarrassing and incriminating, this alone is
3 insufficient to bar public disclosure."), *clarified*, 153 F.R.D. 614 (N.D. Ill. 1993.)

4 **IV. CONCLUSION**

5 Ms. Wynn tips her hand in her brief Motion to File Portions of Appendix Under
6 Seal. Rather than address the District Court's ruling that the 2009 Notes are not
7 confidential, Ms. Wynn continues to just pretend that there is a basis to seal the
8 2009 Notes that are now on file with this Court. There is no basis under the law to
9 do so and this Court should unseal them.

10 DATED this 22nd day of June, 2018.

11 PISANELLI BICE PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 22nd day of June, 2018, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **MOTION TO UNSEAL PORTIONS OF APPENDIX UNDER SEAL** properly addressed to the following:

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