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7  
 8 UNITED STATES DISTRICT COURT  
 9 DISTRICT OF NEVADA

10 In re Application of  
 11 Kate O’Keeffe  
 12 To Issue a Subpoena for the Taking of a  
 13 Deposition and the Production of Documents for  
 Use in a Foreign Proceeding  
 14

Case No.: 2:14-cv-01518-RFB-CWH  
 JOINT [PROPOSED] PROTECTIVE  
 ORDER

15 WHEREAS, Kate O’Keeffe (“O’Keeffe”), the defendant in Sheldon Gary Adelson and  
 16 Kate O’Keeffe, High Court of the Hong Kong Special Administrative Region (HCA 342/2013)  
 17 (the “Hong Kong Lawsuit”), applied to the United States District Court for the District of  
 18 Nevada (the “District Court”) for assistance in obtaining discovery for her defense in that case  
 19 under 28 U.S.C. § 1782 (the “Application”); and

20 WHEREAS, O’Keeffe filed an Application seeking the issuance of a subpoena to  
 21 Jonathan Allan Molnar (“Molnar”) to testify at a videotaped deposition and produce documents  
 22 in a civil action (the “Subpoena”) (The documents and deposition testimony are referred to  
 23 collectively herein as the “Subpoenaed Materials”); and

24 WHEREAS, third party the Venetian Casino Resort, LLC (the “Venetian”) objected to  
 25 the Application because, inter alia , it believed that the Subpoenaed Materials could include  
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1 information that is subject to confidentiality agreements and which is otherwise proprietary  
2 (Dkt. No. 55) (the “Objection”); and

3 WHEREAS, the District Court denied the Objection on April 4, 2016 (Dkt. No. 64); and

4 WHEREAS, the District Court ordered O’Keeffe and the Venetian to meet and confer  
5 and submit a proposed protective order in anticipation of any disclosures that might involve  
6 confidential commercial information;

7 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by O’Keeffe and  
8 the Venetian (collectively, the “Parties”) as follows:

9 1. The Venetian may designate portions of the Subpoenaed Materials as  
10 “CONFIDENTIAL.” Any such “CONFIDENTIAL” designation shall subject the designated  
11 portion to the provisions of this Protective Order (hereinafter, the “Order”).

12 2. The “CONFIDENTIAL” designation shall be used only for any portion of the  
13 Subpoenaed Materials that the Venetian considers in good faith to contain commercially  
14 sensitive and/or proprietary information not otherwise known or available to the public (the  
15 “Confidential Commercial Information”).

16 3. The Order is not intended to give any party the right to indiscriminately  
17 designate material as “Confidential.” The mere fact that a party might prefer that a document or  
18 deposition page be deemed “confidential” is not in and of itself sufficient to justify a  
19 confidential designation. Likewise, a party may not designate material as “confidential” under  
20 the terms of this Order merely because disclosure might cause discomfort or embarrassment.  
21 Instead, this Order is designed to provide relief for confidential proprietary commercial  
22 information.

23 4. Treatment of Documents Produced in Response to the Subpoena

24 a. Any documents produced by Molnar in response to the Subpoena will be  
25 provisionally treated as CONFIDENTIAL for up to ten (10) business days after their  
26 service to enable review by the parties’ counsel. Within ten (10) business days of being  
27 served with any documents produced in response to the Subpoena, the Venetian may

1 request that specific documents or portions thereof, identified by bates number, be  
2 stamped with the words "CONFIDENTIAL" on the face of the document and treated  
3 according to that designation.

4 b. The Venetian shall in good faith determine whether specific Confidential  
5 Commercial Information may be redacted from any documents, such that redacted  
6 versions of those documents would not be designated "CONFIDENTIAL." In the event  
7 that any party disagrees with any of the requested designations and/ or redactions, that  
8 party may so notify the Venetian in writing of the objection within thirty (30) business  
9 days of receipt of the "CONFIDENTIAL" designation/redaction. In the event the  
10 parties are unable to reach agreement as to re-designation and/or redactions, the parties  
11 may seek intervention from the Magistrate Judge as set forth in Section 11 herein.

#### 12 5. Treatment of Deposition Testimony

13 a. Deposition testimony, any portion of deposition testimony or exhibits to  
14 depositions may be designated as "CONFIDENTIAL" by advising the reporter and  
15 counsel of such designation during the course of the deposition or by advising counsel  
16 in writing within ten (10) business days of the receipt of the deposition transcript.

17 b. The Venetian shall in good faith determine whether specific Confidential  
18 Commercial Information may be redacted from any deposition testimony, any portion  
19 of deposition testimony or exhibits to depositions, such that redacted versions of the  
20 same would not be designated "CONFIDENTIAL." In the event that any party  
21 disagrees with any of the requested designations and/or redactions, that party may so  
22 notify the Venetian of the objection in writing within thirty (30) business days of receipt  
23 of the "CONFIDENTIAL" designation of the deposition testimony, any portion of  
24 deposition testimony or exhibits to depositions In the event the parties are unable to  
25 reach agreement as to re-designation and/or redactions, the parties may seek  
26 intervention from the Magistrate Judge as set forth in Section 11 herein  
27

1           6.       Whenever any Subpoenaed Material designated as “CONFIDENTIAL” is used  
2 or submitted to any court in conjunction with any filing or proceeding, the designating party  
3 shall have the burden of justifying the sealing of any such filing, pursuant to this Order,  
4 applicable local laws and/or court rules, if any. Before seeking to maintain the sealing of any  
5 documents filed with a court, the designating party must assess whether redaction is a viable  
6 alternative to complete sealing. The mere fact that a party stamped “CONFIDENTIAL” on a  
7 document, or deposition testimony, any portion of deposition testimony or exhibits to  
8 depositions even if done in good faith, will not be sufficient to justify the sealing of a filing.

9           7.       Any Subpoenaed Material designated “CONFIDENTIAL” shall be and remain  
10 confidential and shall not be disclosed in any fashion, in writing or orally, except as explicitly  
11 permitted by this Order, and may not be used for any purpose other than in connection with  
12 prosecution or defense of or in discovery related to or in connection with the Hong Kong  
13 Lawsuit.

14           8.       Except upon prior written consent of the Venetian, any Subpoenaed Material  
15 designated as “CONFIDENTIAL” shall be held in confidence and shall be used solely for the  
16 purpose of prosecution or defense of or discovery for the Hong Kong Lawsuit. Access to  
17 Subpoenaed Materials designated as “CONFIDENTIAL” shall be limited to:

- 18           (a)       counsel for the parties, including in-house counsel and employees of such  
19           counsel;
- 20           (b)       the Magistrate Judge, District Court and court personnel as allowed herein;
- 21           (c)       counsel for the parties in the Hong Kong Lawsuit, including in-house counsel  
22           and employees of such counsel who are assisting in the prosecution or defense of or in  
23           discovery for the Hong Kong Lawsuit;
- 24           (d)       Molnar and his counsel;
- 25           (e)       Applicant Kate O’Keeffe;
- 26           (f)       experts and consultants (including independent experts and consultants and  
27           employees or clerical assistants of experts) who are employed, retained or otherwise

1 consulted by counsel identified in subsections (a) or (c) for the purpose of analyzing  
2 data, conducting studies or providing opinions to assist in the Hong Kong Lawsuit;  
3 (g) witnesses for the limited purpose of preparing for testimony or giving testimony  
4 either in deposition or at trial;  
5 (h) the author, addressee or recipient or person who previously had access to the  
6 Subpoenaed Material designated as “CONFIDENTIAL”;  
7 (i) the insurers of any of the parties to the Hong Kong Lawsuit; and  
8 (j) any person to whom the Venetian agrees in writing, although no disclosure of  
9 any Subpoenaed Materials designated as “CONFIDENTIAL” may be made to such  
10 person until written agreement is provided by the Venetian.

11 9. In the event that O’Keeffe seeks to disclose Subpoenaed Materials designated  
12 “CONFIDENTIAL” to a specific individual not otherwise authorized under this Order, and the  
13 Venetian refuses to consent to such disclosure after reasonable notice, then O’Keeffe may  
14 submit a written request to the Magistrate Judge with a copy to the Venetian. Such request shall  
15 identify the individual or entity and state the reason for the request. No “CONFIDENTIAL”  
16 information shall be provided or disclosed to said individual or entity for a period of ten (10)  
17 business days following the written request to the Magistrate Judge. During that ten (10)  
18 business day period, the Venetian and any other person or entity that opposes the request may  
19 file an objection with the Magistrate Judge. Until such objection is resolved by the parties or  
20 the Magistrate Judge, no “CONFIDENTIAL” information may be disclosed to the individual or  
21 entity who is the subject of the pending objection. Access to Subpoenaed Materials designated  
22 as “CONFIDENTIAL” shall further be limited to all persons given access under Sections 8 (f),  
23 (g), (i), (j) and 9 after they have executed the Confidentiality Agreement attached hereto as  
24 Exhibit “1”.

25 10. This Agreement shall be interpreted, applied and enforced by the Magistrate  
26 Judge. The parties agree that jurisdiction over this action is to be retained by the Magistrate  
27 Judge for purposes of enabling any party or persons affected by this Order, to apply to the

1 Magistrate Judge at any time for such direction or further decree as may be appropriate for the  
2 construction or enforcement of this Order or for such additional relief as may be appropriate.

3 11. If any party disagrees with the designation of any Subpoenaed Materials as  
4 “CONFIDENTIAL,” that party may at any time within thirty (30) business days of receipt of  
5 the designation give written notice to the Venetian, specifically describing the designated  
6 Subpoenaed Material along with the basis for the request to re-designate. The Venetian shall  
7 thereafter advise the party whether it will change the designation. Unless the parties agree  
8 otherwise, the Venetian shall have ten (10) business days from the receipt of such written  
9 notice to apply to the Magistrate Judge for an order designating the material as  
10 “CONFIDENTIAL”. If such an application is made, the “CONFIDENTIAL” designations  
11 shall remain “CONFIDENTIAL” until there is a ruling by the Magistrate Judge. The Venetian  
12 will have the burden of establishing that the document or information is entitled to be  
13 designated as “CONFIDENTIAL.” If the Venetian does not make a timely motion in the  
14 Magistrate Judge, then the documents or information will be effectively de-designated. Any  
15 party can appeal a decision of the Magistrate Judge to the District Court, but must seek and  
16 obtain a stay of disclosure if the party wishes to stay disclosure pending the appeal to the  
17 District Court.

18 12. In the event a dispute arises under this Order, no party to the dispute will  
19 proceed by motion to the court with respect to such dispute without first promptly meeting and  
20 conferring with the other party(-ies) to the dispute in an attempt to resolve the dispute.

21 13. This Order shall not be construed to prevent the parties from applying to the  
22 Magistrate Judge for relief therefrom or for further or additional protective orders, or from  
23 agreeing between themselves to modification, provided however that any such modifications  
24 must be in writing and agreed upon by both parties.

25 14. This Order shall be binding on, and inure to benefit of, the parties hereto and his  
26 or its agents, employees, employers, successors, assigns, heirs, administrators and  
27 representatives.

1           15.     This Order shall survive the termination of the Hong Kong Lawsuit, and the  
2 Magistrate Judge shall retain jurisdiction to resolve any dispute concerning the use of  
3 information disclosed hereunder.

4           DATED this 26th day of April, 2016.

5           KEMP JONES & COULTHARD, LLP

5           DAVIS WRIGHT TREMAINE LLP

6           /s/ *Mark M. Jones*

6           /s/ *Constance M. Pendleton*

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25 Attorneys for Kate O'Keefe

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IT IS SO ORDERED:

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DATED: April 27, 2016

1 EXHIBIT "1"

2 CONFIDENTIALITY AGREEMENT

3 I, \_\_\_\_\_ do hereby acknowledge and agree, under penalty of  
4 perjury, as follows:

5 1. I have read the Stipulated Protective Order entered in In re Application of Kate  
6 O'Keefe To Issue a Subpoena for the Taking of a Deposition and the Producing of Documents  
7 for Use in a Foreign Proceeding, Case No.: 2:14-cv-01518-RFB-CWH, pending in the United  
8 States District Court for the District of Nevada, on \_\_\_\_\_, \_\_\_\_\_, and I fully  
9 understand its contents.

10 2. I hereby agree and consent to be bound by the terms of the Protective Order and  
11 to comply with it in all respects.

12 3. I understand that by signing this instrument, I will be eligible to receive  
13 information marked "CONFIDENTIAL" under the terms and conditions of the Protective  
14 Order. I further understand and agree that I must treat any information marked  
15 "CONFIDENTIAL" in accordance with the terms and conditions of the Protective Order.

16 DATED:

17 (Signature)

18 (Printed Name)

19 (Address)



**CERTIFICATE OF SERVICE**

1 The undersigned hereby certifies that service of the foregoing JOINT [PROPOSED]  
2 PROTECTIVE ORDER was made on the 26th day of April, 2016, via the United States  
3 District Court’s CM/ECF electronic filing system addressed to all parties on the e-service  
4 list.  
5

6 */s/ David Blake*  
7 \_\_\_\_\_

8 An employee of Kemp, Jones & Coulthard  
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