

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 JOHN V. FERRIS and JOANN M.  
5 FERRIS, individually and on behalf of all  
6 others similarly situated,

7 Plaintiffs,

8 v.

9 WYNN RESORTS LIMITED, STEPHEN A.  
10 WYNN, CRAIG SCOTT BILLINGS,  
11 STEPHEN COOTEY, MATTHEW O.  
12 MADDOX, JOHN J. HAGENBUCH,  
13 ROBERT J. MILLER, PATRICIA  
14 MULROY, CLARK T. RANDT JR., ALVIN  
15 V. SHOEMAKER, KIMMARIE SINATRA,  
16 DANIEL B. WAYSON, JAY L. JOHNSON,  
17 RAY R. IRANI, and J. EDWARD VIRTUE,

18 Defendants.

Case No. 2:18-cv-00479-APG-EJY

**ORDER**

19 Pending before the Court is the Stipulated Discovery Plan and Scheduling Order (ECF No.  
20 183). Despite the title, the parties disagree on virtually all aspect of discovery, when it should occur,  
21 and how it should occur. The Court finds that, generally, there is no way to fully bifurcate class  
22 certification discovery from merits discovery. These subject matters inevitably overlap, and an order  
23 granting bifurcation, without consideration of this overlap, inevitably leads to substantial motion  
24 practice.

25 Accordingly, IT IS HEREBY ORDERED that the Stipulated Discovery Plan and Scheduling  
26 Order (ECF No. 183) is DENIED without prejudice.

27 IT IS FURTHER ORDERED that the parties are to meet and confer regarding discovery and  
28 submit proposed orders as follows:

1. Electronically Stored Information: The parties shall submit a plan outlining the discovery of electronically stored information (“ESI”) no later than **October 25, 2021**. Until that time, all ESI and non-ESI materials should be preserved and not destroyed. Any discovery prior to the adoption of an ESI protocol (the “ESI Protocol”) shall be without alteration in the form currently stored, in the manner previously produced, or in a PDF copy of the same. Production should be in native electronic format if specifically requested. Email attachments should be produced as

1 part of the email so they are together. The Parties may engage a forensic expert or  
2 experts if deemed necessary or desirable in connection with any request for ESI. If,  
3 by **October 25, 2021**, the parties are unable to agree upon a proposed ESI Protocol,  
4 the parties shall, on that date, jointly notify the Court and provide the Court with a  
5 proposed date that will allow the parties to complete negotiations regarding the ESI  
6 Protocol. In the event the parties are at an impasse, the parties shall provide a date  
7 upon which they will submit their disputes related to the ESI Protocol to the Court.

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2. Protective Order: The parties shall submit a proposed stipulated confidentiality and protective order no later than **November 1, 2021**. If the parties need additional time to reach agreement on a proposed confidentiality and protective order, they shall file a stipulation no later than **November 1, 2021** seeking such time. If the parties are at an impasse, the parties shall advise the Court of the same identifying the subject matters on which they cannot agree and whether they seek to file motions or would agree to meet with the Court to discuss their impasse without engaging in motion practice.

3. Phased Discovery Plan: The parties shall submit a proposed discovery plan and scheduling order no later than **October 20, 2021** that addresses the following issues:

a. Phase One shall include discovery necessary to prepare a Motion for Class Certification, the Response, and Reply. Such discovery must be proportional and relevant to the needs of class certification issues in this case. Discovery in this phase may include investigation into all elements of Rule 23 (including, but not limited to, predominance and superiority) and merits based discovery that is necessary for the Court to meaningfully consider a class certification motion and any opposition thereto. Discovery pertaining to damages is not included in this phase of discovery.

i. The parties shall include a deadline for written discovery, deposition discovery, and expert discovery followed by dates for the Motion for Class Certification, Response, and Reply. This proposed plan and order shall address whether the parties reserve the right to take second depositions of any individuals deposed during Phase 1. A consolidated Reply by Plaintiffs, if more than one Response is filed, is granted. The length of the consolidated Reply may be 35 pages excluding exhibits; provided, however, that if any party believes they must file a brief in excess of the number pages allowed by Local Rule, this Order does not foreclose the opportunity to seek such leave.

ii. The parties shall propose a deadline for the filing of the Motion for Certification, the Response(s), and Reply.

b. Phase Two: Within 21 days of the Court ruling on certification, the parties shall submit a second proposed discovery plan and scheduling order that shall address all remaining merits based and damages discovery. This proposed plan and order shall address a deadline for any additional written and deposition discovery. Deadlines for merits and damages expert disclosures and depositions shall be included. The parties shall propose dates for Motions for Summary Judgment, the Responses, and Replies.

IT IS FURTHER ORDERED that the inadvertent waiver of privilege shall be governed by Fed. R. Evid. 502(b) and case law interpreting the same. Pursuant to Fed. R. Evid. 502(d), upon a

1 determination by the Court that there has been an inadvertent waiver of privilege, such waiver shall  
2 not effect a general waiver of privilege.

3 IT IS FURTHER ORDERED that in the event the parties are unable to agree upon a Phase  
4 One of Discovery they are to advise the Court of the same on or before **October 25, 2021**. In such  
5 case, on or before **October 25, 2021**, Plaintiffs and Defendants shall submit individual Phase One  
6 discovery plans to be considered by the Court.

7 Dated this 4th day of October, 2021.

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ELAYNA J. YOUCHAK  
UNITED STATES MAGISTRATE JUDGE