

1 ANDREW R. MUEHLBAUER, ESQ.
 Nevada Bar No. 10161
 2 **MUEHLBAUER LAW OFFICE, LTD.**
 7915 West Sahara Avenue, Suite 104
 3 Las Vegas, Nevada 89117
 Telephone: 702.330.4505
 4 Facsimile: 702.825.0141
 Email: andrew@mlollegal.com

5 **POMERANTZ LLP**
 6 Jeremy A. Lieberman (*pro hac vice*)
 Murielle J. Steven Walsh (*pro hac vice*)
 7 Eric D. Gottlieb (*pro hac vice*)
 600 Third Avenue, 20th Floor
 8 New York, New York 10016
 Tel: (212) 661-1100
 9 Fax: (917) 463-1044
 Email: jalieberman@pomlaw.com
 10 mjsteven@pomlaw.com
 egottlieb@pomlaw.com
 11 *Additional Counsel on Signature Block*

12 *Lead Counsel for Plaintiffs*

13 **UNITED STATES DISTRICT COURT**
 14 **DISTRICT OF NEVADA**

15 JOHN V. FERRIS and JOANN M.
 FERRIS, Individually and on Behalf of All
 16 Others Similarly Situated,

17 Plaintiffs,

18 v.

19 WYNN RESORTS LIMITED, STEPHEN
 A. WYNN, CRAIG SCOTT BILLINGS,
 20 STEPHEN COOTEY, MATTHEW O.
 MADDOX, JOHN J. HAGENBUCH,
 21 ROBERT J. MILLER, PATRICIA
 MULROY, CLARK T. RANDT JR.,
 22 ALVIN V. SHOEMAKER, KIMMARIE
 SINATRA, DANIEL B. WAYSON, JAY
 23 L. JOHNSON, RAY R. IRANI, and J.
 EDWARD VIRTUE,
 24

25 Defendants.

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

26 **NOTICE TO THE COURT OF**
DISCOVERY UPDATE

1 WHEREAS on September 30, 2021, the Parties filed a Joint Rule 26(f) report/proposed
2 discovery plan and scheduling order, setting out their positions on whether discovery should be
3 phased to prioritize class certification (the “Proposed Discovery Plan and Scheduling Order”)
4 (Dkt. No. 183);

5 WHEREAS on October 4, 2021 the Court ordered discovery to take place in Phases, and
6 ordered the Parties to submit an additional proposed discovery plan and scheduling order for
7 phase one of discovery that “shall include discovery necessary to prepare a Motion for Class
8 Certification, the Response, and Reply,” and “may include investigation into all elements of Rule
9 23 (including, but not limited to, predominance and superiority) and merits based discovery that
10 is necessary for the Court to meaningfully consider a class certification motion and any opposition
11 thereto,” and that includes “a deadline for written discovery, deposition discovery, and expert
12 discovery followed by dates for the Motion for Class Certification, Response, and Reply” (*id.* at
13 2);

14 WHEREAS, the Court further ordered “that in the event the parties are unable to agree
15 upon a Phase One of Discovery they are to advise the Court of the same on or before October 25,
16 2021. In such case, on or before October 25, 2021, Plaintiffs and Defendants shall submit
17 individual Phase One discovery plans to be considered by the Court” (*id.*);

18 WHEREAS on October 25, 2021, the Parties submitted their individual proposed
19 discovery plans for the Court’s consideration as they were unable to reach agreement on the
20 proper scope of Phase One discovery;

21 WHEREAS on November 8, 2021, the Court held a hearing with respect to the Parties’
22 respective discovery plans and heard arguments from the Parties concerning their respective
23 proposed discovery plans;

24 WHEREAS, the Court further issued an Order denying Plaintiffs’ Proposed Discovery
25 Plan and Scheduling Order, and granting in part and denying in part Defendants’ Proposed
26 Discovery Plan and Scheduling Order (Dkt. No. 198);

27 WHEREAS, the Court further adopted Defendants’ proposed operative deadlines for
28 Phase One Discovery, directed the Parties to engage in an additional meet and confer session no
later than November 19, 2021, and directed the Parties to notify the Court no later than November

1 29, 2021 whether the Parties have reached agreement on Phase One Discovery, and if not, to (i)
2 identify the issues that are still in dispute; (ii) propose a briefing schedule for Plaintiffs' Motion
3 to compel; (iii) propose three (3) dates on which the Parties are available for a hearing on such
4 Motion; and (iv) address any potential changes to the discovery deadlines currently set forth in
5 the Court's November 8, 2021 Order (*id.* at 3).

6 WHEREAS, the Parties have reached an impasse with respect to Plaintiffs' Phase One
7 document requests, but are still meeting and conferring with respect to Defendants' Phase One
8 discovery requests.

9 WHEREAS, Defendants reserve the right to seek a separate briefing schedule for any
10 disputes concerning Plaintiffs' responses to Defendants' Phase One discovery requests, which the
11 Court's November 8, 2021 Order expressly contemplated (*see id.* at 3).

12 The Parties hereby notify the Court that, despite several meet and confer sessions, they
13 have been unable to reach an agreement regarding the proper scope of Phase One Discovery.

14 The Parties agree that the following additional subjects are relevant to class certification
15 issues, and should be included in Phase One discovery: (a) whether and to what extent the alleged
16 misstatements impacted the price of Wynn Resorts common stock; and (b) Defendants' defenses
17 to Plaintiffs' class certification motion, including arguments and factual assertions raised in
18 Defendants' opposition to class certification. However, there are disagreements among the Parties
19 regarding the scope of those subjects, including the extent to which certain categories of requested
20 materials fall within those subjects.
21

22 The Parties propose the following briefing schedule for Plaintiffs' motion to compel:

- 23 • Plaintiffs' opening motion shall be filed on or before December 8, 2021.
- 24 • Defendants' brief in opposition to Plaintiffs' motion to compel shall be filed on or
25 before December 22, 2021.
- 26 • Plaintiffs' reply brief shall be filed on or before December 29, 2021.
- 27 • The Parties are all available for a remote hearing on the following dates: January
28 11, 13 and 14, 2022.

1 The current deadline for the substantial completion of production of documents responsive
2 to document requests that are served on or before December 8, 2021 is January 7, 2022 (Dkt. 198
3 at 1 (“Subject to rulings on any objections and/or discovery disputes, good faith production by
4 the Parties of all documents responsive to document requests that are served on or before
5 December 8, 2021 shall be substantially complete by January 7, 2022.”)). The Parties agree to
6 an extension of the current substantial completion date of January 7, 2022, to fourteen days after
7 the Court’s order on Plaintiffs’ motion to compel, but will produce documents on a rolling basis
8 and in good faith.
9

10
11 Dated: November 29, 2021

Respectfully submitted,

MUEHLBAUER LAW OFFICE, LTD.

/s/ Andrew R. Muehlbauer

Andrew R. Muehlbauer

Nevada Bar No. 10161

7915 West Sahara Avenue, Suite 104

Las Vegas, Nevada 89117

Telephone: 702.330.4505

Facsimile: 702.825.0141

Email: andrew@mlollegal.com

POMERANTZ LLP

Jeremy Alan Lieberman (*pro hac vice*)

Murielle J. Steven Walsh (*pro hac vice*)

Eric D. Gottlieb (*pro hac vice*)

600 Third Avenue, 20th Floor

New York, New York 10016

Telephone: 212-661-1100

Facsimile: 212-661-8665

jalieberman@pomlaw.com

mjsteven@pomlaw.com

egottlieb@pomlaw.com

Lead Counsel for Plaintiffs

THE ROSEN LAW FIRM, P.A.

Phillip Kim (*Pro Hac Vice*)

Daniel Tyre-Karp (*Pro Hac Vice*)

275 Madison Ave., 40th Floor

New York, NY 10016

1 Telephone: (212) 686-1060
2 Facsimile: (212) 202-3827
3 pkim@rosenlegal.com
4 dtyrekarp@rosenlegal.com

5 *Additional Counsel*

6 **SNELL & WILMER L.L.P.**

7 /s/ Patrick G. Byrne
8 Patrick G. Byrne (Nevada Bar #007636)
9 Bradley T. Austin (Nevada Bar #13064)
10 3883 Howard Hughes Parkway, Suite 1100
11 Las Vegas, Nevada 89169
12 Telephone: 702.784.5200
13 Facsimile: 702.784.5252
14 Email: pbyrne@swlaw.com
15 baustin@swlaw.com

16 Mark Holscher (*Pro Hac Vice*)
17 Michael J. Shipley (*Pro Hac Vice*)
18 **KIRKLAND & ELLIS LLP**
19 333 South Hope Street
20 Los Angeles, California 90071
21 Telephone: 213.680.8190
22 Facsimile: 213.808.8097
23 Email: mark.holscher@kirkland.com
24 michael.shipley@kirkland.com

25 Matthew Solum (*Pro Hac Vice*)
26 **KIRKLAND & ELLIS LLP**
27 601 Lexington Avenue
28 New York, New York 10022-4611
Telephone: 212.446.4688
Facsimile: 212.446.4900
Email: matthew.solum@kirkland.com

*Counsel for Defendants Wynn Resorts
Limited and Matthew O. Maddox*

GARMAN TURNER GORDON

/s/ Erika Pike Turner
Erika Pike Turner, Esq.
Dylan T. Ciciliano, Esq.
7251 Amigo Street, Ste. 210
Las Vegas, Nevada 89119
Telephone: 725.777.3000

1 Facsimile: 725.777.3112
2 Email: eturner@gtg.legal
3 dciciliano@gtg.legal

4 James Neil Kramer, Esq. (*Pro Hac Vice*)
5 M. Todd Scott, Esq. (*Pro Hac Vice*)
6 **ORRICK HERRINGTON &**
7 **SUTCLIFFE LLP**
8 405 Howard St.
9 San Francisco, CA 94105
10 Email: jkramer@orrick.com
11 tscott@orrick.com

12 *Counsel for Kimmarie Sinatra*

13 **MCNUTT LAW FIRM, P.C.**

14 */s/ Daniel R. McNutt*

15 Daniel R. McNutt, Esq.
16 Matthew C. Wolf, Esq.
17 625 South Eighth Street
18 Las Vegas, Nevada 89101
19 Telephone: 702.384.1170
20 Facsimile: 702.384.5529
21 Email: drm@mcnuttlawfirm.com
22 mcw@mcnuttlawfirm.com

23 *Counsel for Stephen Cootey*

24 **CAMPBELL & WILLIAMS**

25 */s/ J. Colby Williams*
26 J. Colby Williams, Esq.
27 700 South Seventh Street
28 Las Vegas, Nevada 89101
Telephone: 702.382.5222
Facsimile: 702.382.0540
Email: jcw@cwlawlv.com

Michele D. Johnson (*pro hac vice*)
LATHAM & WATKINS LLP
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626
Telephone: (714) 540-1235
Facsimile: (714) 755-8290
Email: michele.johnson@lw.com

Colleen C. Smith (*pro hac vice*)
LATHAM & WATKINS LLP


12670 High Bluff Drive
San Diego, California 92130
Telephone: (858) 523-3985
Facsimile: (858) 523-5450
Email: colleen.smith@lw.com

Counsel for Stephen A. Wynn

IT IS SO ORDERED.

IT IS FURTHER ORDERED that a hearing on the Motion to Compel is set for Friday, January 14, 2022 at 10:30 a.m. via the Zoom video conference platform. The parties shall contact Elvia Garcia, Courtroom Deputy for the undersigned Magistrate Judge by 12:00 p.m. on January 12, 2022, at Elvia_Garcia@nvd.uscourts.gov, and provide the email addresses for their respective participants. The courtroom deputy shall email all participants with the Zoom link.

IT IS FURTHER ORDERED that persons granted with remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary to the Court.



ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE

Dated: November 30, 2021