

Pursuant to Rule 16.1 of the Nevada Rules of Civil Procedure, Plaintiff/Counterdefendant Wynn Resorts, Limited ("Wynn Resorts") and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman (collectively, the "Wynn Parties"), by and through their undersigned counsel of record, hereby submit their seventh supplemental list of witnesses who may have information discoverable and/or documents discoverable under Rule 26(b) in **bold text** below:

A. LIST OF WITNESSES

1. Kazuo Okada
c/o Bryce K. Kunimoto, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Tel.: (702) 669-4600
Fax: (702) 669-4650

Mr. Okada is likely to have discoverable information related to the facts and circumstances concerning this action, including, but not limited to, his conduct related to his business interests and activities in the Philippines; payments to, on behalf of, and/or for the benefit of foreign gaming officials; and his role, responsibilities, and duties to Wynn Resorts.

2. 30(b)(6) Aruze USA, Inc.
c/o Bryce K. Kunimoto, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Tel.: (702) 669-4600
Fax: (702) 669-4650

The NRC 30(b)(6) designee(s) for Aruze USA, Inc. is/are likely to have discoverable information related to the facts and circumstances concerning this action, including, but not limited to, business interests and activities in the Philippines; and payments to, on behalf of, and/or for the benefit of foreign gaming officials.

3. 30(b)(6) Universal Entertainment Corporation
c/o Bryce K. Kunimoto, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Tel.: (702) 669-4600
Fax: (702) 669-4650

1 The NRCP 30(b)(6) designee(s) for Universal Entertainment Corporation is/are likely to
2 have discoverable information related to the facts and circumstances concerning this action,
3 including, but not limited to, business interests and activities in the Philippines; and payments to,
4 on behalf of, and/or for the benefit of foreign gaming officials.

- 5 4. Employee of Aruze USA, Inc.
6 Specifically: the individual responsible for monitoring capital contributions
7 c/o Bryce K. Kunimoto, Esq.
8 Holland & Hart LLP
9 9555 Hillwood Drive, 2nd Floor
10 Las Vegas, NV 89134
11 Tel.: (702) 669-4600
12 Fax: (702) 669-4650

13 The Aruze USA, Inc. employee is likely to have discoverable information related to the
14 facts and circumstances concerning this action, including, but not limited to, Aruze USA, Inc.'s
15 capital contributions to Valvino Lamore, LLC and Wynn Resorts, Limited.

- 16 5. Employee of Aruze USA, Inc.
17 Specifically: the individual primarily responsible for negotiating the Valvino
18 Lamore, LLC operating agreements
19 c/o Bryce K. Kunimoto, Esq.
20 Holland & Hart LLP
21 9555 Hillwood Drive, 2nd Floor
22 Las Vegas, NV 89134
23 Tel.: (702) 669-4600
24 Fax: (702) 669-4650

25 The Aruze USA, Inc. employee is likely to have discoverable information related to the
26 facts and circumstances concerning this action, including, but not limited to, the negotiation of the
27 Valvino Lamore, LLC operating agreements.

- 28 6. Employee of Aruze USA, Inc.
Specifically: the individual primarily responsible for negotiating the 2002
stockholders agreement
c/o Bryce K. Kunimoto, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Tel.: (702) 669-4600
Fax: (702) 669-4650

1 The Aruze USA, Inc. employee is likely to have discoverable information related to the
2 facts and circumstances concerning this action, including, but not limited to, the negotiation of the
3 2002 stockholders agreement.

- 4 7. Employee of Aruze USA, Inc.
Specifically: the individual primarily responsible for negotiating the contribution
5 agreement
c/o Bryce K. Kunimoto, Esq.
6 Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
7 Las Vegas, NV 89134
Tel.: (702) 669-4600
8 Fax: (702) 669-4650

9 The Aruze USA, Inc. employee is likely to have discoverable information related to the
10 facts and circumstances concerning this action, including, but not limited to, the negotiation of the
11 contribution agreement.

- 12 8. Employee of Universal Entertainment Corporation
Specifically: the individual responsible for creation of and deposits into city ledger
13 account
c/o Bryce K. Kunimoto, Esq.
14 Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
15 Las Vegas, NV 89134
Tel.: (702) 669-4600
16 Fax: (702) 669-4650

17 The Universal Entertainment Corporation employee is likely to have discoverable
18 information related to the facts and circumstances concerning this action, including, but not
19 limited to, the decision to create a city ledger account with Wynn Resorts and managing the
20 deposits into same.

- 21 9. Employee of Universal Entertainment Corporation
Specifically: the individual responsible for communications with PAGCOR
22 c/o Bryce K. Kunimoto, Esq.
Holland & Hart LLP
23 9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
24 Tel.: (702) 669-4600
Fax: (702) 669-4650
25

26 The Universal Entertainment Corporation employee is likely to have discoverable
27 information related to the facts and circumstances concerning this action, including, but not
28

1 limited to, communications with PAGCOR related to efforts to obtain a gaming license in the
2 Philippines.

3 10. Shinobu Noda
4 Universal Entertainment Corporation and/or Aruze USA, Inc.
5 c/o Bryce K. Kunimoto, Esq.
6 Holland & Hart LLP
7 9555 Hillwood Drive, 2nd Floor
8 Las Vegas, NV 89134
9 Tel.: (702) 669-4600
10 Fax: (702) 669-4650

11 The Universal Entertainment Corporation employee is likely to have discoverable
12 information related to the facts and circumstances concerning this action, including, but not
13 limited to, her communications with and/or instructions from Mr. Okada and/or other executives,
14 employee, and/or agents of Mr. Okada, Aruze USA, Inc., and/or Universal Entertainment
15 Corporation, and communications with Wynn Resorts (including, but not limited to, Board
16 trainings, policies, and acknowledgements).

17 11. Linda Chen
18 Former Director, Wynn Resorts, Limited
19 Executive Director & Chief Operating Officer, Wynn Macau, Ltd.
20 c/o James J. Pisanelli, Esq.
21 PISANELLI BICE PLLC
22 400 South 7th Street, Suite 300
23 Las Vegas, Nevada 89101
24 Tel.: (702) 214-2100
25 Fax: (702) 214-2101

26 Ms. Chen is likely to have discoverable information related to the facts and circumstances
27 concerning this action, including, but not limited to, her service as a member of the Wynn Resorts
28 Board of Directors and the business judgment she and her fellow directors exercised related to
Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation.

12. Russell Goldsmith
Former Director, Wynn Resorts, Limited
c/o James J. Pisanelli, Esq.
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

1 Mr. Goldsmith is likely to have discoverable information related to the facts and
2 circumstances concerning this action, including, but not limited to, his service as a member of the
3 Wynn Resorts Board of Directors and the business judgment he and his fellow directors exercised
4 related to Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation.

5 13. Ray R. Irani
6 Director, Wynn Resorts, Limited
7 c/o James J. Pisanelli, Esq.
8 PISANELLI BICE PLLC
9 400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

10 Mr. Irani is likely to have discoverable information related to the facts and circumstances
11 concerning this action, including, but not limited to, his service as a member of the Wynn Resorts
12 Board of Directors and the business judgment he and his fellow directors exercised related to
13 Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation.

14 14. Governor Robert J. Miller
15 Director, Wynn Resorts, Limited
16 c/o James J. Pisanelli, Esq.
17 PISANELLI BICE PLLC
18 400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

19 Governor Miller is likely to have discoverable information related to the facts and
20 circumstances concerning this action, including, but not limited to, his service as a member of the
21 Wynn Resorts Board of Directors; the business judgment he and his fellow directors exercised
22 related to Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation; and his role as
23 Chairman of the Wynn Resorts Compliance Committee.

24 15. John A. Moran
25 Former Director, Wynn Resorts, Limited
26 c/o James J. Pisanelli, Esq.
27 PISANELLI BICE PLLC
28 400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

1 Mr. Moran is likely to have discoverable information related to the facts and
2 circumstances concerning this action, including, but not limited to, his service as a member of the
3 Wynn Resorts Board of Directors and the business judgment he and his fellow directors exercised
4 related to Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation.

5 16. Marc D. Schorr
6 Former Director & Former Chief Executive Officer, Wynn Resorts, Limited
7 Director, Wynn Macau, Limited
8 c/o James J. Pisanelli, Esq.
9 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

10 Mr. Schorr is likely to have discoverable information related to the facts and
11 circumstances concerning this action, including, but not limited to, his service as a member of the
12 Wynn Resorts Board of Directors; the business judgment he and his fellow directors exercised
13 related to Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation; his role on the
14 Wynn Resorts Compliance Committee; and his service as a member of the Wynn Macau, Ltd.
15 Board of Directors.

16 17. Alvin V. Shoemaker
17 Director, Wynn Resorts, Limited
18 c/o James J. Pisanelli, Esq.
19 PISANELLI BICE PLLC
20 400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

21 Mr. Shoemaker is likely to have discoverable information related to the facts and
22 circumstances concerning this action, including, but not limited to, his service as a member of the
23 Wynn Resorts Board of Directors and the business judgment he and his fellow directors exercised
24 related to Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation.

25 18. D. Boone Wayson
26 Director, Wynn Resorts, Limited
27 c/o James J. Pisanelli, Esq.
28 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100

1 Fax: (702) 214-2101

2 Mr. Wayson is likely to have discoverable information related to the facts and
3 circumstances concerning this action, including, but not limited to, his service as a member of the
4 Wynn Resorts Board of Directors and the business judgment he and his fellow directors exercised
5 related to Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation.

6 19. Allan Zeman
7 Former Director, Wynn Resorts, Limited
8 Vice Chairman & Director, Wynn Macau, Ltd.
9 c/o James J. Pisanelli, Esq.
10 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

11 Mr. Zeman is likely to have discoverable information related to the facts and
12 circumstances concerning this action, including, but not limited to, his service as a member of the
13 Wynn Resorts Board of Directors; the business judgment he and his fellow directors exercised
14 related to Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation; and his service
15 as a member of the Wynn Macau, Ltd. Board of Directors.

16 20. Stephen A. Wynn
17 Chairman & Chief Executive Officer, Wynn Resorts, Limited
18 Executive Director, Chairman & Chief Executive Officer, Wynn Macau, Ltd.
19 c/o Donald J. Campbell, Esq.
20 J. Colby Williams, Esq.
21 Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel.: (702) 382-5222
Fax: (702) 382-0540

22 Mr. Wynn is likely to have discoverable information related to the facts and circumstances
23 concerning this action, including, but not limited to, his history with Mr. Okada; his service as
24 Chairman of the Wynn Resorts and Wynn Macau, Ltd. Boards of Directors; the business
25 judgment he and his fellow WRL directors exercised related to Mr. Okada, Aruze USA, Inc., and
26 Universal Entertainment Corporation; and the allegations Aruze USA, Inc. and Universal
27 Entertainment Corporation have asserted against him in their Second Amended Counterclaim.
28

1 21. Elaine P. Wynn
2 Director, Wynn Resorts, Limited
3 c/o William R. Urga, Esq.
4 Martin A. Little, Esq.
5 JOLLY URG A WOODBURY & LITTLE
 3800 Howard Hughes Parkway, 16th Floor
 Las Vegas, Nevada 89169
 Tel.: (702) 699-7500
 Fax: (702) 699-7555

6 Ms. Wynn is likely to have discoverable information related to the facts and circumstances
7 concerning this action, including, but not limited to, her service as a member of the Wynn Resorts
8 Board of Directors; and the business judgment she and her fellow directors exercised related to
9 Mr. Okada, Aruze USA, Inc., and Universal Entertainment Corporation.

10 22. Kimmarie Sinatra
11 Executive Vice President, General Counsel
12 Wynn Resorts, Limited
13 c/o James J. Pisanelli, Esq.
14 PISANELLI BICE PLLC
 400 South 7th Street, Suite 300
 Las Vegas, Nevada 89101
 Tel.: (702) 214-2100
 Fax: (702) 214-2101

15 Ms. Sinatra is likely to have discoverable information related to the facts and
16 circumstances concerning this action, including, but not limited to, the allegations Aruze USA,
17 Inc. and Universal Entertainment Corporation have asserted against her in their Second Amended
18 Counterclaim; and her communications with Mr. Okada, Aruze USA, Inc., Universal
19 Entertainment Corporation, and/or his/their agents.

20 23. John Strzemp
21 Executive Vice President & Chief Administrative Officer, Wynn Resorts, Limited
22 Formerly Chief Financial Officer, Valvino Lamore LLC
23 c/o James J. Pisanelli, Esq.
24 PISANELLI BICE PLLC
 400 South 7th Street, Suite 300
 Las Vegas, Nevada 89101
 Tel.: (702) 214-2100
 Fax: (702) 214-2101

25 Mr. Strzemp is likely to have discoverable information related to the facts and
26 circumstances concerning this action, including, but not limited to, his role on the Wynn Resorts
27 Compliance Committee; various matters related to the transition from Valvino Lamore LLC to
28

1 Wynn Resorts; and communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment
2 Corporation, and/or his/their agents.

3 24. Matt Maddox
4 President & Chief Financial Officer, Wynn Resorts, Limited
5 Non-executive Director, Wynn Macau, Ltd.
6 c/o James J. Pisanelli, Esq.
7 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

8 Mr. Maddox is likely to have discoverable information related to the facts and
9 circumstances concerning this action, including, but not limited to, the allegations in
10 Paragraphs 41 and 84 of Aruze USA, Inc. and Universal Entertainment Corporation's Fourth
11 Amended Counterclaim; and Wynn Resorts' filings with the Securities and Exchange
12 Commission.

13 25. Scott Peterson
14 Senior Vice President & Chief Financial Officer, Wynn Las Vegas
15 Formerly Vice President of Finance, Valvino Lamore, LLC
16 c/o James J. Pisanelli, Esq.
17 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

18 Mr. Peterson is likely to have discoverable information related to the facts and
19 circumstances concerning this action, including, but not limited to, various matters related to the
20 transition from Valvino Lamore LLC to Wynn Resorts; and communications with Mr. Okada,
21 Aruze USA, Inc., Universal Entertainment Corporation, and/or his/their agents.

22 26. Kevin Tourek
23 Senior Vice President & General Counsel, Wynn Las Vegas
24 c/o James J. Pisanelli, Esq.
25 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
26 Las Vegas, Nevada 89101
27 Tel.: (702) 214-2100
28 Fax: (702) 214-2101

27 Mr. Tourek is likely to have discoverable information related to the facts and
28 circumstances concerning this action, including, but not limited to, his interaction with

1 Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or his/their agents; and
2 his role on the Wynn Resorts Compliance Committee.

3 27. Ian M. Coughlan
4 Executive Director. Wynn Macau, Ltd.
5 President, Wynn Resorts (Macau), S.A.
6 c/o James J. Pisanelli, Esq.
7 PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Tel.: (702) 214-2100
Fax: (702) 214-2101

8 Mr. Coughlan is likely to have discoverable information related to the facts and
9 circumstances concerning this action, including, but not limited to, his service as a member of the
10 Wynn Macau, Ltd. Board of Directors, and its decision to make a donation to the University of
11 Macau Development Foundation.

12 28. The Honorable Louis J. Freeh
13 Pepper Hamilton LLP
14 620 Eighth Avenue, 37th Floor
15 New York, NY 10018-1405
16 Tel.: (212) 808-2700
17 Fax: (212) 286-9806

18 Judge Freeh is likely to have discoverable information related to the facts and
19 circumstances concerning this action, including, but not limited to, the facts learned as a result of
20 Freeh Sporkin & Sullivan's investigation into the activities of Mr. Okada, Aruze USA, Inc., and
21 Universal Entertainment Corporation.

22 29. Joel M. Friedman, Esq.
23 Pepper Hamilton LLP
24 3000 Two Logan Square
25 Eighteenth and Arch Streets
26 Philadelphia, Pennsylvania 19103-2799
27 Tel.: (215) 981-4007
28 Fax: (215) 981-4750

Mr. Friedman is likely to have discoverable information related to the facts and
circumstances concerning this action, including, but not limited to, the facts learned as a result of
Freeh Sporkin & Sullivan's investigation into the activities of Mr. Okada, Aruze USA, Inc., and
Universal Entertainment Corporation.

1 30. Duff & Phelps, LLC.
2 10100 Santa Monica Boulevard
3 Suite 1100
4 Los Angeles, CA 90067
5 Tel.: (310) 284-8008

6 The NRCP 30(b)(6) designee(s) for Duff & Phelps, LLC is/are likely to have discoverable
7 information related to the facts and circumstances of this action, including, but not limited to, the
8 redemption price for Aruze USA, Inc.'s shares in Wynn Resorts.

9 31. Moelis & Company
10 1999 Avenue of the Stars, Suite 1900
11 Los Angeles, CA 90067
12 Tel.: (310) 443-2300
13 Fax: (310) 443-8700

14 The NRCP 30(b)(6) designee(s) for Moelis & Company is/are likely to have discoverable
15 information related to the facts and circumstances of this action, including, but not limited to,
16 financial matters related to the redemption of Aruze USA, Inc.'s shares in Wynn Resorts.

17 32. Philippine Amusement and Gaming Corporation (PAGCOR)
18 1330 PAGCOR House
19 Roxas Boulevard
20 Ermita, Manila, Philippines 1000
21 Tel.: (63 2) 521-1542

22 The NRCP 30(b)(6) designee(s) for PAGCOR is/are likely to have discoverable
23 information related to the facts and circumstances of this action, including, but not limited to, its
24 interactions and communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment
25 Corporation, and/or his/their agents related to their efforts to obtain a gaming license in the
26 Philippines.

27 33. Imelda Dimaporo
28 PAGCOR Board Member
 Unknown at this time; will supplement

 Ms. Dimaporo is likely to have discoverable information related to the facts and
circumstances of this action, including, but not limited to, her service as a member of PAGCOR's
Board, her communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment
Corporation, Inc., and/or any affiliates or agents acting on his/their behalf; her travels to Macau
and/or Las Vegas, and/or any and all payments, benefits, and/or gifts she may have received from

1 Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents
2 acting on his/their behalf.

3 34. Phillip Lo
4 PAGCOR Board Member
Unknown at this time; will supplement

5 Mr. Lo is likely to have discoverable information related to the facts and circumstances of
6 this action, including, but not limited to, his service as a member of PAGCOR's Board, his
7 communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or
8 any affiliates or agents acting on his/their behalf; his travels to Macau and/or Las Vegas, and/or
9 any and all payments, benefits, and/or gifts he may have received from Mr. Okada,
10 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
11 his/their behalf.

12 35. Manuel Roxas
13 PAGCOR Board Member
Unknown at this time; will supplement

14 Mr. Roxas is likely to have discoverable information related to the facts and circumstances
15 of this action, including, but not limited to, his service as a member of PAGCOR's Board, his
16 communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or
17 any affiliates or agents acting on his/their behalf; his travels to Macau and/or Las Vegas, and/or
18 any and all payments, benefits, and/or gifts he may have received from Mr. Okada,
19 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
20 his/their behalf.

21 36. Susan Vargas
22 PAGCOR Board Member
Unknown at this time; will supplement

23 Ms. Vargas is likely to have discoverable information related to the facts and
24 circumstances of this action, including, but not limited to, her service as a member of PAGCOR's
25 Board, her communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment
26 Corporation, and/or any affiliates or agents acting on his/their behalf; her travels to Macau and/or
27 Las Vegas, and/or any and all payments, benefits, and/or gifts she may have received from
28

1 Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents
2 acting on his/their behalf.

3 37. Jose Tanjuatco
4 PAGCOR Board Member
Unknown at this time; will supplement

5 Mr. Tanjuatco is likely to have discoverable information related to the facts and
6 circumstances of this action, including, but not limited to, his service as a member of PAGCOR's
7 Board, his communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment
8 Corporation, and/or any affiliates or agents acting on his/their behalf; his travels to Macau and/or
9 Las Vegas, and/or any and all payments, benefits, and/or gifts he may have received from
10 Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents
11 acting on his/their behalf.

12 38. Rafael Francisco
13 PAGCOR, President and Chief Operating Officer
Unknown at this time; will supplement

14 Mr. Francisco is likely to have discoverable information related to the facts and
15 circumstances of this action, including, but not limited to, his service as PAGCOR's President and
16 COO, his communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment
17 Corporation, and/or any affiliates or agents acting on his/their behalf; his travels to Macau and/or
18 Las Vegas, and/or any and all payments, benefits, and/or gifts he may have received from
19 Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents
20 acting on his/their behalf.

21 39. Rene Figueroa
22 PAGCOR, Executive Vice President
Unknown at this time; will supplement

23 Mr. Figuero is likely to have discoverable information related to the facts and
24 circumstances of this action, including, but not limited to, his service as PAGCOR's Executive
25 Vice President, his communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment
26 Corporation, and/or any affiliates or agents acting on his/their behalf; his travels to Macau and/or
27 Las Vegas, and/or any and all payments, benefits, and/or gifts he may have received from
28

1 Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents
2 acting on his/their behalf.

3 40. Ernesto Francisco
4 PAGCOR, Executive Committee & Casino General Manager
5 Unknown at this time; will supplement

6 Mr. Francisco is likely to have discoverable information related to the facts and
7 circumstances of this action, including, but not limited to, his service as a member of PAGCOR's
8 Executive Committee, as well as Casino General Manager, his communications with Mr. Okada,
9 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
10 his/their behalf; his travels to Macau and/or Las Vegas, and/or any and all payments, benefits,
11 and/or gifts he may have received from Mr. Okada, Aruze USA, Inc., Universal Entertainment
12 Corporation, and/or any affiliates or agents acting on his/their behalf.

13 41. Francis P. Hernando
14 PAGCOR, Vice President, Licensed Casino Development Department
15 Unknown at this time; will supplement

16 Mr. Hernando is likely to have discoverable information related to the facts and
17 circumstances of this action, including, but not limited to, his service as PAGCOR's
18 Vice President, Licensed Casino Development Department, his communications with Mr. Okada,
19 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
20 his/their behalf; his travels to Macau and/or Las Vegas, and/or any and all payments, benefits,
21 and/or gifts he may have received from Mr. Okada, Aruze USA, Inc., Universal Entertainment
22 Corporation, and/or any affiliates or agents acting on his/their behalf.

23 42. Ed de Guzman
24 PAGCOR, Executive Committee & Vice President of Slots
25 Unknown at this time; will supplement

26 Mr. Guzman is likely to have discoverable information related to the facts and
27 circumstances of this action, including, but not limited to, his service as a member of PAGCOR's
28 Executive Committee, as well as Vice President of Slots, his communications with Mr. Okada,
Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
his/their behalf; his travels to Macau and/or Las Vegas, and/or any and all payments, benefits,

1 and/or gifts he may have received from Mr. Okada, Aruze USA, Inc., Universal Entertainment
2 Corporation, and/or any affiliates or agents acting on his/their behalf.

3 43. Gabriel Guzman
4 PAGCOR, Executive Committee & Vice President of Slots
Unknown at this time; will supplement

5 Mr./Ms. Guzman is likely to have discoverable information related to the facts and
6 circumstances of this action, including, but not limited to, his/her relationship to Ed de Guzman,
7 his/her travels to Macau and/or Las Vegas, and/or any and all payments, benefits, and/or gifts he
8 may have received from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
9 and/or any affiliates or agents acting on his/their behalf.

10 44. Edward King
11 PAGCOR, Vice President of Corporate Communications
Unknown at this time; will supplement

12 Mr. King is likely to have discoverable information related to the facts and circumstances
13 of this action, including, but not limited to, his service as PAGCOR's Vice President of Corporate
14 Communications, his communications with Mr. Okada, Aruze USA, Inc., Universal
15 Entertainment Corporation, and/or any affiliates or agents acting on his/their behalf; his travels to
16 Macau and/or Las Vegas, and/or any and all payments, benefits, and/or gifts he may have
17 received from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or any
18 affiliates or agents acting on his/their behalf.

19 45. Carlos Bautista
20 PAGCOR, Legal Department
Unknown at this time; will supplement

21 Mr. Bautista is likely to have discoverable information related to the facts and
22 circumstances of this action, including, but not limited to, his service with PAGCOR, his
23 communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or
24 any affiliates or agents acting on his/their behalf; his travels to Macau and/or Las Vegas, and/or
25 any and all payments, benefits, and/or gifts he may have received from Mr. Okada,
26 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
27 his/their behalf.

1 46. Emelio Marcello
2 PAGCOR consultant
 Unknown at this time; will supplement

3 Mr. Marcello is likely to have discoverable information related to the facts and
4 circumstances of this action, including, but not limited to, his service as a consultant to PAGCOR,
5 his communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
6 and/or any affiliates or agents acting on his/their behalf; his travels to Macau and/or Las Vegas,
7 and/or any and all payments, benefits, and/or gifts he may have received from Mr. Okada,
8 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
9 his/their behalf.

10 47. Mario Cornista
11 PAGCOR consultant
 Unknown at this time; will supplement

12 Mr. Cornista is likely to have discoverable information related to the facts and
13 circumstances of this action, including, but not limited to, his service as a consultant to PAGCOR,
14 his communications with Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
15 and/or any affiliates or agents acting on his/their behalf; his travels to Macau and/or Las Vegas,
16 and/or any and all payments, benefits, and/or gifts he may have received from Mr. Okada,
17 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
18 his/their behalf.

19 48. Jeffrey Opinion
20 Member of Naguiat's party
 Unknown at this time; will supplement

21 Mr. Opinion is likely to have discoverable information related to the facts and
22 circumstances of this action, including, but not limited to, his communications with Mr. Okada,
23 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
24 his/their behalf; his communications with Cristiano Naguiat, his travels to Macau and/or
25 Las Vegas, and/or any and all payments, benefits, and/or gifts he may have received from
26 Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents
27 acting on his/their behalf.

1 49. Tiger Resort Leisure & Entertainment Inc.
2 c/o Bryce K. Kunimoto, Esq.
3 Holland & Hart LLP
4 9555 Hillwood Drive, 2nd Floor
 Las Vegas, NV 89134
 Tel.: (702) 669-4600
 Fax: (702) 669-4650

5 The NRCP 30(b)(6) designee(s) for Tiger Resort Leisure & Entertainment Inc. is/are
6 likely to have discoverable information related to the facts and circumstances of this action,
7 including, but not limited to, its relationship to Universal Entertainment Corporation, the gaming
8 license it holds to operate in PAGCOR's Entertainment City in Manila, Philippines, and any and
9 all transfer of funds from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
10 and/or his/their agents related to Universal Entertainment Corporation's efforts to obtain a gaming
11 license in the Philippines.

12 50. Okada Holdings, LLC
13 43 Calvados
 Newport Coast, CA 92657-1051
14 -or-
 Asset Exchange Strategies, LLC (Registered Agent)
 2407 S. Bagdad Rd., Leander, TX 78641

15
16 The NRCP 30(b)(6) designee(s) for Okada Holdings, LLC is/are likely to have
17 discoverable information related to the facts and circumstances of this action, including, but not
18 limited to, any and all transfer of funds from Mr. Okada, Aruze USA, Inc., Universal
19 Entertainment Corporation, and/or his/their agents related to Universal Entertainment
20 Corporation's efforts to obtain a gaming license in the Philippines.

21 51. Eagle Landholdings, Inc. ("EAGLE I")
22 Unknown at this time; will supplement

23 The NRCP 30(b)(6) designee(s) for Eagle I is/are likely to have discoverable information
24 related to the facts and circumstances of this action, including, but not limited to, its relationship
25 to and support of Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or
26 his/their agents related to Universal Entertainment Corporation's efforts to obtain a gaming
27 license in the Philippines, the identity of its shareholders, directors, and officers, their relationship
28 to any and all Philippine government/gaming officials (former and current), and any and all

1 transfers of funds from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
2 and/or his/their agents to the Philippine government and/or Philippines gaming officials.

3 52. Eagle Holdco Inc. ("EAGLE II")
4 Unknown at this time; will supplement

5 The NRCP 30(b)(6) designee(s) for Eagle II is/are likely to have discoverable information
6 related to the facts and circumstances of this action, including, but not limited to, its relationship
7 to and support of Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or
8 his/their agents related to Universal Entertainment Corporation's efforts to obtain a gaming
9 license in the Philippines, the identity of its shareholders, directors, and officers, their relationship
10 to any and all Philippine government/gaming officials (former and current), any and all transfers
11 of funds from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or his/their
12 agents to the Philippine government and/or Philippines gaming officials.

13 53. Platinum Gaming and Entertainment Corp.
14 Unknown at this time; will supplement

15 The NRCP 30(b)(6) designee(s) for Platinum Gaming and Entertainment Corp. is/are
16 likely to have discoverable information related to the facts and circumstances of this action,
17 including, but not limited to, its relationship to and support of Mr. Okada, Aruze USA, Inc.,
18 Universal Entertainment Corporation, and/or his/their agents related to Universal Entertainment
19 Corporation's efforts to obtain a gaming license in the Philippines, the identity of its shareholders,
20 directors, and officers, their relationship to any and all Philippine government/gaming officials
21 (former and current), any and all transfers of funds from Mr. Okada, Aruze USA, Inc., Universal
22 Entertainment Corporation, and/or his/their agents to the Philippine government and/or
23 Philippines gaming officials.

24 54. Molly Investments Cooperative UA ("Molly")
25 Unknown at this time; will supplement

26 The NRCP 30(b)(6) designee(s) for Molly is/are likely to have discoverable information
27 related to the facts and circumstances of this action, including, but not limited to, its relationship
28 to and support of Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, Eagle I,

1 Eagle II, and/or his/their agents related to Universal Entertainment Corporation's efforts to obtain
2 a gaming license in the Philippines, the identity of its shareholders, directors, and officers, their
3 relationship to any and all Philippine government/gaming officials (former and current), any and
4 all transfers of funds from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
5 and/or his/their agents to the Philippine government and/or Philippines gaming officials.

6 55. Ophiuchus Real Properties Corp.
Unknown at this time; will supplement

7
8 The NRCP 30(b)(6) designee(s) for Ophiuchus Real Properties Corp. is/are likely to have
9 discoverable information related to the facts and circumstances of this action, including, but not
10 limited to, its relationship to and support of Mr. Okada, Aruze USA, Inc., Universal
11 Entertainment Corporation, Eagle I, Eagle II, and/or his/their agents related to Universal
12 Entertainment Corporation's efforts to obtain a gaming license in the Philippines, the identity of
13 its shareholders, directors, and officers, their relationship to any and all Philippine
14 government/gaming officials (former and current), any and all transfers of funds from Mr. Okada,
15 Aruze USA, Inc., Universal Entertainment Corporation, and/or his/their agents to the Philippine
16 government and/or Philippines gaming officials.

17 56. SEAA Corp.
Unknown at this time; will supplement

18
19 The NRCP 30(b)(6) designee(s) for SEAA Corp. is/are likely to have discoverable
20 information related to the facts and circumstances of this action, including, but not limited to, its
21 relationship to and support of Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
22 Eagle I, Eagle II, Ophiuchus Real Properties Corp., and/or his/their agents related to Universal
23 Entertainment Corporation's efforts to obtain a gaming license in the Philippines, the identity of
24 its shareholders, directors, and officers, their relationship to any and all Philippine
25 government/gaming officials (former and current), any and all transfers of funds from Mr. Okada,
26 Aruze USA, Inc., Universal Entertainment Corporation, and/or his/their agents to the Philippine
27 government and/or Philippines gaming officials.

1 57. Paulo Bombase
2 Unknown at this time; will supplement

3 Mr. Bombase is likely to have discoverable information related to the facts and
4 circumstances of this action, including, but not limited to, his relationship to or with Eagle I and
5 Eagle II, his knowledge about, relationship to, and/or communications related to Universal
6 Entertainment Corporation's efforts to obtain a gaming license in the Philippines, his former
7 position as PAGCOR consultant under former chairman Genuino, any and all payments received
8 by him or any entity that he owns, controls, or with which he is associated (including, but not
9 limited to, Future Fortune Ltd.) from Mr. Okada, Aruze USA, Inc., Universal Entertainment
10 Corporation, and/or any person or entity acting on his/their behalf.

11 58. Yoshiyuki Shoji
12 Unknown at this time; will supplement

13 Mr. Shioji is likely to have discoverable information related to the facts and circumstances
14 of this action, including, but not limited to, his former employment relationship with Aruze USA,
15 Inc. and/or Universal Entertainment Corporation, the services he provided, the acts he performed,
16 any and all transfers of funds from Mr. Okada, Aruze USA, Inc., Universal Entertainment
17 Corporation, and/or his/their agents to the Philippine government and/or Philippines gaming
18 officials; and Mr. Okada's knowledge, participation, and role.

19 59. Michiaki Tanaka
20 Unknown at this time; will supplement

21 Mr. Tanaka is likely to have discoverable information related to the facts and
22 circumstances of this action, including, but not limited to, his former employment relationship
23 with Aruze USA, Inc. and/or Universal Entertainment Corporation, the services he provided, the
24 acts he performed, any and all transfers of funds from Mr. Okada, Aruze USA, Inc., Universal
25 Entertainment Corporation, and/or his/their agents to the Philippine government and/or
26 Philippines gaming officials; and Mr. Okada's knowledge, participation, and role.

1 60. Future Fortune Ltd.
2 Unknown at this time; will supplement

3 The NRCP 30(b)(6) designee(s) for Future Fortune Ltd. is/are likely to have discoverable
4 information related to the facts and circumstances of this action, including, but not limited to, any
5 and all payments received from Mr. Okada, Aruze USA, Inc., Universal Entertainment
6 Corporation, and/or any person or entity acting on his/their behalf, and any and all payments
7 made for or on behalf of Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
8 and/or any person or entity on his/their behalf.

9 61. Hong Kong Shanghai Banking Corporation ("HSBC")
10 Unknown at this time; will supplement

11 The NRCP 30(b)(6) designee(s) for HSBC is/are likely to have discoverable information
12 related to the facts and circumstances of this action, including, but not limited to, account records,
13 and deposits and payments transactions for Future Fortune Ltd., People's Technology Holding,
14 and/or Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or other person or
15 entity on his/their behalf.

16 62. People's Technology Holding Ltd.
17 Unknown at this time; will supplement

18 The NRCP 30(b)(6) designee(s) for People's Technology Holding Ltd. is/are likely to have
19 discoverable information related to the facts and circumstances of this action, including, but not
20 limited to, ownership history and management structure; any and all payments received from
21 Future Fortune Ltd., Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or
22 any person or entity acting on his/their behalf; and the knowledge, participation, and role(s) of
23 Efraim Genuino and/or Rodolfo Soriano.

24 63. Subic Leisure and Management
25 Unknown at this time; will supplement
26 British Virgin islands

27 The NRCP 30(b)(6) designee(s) for Subic Leisure and Management is/are likely to have
28 discoverable information related to the facts and circumstances of this action, including, but not
limited to, ownership history and management structure, any and all payments received from

1 Future Fortune Ltd., Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or
2 any person or entity acting on his/their behalf.

3 64. Rodolfo V. Soriano
4 Unknown at this time; will supplement

5 Mr. Soriano is likely to have discoverable information related to the facts and
6 circumstances of this action, including, but not limited to, any and all payments, gifts, and/or
7 benefits received by him or any entity that he owns, controls, or with which he is associated
8 (including, but not limited to, Future Fortune Ltd., Ophiucus Real Properties Corp., Subic Leisure
9 and Management, People's Technology Holding from Mr. Okada, Aruze USA, Inc., Universal
10 Entertainment Corporation), and/or any person or entity acting on his/their behalf; his role as a
11 PAGCOR consultant; his relationship with Efraim Genuino; his travels to Las Vegas and/or
12 Macau, and his communications and interactions with Mr. Okada, Aruze USA, Inc., Universal
13 Entertainment, and/or his/their agents and/or affiliates.

14 65. Olivia Soriano
15 Unknown at this time; will supplement

16 Ms. Soriano is likely to have discoverable information related to the facts and
17 circumstances of this action, including, but not limited to, her relationship with Rodolfo Soriano,
18 her travels to Macau and/or Las Vegas, and/or any and all payments, benefits, and/or gifts she
19 may have received from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
20 and/or any affiliates or agents acting on his/their behalf.

21 66. Rodolfo J. B. Bangsil
22 PAGCOR, Officer in Charge of Gaming Department
Unknown at this time; will supplement

23 Mr. Bangsil is likely to have discoverable information related to the facts and
24 circumstances of this action, including, but not limited to, his service as officer in charge of the
25 PAGCOR Gaming Department, his communications with Mr. Okada, Aruze USA, Inc., Universal
26 Entertainment Corporation, and/or any affiliates or agents acting on his/their behalf; his travels to
27 Macau and/or Las Vegas, and/or any and all payments, benefits, and/or gifts he may have
28

1 received from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or any
2 affiliates or agents acting on his/their behalf.

3 67. Suzzanne Bangsil
4 Unknown at this time; will supplement

5 Ms. Bangsil is likely to have discoverable information related to the facts and
6 circumstances of this action, including, but not limited to, her communications with Mr. Okada,
7 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
8 his/their behalf; her travels to Las Vegas and/or Macau, and/or any and all payments, benefits,
9 and/or gifts she may have received from Mr. Okada, Aruze USA, Inc., Universal Entertainment
10 Corporation, and/or any affiliates or agents acting on his/their behalf.

11 68. Efraim Genuino (former PAGCOR chairman)
12 Unknown at this time; will supplement

13 Mr. Genuino is likely to have discoverable information related to the facts and
14 circumstances of this action, including, but not limited to, any and all payments and/or benefits
15 received by him or any person with which he is affiliated or any entity that he owns, controls, or
16 with which he is associated (including, but not limited to, Future Fortune Ltd.) from Mr. Okada,
17 Aruze USA, Inc., Universal Entertainment Corporation, and/or any person or entity acting on
18 his/their behalf; his former role as PAGCOR chairman and its interactions with Universal
19 Entertainment Corporation related to the latter's efforts to obtain a Philippine gaming license.

20 69. Anthony F. Genuino
21 Mayor of Los Banos
22 Unknown at this time; will supplement

23 Mr. Genuino is likely to have discoverable information related to the facts and
24 circumstances of this action, including, but not limited to, his relationship with Efraim Genuino,
25 his travels to Macau and/or Las Vegas, and/or any and all payments, benefits, and/or gifts he may
26 have received from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or
27 any affiliates or agents acting on his/their behalf.
28

1 70. Manuel M. Camacho
2 Unknown at this time; will supplement

3 Mr. Camacho is likely to have discoverable information related to the facts and
4 circumstances of this action, including, but not limited to, any and all payments received by him
5 or any entity that he owns, controls, or with which he is associated (including, but not limited to,
6 Future Fortune Ltd., Platinum Gaming and Entertainment Corp., Eagle I, and Eagle II) from
7 Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or any person or entity
8 acting on his/their behalf.; his role with Eagle II, his relationship with Efraim and/or Erwin
9 Genuino; and any information regarding Universal Entertainment Corporation's efforts to obtain a
10 gaming license in the Philippines.

11 71. Erwin Genuino
12 Unknown at this time; will supplement

13 Mr. Genuino is likely to have discoverable information related to the facts and
14 circumstances of this action, including, but not limited to, any and all payments received by him
15 or any entity that he owns, controls, or with which he is associated (including, but not limited to,
16 Future Fortune Ltd.) from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation,
17 and/or any person or entity acting on his/their behalf.

18 72. Mitsuo Hida
19 Unknown at this time; will supplement

20 Mr. Hida is likely to have discoverable information related to the facts and circumstances
21 of this action, including, but not limited to, his former employment as president of Aruze USA,
22 Inc.'s Japan branch; his former position as a director for Future Fortune Ltd.; the services he
23 provided and acts he performed for or on behalf of Mr. Okada, Aruze USA, Inc., Universal
24 Entertainment Corporation, Future Fortune Ltd., and/or his/their agents; any and all transfers of
25 funds from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or his/their
26 agents to the Philippine government and/or Philippines gaming officials; communications with
27 the Philippines government and gaming officials related to Universal Entertainment Corporation's
28

1 efforts to obtain a gaming concession in the Philippines; and Mr. Okada's knowledge,
2 participation, and role.

3 73. Cristino Naguiat, Jr.
4 (current) Chairman, PAGCOR
5 1330 PAGCOR House
6 Roxas Boulevard
7 Ermita, Manila, Philippines 1000
8 Tel.: (63 2) 521-1542

9 Mr. Naguiat is likely to have discoverable information related to the facts and
10 circumstances of this action, including, but not limited to, any and all payments gifts, and/or
11 benefits received by him or any person with which he is affiliated or any entity that he owns,
12 controls, or with which he is from Mr. Okada, Aruze USA, Inc., Universal Entertainment
13 Corporation, and/or any person or entity acting on his/their behalf; his role as PAGCOR chairman
14 and its interactions with Universal Entertainment Corporation related to the latter's efforts to
15 obtain a Philippine gaming license.

16 74. Benigno Simeon Aquino, III
17 President, Republic of the Philippines
18 Office of the President of the Philippines
19 Presidential Communications Operations Office
20 3/F New Executive Building (NEB)
21 Malacañang Compound
22 op@president.gov.ph

23 President Aquino is likely to have discoverable information related to the facts and
24 circumstances of this action, including, but not limited to, any and all payments gifts, and/or
25 benefits received by him or any person with which he is affiliated or any entity that he owns,
26 controls, or with which he is from Mr. Okada, Aruze USA, Inc., Universal Entertainment
27 Corporation, and/or any person or entity acting on his/their behalf; his interactions with Universal
28 Entertainment Corporation related to the latter's efforts to obtain a Philippine gaming license.

75. Jose Miguel Arroyo
Unknown at this time; will supplement

Mr. Arroyo is likely to have discoverable information related to the facts and
circumstances of this action, including, but not limited to, his communications with Mr. Okada,
Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on

1 his/their behalf; his travels to Las Vegas and/or Macau, and/or any and all payments benefits,
2 and/or gifts he may have received from Mr. Okada, Aruze USA, Inc., Universal Entertainment
3 Corporation, and/or any affiliates or agents acting on his/their behalf.

4 76. Maria Teresa Socorro Naguiat
5 Unknown at this time; will supplement

6 Ms. Naguiat is likely to have discoverable information related to the facts and
7 circumstances of this action, including, but not limited to, her communications with Mr. Okada,
8 Aruze USA, Inc., Universal Entertainment Corporation, and/or any affiliates or agents acting on
9 his/their behalf; her travels to Macau, and/or any and all payments, benefits, and/or gifts she may
10 have received from Mr. Okada, Aruze USA, Inc., Universal Entertainment Corporation, and/or
11 any affiliates or agents acting on his/their behalf.

12 77. Bayan Muna Representative Teddy A. Casiño
13 Congress of the Philippines
14 House of Representatives, Quezon City
Rm. N-508
Tel.: 931-5001 or 7407, 9315911

15 Representative Casiño is likely to have discoverable information related to the facts and
16 circumstances of this action, including, but not limited to, the information and documents in his
17 possession that demonstrate the transfer of payments from Mr. Okada, Aruze USA, Inc.,
18 Universal Entertainment Corporation, and/or any person or entity acting on his/their behalf and
19 Philippine gaming officials, and the government investigation he is spearheading.

20 78. Baron Asset Fund
21 c/o Baron Funds
22 Attn: Linda S. Martinson, Esq.
23 767 Fifth Avenue, 49th Floor
New York, NY 10153
Fax: (212) 583-2014

24 The NRCP 30(b)(6) designee(s) for the Baron Asset Fund is/are likely to have
25 discoverable information related to the facts and circumstances of this action, including, but not
26 limited to, the transactions related to the Stockholders Agreement and amendments thereto.

1 79. Frank A. Schreck, Esq.
2 former chairman of Universal's Compliance Committee
3 Brownstein Hyatt Farber Schreck
4 100 North City Parkway, Suite 1600
5 Las Vegas, NV 89106-4614
6 Tel.: (702) 382-2101
7 Fax: (702) 382-8135

8 Mr. Schreck is likely to have discoverable information related to the facts and
9 circumstances of this action, including, but not limited to, the allegations in Paragraphs 100
10 through 102 of Aruze USA, Inc. and Universal Entertainment Corporation's Fourth Amended
11 Counterclaim.

12 80. Richard Morgan, Esq.
13 Chairman of Universal's Compliance Committee
14 LIONEL SAWYER & COLLINS
15 300 South Fourth Street, Suite 1700
16 Las Vegas, NV 89101
17 Tel.: (702) 383-8888
18 Fax: (702) 383-8845

19 Mr. Morgan is likely to have discoverable information related to the facts and
20 circumstances of this action, including, but not limited to, his role as current Chairman of
21 Universal Entertainment Corporation's Compliance Committee; and the allegations in
22 Paragraph 101 of Aruze USA, Inc. and Universal Entertainment Corporation's Fourth Amended
23 Counterclaim.

24 81. Robert Faiss, Esq.
25 LIONEL SAWYER & COLLINS
26 300 South Fourth Street, Suite 1700
27 Las Vegas, NV 89101
28 Tel.: (702) 383-8888
 Fax: (702) 383-8845

 Mr. Faiss is likely to have discoverable information related to the facts and circumstances
of this action, including, but not limited to, the September 30, 2011 meeting he attended and the
allegations in Paragraphs 103 to 110 of Aruze USA, Inc. and Universal Entertainment
Corporation's Fourth Amended Counterclaim.¹

¹ Mr. Faiss passed away on June 4, 2014.

1 82. Mark Clayton, Esq.
2 LIONEL SAWYER & COLLINS
3 300 South Fourth Street, Suite 1700
4 Las Vegas, NV 89101
5 Tel.: (702) 383-8888
6 Fax: (702) 383-8845

7 Mr. Clayton is likely to have discoverable information related to the facts and
8 circumstances of this action, including, but not limited to, the September 30, 2011 meeting he
9 attended and the allegations in Paragraphs 103 to 110 of Aruze USA, Inc. and Universal
10 Entertainment Corporation's Fourth Amended Counterclaim.

11 83. Jennifer Roberts, Esq.
12 LIONEL SAWYER & COLLINS
13 300 South Fourth Street, Suite 1700
14 Las Vegas, NV 89101
15 Tel.: (702) 383-8888
16 Fax: (702) 383-8845

17 Ms. Roberts is likely to have discoverable information related to the facts and
18 circumstances of this action, including, but not limited to, her communications with
19 Wynn Resorts related to Mr. Okada, Aruze USA, Inc., and/or Universal Entertainment
20 Corporation.

21 84. Davis Polk & Wardell LLP
22 450 Lexington Avenue
23 New York, NY 10017
24 Tel.: (212) 450-4000
25 Fax: (212) 701-5800

26 The NRCP 30(b)(6) designee(s) for Davis Polk & Wardell LLP is/are likely to have
27 information and/or documents related to the facts and circumstances of this action, including, but
28 not limited to, communications by and between Mr. Okada, Aruze USA, Inc., Universal
Entertainment Corporation, and/or any affiliates and/or agents acting on his or their behalf with
third parties, including with past and former Philippine government officials.

1 85. Manabu Kawasaki
2 Unknown at this time; will supplement

3 Mr. Kawasaki is likely to have discoverable information related to the facts and
4 circumstances of this action, including, but not limited to, information related to the
5 formation/ownership/structure of certain entities involved in the Philippine development project.

6 86. Masato Araki
7 Unknown at this time; will supplement

8 Mr. Araki is likely to have discoverable information related to the facts and circumstances
9 of this action, including, but not limited to, information related to the formation/
10 ownership/structure of certain entities involved in the Philippine development project.

11 87. Any and all witnesses identified and/or disclosed by any other party to this action.

12 The Wynn Parties reserve the right to amend and/or supplement this list of witnesses as
13 discovery continues.

14 **B. LIST OF DOCUMENTS**

15 Pursuant to NRCP 16.1, the Wynn Parties hereby submit their **seventh** supplemental list
16 of documents that may be discoverable pursuant to NRCP 26(b). The supplemental documents
17 are identified as bearing Bates numbers WYNN00013325 – WYNN00016187 and described with
18 particularity on the index attached hereto as Exhibit A.

19 The Wynn Parties also disclose any and all documents identified and/or disclosed by any
20 other party to this action. In addition, the Wynn Parties reserve the right to amend and/or
21 supplement this list of documents as discovery continues.

22 **C. DAMAGES COMPUTATION**

23 Wynn Resorts is seeking declaratory relief, as well as monetary damages in the form of
24 compensatory and special damages, as well as disgorgement of any and all profits, in a total
25 amount to be proven at trial but, in any event, over \$10,000.00. In addition, Wynn Resorts is
26 seeking punitive damages as Defendants' acts were oppressive, fraudulent, malicious, and done
27 with a conscious disregard for the harm to Wynn Resorts. Wynn Resorts is also seeking to
28

1 recover its attorney's fees and costs incurred in prosecuting this matter. Wynn Resorts will
2 supplement this information concerning its damages as discovery proceeds.

3 **D. INSURANCE AGREEMENTS**

4 Given the Court's entry of the Protective Order with Respect to Confidentiality in this
5 case, and pursuant to NRCP 16.1(a)(1)(D), the Wynn Parties previously disclosed (in their third
6 supplemental disclosure) the insurance agreements identified as bearing Bates-numbers
7 WYNN008969 – WYNN009015.

8 The Wynn Parties reserve the right to supplement this disclosure to add additional
9 documents and/or name(s) of person(s) who may have relevant information, including expert
10 witnesses, as discovery continues.

11 DATED this 13th day of April, 2015.

12 PISANELLI BICE PLLC

13 By: /s/ Debra L. Spinelli

14 James J. Pisanelli, Esq., Bar No. 4027
15 Todd L. Bice, Esq., Bar No. 4534
16 Debra L. Spinelli, Esq., Bar No. 9695
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

17 and

18 Paul K. Rowe, Esq. (*pro hac vice admitted*)
19 Bradley R. Wilson, Esq. (*pro hac vice admitted*)
20 WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, New York 10019

21 and

22 Robert L. Shapiro, Esq. (*pro hac vice admitted*)
23 GLASER WEIL FINK HOWARD
24 AVCHEN & SHAPIRO, LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067

25 Attorneys for Wynn Resorts, Limited, Linda Chen,
26 Russell Goldsmith, Ray R. Irani, Robert J. Miller,
27 John A. Moran, Marc D. Schorr, Alvin V.
28 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 13th day of April, 2015, I caused to be electronically served through the Court's e-service/e-filing system and/or served by U.S. Mail true and correct copies of the foregoing THE WYNN PARTIES' SEVENTH SUPPLEMENTAL DISCLOSURES PURSUANT TO NRCP 16.1 properly addressed to the following:

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, NV 89101

Bryce K. Kunitomo, Esq.
J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
Brian G. Anderson, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

William R. Urga, Esq.
Martin A. Little, Esq.
JOLLY URGAL WOODBURY & LITTLE
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169

Joseph J. Reilly, Esq.
Benjamin B. Klubes, Esq.
David S. Krakoff, Esq.
BUCKLEY SANDLER LLP
1250 24th Street NW, Suite 700
Washington, DC 20037

Ronald L. Olson, Esq.
Mark B. Helm, Esq.
Jeffrey Y. Wu, Esq.
Soraya C. Kelly, Esq.
MUNGER TOLLES & OLSON, LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071

/s/ Kimberly Peets
An Employee of PISANELLI BICE PLLC

EXHIBIT B

EXHIBIT B

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Russell Goldsmith, Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
Kimmarie Sinatra, D. Boone Wayson, and Allan Zeman

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 VIDEOTAPED
DEPOSITION OF KAZUO OKADA**

Dates: July 20-24, 27-31, 2015

Time: 10:00 a.m.

1 PLEASE TAKE NOTICE that at 10:00 a.m. on the dates of July 20-24, and July 27-31,
2 2015, at the law office of PISANELLI BICE PLLC, located at 400 South 7th Street, Suite 300,
3 Las Vegas, Nevada 89101, Plaintiff Wynn Resorts, Limited will take the videotaped deposition of
4 KAZUO OKADA upon oral examination, pursuant to Rules 26 and 30 of the Nevada Rules
5 of Civil Procedure, before a Notary Public or before some other officer authorized by law to
6 administer oaths.

7 Oral examination will continue from day to day until completed. You are invited to attend
8 and cross examine.

9 DATED this 14th day of April, 2015.

10 PISANELLI BICE PLLC

11 By: /s/ Debra L. Spinelli

12 James J. Pisanelli, Esq., Bar No. 4027
13 Todd L. Bice, Esq., Bar No. 4534
14 Debra L. Spinelli, Esq., Bar No. 9695
15 400 South 7th Street, Suite 300
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17 and

18 Paul K. Rowe, Esq. (*pro hac vice admitted*)
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20 WACHELL, LIPTON, ROSEN & KATZ
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22 New York, New York 10019

23 and

24 Robert L. Shapiro, Esq. (*pro hac vice admitted*)
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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 14th day of April, 2015, I caused to be electronically served through the Court's e-service/e-filing system true and correct copies of the foregoing NOTICE OF VIDEOTAPED DEPOSITION OF KAZUO OKADA to the following:

J. Stephen Peek, Esq.
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Brian G. Anderson, Esq.
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/s/ Kimberly Peets
An Employee of PISANELLI BICE PLLC

EXHIBIT C
TO BE FILED
UNDER SEAL

EXHIBIT C

EXHIBIT D

EXHIBIT D

1 **ORDR**

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28 *Attorneys for Defendant Kazuo Okada and
Defendants/Counterclaimants Aruze USA, Inc.
and Universal Entertainment Corp.*

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-12-656710-B
DEPT. NO.: XI

**[PROPOSED] ORDER GRANTING
MOTION FOR DEPOSITION OF KAZUO
OKADA AT THE U.S. EMBASSY IN
TOKYO, JAPAN OR CONSULATE IN
OSAKA, JAPAN**

Electronic Filing Case

Hearing Date:
Hearing Time:

1 TO ANY CONSUL OR VICE CONSUL OF THE UNITED STATES EMBASSY IN
2 TOKYO, JAPAN OR THE UNITED STATES CONSULATE IN OSAKA, JAPAN:

3 Upon the application of Defendant Kazuo Okada in the above-captioned action, and
4 pursuant to Article 17 of the United States – Japan Consular Convention, Mar. 22, 1963, 15
5 U.S.T. 768,

6 IT IS HEREBY ORDERED that the deposition on notice of the following witness be
7 taken at the United States Embassy in Tokyo, Japan or the United States Consulate in Osaka,
8 Japan, for no more than three business days:

9 WITNESS: KAZUO OKADA

10 EMPLOYERS: Universal Entertainment Corporation and Aruze USA, Inc.

11 ADDRESS: c/o David S. Krakoff
12 BuckleySandler, LLP
13 1250 24th Street NW, Suite 700
Washington, D.C. 20037

14 IT IS FURTHER ORDERED that the deposition shall commence on or about
15 _____ and terminate on or about _____.

16 IT IS FURTHER ORDERED that any documentary exhibits in connection with the
17 deposition be marked.

18 Counsel for defendants who will participate in said deposition and counsel for plaintiffs
19 who will participate in said deposition are listed in the Appendix to this Order. The proceedings
20 will be recorded by a certified court reporter to be agreed upon by the parties.
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1 Please cause the testimony of the witness to be reduced to writing and recorded on video-
2 tape, cause the deposition to be signed by the witness, annex the deposition testimony to your
3 commission, close the same under your seal and make return thereof to this court with all
4 convenient speed.

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7 Dated this __th day of ____, 2015

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DISTRICT COURT JUDGE

Respectfully submitted by:

By _____
J. Stephen Peek, Esq. (1758)
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Robert J. Cassity, Esq. (9779)
Brian G. Anderson, Esq. (10500)
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Defendants/Counterclaimants Aruze USA, Inc.
and Universal Entertainment Corp.*

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Appendix: Counsel Who Will Participate in the Deposition

For the Plaintiff:

For the Defendants:

EXHIBIT E

EXHIBIT E

Bob Cassity

From: Debra Spinelli <dls@pisanellibice.com>
Sent: Tuesday, April 14, 2015 3:47 PM
To: Steve Peek; Valerie Larsen; Bob Cassity; Bryce Kunimoto; Miller, Adam; Klubes, Benjamin B.; David S. Krakoff (dkrakoff@buckleysandler.com); Reilly, Joseph J.; Wu, Jeffrey; Helm, Mark; William Urga; Donald Campbell; J. Colby Williams Esq. (jcw@campbellandwilliams.com)
Cc: James Pisanelli; Michael R. Kalish; Magali Calderon; Paul Garcia; Paul Rowe (PKRowe@wlrk.com); Bradley R. Wilson (BRWilson@wlrk.com); Robert L. Shapiro (rs@glaserweil.com)
Subject: Wynn/Okada -- Deposition of Kazuo Okada

Counsel –


We have on multiple occasions discussed the deposition of Mr. Okada. During our last meet and confer, I stated that we'd like to know counsel and Mr. Okada's availability for a deposition in June. Understanding that he had not spoken with his client and was reserving all rights, Mr. Peek stated that he thought July may be better. As I stated, we would certainly not quibble over a two week scheduling difference, and thus to schedule the deposition in July. I have not heard back regarding Mr. Okada's July availability nor that of his counsel on these issues.

We also confirmed a dispute over the length of deposition (2 weeks - due to number of parties who will question Mr. Okada and also the interpretation issues - versus 3 days), and the location (Las Vegas versus [I am not sure it was stated]).

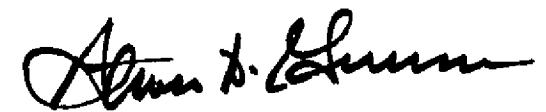
To tee these long-discussed issues up for the Court's resolution, and so to make sure that everyone saves the dates, we are noticing Mr. Okada's deposition for the last two weeks in July (20-24, 27-31), in Las Vegas, Nevada. As we all previously discussed and agreed, we will of course work with counsel on a briefing schedule that may be associated with the anticipated motion practice.

Thank you.
Debbie

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 Please consider the environment before printing.

This transaction and any attachment is privileged and confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.



CLERK OF THE COURT

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Attorneys for Counterdefendant,

Counterclaimant, and Crossclaimant

ELAINE P. WYNN

*Admitted pro hac vice

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, etc.,

Plaintiff,

vs.

KAZUO OKADA, etc., et al.,

Defendants.

AND ALL RELATED CLAIMS.

Case No. A-12-656710-B

Dept. No.: XI

**ELAINE P. WYNN'S OPPOSITION TO
KAZUO OKADA'S MOTION FOR A
PROTECTIVE ORDER TO (1) LOCATE
HIS DEPOSITION IN TOKYO AND (2)
SET IT FOR THREE DAYS**

Electronic Filing Case

Hearing Date: June 4, 2015

Hearing Time: 8:30 a.m.

1
2 **I. INTRODUCTION**

3 This complex litigation concerns numerous facts and events that unfolded over more than a
4 decade and across multiple countries. Kazuo Okada is one of the central witnesses in this case,
5 having been involved in nearly all of the events important to the parties' many claims,
6 crossclaims, counterclaims, and defenses. He is now seeking a protective order to limit his
7 deposition to just three days, even though that time is plainly insufficient to cover all of the topics
8 encompassed within this litigation, and even though the necessity of live translation will
9 substantially increase the amount of time needed to complete the deposition. The three-day limit
10 Mr. Okada proposes will deprive his adversaries, including Ms. Wynn, of a full and fair
11 opportunity to take discovery and develop their cases for trial. Mr. Okada's request to require the
12 deposition to be conducted in Tokyo, Japan rather than in Nevada is also meritless. Since Wynn
13 Resorts will be filing a separate opposition to Mr. Okada's motion, Ms. Wynn will focus on
14 addressing issues related to her claims.

15 Ms. Wynn will need, and the Court should allow, *at least* one full day to question Mr.
16 Okada on topics related to her claims, which challenge the validity and enforceability of the
17 stockholders agreement between herself, Stephen Wynn, and Mr. Okada's company Aruze USA,
18 Inc. ("Aruze"). At Mr. Okada's deposition, Ms. Wynn's counsel expects to question him about,
19 among other things, the history and purpose of the stockholders agreement, which was initially
20 signed by Messrs. Okada and Wynn nearly 8 years before Ms. Wynn entered into it; the history of
21 communications between Mr. Okada and Mr. Wynn about the agreement and amendments over
22 the course of a decade; the history and nature of the relationship between Mr. Okada and Mr.
23 Wynn, particularly their alliance to maintain control of Wynn Resorts; and Aruze's effort to
24 nominate board candidates whom Mr. Wynn was contractually required to support under the
25 stockholders agreement. That every question and answer will need to be interpreted from English
26 to Japanese and vice versa would at minimum double the time needed. And, while Ms. Wynn's
27 counsel will strive to conduct the deposition efficiently, because additional time may be needed
28

1 depending on what information is discovered during the deposition or if Mr. Okada impedes or
2 delays the deposition, Ms. Wynn reserves the right to go beyond one day if needed.

3 For these reasons, Mr. Okada's conclusory assertion that questioning about the
4 stockholders agreement would not justify a full day is baseless. (*See* Okada Mot. for Protective
5 Order ("Okada Mot.") at 19 & n.17.) And, that Mr. Okada will need to be deposed on numerous
6 issues related to the other claims and defenses in the case—including his improper conduct to
7 secure a Philippine gaming license—makes the proposed three-day limit unworkable.

8 Ms. Wynn also opposes Mr. Okada's request to require the deposition to take place in
9 Japan. Ms. Wynn agrees with Wynn Resorts that the deposition should be conducted in Nevada,
10 and will not duplicate Wynn Resorts' arguments on that score.

11 **II. BACKGROUND**

12 This litigation began in February 2012, shortly after Wynn Resorts' board of directors
13 voted to redeem Aruze's Wynn Resorts stock, based on an investigation of corrupt conduct by Mr.
14 Okada in the Philippines. Wynn Resorts brought claims against Mr. Okada for breach of fiduciary
15 duty, against Aruze and its parent company Universal Entertainment Corp. ("UEC") for aiding and
16 abetting breach of fiduciary duty, and against all three for a declaration to confirm the validity of
17 the redemption. (*See* Wynn Resorts' Second Amended Complaint, Apr. 22, 2013, ¶¶ 62-92.)
18 Wynn Resorts' claims focus on improper activity engaged by the Okada parties in the Philippines
19 and Macau. (*See id.*) Ms. Wynn therefore expects that a substantial portion of Wynn Resorts'
20 examination during Mr. Okada's deposition will focus on those issues.

21 Ms. Wynn, on the other hand, has claims that focus on challenging the validity of the
22 stockholders agreement. The stockholders agreement first came into being nearly 13 years ago.
23 The initial version of the agreement was signed by Mr. Okada, Mr. Wynn, and Baron Capital in
24 April 2002. (*See* Amended Counterclaim and Crossclaim of Elaine P. Wynn, Dec. 16, 2013
25 ("EPW ACC"), ¶ 18.) This version gave the parties a right of first refusal if any of them sought to
26 sell stock in Wynn Resort's predecessor, and further required Mr. Wynn and Mr. Okada's
27 company Aruze to vote for each other's board candidates. (*See id.*, ¶ 21-22.) Wynn Resorts made
28 its initial public offering several months later, in October 2002. In November 2006, Mr. Wynn

1 and Aruze agreed to amend the agreement to prevent either from selling Wynn Resorts stock
2 without the other's express written consent. (*See id.*, ¶¶ 29, 32.) In January 2010, in connection
3 with the divorce of Mr. Wynn and Ms. Wynn and the division of community property between
4 them, they and Mr. Okada signed the amended and restated stockholders agreement. (*See id.*, ¶¶
5 36-44.) While the 2010 agreement included certain changes to the prior agreement between Mr.
6 Okada and Mr. Wynn, many of its provisions—including the “consent restriction” that requires
7 written consent of the parties before any stock transfer—originated from the prior agreements
8 between Aruze and Mr. Wynn. After January 2010, the agreement was further amended, and Mr.
9 Okada and Mr. Wynn continued to have conversations about the stockholders agreement,
10 including with respect to a potential sale of stock by Ms. Wynn and Aruze's request to pledge its
11 stock to obtain liquidity (*see* Fourth Amended Counterclaim of Aruze and UEC, Nov. 26, 2013, ¶¶
12 85-88).

13 Ms. Wynn contends that the stockholders agreement, including its onerous restriction on
14 stock transfers, is invalid and unenforceable. In particular, Ms. Wynn has pleaded that (i) the
15 purpose of the stockholders agreement was to maintain an alliance between Mr. Wynn and Mr.
16 Okada to control Wynn Resorts, and that purpose has been frustrated by the redemption of Aruze's
17 stock; (ii) that the stockholders agreement's “consent restriction” on stock transfers served only
18 the private purposes of Mr. Wynn and Mr. Okada, rather than any corporate purpose, and that the
19 consent restriction therefore constitutes an unreasonable restraint on alienation; and (iii) if Aruze
20 obtains a discharge of its obligations under the stockholders agreement based on its allegation that
21 Mr. Wynn breached the agreement by failing to endorse Aruze's candidates for the board of
22 directors, Ms. Wynn's contractual duties should also be discharged. (*See* EPW ACC ¶¶ 58-76.)
23 At Mr. Okada's deposition, Ms. Wynn intends to question Mr. Okada about the history of the
24 stockholders agreement, the parties' performance or breach of it, and the long course of
25 interactions between Mr. Wynn and Aruze regarding it.

1 **III. MS. WYNN SHOULD HAVE AT LEAST ONE FULL DAY TO DEPOSE MR.**
2 **OKADA ON TOPICS RELATED TO HER CLAIMS**

3 NRCP 30(d)(1) states that, while a deposition is limited to one day absent a stipulation or
4 court order, the court “must allow additional time consistent with Rule 26(b)(2) if needed to fairly
5 examine the deponent” Although we have found no reported Nevada decisions applying this
6 language, federal authority is instructive, as this provision mirrors Fed. R. Civ. P. 30(d)(1).¹ The
7 Advisory Committee Notes to Fed. R. Civ. P. 30(d)(1) explain that a court should extend the
8 length of a deposition if needed for “each party to examine the witness” in multiparty cases, “[i]f
9 the deposition will cover events occurring over a long period of time,” and “if the witness needs an
10 interpreter.” Fed. R. Civ. P. 30(d)(a), Advisory Committee Notes for 2000 Amendment.

11 All of those factors are present here. Mr. Okada’s deposition should not be limited to three
12 days, and Ms. Wynn should be allowed *at least* one full day to depose him about her claims,
13 assuming he is cooperative during the deposition. And, as noted above, Ms. Wynn reserves the
14 right to continue the deposition or take additional time if needed, depending on Mr. Okada’s
15 cooperation and the information discovered during the deposition.

16 Mr. Okada will need to be deposed not just with respect to the dispute over the redemption
17 of Aruze’s stock in 2012,² but also with respect to Ms. Wynn’s claims. The stockholders
18 agreement has a long history, having been originally entered into by Mr. Wynn and Aruze in 2002,
19 subsequently amended in 2006, and amended and restated in 2010 to include Ms. Wynn as a party.
20 As set forth above, Ms. Wynn needs to question Mr. Okada regarding many years of discussions
21 and activity relating to the negotiating history, purpose, and performance of the stockholders
22 agreement that predate her involvement in the agreement. As Mr. Okada recognizes in his motion,

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25 ¹ As Mr. Okada acknowledges, federal authority is persuasive with respect to the interpretation of
26 Nevada rules that are based on their federal counterparts. (Okada Mot. at 18 & n.16.)

27 ² In addition, Ms. Wynn reserves the right to question Mr. Okada, if needed, about issues
28 regarding Aruze and UEC’s counterclaims against her relating to the redemption, which overlap
with issues that other parties will likely ask about. Ms. Wynn expects that her counsel’s questions
on those topics will be limited.

1 these topics likely will be addressed only by parties to Ms. Wynn's claims. (Okada Mot. at 19 &
2 n.17.)

3 Adequate time to depose Mr. Okada is particularly important because a substantial part of
4 Mr. Wynn's and Aruze's communications over the course of a decade appears to have been oral.
5 Just as one example, Mr. Wynn and the Okada parties have thus far produced few, if any
6 documents, that reflect direct negotiations between Mr. Wynn and Aruze with respect to the
7 consent restriction that they added to the agreement in 2006. Ms. Wynn will therefore have to
8 question Mr. Okada about an unspecified and currently unknown number of communications
9 between the two parties regarding the stockholders agreement. Ms. Wynn's counsel will have to
10 reserve time during the deposition to identify the relevant communications and explore the
11 substance of those discussions.

12 Importantly, because Mr. Okada will need an interpreter, and because the deposition will
13 involve the use of translated documents, the time needed to conduct that examination is likely to
14 be at least double what it would take were the deposition to proceed solely in English. Indeed, Mr.
15 Okada acknowledges the general rule that, when a deponent requires the use of an interpreter, the
16 deposition time is normally doubled. *See Procaps S.A. v. Patheon Inc.*, 2015 WL 2090401, *6
17 (S.D. Fla. May 5, 2015) (noting the general "rule that the use of an interpreter doubles the
18 deposition time"); *Womack v. Nissan N. Am., Inc.*, 2007 WL 5160790, *3 (E.D. Tex. Oct. 12,
19 2007) (noting that "deposition time requiring the use of an interpreter shall only count as half-
20 time" toward the total hours allotted for a deposition); Okada Mot. at 20. This only underscores
21 the need to ensure that all parties have adequate time to examine Mr. Okada at this deposition.

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1 **IV. CONCLUSION**

2 Ms. Wynn respectfully requests that the Court allow her *at least* one full day to conduct
3 Mr. Okada's deposition (with the right for more time if needed), deny Mr. Okada's request to limit
4 his overall deposition to three days, and deny Mr. Okada's request to have the deposition proceed
5 in Japan.

6 Dated: May 29, 2015

JOLLEY URGAL WOODBURY & LITTLE

8 By: 

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*Pro hac vice admitted

22 Attorneys for Counterdefendant/

23 Counterclaimant/Cross-claimant

ELAINE P. WYNN

24 **CERTIFICATE OF SERVICE**

25 I hereby certify that on the 29th day of May, 2015, I caused the foregoing ELAINE P.

26 WYNN'S OPPOSITION TO KAZUO OKADA'S MOTION FOR A PROTECTIVE

1 **ORDER TO (1) LOCATE HIS DEPOSITION IN TOKYO AND (2) SET IT FOR THREE**

2 **DAYS** to be served as follows:

3 [X] by the Court's ECF System through Wiznet:

4 Bryce K. Kunimoto, Esq.
5 Brian G. Anderson, Esq.
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7 Robert J. Cassity, Esq.
8 Holland & Hart LLP
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16 Attorneys for Kazuo Okada,
17 Aruze USA, Inc. and Universal Entertainment Corp.

18 James J. Pisanelli, Esq.
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20 Debra Spinelli, Esq.
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25 and


26 Paul K. Rowe, Esq.
27 Grant R. Mainland, Esq.
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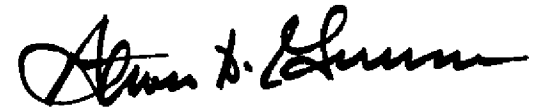
and

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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 RELATED CLAIMS

Case No.: A-12-656710-B

Dept. No.: XI

**WYNN RESORTS, LIMITED'S
OPPOSITION TO DEFENDANT
KAZUO OKADA'S MOTION FOR A
PROTECTIVE ORDER TO (1) LOCATE
HIS DEPOSITION IN TOKYO AND
(2) SET IT FOR THREE DAYS**

Hearing Date: June 4, 2015

Hearing Time: 8:30 a.m.

1 **I. INTRODUCTION**

2 The facts, the parties, and underlying circumstances of this litigation are well-known to
3 this Court. The core dispute between Wynn Resorts and the Okada Parties¹ arises from the
4 Wynn Board of Directors' decision to exercise its express power under Article VII of the
5 Wynn Resorts Articles of Incorporation to redeem Okada's shares in Wynn Resorts. Further, this
6 Court is well aware of the significant discovery disputes between the parties. True to form,
7 Okada now brings this current motion requesting the Court order his deposition to occur in Tokyo
8 and be limited to just three days. The Court must view Okada's request for what it is – an attempt
9 to prevent the just, speedy, and inexpensive (or most efficient) determination of this action.

10 Okada's proposal that all attorneys from eight different law firms fly from the
11 United States to Tokyo, rather than fly Okada to the United States (Las Vegas) defies common
12 sense. Contrary to Okada's assertion, the mere fact that Okada's conduct occurred elsewhere does
13 not change the fact that both the nature of the claim and the parties' relationship involve Nevada.
14 Ordering Okada's deposition in Tokyo is neither in the parties' nor the Court's best interest. And,
15 given the importance of Okada's deposition, the translation issues involved, the complex nature
16 and multiple parties involved in this action, a ten-day deposition is more than warranted to fairly
17 examine Okada.

18 **II. STATEMENT OF FACTS**

19 **A. The Parties.**

20 Wynn Resorts, Limited ("Wynn Resorts") is a Nevada corporation that operates resort
21 casinos in Las Vegas and in the Macau Special Administrative Region of the People's Republic of
22 China ("Macau"). (See Second Am. Compl. ("SAC"), ¶¶ 1-4.) Kazuo Okada ("Okada") is a
23 former director of Wynn Resorts. (*Id.* ¶ 5.) Although Okada is a Japanese citizen, he admittedly
24 resides in Hong Kong. (*Id.* ¶ 5; *see also* Okada's Mot. for Protective Order ("MPO"), 10:4.)
25 Okada is the Director, President, Secretary, and Treasurer of Defendant/Counter-claimant
26 Aruze USA, Inc. ("Aruze USA"), a Nevada corporation with its principal place of business in
27

28 ¹ The term "Okada Parties" encompasses Kazuo Okada, Aruze USA, Inc., and Universal Entertainment Corp.

1 Las Vegas, Nevada, and a Nevada gaming licensee. (*See* SAC, ¶¶ 6-7; *see also* Fourth Amended
2 Counterclaim ("FAC"), ¶ 13.) Okada is also the Director and Chairman of the Board of
3 Defendant/Counter-claimant Universal Entertainment Corporation ("Universal"). (*See* SAC, ¶ 7.)
4 Although Universal is a corporation organized under the laws of Japan, (*see* SAC, ¶7; *see also*
5 FAC, ¶14), Universal does business in Nevada, and has been issued a manufacturer's license by
6 the Nevada Gaming Commission. (*See* SAC, ¶7.)

7 **B. The Central Dispute Revolves Around Okada's Acts and Omissions that**
8 **Necessitated The Actions Taken by the Wynn Resorts Board of Directors.**

9 The dispute between Wynn Resorts and the Okada Parties arises from the Wynn Board of
10 Directors' decision to exercise its express power under Article VII of the Wynn Resorts Articles
11 of Incorporation to redeem the Wynn Resorts shares held by Aruze USA. Specifically, on
12 February 18, 2012, the Wynn Resorts board voted to exercise the discretion granted to it under the
13 Company's Articles of Incorporation and declared the Defendants "unsuitable" to be connected
14 with the Company. (*See* SAC, ¶¶ 51, 54.) The board did so upon the results of three independent
15 investigations, including one by former director of the FBI, Louis Freeh, (the "Freeh Report"),
16 into Mr. Okada's business dealings in the Philippines and elsewhere. (*Id.* at ¶¶ 30-33, 36-39,
17 45-49.) The Wynn Resorts board then voted to exercise its power, also granted in the Articles of
18 Incorporation, to redeem the stock held by any unsuitable person and issued Aruze USA, the
19 company through which Mr. Okada held his stake, a promissory note in exchange for its
20 19.66% stake in the Company. (*Id.* at ¶ 54.)

21 **C. Okada's Prior Deposition Was Contentious, and Plagued by Delays.**

22 On January 11, 2012, Okada commenced legal action against Wynn Resorts by filing a
23 Petition for Writ of Mandamus in the Eighth Judicial District Court, Clark County, Nevada. (*See*
24 *Okada v. Wynn Resorts, Ltd.*, Case No. A-12-654522). Thereafter, upon Motion and then Order
25 of this Court, Okada appeared for his deposition in Las Vegas on September 18, 2012. (Ex. 1,
26 Order; Ex. 2, Kazuo Okada Dep. Tr. ("Okada Tr."))

1 Okada required the use of an interpreter throughout the deposition. (*Id.*) It was thus
2 necessary for counsel to confer with their respective check interpreters to verify both the official
3 interpretation of the question, as well as Okada's answers. (*Id.* at 10:17-11:4, 12:2-24.) Okada's
4 counsel clearly recognized these difficulties. (*Id.* at 88:9-12 ("Just for the record, I think all of the
5 translators are doing their best under difficult circumstances here to translate all of the nuances of
6 English into Japanese.").)

7 Okada repeatedly objected to the accuracy and completeness of the official interpretation.
8 (*Id.* at 13:5-12; 14:15-23; 15:3-9; 16:20-17:10.) The questions posed to Okada, and Okada's
9 answers, were subjected to varying interpretations by the check and official translators.
10 (*E.g., id.* at 31:21-25; 33:23-34:3; 36:23-37:3; 38:6-39:5; 39:18-40:7; 42:6-45:5; 85:16-86:19;
11 132:10-133:22.) And the examining counsel was repeatedly required to restate questions.
12 (*E.g., id.* at 10:17-11:9; 14:25-15:13; 30:9-31:15; 40:8-13.) As a result of these persistent issues,
13 the nearly 6 to 7 hour deposition barely scratched the surface of then-relevant issues, which dealt
14 only with the narrow issue of the purpose behind Okada's petition for writ.

15 The interpretation during the deposition was not the only issue that considerably slowed
16 down the deposition. As expected, the deposition was highly contested by Okada's counsel.
17 (*E.g., id.* at 35:10-36:14; 67:21-69:7; 88:1-89:6.) But, at times, the objections were overzealous,
18 and resulted in numerous colloquies between counsel. (*E.g., id.* at 88:1-89:6; 116:23-119:9;
19 123:9-126:1; 126:12-127:24.) The repeated objections also caused the deposition of a central
20 figure in this complex business court case to proceed much slower than a routine deposition in a
21 more simple breach of contract case.

22 **III. ARGUMENT**

23 **A. Okada's Deposition Should be Held in Las Vegas.**

24 Wynn Resorts may unilaterally choose the location to conduct Okada's deposition subject
25 to the Court granting a protective order pursuant to NRCP 26(c). *See* NRCP 30(a)(1); *McGee v.*
26 *Hanger Prosthetics & Orthotics, Inc.*, 2013 WL 1701098, at *5 (D. Nev. Apr. 18, 2013) (citations
27
28

1 omitted); *see also Cadent Ltd. v. 3M Unitek Corp.*, 232 F.R.D. 625, 628 (C.D. Cal. 2005).²
2 NRCP 26(c) provides that a protective order should only be granted when the moving party
3 establishes "good cause" for the order and "justice requires [a protective order] to protect a party
4 or person from annoyance, embarrassment, oppression or undue burden or expense," including an
5 order "that the discovery may be had only on specified terms and conditions, including a
6 designation of the time or place." *See* NRCP 26(c)(2). Okada has the burden under NRCP 26(c)
7 to show good cause for the issuance of a protective order requiring the deposition to be held in
8 Tokyo, Japan, instead of Las Vegas, Nevada, where it was noticed. *Cadent*, 232 F.R.D. at 629
9 (citing cases).

10 Although some courts have loosely referred to a "presumption" that a non-resident
11 defendant's deposition will be held where he or she resides, in reality, this so-called
12 "presumption" is often treated by courts as "merely a kind of general rule that facilitates
13 determination when other relevant factors do not favor one side over the other." *New Medium*
14 *Techs. LLC v. Barco NV.*, 242 F.R.D. 460, 466 (N.D.Ill.2007) (internal quotation marks and
15 citations omitted).³ Indeed, the presumption has "little force" where the plaintiff's forum selection
16 options are limited. *Mill-Run Tours, Inc. v. Khashoggi*, 124 F.R.D. 547, 550 (S.D.N.Y. 1989)
17 (finding that the standard presumption had "little force in this case" where the defendants reside in
18 various countries "so that no other single forum would have been more convenient for all").
19 Regardless, the presumption is not "invariable." *Hirsch v. Glidden Co.*, 79 F. Supp. 729, 730
20 (S.D.N.Y.1948)).

21 If there does not appear to be a convenient location for all of the parties, "the task of
22 deciding the proper location falls on the court." *S.E.C. v. Banc de Binary*,
23 No. 2:13-CV-993-RCJ-VCF, 2014 WL 1030862, at *3 (D. Nev. Mar. 14, 2014) (citing
24 *In re Outsidewall Tire Litig.*, 267 F.R.D. 466, 471 (E.D. Va. 2010)). Thus, the determination as

25 _____
26 ² Federal court interpretations of analogous Federal Rules of Civil Procedure are persuasive
27 authority. *Greene v. Eighth Judicial Dist. Court of Nevada ex rel. Cnty. of Clark*, 115 Nev. 391,
28 393 (1999).

³ As the court explained, the presumption "is not a presumption at all. Indeed, it is the
antithesis of a presumption." *New Medium Techs.*, 242 F.R.D. at 466.

1 to the location of a deposition is "ultimately an exercise in the vast discretion a district court has
2 in supervising discovery." *New Medium Techs.*, 242 F.R.D. at 462.⁴

3 When making this determination, courts consider a vast array of non-exhaustive factors.
4 Not one factor is dispositive as the court must ultimately consider each case on its own facts as
5 well as the equities of the particular situation. Courts within the Ninth Circuit apply the
6 five-factor test noted in *Cadent*. See *S.E.C. v. Banc de Binary*, No. 2:13-CV-993-RCJ-VCF,
7 2014 WL 1030862, at *3 (D. Nev. Mar. 14, 2014). The *Cadent* factors include: (1) the location
8 of counsel for the parties in the forum district; (2) the number of corporate representatives a party
9 is seeking to depose; (3) the likelihood of significant discovery disputes arising which would
10 necessitate-resolution by the forum court; (4) whether the persons sought to be deposed often
11 engage in travel for business purposes; and (5) the equities with regard to the nature of the claim
12 and the parties' relationship. See *Cadent*, 232 F.R.D. at 629. But, of course, these are not the only
13 factors a court may consider. See *Banc de Binary*, 2014 WL 1030862, at *3. When considering
14 where to locate the deposition of a defendant residing overseas, courts additionally consider:
15 (6) its ability to supervise depositions and resolve discovery disputes and (7) whether the
16 deposition abroad would promote the goals of Rule 1 – "to secure the just, speedy, and
17 inexpensive determination of every action and proceeding." *Id.*

18 ***1. All parties have lead counsel in Las Vegas.***

19 Okada's co-lead counsel is located in Las Vegas. Wynn Resorts' co-lead counsel is
20 similarly located in Las Vegas. Okada does not contend that his local counsel could not
21 adequately represent him during his deposition in this forum. Without any asserted need for
22 out-of-state counsel, the location of lead counsel within this forum strongly weighs in favor of
23 conducting the deposition of Okada in Nevada. See *Paleteria La Michoacana, Inc. v. Productos*

24
25 ⁴ Accordingly, "there are numerous cases in which courts have ordered depositions of
26 foreign defendants taken in the United States, rather than at the defendant's principal place of
27 business." *In re Vitamin Antitrust Litig.*, 2001 WL 35814436, at *3 (D.D.C. Sept. 11, 2001); see
28 also *McKesson Corp. v. Islamic Republic of Iran*, 185 F.R.D. 70 (D.D.C. 1999); *Fin. Gen.*
Bankshares, Inc. v. Lance, 80 F.R.D. 22, 23 (D.D.C. 1978); *Custom Form Mfg., Inc. v.*
Omron Corp., 196 F.R.D. 333, 336-37 (N.D. Ind. 2000); *New Medium Techs.*, 242 F.R.D. at 460
(requiring corporate deponent to travel from Japan to Chicago).

1 *Lacteos Tocumbo S.A. de C.V.*, 292 F.R.D. 19, 22 (D.D.C. 2013) (location of all lead counsel in
2 California weighed the factor in favor of holding the deposition in California).

3 Even if Okada intends to utilize his out-of-state counsel, his counsel would only be
4 required to travel from Washington D.C. to Nevada. Indeed, Okada's out-of-state counsel are all
5 admitted pro hac vice, and have travelled frequently to Las Vegas to appear before this Court
6 (as they intend to do for the hearing of this motion and others on June 4). Okada's deposition
7 would be no different. Moreover, travel from Washington D.C. to Nevada is far less burdensome
8 than a cross-country, and cross-Pacific flight to Japan. *See E.I. DuPont de Nemours & Co. v.*
9 *Kolon Indus., Inc.*, 268 F.R.D. 45, 55 (E.D. Va. 2010) (finding that the first factor weighed in
10 favor of the plaintiff where the defendant had American counsel "who would be inconvenienced
11 more by travel to Korea than travel to a location in [Virginia]").

12 Instead of exploiting the efficiencies that could be gained from the location of counsel in
13 Nevada, the Okada Parties insist that ***all counsel travel to Japan***. The Okada Parties' proposed
14 location would potentially require eight different law firms, client representatives, interpreters, a
15 court reporter, and a videographer to fly from various locations around the United States to
16 Tokyo. Quite frankly, given that Okada resides in Hong Kong (MPO 10:4), he, too, may have to
17 travel to Japan for his own deposition. This is simply not time or cost efficient. Given the
18 number of parties and attorneys actively involved in this litigation, there are considerable
19 efficiencies to be gained by ordering Okada's deposition to take place in Las Vegas, and they
20 outweigh any conceivable burden to Okada, if he even has a burden.

21 **2. *The number of corporate representatives is limited.***

22 Okada makes much ado about how he is the corporate representative for his Nevada
23 entity, Aruze, and his Japanese entity, Universal, therefore his deposition should be taken in
24 Japan. But Wynn Resorts only noticed the deposition of Okada. (Ex. 3, Notice.) Wynn Resorts
25 did not serve either Aruze USA or Universal Entertainment with a Notice of Rule 30(b)(6)
26 deposition. (*Id.*) The fact that the deposition is of Okada weighs in favor of holding his
27 deposition within this State. *See Foley v. Loeb*, No. 06-53S, 2007 WL 132003, at *1
28

(D.R.I. Jan. 16, 2007) (the second factor did not weigh in favor of the defendant where there was only one deponent at issue).

Wynn Resorts' NRCP 16.1 disclosure changes nothing. Wynn Resorts disclosed a list of individuals who are likely to have discoverable information, and will continue to supplement that list as discovery proceeds. But, Wynn Resorts only noticed the deposition of Kazuo Okada at this point in time; not a 30(b)(6) from the defendant/counter-claimant entities on various subjects. Thus, relocating Okada's deposition to Japan will not result in any cost or time savings.⁵ Indeed, the opposite is most certainly true. Accordingly, the second factor weighs in favor of conducting Okada's deposition in Nevada.

3. *There is a strong likelihood of significant discovery disputes arising which would necessitate resolution by the Court.*

This Court and all of the parties are aware of the disputes that did and will likely again arise during Okada's deposition in the books and records proceeding. More substantive issues certainly will be discussed during this merits deposition, and there are significant discovery disputes among the parties that are in different stages of resolution. Discovery has demonstrated that this matter is both highly contested and actively litigated. The best indicator of future discovery disputes is the disputes that have transpired thus far. *See New Medium Techs. LLC*, 242 F.R.D. at 467 ("[T]he wrangling that has gone on so far is a fair predictor of what may come."). Okada's deposition will not be an exception to the rule.

⁵ The Okada Parties' reliance upon *Stonebreaker v. Guardian Life Ins. Co.*, 820 F. Supp. 2d 1096, 1099 (S.D. Cal. 2011), is misplaced. In *Stonebreaker*, the plaintiff served the defendant with a notice of PMK deposition, and required the defendant to designate witnesses for the four noticed topics. *Stonebreaker*, 820 F. Supp. 2d at 1098. Although the defendant only designated a single witness, the court noted that the second factor weighed in favor of the defendant where the plaintiff may be required to depose further witnesses if the PMK deposition was not sufficient. *Id.* at 1099.

But again, Wynn Resorts did not notice a Rule 30(b)(6) deposition of either Aruze USA or Universal Entertainment. The concern regarding multiple deponents present in *Stonebreaker* is not present here, and the second factor weighs in favor of Wynn Resorts. *See Doe v. Successfulmatch.com*, No. 5:13-CV-03376 LHK-HRL, 2014 WL 5775328, at *2 (N.D. Cal. Nov. 5, 2014) (considering the fact that only a single corporate designee was to be deposed in finding that the factors weighed in favor of holding the deposition in the forum state).

1 The strong likelihood of disputes during Okada's deposition weigh in favor of conducting
2 his examination in this forum, and in this time zone,⁶ to allow the deposition to proceed fairly and
3 expeditiously. *See El Camino Res. Ltd. v. Huntington Nat. Bank*, No. 1:07-CV-598,
4 2008 WL 2557596, at *5 (W.D. Mich. June 20, 2008) (the potential for discovery disputes
5 weighed in favor of conducting the deposition in the forum state where discovery was contentious
6 and the court was faced with two other discovery motions set for hearing); *see also Campbell v.*
7 *Sedgwick Detert, Moran & Arnold*, No. CIV. 11-642-ES-SCM, 2013 WL 1314429, at *13
8 (D.N.J. Mar. 28, 2013) (large number of prior discovery disputes weighed in favor of conducting
9 the deposition in the forum where there was a "high likelihood that disputes will arise during the
10 depositions that may require resolution by the Court.").

11 **4. Okada reached into this forum, and routinely travelled to Las Vegas.**

12 Okada cannot run from the fourth factor, which clearly weighs in favor of a Las Vegas
13 deposition. "When considering this factor the dispositive question is whether the foreign
14 defendant reached into the forum to conduct business." *S.E.C. v. Banc de Binary*,
15 No. 2:13-CV-993-RCJ-VCF, 2014 WL 1030862, at *7 (D. Nev. Mar. 14, 2014) (citing *Turner v.*
16 *Prudential Ins. Co. of Am.*, 119 F.R.D. 381, 384 (M.D.N.C. 1988)). "Defending lawsuits in
17 various forums throughout this country is . . . one of the expected costs of doing business for
18 defendant." *Turner v. Prudential Ins. Co. of Am.*, 119 F.R.D. 381, 384 (M.D.N.C. 1988).

19 Okada, the Director, President, Secretary, and Treasurer of Aruze USA, is in control of
20 Aruze USA. (See SAC, ¶¶ 5, 6.) Okada formed Aruze USA to become the shareholder of
21 Wynn Resorts. (See MPO, 10:14-15.) In doing so, Okada formed Aruze USA under the laws of
22 the State of Nevada. (See SAC, ¶ 6.) And Okada is a Nevada gaming licensee. Both Okada and
23 Aruze USA reached into this State and sought the protection from the laws of the
24 State of Nevada. After obtaining the benefits from incorporation, and from obtaining ownership
25 in Wynn Resorts, a Nevada corporation, Okada cannot seek to avoid the imposition of the related
26 costs, including sitting for a deposition within this forum. *See S.E.C. v. Banc de Binary*,
27 No. 2:13-CV-993-RCJ-VCF, 2014 WL 1030862, at *7 (D. Nev. Mar. 14, 2014) (defendant may

28

⁶ Tokyo, Japan is sixteen hours ahead of Pacific Standard Time.

1 not benefit from "its status as a foreign corporation after it has exploited its appearance as an
2 American company").

3 Regardless, Okada has routinely travelled to Nevada. Okada served as Vice Chairman of
4 Wynn Resorts' Board starting in 2002. (See FAC, ¶ 52.) Until February 18, 2012, for a period of
5 more than ten years, Okada routinely travelled to Las Vegas for Board of Director meetings,
6 Wynn Resorts' Annual Meeting, and other non-Wynn Resorts business and pleasure as well.
7 Furthermore, Wynn Resorts' claims are supported by affirmative statements and omissions made
8 by Okada during at least three Board of Director meetings. (See SAC, ¶¶ 25, 34, 36.) Okada's
9 actions and travel within this forum weigh in favor of Wynn Resorts. See *Maggard v. Essar*
10 *Global Ltd.*, No. 2:12CV00031, 2013 WL 6158403, at *4 (W.D. Va. Nov. 25, 2013) *objections*
11 *overruled*, No. 2:12CV00031, 2013 WL 6571940 (W.D. Va. Dec. 13, 2013) (the travel of the
12 foreign deponents weighed in favor of conducting the deposition in New York where the
13 Amended Complaint alleged that the deponents travelled to New York). Okada cannot run from
14 this forum, and should not be permitted to do so at his whim.⁷

15 **5. *The equities with regard to the nature of the claim and the parties'***
16 ***relationship weigh heavily in favor of holding Okada's deposition in***
 Las Vegas.

17 Okada next argues that because his conduct under scrutiny took place outside of
18 Las Vegas, his deposition should be permitted to take place in Japan. But the location of Okada's
19 alleged misconduct – even if it were all outside of Las Vegas – is not relevant to the disposition of
20 Wynn Resorts' claims. Wynn Resorts alleged that Okada engaged in a corrupt course of conduct
21 that breached the fiduciary duties owed to Wynn Resorts. (See SAC, ¶¶ 62 – 74.) Similarly,
22 Wynn Resorts alleged that Okada's actions jeopardized Wynn Resorts' existing and prospective
23 gaming licenses. (*Id.* at ¶ 87.) The breaches will only be resolved after interpreting and applying
24 Nevada corporate law. See *In re Amerco Derivative Litig.*, 127 Nev. Adv. Op. 17, 252 P.3d 681,

25 _____
26 ⁷ While Okada's travels to the United States have apparently decreased since the
27 United States government's investigation into his activities commenced, it bears mention that
28 Okada travels to the United States when he wants and when it is advantageous to him and his
business. Okada reportedly and willingly travelled to the United States in March 2015 when his
gaming license in Mississippi was up for renewal. His license was renewed with a
caveat/condition related to the outcome of any government investigation.

1 702 (2011); *see also Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184
2 (2006). The authorization for the actions taken by the Board of Directors will be provided based
3 upon the interpretation and application of Wynn Resorts' Articles of Incorporation, and
4 well-established Nevada corporate law regarding the business judgment rule. *See* NRS 78.138;
5 *see also Shoen*, 122 Nev. at 622, 137 P.3d at 1179. The Court will also be required to review
6 Nevada Gaming Regulations governing suitability and licensing of gaming applicants and gaming
7 licensees. *See* Nev. Gaming Regs. §§ 3.090, 3.080. Thus, the nature of Wynn Resorts' claims
8 involve the interpretation and application of Nevada's corporate law.

9 Furthermore, all of the parties have strong connections to this forum. Of course, Okada
10 was Vice Chairman of Wynn Resorts, and a member of the Board of Directors. (*See* SAC, ¶ 5.)
11 Okada, through Aruze USA, owned 19.66% of Wynn Resorts. (*Id.*) Okada incorporated
12 Aruze USA in Nevada only for the purpose of holding shares in Wynn Resorts. (*Id.* at ¶ 6;
13 *see also* MPO, 10:14-15.) In fact, the Okada Parties alleged that Aruze USA's principal place of
14 business is in Las Vegas, Nevada.⁸ (*See* FAC, ¶ 13.) Aruze USA was found suitable by the
15 Nevada Gaming Commission as a stockholder of Wynn Resorts. (*Id.*) Universal was also found
16 to be suitable, and was issued a manufacturer's license by the Nevada Gaming Commission.
17 (*See* SAC, ¶7; *see also* FAC, ¶14.) Permitting Okada to now benefit from his alleged status as a
18 non-resident defendant after his strong ties to and many advantages reaped from Nevada would be
19 inequitable.

20 **6. *Conducting the deposition in Tokyo would severely compromise the***
21 ***Court's ability to supervise and resolve discovery disputes.***

22 Although the parties will act in good faith to resolve any disputes that arise during Okada's
23 deposition, as previously discussed, there is a high probability that disputes will arise that require
24 this Court's intervention. If Okada's deposition proceeds in Tokyo, the time difference would
25 render the Court 16 hours behind. As a result of the substantial time difference, the parties would
26

27 ⁸ *See Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224 (9th Cir. 1988) ("Factual assertions
28 in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively
binding on the party who made them.").

1 be prevented from conferring with the Court at the end of each day, and prevented from obtaining
2 any immediate relief.⁹ The Court's inability to promptly resolve any dispute would only cause
3 further delay and additional expense. Other courts have recognized the adverse impact on the
4 court's supervisory role when depositions are conducted in Japan. *See New Medium Techs. LLC*,
5 242 F.R.D. at 467 ("[C]onducting depositions in Japan, over a dozen time zones away and on the
6 other side of the International Dateline, would severely compromise – to put it mildly – the court's
7 ability to intervene should problems arise."); *see also Custom Form Mfg.*, 196 F.R.D. at 336-37
8 (noting that a United States court's authority to resolve discovery disputes that might arise during
9 depositions in Japan is compromised both by distance and issues of foreign judicial sovereignty);
10 *see also Delphi Auto. Sys. LLC v. Shinwa Int'l Holdings LTD*, 2008 WL 2906765, at *2 (S.D. Ind.
11 July 23, 2008) ("The most significant factor in making the determination as to where the
12 depositions at issue should take place is the ability of the Court to intervene should a dispute
13 arise."). The deposition of this defendant should take place in this forum, where the Court can
14 promptly intervene and resolve the inevitable disputes that will arise. It is, indeed, the most
15 efficient way to proceed for this key deposition of the central figure in this action.

16 **7. *Okada's request is nothing more than a thinly-veiled disguise to prevent a***
17 ***just, speedy, and inexpensive determination of this action.***

18 A number of courts have highlighted how the taking of depositions in Japan can involve
19 significant complications and may have a detrimental impact on the discovery process intended
20 by the Rules of Civil Procedure. *See, e.g., Dean Foods Co. v. Eastman Chem. Co.*,
21 No. C 00-4379 WHO, 2001 U.S. Dist. LEXIS 25447, at *23–24 (N.D.Cal. Aug. 13, 2001) (noting
22 "[t]he burden of procedures required to conduct a deposition in Japan are daunting");
23 *In re Vitamin Antitrust Litig.*, 2001 WL 35814436, at *6 (D.D.C. Sept. 11, 2001) (finding the
24 steps required for taking depositions in Japan to be a burden and given the number of attorneys
25 expected to attend the depositions, the size and availability of conference rooms, the court ordered
26 the depositions of the Japanese defendants' 30(b)(6) witnesses and managing agents in
27

28 ⁹ For example, if the parties concluded the deposition at 5:00 p.m. Tokyo time, it would be
1:00 a.m. in Las Vegas.

1 Washington, D.C., rather than Japan). Depositions in Japan must be taken at the United States
2 consulate in either Tokyo or Osaka.¹⁰ The Tokyo consulate has one conference room that seats
3 only eight people. The Osaka consulate has two conference rooms, one accommodating fifteen
4 people and the other accommodating eight people. Given the scarcity of deposition locations,
5 they must be booked well in advance. From a practical standpoint, requiring the parties to
6 conduct Okada's deposition in Tokyo is unworkable given the limited size and availability of
7 rooms and the number of attorneys expected to attend the depositions. At Okada's last deposition
8 in Las Vegas, there was a total of 20 people in attendance. (Ex. 2, Okada Tr., 7:17-9:5.)¹¹

9 Even if there was a room large enough to accommodate the parties at these mandatory
10 locations, the parties would face the following hurdles in the arrangements: (1) within three
11 weeks of reserving the room pay a \$1,283.00 non-refundable reservation fee, (2) within six weeks
12 before the deposition send a certified copy of the court order/commission, (3) at least three weeks
13 prior to the deposition all parties who will be in attendance must apply for a deposition visa at the
14 Japanese Embassy or a Consulate in the U.S., and (4) two weeks prior to the deposition parties
15 must send a list of all participants and all electronic equipment, including the owner of equipment,
16 make, model and serial number to be used.

17 Once at the deposition, the parties will not be able to bring any electronic devices into the
18 consulate except those pre-approved for recording the deposition, *i.e.* no computers or cell
19 phones. Further, the deposition must occur during the hours of 8:30 a.m. to 1:00 p.m., and
20 2:00 p.m. to 4:00 p.m. All participants must vacate the deposition room between 1:00 p.m. and
21 2:00 p.m. (This will thus increase the number of days needed to conduct Okada's deposition.) In
22 short, taking Okada's deposition in Tokyo will not secure the just, speedy, and inexpensive or
23 most efficient determination of this action. *See* NRCP 1 (the rules "shall be construed and
24
25

26 ¹⁰ *See* Outline of Steps for Depositions in Japan on the website for the Embassy of the
27 United States in Tokyo Japan, <http://japan.usembassy.gov/e/acs/tacs-7116.html>.

28 ¹¹ Telephonic and videoconference depositions – even if that were desired – are prohibited
absent specific authorization from the Japanese Ministry of Foreign Affairs. All participants must
be physically present at the deposition.

administered to secure the just, speedy, and inexpensive determination of every action."). It will do just the opposite.

B. At Least Ten Days are Needed to Fairly Examine Okada.

Okada is arguing vigorously against a 10-day deposition. But the duration was not determined for any ill-purpose; rather, it was a thoughtful decision based upon the multiple parties who intend to examine Okada, the scope of the deposition given the claims and many allegations in the counterclaim, and the practical reality of depositions that involve interpreters. Frankly, while Wynn Resorts endeavors to complete the deposition within that time frame, there is no guarantee that it is possible.

Generally, "unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours." NRCP 30(d)(1). But, courts have discretion to alter the "length of depositions under Rule 30." *USF Ins. Co. v. Smith's Food & Drug Centers, Inc.*, No. 2:10-CV-01513-RLH, 2012 WL 1106939, at *3 (D. Nev. Apr. 2, 2012) (quoting Fed. R. Civ. P. 26(b)(2)(A)) (internal quotations omitted). A party seeking to extend the length of a deposition "is expected to show good cause to justify such an order." *U-Haul Co. of Nev. v. Gregory J. Kamer, Ltd.*, No. 2:12-CV-00231-KJD, 2013 WL 5278523, at *3 (D. Nev. Sept. 17, 2013) (quoting Advisory Comm. Notes to 2000 Amendments to Fed. R. Civ. P. 30) (internal quotations omitted). And there is certainly good cause here.

Ultimately, this Court's good cause determination is "fact specific." *Carmody v. Vill. of Rockville Ctr.*, No. CV05-4907(SJF)(ETB), 2007 WL 2177064, at *2 (E.D.N.Y. July 27, 2007). But, after good cause is established, "[t]he court *must* allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent[.]" *Cohan v. Provident Life & Accident Ins. Co.*, No. 2:13-CV-00975-LDG, 2014 WL 4231238, at *2 (D. Nev. Aug. 26, 2014) (quoting Fed. R. Civ. P. 30(d)(1)) (internal quotations omitted).

Good cause can be established based upon a deponent's need to utilize the services of an interpreter, as well as based upon the need of multiple parties to be provided adequate time to question a witness. *See* Advisory Comm. Notes to 2000 Amendments to Fed. R. Civ. P. 30. It is not uncommon for depositions involving the use of interpreters and translators to be extended.

1 See *Boston Scientific Corp. v. Cordis Corp.*, No. 03-CV-5669 JW (RS), 2004 WL 1945643, at *3
2 (N.D. Cal. Sept. 1, 2004) (permitting a further half-day deposition of a key witness that required
3 the use of an interpreter after being deposed for five full days); see also *In re Republic of*
4 *Ecuador*, No. C-10-80225 MISC CRB, 2011 WL 736868, at *5 (N.D. Cal. Feb. 22, 2011)
5 (extending the deposition from seven hours to three days).¹²

6 Delays are inherent in any deposition that involves the use of an interpreter. But, Okada's
7 prior deposition was delayed by not only the translation, but by the repeated challenges to the
8 official and check translations of both the questions and Okada's answers. (Ex. 2,
9 Okada Tr., 13:5-12; 14:15-23; 15:3-9; 16:20-17:10.) And, these challenge are expected given the
10 complexity of the Japanese language. In fact, there are very few portions of the transcript that did
11 not include any such challenge. (*Id.* at 31:21-25; 33:23-34:3; 36:23-37:3; 38:6-39:5; 39:18-40:7;
12 42:6-45:5; 85:16-86:19; 132:10-133:22.) This necessarily required counsel to restate questions in
13 order to elicit answers from Okada that were accurate and actually responsive to the question.
14 (*Id.* at 10:17-11:9; 14:25-15:13; 30:9-31:15; 40:8-13.) The result was a deposition truncated in
15 scope more than anticipated, but also lengthier in time than anticipated for the books and records

16
17 ¹² The Okada Parties rely upon case law that is factually distinct from the instant matter. For
18 example, in *Balu v. Costa Crociere S.P.A.*, No. 11-60031-CIV, 2011 WL 3359681, at *2
19 (S.D. Fla. Aug. 3, 2011), the court extended the deposition for a total of ten hours in a
20 slip-and-fall case arising from a three-page complaint. *Balu*, 2011 WL 3359681, at *2. The
21 breach of fiduciary duty claims, as well as the request for declaratory relief is far more complex
22 than a mere negligence case. See SAC, ¶¶ 62-92. Furthermore, the allegations cover the actions
of the Okada Parties taken over a period of time in excess of four years. *Id.* at ¶¶ 16-61. But the
lengthy allegations in the counterclaims add not only more subject matters but also a greater
period of time, since Okada is alleging facts and seeking documents that go back as far as 2002.
The additional time requested by the Wynn Parties is absolutely necessary to fairly examine
Okada regarding all of these allegations.

23 Moreover, the remaining cases are procedurally distinct, as well as distinct from the
24 extension of time actually requested by Wynn Resorts. This case does not involve limited
25 discovery to determine this Court's jurisdiction. See *Womack v. Nissan N. Am., Inc.*,
26 No. 2:06-CV-479-DF, 2007 WL 5160790, at *3 (E.D. Tex. Oct. 12, 2007) (granting additional
27 time to depose a witness using an interpreter during limited jurisdictional discovery). And, the
28 Wynn Parties specifically requested that the deposition be extended for a period of ten days. See
Marlborough Holdings Grp., Ltd. v. Pliske Marine, Inc., No. 08-62075-CIV, 2010 WL 4614704,
at *1 (S.D. Fla. Nov. 5, 2010) (granting plaintiff's request to extend the deposition where the
plaintiff specifically requested two days); see also *Gen. Elec. Co. v. SonoSite, Inc.*,
No. 07-C-273-C, 2008 WL 4062098, at *2 (W.D. Wis. Jan. 22, 2008) (granting a specific request
to extend the deposition to ten hours). Based upon the fact-intensive inquiry that this Court must
conduct in order to determine good cause to extend Okada's deposition, Okada's case law is not
persuasive.

1 proceeding. While Okada may prefer the former, it would be unfair to Wynn Resorts and the
2 other parties seeking to examine him.

3 Okada's concerns regarding duplication of questions amongst counsel for the
4 counter-defendants is not supported. A ten-day examination involving Japanese interpretation is
5 certainly necessary but it is not a walk in the park for the examining counsel. It is neither the
6 desire nor intent of counsel to repeat each other's questions and examinations. Each party has a
7 different interest in examining Okada, and each party is entitled to examine Okada related to those
8 interests, claims, and defenses. Examining counsel will limit the overlap as best as possible, but
9 will not forego their respective clients' rights.¹³ The notice of a ten-day deposition was designed
10 to permit an inquiry into all of the relevant allegations, and to compensate for the undoubtedly
11 complex translation issues that will arise. Okada's claim of harassment is baseless.¹⁴

12 Okada also fails to demonstrate that the necessary extension of his deposition will disrupt
13 his business responsibilities. Okada does not regularly work out of either Aruze USA or
14 Universal's offices in Tokyo. (*See* MPO, 10:4-6, 10:11-13.) Okada only travels from Hong Kong
15 to Tokyo once a month. (*Id.*) But even if Okada alleges that he tele-commutes from Hong Kong,
16 Okada's ability to work from Hong Kong more than demonstrates his ability to conduct the affairs
17 of either Aruze USA or Universal from other locations, including the United States. Importantly,
18 as the Okada Parties concede, after Aruze USA's shares were redeemed, Aruze USA cannot be
19 disrupted as it was only formed to be the shareholder of Wynn Resorts. (*See* MPO, 10:14-15.)
20 The absence of a single executive is not sufficient to establish that either Universal or Aruze USA
21 will be disrupted. *See El Camino Res. Ltd. v. Huntington Nat. Bank*, No. 1:07-CV-598,

23 ¹³ Courts have relied on Rule 30 and its Advisory Committee Note in granting additional
24 time for depositions involving examination of a deponent by multiple parties. *See Schmidt v. Levi*
25 *Strauss & Co.*, 2006 WL 2192054 (N.D. Cal. 2006) (given the involvement of multiple parties,
the court permitted each side one day of seven hours to examine deponents with special
knowledge of events in question).

26 ¹⁴ "The length of the deposition, alone, is not indicative of bad faith on the part of . . .
27 counsel, and it does not constitute sufficient reason for terminating the deposition under
28 Rule 30(d). Clearly, the length of the deposition must be considered in light of the nature of the
action, the issues raised and the deponent's involvement in the case." *Hearst/ABC-Viacom*
Entertainment Servs. v. Goodway Marketing, Inc., 145 F.R.D. 59, 63 (E.D. Pa. 1992).

2008 WL 2557596, at *4 (W.D. Mich. June 20, 2008) (claims of potential business disruption were "exaggerated" where a single executive was noticed to be deposed). Regardless, Okada's conclusory allegations are not sufficient to establish any disruption.

IV. CONCLUSION

Given the importance of Okada's deposition, the translation issues involved, the complex nature and multiple parties involved in this action, a ten-day deposition is warranted to fairly examine Okada. For all of the reasons stated herein, Defendant Kazuo Okada's Motion for Protective Order should be denied as the deposition should proceed forward in Las Vegas over the proposed ten-day time frame.

DATED this 29th day of May, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 29th day of May, 2015, I caused to be **electronically served through the Court's filing system** true and correct copies of the foregoing **WYNN RESORTS, LIMITED'S OPPOSITION TO DEFENDANT KAZUO OKADA'S MOTION FOR A PROTECTIVE ORDER TO (1) LOCATE HIS DEPOSITION IN TOKYO AND (2) SET IT FOR THREE DAYS** to the following:

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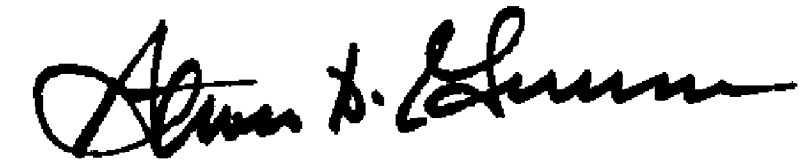
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EXHIBIT 1



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DISTRICT COURT

CLARK COUNTY, NEVADA

KAZUO OKADA, an individual,

Petitioner,

v.

WYNN RESORTS, LIMITED, a Nevada
corporation,

Respondent.

Case No.: A-12-654522-B

Dept. No.: XI

**ORDER REGARDING WYNN
RESORTS, LIMITED'S MOTION FOR
LEAVE TO DEPOSE KAZUO OKADA**

Date of Hearing: June 28, 2012

Time of Hearing: 9:00 a.m.

Respondent Wynn Resorts, Limited's ("Wynn Resorts") Motion For Leave to Depose
Kazuo Okada ("Motion") and Petitioner Kazuo Okada's ("Okada") Counter-motion for Leave to
Depose the Wynn Resorts Directors ("Counter-motion") came before the Court for hearing on

June 28, 2012. Appearing on behalf of Wynn Resorts was James J. Pisanelli, Esq. of PISANELLI BICE PLLC. Appearing on behalf of Petitioner Kazuo Okada ("Okada") was Charles H. McCrea, Esq. of Lionel Sawyer & Collins, and Gidon M. Caine, Esq., of ALSTON & BIRD, LLP. The Court having considered the papers filed on behalf of all parties and the arguments of counsel presented at the hearing, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Wynn Resorts' Motion is GRANTED as follows:

1. Okada shall appear for his deposition in Las Vegas, Nevada;
2. Wynn Resorts shall conduct an examination of Okada with areas of inquiry limited to the alleged improper purpose of Okada's request to inspect Wynn Resorts' books and records as described in his First Amended Petition for Writ of Mandamus;

3 There will be no duplication of examination that occurs during the limited deposition at any subsequent deposition of Okada in the action entitled *Wynn Resorts, Limited v. Kazuo Okada, et al.*, Case No. A-12-656710-B.

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioner Okada's Counter-motion is DENIED.

DATED this 21st day of August, 2012.


THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

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EXHIBIT 2

**SUBMITTED
UNDER
SEAL
PURSUANT
TO
CONFIDENTIALITY
ORDER**

EXHIBIT 3

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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 VIDEOTAPED
DEPOSITION OF KAZUO OKADA**

Dates: July 20-24, 27-31, 2015
Time: 10:00 a.m.

PLEASE TAKE NOTICE that at 10:00 a.m. on the dates of July 20-24, and July 27-31, 2015, at the law office of PISANELLI BICE PLLC, located at 400 South 7th Street, Suite 300, Las Vegas, Nevada 89101, Plaintiff Wynn Resorts, Limited will take the videotaped deposition of KAZUO OKADA upon oral examination, pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public or before some other officer authorized by law to administer oaths.

Oral examination will continue from day to day until completed. You are invited to attend and cross examine.

DATED this 14th day of April, 2015.

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 14th day of April, 2015, I caused to be **electronically served through the Court's e-service/e-filing system** true and correct copies of the foregoing **NOTICE OF VIDEOTAPED DEPOSITION OF KAZUO OKADA** to the following:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

KAZUO OKADA,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE, DEPT. 11,

Respondents.

and

WYNN RESORTS LIMITED, a Nevada
corporation

Real Party in Interest.

Supreme Court No.

District Court Case No. A12-650710
B Electronically Filed
Jun 29 2015 08:46 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**APPENDIX TO KAZUO OKADA'S
PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS**

**VOL. I of III
(APP0001-0225)**

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**APPENDIX TO PETITION FOR
WRIT OF PROHIBITION OR MANDAMUS
CHRONOLOGICAL INDEX**

Date	Description	Vol. #	Page Nos.
4/22/2013	Wynn Resorts 2nd Amended Complaint	1	APP0001-26
11/26/2013	Aruze USA and UEC 4th Amended Counterclaim	1	APP0027-110
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Holland & Hart; that, in accordance therewith and on the 26th day of June 2015, I caused a copy of the **APPENDIX TO KAZUO OKADA'S PETITION FOR WRIT OF PROHIBITION OR MANDAMUS, VOL. I of III (APP0001-0225)** to be delivered, in a sealed envelope, on the date and to the addressee(s) shown below (as indicated below):

VIA HAND DELIVERY:

Judge Elizabeth Gonzalez
Eighth Judicial District Court of Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

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17 DISTRICT COURT

18 CLARK COUNTY, NEVADA

19 WYNN RESORTS, LIMITED, a Nevada
20 Corporation,

21 Plaintiff,

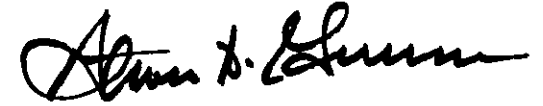
22 vs.

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

25 Defendants.

26 AND ALL RELATED CLAIMS
27
28

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CLERK OF THE COURT

Case No.: A-12-656710-B

Dept. No.: XI

SECOND AMENDED COMPLAINT

**(Request for Business Court Assignment
Pursuant to EDCR 1.61(a))**

**(Exempt from Arbitration – Declaratory
Relief Requested)**

1 Plaintiff Wynn Resorts, Limited ("Wynn Resorts" or "the Company"), by and through its
2 undersigned counsel, hereby files the above-captioned Second Amended Complaint:

3 **NATURE OF THE ACTION**

4 This is an action for breach of fiduciary duty and related offenses committed against
5 Wynn Resorts by one of its former directors, Kazuo Okada, and his affiliates. Beginning in 2010,
6 Wynn Resorts began to uncover evidence that Mr. Okada, his companies, and their associates
7 were engaged in unethical, unlawful, and potentially criminal activities in the Philippines in
8 connection with the development of a casino resort in that country. The evidence raised
9 substantial questions as to Mr. Okada's probity and his suitability to be associated with a
10 corporation in the casino gaming industry. Because of this, Mr. Okada's business activities in the
11 Philippines posed an ongoing and potentially significant risk for Wynn Resorts' existing and
12 potential future gaming licenses.

13 When confronted with the mounting evidence of his wrongdoing, however, Mr. Okada
14 was evasive, and tried to conceal his misconduct from Wynn Resorts and its Board — a clear
15 breach of Mr. Okada's duty to make a full and fair disclosure to the Company of all facts that
16 materially affect its rights and interests. Mr. Okada also consistently refused to take steps to
17 address Wynn Resorts' concerns, either by shutting down his Philippine project or by severing his
18 ties with Wynn Resorts. By engaging in the wrongful conduct alleged herein while associated
19 with Wynn Resorts, failing to make full and fair disclosure to the Company and his fellow
20 directors about the factual circumstances surrounding his business activities in the Philippines,
21 and refusing to act to protect the Company's rights and interests when called upon to do so,
22 Mr. Okada breached his fiduciary duties to Wynn Resorts.

23 In view of Mr. Okada's inaction and his and his counsel's refusal to cooperate with the
24 Company's investigations or provide any explanation for the troubling evidence that had been
25 presented to them by the Company and its attorneys, in the fall of 2011, the Compliance
26 Committee of Wynn Resorts retained former Director of the Federal Bureau of Investigation,
27 Louis J. Freeh, to conduct a comprehensive investigation of Mr. Okada's business activities in the
28 Philippines and their potential impact on Wynn Resorts' interests. As discussed in his written

1 report to the Board (attached as Exhibit 1), Mr. Freeh uncovered substantial evidence of gross
2 improprieties by Mr. Okada and his agents, including evidence that Mr. Okada had made a series
3 of payments to the Philippine gaming regulators with direct responsibility for overseeing
4 Mr. Okada's development project. Based on these findings, and upon the advice of two
5 independent gaming experts, the Board exercised its authority under the Wynn Resorts Articles of
6 Incorporation to declare Mr. Okada and his affiliates unsuitable and to redeem the Wynn Resorts
7 stock held by a company that Mr. Okada controlled. In addition to seeking damages for
8 Mr. Okada's breaches of fiduciary duty, Wynn Resorts seeks a declaration from this Court that
9 the Board's actions in this regard were lawful in all respects.

10 PARTIES AND RELEVANT PERSONS/ENTITIES

11 1. Plaintiff Wynn Resorts is and was at all times relevant hereto a corporation
12 organized and existing under the laws of the State of Nevada, with its principal place of business
13 in the State of Nevada. Wynn Resorts is publicly traded on NASDAQ.

14 2. Wynn Resorts is a world class developer of destination resort casinos.
15 Wynn Resorts owns resort casinos through its wholly owned subsidiary Wynn Las Vegas, LLC
16 ("Wynn Las Vegas") and through its majority owned subsidiary Wynn Macau, Limited
17 ("Wynn Macau").

18 3. Wynn Las Vegas operates the Wynn Las Vegas and Encore resort casinos in
19 Las Vegas, Nevada.

20 4. Wynn Macau is a Cayman Islands company that is publicly traded on the
21 Hong Kong Stock Exchange. Wynn Macau operates the Wynn Macau and Encore at
22 Wynn Macau resort casinos in Macau through its wholly owned subsidiary, Wynn Resorts
23 (Macau), S.A., a company organized and existing under the laws of Macau Special
24 Administrative Region of the People's Republic of China.

25 5. Defendant Mr. Okada is and was at all times relevant hereto a citizen of Japan and
26 a member of the Board of Directors of Wynn Resorts. During the relevant period, Mr. Okada
27 served multiple roles with Wynn Resorts and its affiliated companies. In addition to serving as a
28 Wynn Resorts director, until February 24, 2012, Mr. Okada was a member of the Board of

1 Directors of Wynn Macau, and, until February 18, 2012, he controlled a shareholder that owned
2 approximately 19.66% of Wynn Resorts. Moreover, between October 2002 and November 2011,
3 Mr. Okada served as Vice Chairman of Wynn Resorts. On February 21, 2013, Mr. Okada
4 resigned as a director of Wynn Resorts, one day before a scheduled special meeting of
5 Wynn Resorts' stockholders that had been called to consider and vote on a proposal to remove
6 Mr. Okada from the Board. The special meeting was held as scheduled, and the removal proposal
7 was approved by 99.6% of the shares voted at the special meeting.

8 6. Defendant Aruze USA, Inc. ("Aruze USA") is and was at all times relevant hereto
9 a corporation organized and existing under the laws of the State of Nevada and a wholly owned
10 subsidiary of defendant Universal Entertainment Corporation ("Universal"). Until February 18,
11 2012, Aruze USA was a 19.66% shareholder in Wynn Resorts. Mr. Okada serves as Director,
12 President, Secretary, and Treasurer of Aruze USA.

13 7. Defendant Universal (formerly Aruze Corporation) is a public corporation
14 organized under the laws of Japan. Universal manufactures and sells pachislot and pachinko
15 machines and other similar gaming equipment. Universal does business in the State of Nevada,
16 has been issued a manufacturer's license by the Nevada Gaming Commission, and was deemed
17 suitable by the Nevada Gaming Commission as a 100% shareholder of Aruze USA. Mr. Okada
18 serves as Director and Chairman of the Board of Universal, and, together with his family
19 members, is a 67.9% shareholder of Universal.

20 8. In February 2012, the Wynn Resorts Board of Directors consisted of twelve
21 members: Chairman Stephen A. Wynn, Linda Chen, Russell Goldsmith, Dr. Ray R. Irani, former
22 Nevada Governor Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
23 D. Boone Wayson, Elaine P. Wynn, Allan Zeman, and Mr. Okada.

24 9. Wynn Resorts' Gaming Compliance Committee (the "Compliance Committee") is
25 an internal committee chaired by Governor Miller and consisting of two additional members:
26 Mr. Schorr (director and Chief Operating Officer of Wynn Resorts) and John Strzemp (Executive
27 Vice President and Chief Administrative Officer of Wynn Resorts). The Compliance Committee
28

1 is charged with assuring Wynn Resorts' compliance with all laws and regulations, including, in
2 particular, applicable gaming laws, regulations, and policies.

3 10. The Honorable Louis J. Freeh, Esq. is a former director of the Federal Bureau of
4 Investigation, having led that agency with distinction from 1993 to 2001. Prior to serving as FBI
5 Director, Mr. Freeh was a United States District Court Judge. In February 2012, Mr. Freeh was a
6 partner in Freeh Sporkin & Sullivan, LLP — a law firm he founded with two other former federal
7 judges — which specialized in domestic and foreign corporate investigations and compliance.
8 Today, Mr. Freeh is a partner and the chairman of the Executive Committee of Pepper
9 Hamilton LLP.

10 JURISDICTION

11 11. Defendants Mr. Okada, Universal, and Aruze USA have each individually and in
12 concert with one another caused the acts and events herein within the State of Nevada, and all are
13 subject to the jurisdiction of this Court. Venue is also proper in this Court.

14 12. This matter is properly designated as a business court matter and assigned to the
15 Business Docket under EDCR 1.61(a), as the claims alleged herein arise from business torts.

16 GENERAL ALLEGATIONS

17 13. A Nevada gaming license is a privilege. Nevada law imposes comprehensive
18 regulatory requirements upon gaming licensees, including the requirement that persons and
19 entities associated with the licensee possess the necessary character, qualifications, and integrity
20 to be suitable to hold that privilege so as not to threaten the public interest or the integrity of the
21 regulation and control of gaming.

22 14. Under the applicable gaming laws and regulations, Wynn Resorts has an obligation
23 to police itself and to take independent and proactive measures with respect to compliance issues
24 before it becomes necessary for gaming regulators to take action. Consistent with this regulatory
25 framework, Wynn Resorts has adopted a compliance program that requires the Compliance
26 Committee to, among other things, investigate senior officers, directors, and key employees to
27 protect Wynn Resorts from becoming associated from any unsuitable persons. The compliance
28

1 program further requires Wynn Resorts to self-report to Nevada gaming regulators with respect to
2 any significant compliance-related issues that may arise.

3 15. As a director of Wynn Resorts (and formerly, through Aruze USA, one of its
4 largest shareholders), Mr. Okada's conduct and reputation for probity had a direct impact on the
5 ability of Wynn Resorts to maintain its Nevada gaming license and to seek additional licenses in
6 the future. Accordingly, pursuant to Nevada law and its own compliance program, Wynn Resorts
7 was obliged to monitor Mr. Okada's business activities to ensure that his association with
8 Wynn Resorts did not create any regulatory concern.

9 *Okada Announces Plan to Enter Philippine Market*

10 16. In or about 2008, Wynn Resorts learned that Mr. Okada, through one or more
11 companies he controlled, had publicly stated his intention to develop a casino resort in the
12 Philippines. Wynn Resorts was not and has never been an investor or participant in Mr. Okada's
13 development project in the Philippines.

14 17. For a number of reasons, it was highly uncertain whether Mr. Okada's planned
15 casino resort in the Philippines would ever come to fruition. The scale of the proposed
16 development was larger than any comparable project in existence in the Philippines at the time,
17 and Mr. Okada and the companies he controlled had never developed anything on such a scale
18 previously. Numerous approvals and licenses from the Philippine government would also be
19 needed before any project could get off the ground, let alone become operational.

20 18. In 2008, the Philippines Amusement and Gaming Corporation ("PAGCOR")
21 awarded four provisional gaming licenses, without public bidding, in connection with a
22 development project in the Manila Bay area referred to as Entertainment City. PAGCOR is a
23 100% government-owned and -controlled corporation that operates under the direct supervision of
24 the Office of the President of the Philippines and is charged with licensing and regulating casino
25 gaming in the Philippines. One of the provisional licenses that PAGCOR awarded went to a
26 newly-formed entity that is 99% owned by Aruze USA, known as Tiger Resort, Leisure and
27 Entertainment Inc.
28

1 19. Apart from obtaining a provisional license, however, between 2008 and early
2 2010, Mr. Okada and his companies made very little apparent progress with respect to the
3 proposed development in the Philippines. Indeed, on various occasions during that period,
4 Mr. Okada made statements to Mr. Wynn and others at Wynn Resorts expressing doubt that he
5 would ever actually develop a casino resort in the Philippines, stating that he had reconsidered.

6 20. In this period of time, Wynn Resorts did not know what activities Mr. Okada was
7 engaged in to promote his Philippine project. As of early 2010, Wynn Resorts had no reason to
8 suspect that Mr. Okada and his associates would engage in unethical or unlawful conduct, or that
9 Mr. Okada's project in the Philippines would damage Wynn Resorts or pose a threat to
10 Wynn Resorts' gaming licenses. Indeed, Mr. Okada had every reason to conceal his activities,
11 both because he could be harmed by its exposure, and because Mr. Okada made periodic attempts
12 in that time period to persuade Wynn Resorts and/or Mr. Wynn to have some degree of
13 involvement with his Philippine project.

14 *Wynn Resorts Begins to Have Concerns*

15 21. Beginning in 2010, a number of events occurred to change Wynn Resorts'
16 perception of Mr. Okada and his Philippine project. In June 2010, as Mr. Wynn was planning to
17 return from a visit to Macau, Mr. Okada prevailed on Mr. Wynn to make an unscheduled stopover
18 in Manila in the course of his trip back to the United States. Mr. Wynn had no interest in
19 involving Wynn Resorts in Mr. Okada's project in the Philippines and agreed to the visit as a
20 courtesy to Mr. Okada. Mr. Okada abused Mr. Wynn's courtesy, however, and went to great
21 lengths to try to associate Wynn Resorts and Mr. Wynn with his Philippine project.

22 22. Unbeknownst to Mr. Wynn, Mr. Okada had arranged for a public event at his
23 Manila Bay development site that was to be attended by various Philippine government officials.
24 Mr. Okada conspicuously publicized Mr. Wynn's attendance at the event by erecting a large sign
25 that read, "Welcome to the Philippines Chairman Steve Wynn," and bore the trademarked
26 corporate logo of Wynn Resorts. Mr. Wynn immediately recognized that Mr. Okada had brought
27 him to the Philippines under misleading pretenses, and that he had orchestrated the event to send
28

1 the false message to the Philippine government that Wynn Resorts' good reputation and standing
2 in the casino resort industry backed Mr. Okada's development project.

3 23. Following Mr. Wynn's stopover in Manila, and in light of concerns that Mr. Okada
4 was trading on Wynn Resorts' reputation and creating the false impression that Wynn Resorts had
5 a role in his Philippine project, management determined to conduct an investigation regarding the
6 general business environment in the Philippines as part of the Company's general compliance
7 program. Management produced a written report and presented it to the Board (including
8 Mr. Okada) in July 2010.

9 24. Based on reports from sources in the U.S. government and local authorities in the
10 Philippines, as well as international organizations and media, the report concluded that corruption
11 posed a major problem in the Philippines and that Philippine anti-corruption efforts were
12 ineffective. Management's report cited a "Global Corruption Barometer" study that listed the
13 Philippines in the top quintile of "Countries most affected by bribery."

14 25. At this same July 2010 meeting of the Wynn Resorts Board, the other directors
15 asked Mr. Okada to state his intentions with respect to his casino resort development in the
16 Philippines. Mr. Okada was evasive, however, and failed to alleviate the Board's concerns. By
17 refusing to make full disclosure to the Board about his business activities in the Philippines and
18 the factual circumstances surrounding those activities, Mr. Okada was able to conceal his
19 wrongful conduct from the Company and his fellow directors.

20 26. Although Wynn Resorts did not appreciate the situation at the time — due to
21 Mr. Okada's lack of candor — 2010 was a critical period for Mr. Okada's project in the
22 Philippines. Effective June 30, 2010, Benigno S. Aquino III assumed office as President of the
23 Republic of the Philippines, succeeding Gloria M. Arroyo. Soon thereafter, President Aquino
24 appointed Cristino L. Naguiat, Jr. to replace Efraim C. Genuino as the Chairman of PAGCOR.

25 27. In July 2010, reports surfaced in the Philippine press that at the behest of the new
26 President, Mr. Naguiat was investigating certain "midnight deals" that had been approved by his
27 predecessor. Specifically, in his final weeks as Chairman, Mr. Genuino, with the support of
28 then-President Arroyo, had caused PAGCOR to award several gaming licenses and related

1 concessions on an abnormally expedited basis. Among the beneficiaries of these deals was
2 Mr. Okada, who received a special exemption allowing an Okada-controlled company to take title
3 to the land on which his casino resort was to be built. Without the exemption, Mr. Okada's
4 company would have been subject to Philippine law prohibiting foreign investors from owning
5 land. A decision by Mr. Naguiat to revoke the exemption, therefore, would have significantly
6 impaired Mr. Okada's project in the Philippines.

7 28. Despite direct inquiry by Wynn Resorts management, the Company was not made
8 aware of these events until 2011, when it began to receive certain third-party investigative reports
9 discussed below. Mr. Okada still has never made a full or fair disclosure to the Company despite
10 the material effects his activities in the Philippines have had on Wynn Resorts' rights and
11 interests.

12 *Wynn Resorts Receives Further Evidence of Mr. Okada's Misconduct*

13 29. By mid-2010, Wynn Resorts had no definitive proof of wrongdoing by Mr. Okada
14 or his associates. Mr. Okada's continued evasiveness, however, coupled with substantial
15 concerns about widespread corruption in the Philippines, caused Wynn Resorts to determine that
16 further inquiry was warranted.

17 30. Accordingly, in early 2011, Wynn Resorts retained a well-known investigative
18 organization, The Arkin Group LLC ("Arkin Group"), to further examine the risks associated
19 with doing business in the Philippines and to investigate Mr. Okada's activities in that country.
20 Arkin Group summarized its findings in a series of written reports that were provided to
21 Wynn Resorts in February 2011.

22 31. Based on its investigation, which included interviews of Philippine officials and
23 other industry and government contacts, Arkin Group concluded that official corruption in the
24 Philippines — particularly in the gaming industry — was "deeply ingrained" and that "official
25 corruption at some level accompanies most if not all major business deals and transactions in the
26 Philippines." In support of these conclusions, Arkin Group cited, among other sources, the 2010
27 Transparency International Corruption Percentage Index, which rated the Philippines at the lower
28 end of the index, 134th out of 178 countries surveyed. The Arkin Group observed that this rating

1 placed the Philippines "on par with Nigeria, Honduras, Azerbaijan and Bangladesh" in terms of
2 the pervasiveness of government corruption.

3 32. As for Mr. Okada's activities, Arkin Group found that Mr. Okada was "perceived
4 as touting his relationship with Wynn Resorts as a means to generate a positive reputation and
5 high profile" and "proving his and Aruze's credibility." The Arkin Group's reports also discussed
6 the land title exemption that Mr. Okada had obtained in the final days of the administrations of
7 PAGCOR Chairman Genuino and Philippine President Arroyo, and explained that such "midnight
8 deals" were at that time "receiving significant media attention and scrutiny" in the Philippines.

9 33. The Wynn Resorts Board discussed the results of the Arkin Group's investigation
10 at a Board meeting held on February 24, 2011. Mr. Wynn advised the Board that Mr. Okada
11 (who was present for the meeting) had arranged for him to meet with Philippine President
12 Aquino. Based on the information the Board had received about endemic corruption in the
13 Philippines, the independent directors unanimously advised Wynn Resorts management that any
14 involvement in the Philippines was inadvisable and strongly recommended that the meeting with
15 President Aquino be cancelled. Management agreed with the Board's recommendation.
16 Mr. Okada, however, was embarrassed and angry about having to cancel the arrangements he had
17 made with President Aquino.

18 34. At the same Board meeting, in the course of an update from Wynn Resorts'
19 general counsel on the Foreign Corrupt Practices Act ("FCPA"), Mr. Okada stated that he
20 personally rejected Wynn Resorts' anti-bribery rules and regulations, as well as legal prohibitions
21 against making such payments to government officials. Mr. Okada also stated that paying bribes
22 to government officials was a common business practice in certain Asian countries, and that the
23 important thing was to channel such illegal payments through third parties. Given that such
24 conduct is prohibited by law in virtually every Asian country, as well as the United States, this
25 was a shocking statement for Mr. Okada to make.

26 35. Mr. Okada responded to the rift he had opened with the other Board members
27 through such comments by counter-attacking. At a Board meeting held on April 18, 2011,
28 Mr. Okada was the lone director to vote against a proposed charitable gift to the University of

1 Macau Development Foundation. At the time, Mr. Okada's stated concern related solely to the
2 length of the commitment, not its propriety. Mr. Okada has subsequently asserted, however, that
3 the charitable gift violated the FCPA, and he has sued Wynn Resorts in this Court seeking
4 documents and records related to the Board's decision to authorize the charitable gift. These
5 claims are baseless, and they are designed to divert attention from Mr. Okada's own misconduct
6 and breaches of fiduciary duty.

7 36. Mr. Okada's business activities in the Philippines were again discussed at a
8 Wynn Resorts Board meeting held on July 28, 2011. At that time, Mr. Okada confirmed to the
9 Board that notwithstanding his fellow directors' stated concerns, he was proceeding with his
10 Philippine project. Wynn Resorts' independent directors expressed great concern regarding
11 probity issues attendant to Mr. Okada's decision to do business in the Philippines and the possible
12 adverse effect that Mr. Okada's involvement in the Philippines would have on Wynn Resorts.
13 The Board was advised that the Compliance Committee had engaged a second independent
14 firm — Archfield Limited ("Archfield") — to further investigate these issues.

15 37. The Compliance Committee reviewed the results of Archfield's investigation at a
16 meeting held on September 27, 2011. The reports from Archfield deepened the Compliance
17 Committee's concerns about Mr. Okada's involvement in the Philippines.

18 38. As described therein, Archfield's investigation identified additional anomalies and
19 apparent improprieties related to Mr. Okada's business activities in the Philippines. Among other
20 things, Archfield reported that a gaming license had been granted to Mr. Okada's company
21 notwithstanding that Mr. Okada did not appear to have a Philippine business partner, as required
22 by Philippine law. In addition, Archfield cited reports that former Chairman Genuino, with the
23 support of former President Arroyo, had paved the way for Mr. Okada to obtain title to the land
24 on which his casino resort was to be located in a clear reversal of Philippine policy on foreign
25 investment.

26 39. Archfield also reported that former PAGCOR Chairman Genuino, the government
27 official who had authorized Mr. Okada's gaming license and who had direct regulatory authority
28 over Mr. Okada's project in the Philippines, had been removed from office and was under

1 investigation for potential misconduct. This was particularly troubling for the Compliance
2 Committee given the report from Archfield that former Chairman Genuino and former
3 President Arroyo were "strongly rumored to have profited from their relationship with Okada."

4 40. A few days later, at the direction of the Compliance Committee, Wynn Resorts
5 management met with Mr. Okada's attorneys, including Robert Faiss of the Lionel Sawyer firm,
6 to discuss Wynn Resorts' concerns relative to Mr. Okada's business activities in the Philippines
7 and the potential adverse effect of those activities on Wynn Resorts' privileged status as a gaming
8 licensee. At this meeting, the Wynn Resorts representatives made clear that Mr. Okada's alleged
9 activities in the Philippines posed substantial risks for Wynn Resorts and needed to be explained
10 post haste. Wynn Resorts' concerns were ill-received, and the meeting was not productive.
11 Mr. Okada's representatives refused to disclose the full factual circumstances surrounding his
12 business activities in the Philippines, much less provide an explanation for those activities that
13 might somehow address the Company's concerns.

14 41. Around this same time, Wynn Resorts was preparing to hold a training session for
15 its directors regarding the FCPA. The training session was scheduled for October 31, 2011, the
16 day before a scheduled in-person Board meeting, and Mr. Okada (through his assistant) had
17 previously sent an RSVP indicating that he would attend. Six days before the session, however,
18 Mr. Okada requested that the training materials be translated into Japanese (despite his previous,
19 long-term practice of translating all materials on his own) and that the date of the session be
20 moved (despite that it had been planned around his previous confirmation). Wynn Resorts
21 accommodated Mr. Okada's first request by obtaining a Japanese translation of the training
22 materials and arranging for professional translators to be available to assist Mr. Okada at the
23 session. Ultimately, however, although he was present at the Board meeting held the very next
24 day, Mr. Okada was the sole Board member who failed to attend the FCPA training session in
25 October 2011, with all other directors appearing in person or telephonically. Mr. Okada likewise
26 was the sole Board member to not attend a similar FCPA training session held in 2012.
27 Mr. Okada's refusal to attend these training sessions further demonstrates his disregard for his
28 obligations as a director of a company in a highly regulated gaming industry.

1 42. At this point, even if there was insufficient evidence in hand at that time to prove
2 misconduct by Mr. Okada in the Philippines, it was clear that Mr. Okada had set himself on a
3 course against the rest of the Board and was acting without regard for the best interests of
4 Wynn Resorts. Accordingly, in October 2011, management was authorized by the Board to
5 request Mr. Okada's resignation as a director. Mr. Okada refused.

6 43. On November 1, 2011, in light of Mr. Okada's failure to attend mandatory FCPA
7 compliance training, acknowledge the Company's internal compliance policies, or to address the
8 Company's serious concerns and inquiries about potentially dangerous and illegal activities in the
9 Philippines, the Board (apart from Mr. Okada) voted unanimously to remove Mr. Okada from his
10 Vice Chairmanship and to leave the office vacant.

11 44. The Board and management have reiterated their request that Mr. Okada resign his
12 directorship on various occasions between October 2011 and the present date. Mr. Okada has
13 consistently refused to do so. At a special meeting of the Wynn Resorts stockholders held on
14 February 22, 2013, 99.6% of the shares voted at the meeting were cast in favor of a proposal to
15 remove Mr. Okada from the Wynn Resorts Board.

16 ***Former FBI Director Freeh Investigates***

17 45. By late 2011, the Compliance Committee was sufficiently concerned to seek
18 further assistance in determining the propriety of Mr. Okada's activities in the Philippines.
19 Accordingly, on October 29, 2011, the Compliance Committee determined to retain Mr. Freeh
20 and his colleagues at Freeh Sporkin & Sullivan LLP to conduct a rigorous investigation.

21 46. Over a three-month period, Mr. Freeh and/or his colleagues made several trips to
22 the Philippines and Macau, reviewed thousands of pages of documents, emails, and public
23 records, and conducted dozens of interviews, including of every independent director on the
24 Wynn Resorts Board. By early 2012, Mr. Freeh and his team had uncovered detailed prima facie
25 evidence of serious wrongdoing by Mr. Okada and his associates.

26 47. On February 15, 2012, Mr. Freeh conducted a full-day, in-person interview of
27 Mr. Okada in Tokyo. Mr. Okada was accompanied by counsel, the former United States Attorney
28 for the Central District of California. Following the interview, Mr. Freeh advised Mr. Okada and

1 his counsel that he would be reporting his findings to the Wynn Resorts Board on February 18,
2 2012, and invited Mr. Okada to present Mr. Freeh with any exculpatory evidence that might be
3 available.

4 48. At the Board meeting, Mr. Freeh made a detailed presentation and provided the
5 directors with copies of his 47-page written report, outlining the following improprieties, among
6 others:

7 a. Since 2008, Okada and his associates have made multiple payments to and on
8 behalf of the Philippines' chief gaming regulators at PAGCOR, the government
9 officials who directly oversee and regulate Mr. Okada's licensing agreement to
10 operate in the Philippines.

11 b. For example, records reviewed by Mr. Freeh revealed 36 separate instances, from
12 May 2008 to through June 2011, where Mr. Okada or his associates/affiliates made
13 payments exceeding \$110,000 that directly benefitted senior PAGCOR officials.
14 This included payments to former PAGCOR Chairman Genuino, current
15 PAGCOR Naguiat, and their family, friends, and associates.

16 c. On one particular occasion in September 2010, Mr. Okada arranged for newly
17 appointed PAGCOR Chairman Naguiat, his wife, his three children, their nanny,
18 and other senior PAGCOR officials (one of whom also brought his family) to stay
19 at Wynn Macau. Mr. Okada and his associates refused to provide Wynn Macau
20 management with the name of Chairman Naguiat and tried to conceal his identity.
21 At Mr. Okada's associates' request and Mr. Okada's direction, Chairman Naguiat
22 and his entourage were provided with the most expensive accommodation, food,
23 and star treatment. In addition, Mr. Okada's associates asked that each guest be
24 provided a \$5,000 advance, in cash, during their stay. Following the stay,
25 Mr. Okada's associates requested that Wynn Macau reduce the excessive charges
26 because they feared an investigation and did not want Mr. Okada or his companies
27 to get in trouble. Wynn Macau refused.
28

- 1 d. There is substantial evidence that Mr. Okada, his associates, and companies may
2 have arranged and manipulated ownership and management of legal entities in the
3 Philippines under his control, in a manner that may have enabled the evasion of
4 Philippine constitutional and statutory requirements.
- 5 e. Moreover, close associates and consultants of the former PAGCOR administration
6 attained positions as corporate officers, directors, and/or nominal shareholders of
7 entities controlled by Mr. Okada and, in some cases, served as links between
8 Mr. Okada and the former PAGCOR Chairman.
- 9 f. Mr. Okada has stated his personal rejection of Wynn Resorts' anti-bribery policies
10 and applicable anti-bribery laws to his fellow Wynn Resorts directors. Despite
11 being advised by members of the Wynn Resorts Board and the Company's counsel
12 that making payments and providing gifts to foreign government officials is strictly
13 prohibited, Mr. Okada has expressed a willingness to engage in such conduct when
14 doing business in Asia.
- 15 g. The nature of Mr. Okada's gaming license in the Philippines requires continued
16 oversight by PAGCOR officials. Mr. Okada thus has a strong and continuing
17 motive to maintain favorable relations with the Chairman and other senior officials
18 of PAGCOR.

19 49. Despite being invited to present exonerating evidence regarding these matters,
20 Mr. Okada provided no such evidence at his interview with Mr. Freeh in Tokyo or subsequently.
21 Moreover, Mr. Freeh concluded and advised the Board that Mr. Okada lacked credibility in the
22 statements he did make concerning his conduct.

23 *The Wynn Resorts Board Redeems Aruze USA's Shares*

24 50. The conduct detailed in Mr. Freeh's report is conduct of a type that, when engaged
25 in by a person affiliated with a licensed entity, puts the entity's existing and prospective gaming
26 licenses at risk. The Board was so advised by two independent experts on Nevada gaming law.

1 51. Thus, following Mr. Freeh's presentation, the Wynn Resorts Board deliberated at
2 length and unanimously (except for Mr. Okada) adopted resolutions finding Mr. Okada,
3 Universal, and Aruze USA to each be an "Unsuitable Person" under Wynn Resorts' Second
4 Amended and Restated Articles of Incorporation (the "Articles of Incorporation" or "Articles").

5 52. An "Unsuitable Person" is defined in Article VII of the Articles as any "Person
6 who . . . in the sole discretion of the board of directors of the Corporation, is deemed likely to
7 jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for,
8 right to the use of, or entitlement to, any Gaming License."

9 53. Having found Mr. Okada, Universal, and Aruze USA unsuitable under the
10 Articles, the Board had an affirmative obligation under the applicable gaming laws and
11 regulations to take action to protect the gaming licenses and approvals of Wynn Resorts and its
12 affiliates. The specific course of action that was available to the Board is set forth in Article VII
13 of the Articles, which provides that following a determination of unsuitability, "[t]he Securities
14 Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be
15 subject to redemption by the Corporation, out of funds legally available therefor, by action of the
16 board of directors, to the extent . . . deemed necessary or advisable by the board of directors. . . ."

17 54. On the basis of these express provisions in the Articles, on February 18, 2012,
18 following Mr. Freeh's presentation and the Board's finding of unsuitability with respect to
19 Mr. Okada, Universal, and Aruze USA, the Board voted to redeem and cancel all of Aruze USA's
20 shares of Wynn Resorts stock. In exchange, as expressly permitted by the Articles, the Board
21 unanimously (except for Mr. Okada) determined to issue to Aruze USA a promissory note with a
22 face value of approximately \$1.936 billion and paying interest at 2% per year as provided for in
23 the Articles.

24 ***Further Evidence of Mr. Okada's Wrongdoing Comes to Light Post-Redemption***

25 55. Following the Board's unsuitability finding and redemption of Aruze USA's
26 shares, further evidence has reportedly come to light revealing the true extent of Mr. Okada's
27 breach of fiduciary duty and lack of disclosure regarding his activities in the Philippines. It has
28 been widely reported in the press that Mr. Okada and his companies are the subject of multiple

1 pending investigations relating to the development of Mr. Okada's project in the Philippines. The
2 FBI, the Nevada Gaming Control Board, and the Philippine Department of Justice, among many
3 other organizations, are reportedly gathering additional evidence that Mr. Okada's companies
4 paid bribes to Philippine gaming regulators at PAGCOR and their associates to facilitate the
5 development of Mr. Okada's casino resort in Manila Bay.

6 56. At the center of the new evidence that has reportedly come to light is Rodolfo
7 Soriano, a former consultant to PAGCOR and a close business associate of former PAGCOR
8 Chairman Genuino. Mr. Freeh's report to the Wynn Resorts Board in February 2012 described
9 Mr. Soriano as a "bag man" for Mr. Genuino. Mr. Soriano is often referred to by his nickname,
10 "Boysie."

11 57. The evidence reportedly uncovered in the ongoing investigations shows that, in or
12 about 2009, Mr. Okada and his companies made a strategic "shift to Boysie" to jumpstart the
13 lagging progress at their Philippine development site. This shift in strategy, it has been reported,
14 involved Okada-controlled companies paying up to \$40 million in bribes to companies controlled
15 by Mr. Soriano in order to secure benefits from PAGCOR and the Arroyo administration that
16 were essential to the viability and profitability of Mr. Okada's project in the Philippines. Of
17 course, the factual circumstances of these transactions were never disclosed to the Wynn Resorts
18 Board despite their unquestionable material effect on the Company's rights and interests.

19 58. News reports indicate that on January 14, 2010, Mr. Okada's company transferred
20 \$10 million to Subic Leisure and Management ("Subic Leisure"), a Soriano-controlled company
21 registered in the British Virgin Islands. Mr. Okada's company transferred an additional
22 \$15 million to Subic Leisure on March 3, 2010, and a further \$10 million to Subic Leisure in or
23 about early May 2010. And, it has been reported that Mr. Okada's company transferred
24 \$5 million to a Hong Kong shell company named People's Technology Holding Ltd., of which
25 Mr. Soriano was the sole shareholder.

26 59. The *Asahi Shimbun*, one of the largest national newspapers in Japan, has reported
27 that these money transfers were reported to senior management at Universal and were approved
28 by its board of directors. According to these *Asahi Shimbun* reports, the money transfers were

1 discussed at a Universal board meeting and expressly approved in a board resolution that
2 Mr. Okada himself signed as the Chairman of Universal. Again, the factual circumstances of
3 these transactions were never disclosed to the Wynn Resorts Board despite their unquestionable
4 material effect on the Company's rights and interests.

5 60. Other news reports indicate that in exchange for these illicit payments, between
6 late 2009 and early 2010, Mr. Okada's companies won concessions on three critical issues related
7 to the Philippine project. In November 2009, PAGCOR, through its then-Chairman Genuino,
8 brokered a land swap that Mr. Okada's company needed to move ahead with construction of its
9 casino resort. Then, in or about February 2010, then-Philippine President Arroyo signed a
10 presidential order that permitted foreign investors such as Mr. Okada to have 100-percent
11 ownership of casinos. Finally, around the same time, the Philippine government approved an
12 application for corporate tax relief by Mr. Okada's company.

13 61. This additional evidence that has reportedly come to light in the ongoing
14 government investigations is entirely consistent with and supplements the findings contained in
15 Mr. Freeh's report to the Wynn Resorts Board, as detailed above. This additional evidence is
16 consistent with Mr. Okada's statements to the Wynn Resorts Board in February 2011, discussed
17 above, regarding Mr. Okada's perspective on anti-corruption laws and regulations and his
18 willingness to pay bribes through intermediaries while doing business in certain Asian countries.
19 Because Mr. Okada engaged in this reported misconduct while he was associated with
20 Wynn Resorts, this additional information further demonstrates Mr. Okada's failure to provide
21 full and fair disclosure to the Board of the factual circumstances surrounding his and his affiliates'
22 business dealings in the Philippines, and further supports Wynn Resorts' claim for breach of
23 fiduciary duty.

24 **FIRST CAUSE OF ACTION**

25 **(Breach of Fiduciary Duty)**

26 **(Wynn Resorts against Mr. Okada)**

27 62. Wynn Resorts repeats and realleges the allegations set forth in Paragraphs 1
28 through 61 above as though fully set forth herein.

1 63. As a director of Wynn Resorts, at all relevant times Mr. Okada owed fiduciary
2 duties to Wynn Resorts under NRS 78.138 and the common law. Those duties included, without
3 limitation: (a) the duty not to engage in conduct that was likely to damage the corporate interests
4 of Wynn Resorts; (b) the duty to act in the best interests of Wynn Resorts, as opposed to
5 advancing his own personal interests; and (c) the duty to make full disclosure to Wynn Resorts
6 and his fellow directors about his business activities in the Philippines and to avoid concealment
7 of his wrongful conduct where the interests of Wynn Resorts were concerned.

8 64. As set forth herein, Mr. Okada violated his fiduciary duties in several material
9 ways during the period of 2008 to the date hereof. These violations of Mr. Okada's duties were
10 intentionally concealed by him, however, and were not discovered by Wynn Resorts until various
11 times after 2010, as set forth in more detail herein. Indeed, the details of Mr. Okada's wrongful
12 conduct are still coming to light today through the ongoing investigative efforts of government
13 and regulatory authorities worldwide.

14 65. Mr. Okada's breaches of fiduciary duty arise from his plan to have entities he
15 personally controls develop and operate a resort casino in the Philippines. Specifically, the
16 breaches occurred when, in furtherance of these plans, Mr. Okada engaged in conduct that was
17 unethical, unlawful, and apparently criminal.

18 66. By engaging in such conduct while he was a director of Wynn Resorts, and indeed
19 while he held the title of Vice Chairman of Wynn Resorts, Mr. Okada directly, knowingly, and
20 intentionally damaged the interests of Wynn Resorts. This is because Wynn Resorts must be
21 licensed as an entity in order to operate in the casino industry in Nevada, Macau, and in other
22 jurisdictions in which Wynn Resorts may seek to operate casino resorts in the future. Such
23 licensure, both existing and prospective, is put at grave risk by unethical, unlawful, and/or
24 criminal conduct by any persons who serve as directors of the regulated entity. By engaging in
25 conduct that could have resulted in risk to Wynn Resorts' existing and prospective licenses,
26 Mr. Okada struck at the heart of Wynn Resorts' corporate interests in clear violation of his duty to
27 protect and advance the interests of Wynn Resorts.

28

1 67. Mr. Okada further demonstrated his willingness to damage Wynn Resorts, and his
2 contempt for his fiduciary duties, by concealing his wrongful conduct from Wynn Resorts and by
3 refusing voluntarily to resign and sever his links with Wynn Resorts when requested to do so.
4 This conduct compounded Mr. Okada's other breaches of duty. In particular, despite requests to
5 do so at Board meetings and in conversations with senior executives of Wynn Resorts, Mr. Okada
6 refused to supply information about his activities in the Philippines and indeed refused to confirm
7 even that he had determined to proceed with his Philippine project. In addition, through his
8 counsel, Mr. Okada refused to cooperate with the Company's investigations regarding his
9 activities in the Philippines or to provide any explanation for the troubling evidence that was
10 brought to Mr. Okada and his counsel's attention by Wynn Resorts and its attorneys.

11 68. Rather than providing full and fair disclosure, Mr. Okada purposefully covered his
12 tracks to prevent Wynn Resorts from discovering the extent of his questionable conduct.
13 Mr. Okada knew that if he was forthcoming with the Company and his fellow directors, and did
14 not evade their questions about his business activities in the Philippines, Wynn Resorts would
15 undoubtedly take action to protect itself. Specifically, Mr. Okada did not wish for the
16 Wynn Resorts Board to use its power under Article VII of the Articles of Incorporation to redeem
17 the shares he owned through Aruze USA, nor did Mr. Okada wish for Wynn Resorts to
18 commence the process of removing him as a director by a two-thirds shareholder vote (the only
19 way in which Mr. Okada could be removed against his will under Nevada law). Mr. Okada's lack
20 of candor — when he owed the Company a duty of full and fair disclosure of the factual
21 circumstances surrounding his business dealings in the Philippines — amounted to an
22 independent breach of Mr. Okada's fiduciary duties.

23 69. In addition, Mr. Okada breached his fiduciary duties by refusing, in 2011 and
24 2012, to attend the training sessions that Wynn Resorts arranged for its directors to ensure that
25 they are familiar with Wynn Resorts' duties to be compliant with all applicable laws and
26 regulations, and to avoid corrupt conduct. By repeatedly evading such compliance education
27 without valid excuse, Mr. Okada not only made it more difficult for Wynn Resorts to demonstrate
28

1 the commitment of its Board to compliance, but he also further manifested his position that
2 anti-corruption laws are irrelevant and of no importance to Mr. Okada.

3 70. Mr. Okada's breaches of duty involved intentional misconduct and knowing
4 violations of law.

5 71. As a result of Mr. Okada's violations of his fiduciary duties, Wynn Resorts has
6 suffered harm. In particular, Mr. Okada's violations of duty, once suspected and/or discovered,
7 required Wynn Resorts: (a) to investigate his conduct, including to retain the services of three
8 investigative firms; and (b) to take action pursuant to Nevada law and to Wynn Resorts' Articles
9 to protect the corporation from Mr. Okada's breaches of duty. Wynn Resorts has been damaged
10 by having to incur and pay the costs associated with these efforts to limit and repair the threatened
11 damage to Wynn Resorts caused by Mr. Okada's course of conduct.

12 72. As direct and proximate result of Mr. Okada's acts and omissions, Wynn Resorts
13 has suffered and will continue to suffer direct, incidental, and consequential damages, in an
14 amount to be proven at trial, but in any event, in excess of \$10,000, plus prejudgment interest.

15 73. In committing the acts herein above alleged, Mr. Okada is guilty of oppression,
16 fraud, and malice toward Wynn Resorts. As such, Wynn Resorts is entitled to recover punitive
17 damages from Mr. Okada for, inter alia, the purpose of deterring him and others similarly situated
18 from engaging in like conduct.

19 74. As a result of the acts and omissions of Mr. Okada, Wynn Resorts has been
20 compelled to hire the services of an attorney for the protection of its interests.

21 **SECOND CAUSE OF ACTION**

22 **(Aiding and Abetting Breach of Fiduciary Duty)**

23 **(Wynn Resorts against Universal and Aruze USA)**

24 75. Wynn Resorts repeats and realleges the allegations set forth in Paragraph 1
25 through 74 above as though fully set forth herein.

26 76. As a director, Mr. Okada owed Wynn Resorts a fiduciary duty of loyalty which, as
27 alleged herein, he breached.
28

1 77. Universal and Aruze USA knowingly participated in Mr. Okada's breaches of
2 fiduciary duty by facilitating and/or actively participating in the unethical, unlawful, and/or
3 criminal conduct described herein, which conduct has threatened to undermine Wynn Resorts'
4 reputation as well as its existing and prospective gaming licenses.

5 78. As a direct and proximate result of Universal's and Aruze USA's acts and
6 omissions in aiding and abetting Mr. Okada's breaches of duty, Wynn Resorts has suffered and
7 will continue to suffer direct, incidental, and consequential damages in an amount to be proven at
8 trial, but in any event, in excess of \$10,000, plus prejudgment interest.

9 79. In committing the acts herein above alleged, Universal and Aruze USA are guilty
10 of oppression, fraud, and malice toward Wynn Resorts. As such, Wynn Resorts is entitled to
11 recover punitive damages from Universal and Aruze USA for, inter alia, the purpose of deterring
12 them and others similarly situated from engaging in like conduct.

13 80. As a result of the acts and omissions of Universal and Aruze USA, Wynn Resorts
14 has been compelled to hire the services of an attorney for the protection of its interests.

15 **THIRD CAUSE OF ACTION**

16 **(Declaratory Relief – NRS Chapter 30)**

17 **(Wynn Resorts against Mr. Okada, Universal, and Aruze USA)**

18 81. Wynn Resorts repeats and realleges the allegations set forth in paragraphs 1
19 through 80 above as though fully set forth herein.

20 82. To be deemed "suitable" under Nevada gaming law, the applicant must be: (a) a
21 person of good character, honesty and integrity; (b) a person whose prior activities, criminal
22 record, if any, reputation, habits and associations do not pose a threat to the public interest of the
23 State of Nevada or to the effective regulation and control of gaming; and (c) must have adequate
24 business probity, competence, and experience, in gaming or generally.

25 83. Section 3.090 of the Nevada Gaming Regulations provides that a license,
26 registration, and suitability finding requires, among other things, a person of "good character,
27 honesty, and integrity" and one "whose background, reputation and associations will not result in
28 adverse publicity for the State of Nevada and its gaming industry"

1
2 84. Even after a suitability finding, Regulation 3.080 provides that "[t]he commission
3 may deny, revoke, suspend, limit condition or restrict any registration or finding of suitability or
4 application therefor upon the same grounds as it may take such action with respect to licenses,
5 licensees and licensing; without exclusion of any other grounds."

6 85. In recognition of the central importance of its gaming license to the affairs of the
7 corporation, the Articles of Incorporation afford the Wynn Resorts Board the "sole discretion" to
8 take certain action to protect the gaming licenses and approvals of Wynn Resorts and its affiliates.
9 Under the Articles, an "Unsuitable Person" shall mean a Person who . . . in the sole discretion of
10 the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any
11 Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to,
12 any Gaming License."

13 86. Following a determination of unsuitability, the Articles of Incorporation provide
14 that "[t]he Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an
15 Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally
16 available therefor, by action of the board of directors, to the extent . . . deemed necessary or
17 advisable by the board of directors. If . . . the board of directors deems it necessary or advisable,
18 to redeem any such Securities, the Corporation shall give a redemption Notice to the Unsuitable
19 Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the
20 Securities specified in the Redemption Notice for the price set forth in the Redemption
21 Notice"

22 87. On February 18, 2012, after receiving Mr. Freeh's written report and considering
23 his presentation and the advice of expert gaming counsel, the Wynn Resorts Board of Directors
24 deliberated at length and thereafter adopted resolutions that: (a) determined that Mr. Okada,
25 Universal, and Aruze USA were likely to jeopardize Wynn Resorts' and its affiliated companies'
26 existing and prospective gaming licenses; (b) deemed Mr. Okada, Universal, and Aruze USA to
27 be "Unsuitable Persons" under the Articles of Incorporation; and (c) redeemed Aruze USA's
28

1 shares of Wynn Resorts common stock in exchange for an approximately \$1.936 billion
2 promissory note, in accordance with Article VII of the Articles of Incorporation.

3 88. Aware of the magnitude of his improprieties and what the likely response of any
4 reasonable board of directors of a Nevada gaming company, Mr. Okada attempted, in advance of
5 the February 18, 2012 meeting of the Wynn Resorts Board, to set up a defense by disputing the
6 Board's authority to act upon Mr. Freeh's report.

7 89. In light of the foregoing, Wynn Resorts seeks a judicial declaration that it acted
8 lawfully and in compliance with its Articles, Bylaws, and other governing documents when it
9 made the determination set forth herein.

10 90. NRS 30.130 states that "all persons shall be made parties who have . . . any interest
11 which would be affected by the declaration." Each of Mr. Okada, Universal, and Aruze USA has
12 interests that will be affected by the declaration that Wynn Resorts seeks. Among other
13 examples, given the determination by the Wynn Resorts Board that Mr. Okada, Universal, and
14 Aruze USA are unsuitable persons, none may be shareholders in Wynn Resorts.

15 91. Accordingly, a justiciable controversy has arisen between the parties whose
16 interests are adverse, and the dispute is ripe for adjudication.

17 92. As a result of the acts and omissions of Defendants, Wynn Resorts has been
18 compelled to hire the services of an attorney for the protection of its interests.

19 WHEREFORE, Wynn Resorts prays for judgment as follows:

20 1. For compensatory and special damages, in excess of \$10,000, in an amount to be
21 determined at trial;

22 2. For a declaration that Wynn Resorts acted lawfully and in full compliance with its
23 Articles of Incorporation, Bylaws, and other governing documents as set forth herein;

24 3. For punitive damages;

25 4. For an award of reasonable costs and attorneys' fees;

1 5. For prejudgment and post-judgment interest on the foregoing sums at the highest
2 rate permitted by law; and

3 6. For any additional relief this Court deems just and proper.

4 DATED this 22nd day of April 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 2nd day of April, 2013, I caused to be e-mailed and electronically served through the Court's filing system true and correct copies of the foregoing PLAINTIFF WYNN RESORTS, LIMITED'S SECOND AMENDED COMPLAINT properly addressed to the following:

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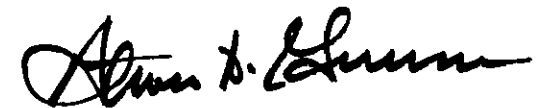
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ARUZE USA, INC. and UNIVERSAL
ENTERTAINMENT CORPORATION

DISTRICT COURT

CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED, a Nevada
corporation.

Plaintiff.

vs.

KAZUO OKADA, an individual, et al.,

Defendants.

AND ALL RELATED CLAIMS.

Case No. A-12-656710-B

Dept. No: XI

ELECTRONIC FILING CASE

**FOURTH AMENDED
COUNTERCLAIM OF ARUZE USA,
INC. AND UNIVERSAL
ENTERTAINMENT CORP.**

COUNTERCLAIM
JURISDICTION AND VENUE

1. Counterdefendants Wynn Resorts, Limited (“Wynn Resorts” or the “Company”), Stephen A. Wynn (“Mr. Wynn” or “Steve Wynn”), Kimmarie Sinatra, Linda Chen, Ray R. Irani, Russell Goldsmith, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, D. Boone Wayson, Elaine P. Wynn, and Allan Zeman (collectively, “Wynn Parties”) have each individually and in concert with one another, caused the acts and events alleged herein within the State of Nevada and all are subject to the jurisdiction of this Court. Venue is also proper in this Court.

2. This matter is properly designated as a business court matter and assigned to the Business Docket under EDCR 1.61(a) as the claims alleged herein arise from business torts.

NATURE OF THE ACTION

3. Plaintiff and Counterdefendant Wynn Resorts initiated this litigation on the same night it claims to have forcibly purchased (*i.e.*, “redeemed”) nearly 20% of its own common stock held by its largest shareholder, Counterclaimant Aruze USA, Inc. (“Aruze USA”). Wynn Resorts understood that, as soon as it became known that it was doing this, Aruze USA would sue Wynn Resorts and the Wynn Directors.¹ Wynn Resorts had undertaken the redemption in the dead of night through a rushed and secretive process.

4. Among other things, Wynn Resorts purported to redeem the shares at a flat 30% discount to the most recent market price. Aruze USA’s interests, valued by the market at more than \$2.7 billion and by Wynn Resorts at \$2.9 billion three weeks prior to the redemption, would be forcibly purchased in exchange for a non-transferable promissory note to pay approximately \$1.9 billion in a single “balloon payment” 10 years from now. So Wynn Resorts raced to court, electronically filing a complaint at 2:14 a.m. on a Sunday morning – even before giving notice to

¹ The Wynn Resorts’ Board of Directors (the “Board”), other than Kazuo Okada (“Kazuo Okada” and “Mr. Okada”), were Steve Wynn, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, Elaine P. Wynn, and Allan Zeman (collectively, the “Wynn Directors”) during the events underlying the claims raised in this Counterclaim.

1 Aruze USA of the purported redemption. Wynn Resorts apparently thought that its position as
2 the named “plaintiff” would help obfuscate the issues and distract the court from the claims of
3 wrongdoing sure to be filed against it by Aruze USA and Counterclaimant Universal
4 Entertainment Corporation (“Universal” and collectively with Aruze USA, “Counterclaimants”).
5 Wynn Resorts’ cynical tactics are unavailing. Based on the facts and the law, it is clear that it is
6 Counterclaimants who have been grievously damaged in this case, and any suggestion to the
7 contrary is entirely without credibility.

8 5. This Counterclaim arises because this purported redemption would: (a) violate the
9 express terms of agreements between Mr. Wynn, Elaine Wynn and Aruze USA; (b) allow
10 Mr. Wynn and others to profit unjustly from their illegal acts and a process that was corrupt and
11 unfair; and (c) subject Aruze USA to an unconscionably punitive remedy based on an unproven
12 pretext.

13 6. To be clear at the outset, Aruze USA disputes that any redemption has occurred.
14 Among other things, even if the redemption provision in the Company’s Second Amended
15 Articles of Incorporation (“Articles of Incorporation”) was legally enforceable (which it is not),
16 Aruze USA’s stock has never been subject to the redemption provision in the Company’s Articles
17 of Incorporation, because Aruze USA entered into a Stockholders Agreement before the Articles
18 of Incorporation were amended and filed, which preclude any redemption of Aruze USA’s stock.
19 Specifically, Mr. Wynn covenanted that Aruze USA shall be the “record and Beneficial owner”
20 of its common shares in Wynn Resorts and “shall have the *sole power of disposition* [and] *sole*
21 *power of conversion...*” of the shares “with no material limitations, qualification or restrictions
22 on such rights....” (Emphasis added.) Aruze USA and Mr. Wynn entered into the Stockholders
23 Agreement *before* Mr. Wynn unilaterally amended the Articles of Incorporation of Wynn Resorts
24 to provide a discretionary right to redeem shareholders’ stock. Elaine Wynn later became a party
25 to the Stockholders Agreement and likewise covenanted that Aruze USA shall have the “sole
26 power of disposition [and] sole power of conversion” of its shares in Wynn Resorts. Aruze USA
27 never agreed in writing to the redemption rights in the Articles of Incorporation, as would be
28

1 required to amend the “sole powers of disposition” set forth in the Stockholders Agreement. The
2 right of redemption thus does not apply to Aruze USA’s shares.

3 7. Moreover, even if the Articles of Incorporation allowed the redemption of Aruze
4 USA’s interests in Wynn Resorts (which they do not), Steve Wynn and Elaine Wynn are not
5 excused from breaching the express terms of the Stockholders Agreement by voting for the
6 redemption in violation of Aruze USA’s “sole right of disposition and sole right of conversion”
7 and are liable for all damages caused by their breach. Likewise, by voting in favor of and giving
8 effect to the redemption of Aruze USA’s shares, Wynn Resorts and the other individual directors
9 of Wynn Resorts tortiously interfered with the Stockholders Agreement and are thereby liable for
10 all damages proximately caused by their interference, including for any losses incurred by Aruze
11 USA as a result of the unprecedented \$1 billion discount Wynn Resorts purported to apply to
12 Aruze USA’s shares.

13 8. The redemption of Aruze USA’s shares is also invalid and unlawful because there
14 was no legitimate factual or legal basis to invoke the redemption provision in this case. Wynn
15 Resorts undertook a secret investigation, hiding the subjects of the investigation from Aruze USA
16 by erroneously invoking attorney-client privilege and confidentiality, even after Wynn Resorts
17 had leaked a “report” of the investigation to the *Wall Street Journal*. Wynn Resorts refused
18 Aruze USA any reasonable opportunity to respond prior to redeeming Aruze USA’s interests,
19 despite prior written promises to do so. If Wynn Resorts had provided the opportunity, it would
20 be clear why redemption is unwarranted.

21 9. The Wynn Directors breached their fiduciary duties to Wynn Resorts and to Aruze
22 USA in not undertaking a thorough, independent, and objective examination of the law, facts, and
23 evidence before purporting to usurp the role of the gaming authorities in finding Aruze USA
24 “unsuitable.” Similarly, they breached their duties by then voting for a wholly unnecessary and
25 improper “redemption” on unconscionable terms. As a result, the Wynn Directors cannot rely on
26 the “business judgment rule,” as they did not act in a fully informed, good faith, and independent
27 manner, and their actions are both contrary to the law and not objectively reasonable.
28

10. Mr. Wynn, Kimmarie Sinatra and Wynn Resorts later used the secret and one-sided investigative report to try and extort Aruze USA into selling its approximately \$3 billion stake in Wynn Resorts to Mr. Wynn at a significant discount.

11. In addition to the lack of any legal basis for Wynn Resorts' actions, Aruze USA sues because Wynn Resorts, for all its accomplishments, is not a corporation in any ordinary sense. Rather, Wynn Resorts' flamboyant Chairman, Mr. Wynn, has run Wynn Resorts as a personal business, packing the Board with friends who do his personal bidding, and paying key executives exorbitant amounts for their loyalty.

12. The wrongful acts complained of here cannot be countenanced, and the purported taking of Aruze USA's property cannot stand.

PARTIES

13. Counterclaimant Aruze USA is a company organized and existing under the laws of the State of Nevada and is a wholly-owned subsidiary of Universal. Aruze USA has its principal place of business in Las Vegas, Nevada. Aruze USA has been found suitable by the Nevada Gaming Commission as a stockholder of Wynn Resorts. Aruze USA owns 24,549,222 shares or 19.66% of the total outstanding stock of Wynn Resorts, making it the largest single owner of Wynn Resorts' stock.

14. Counterclaimant Universal (f/k/a Aruze Corp.) is a corporation organized and existing under the laws of Japan. Universal manufactures and sells pachislot and pachinko machines. Universal is registered with the Nevada Gaming Commission, and has been deemed suitable by the Nevada Gaming Commission as a 100% shareholder of Aruze USA. Mr. Okada is the Chairman of the Board of Universal.

15. Counterdefendant Wynn Resorts is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Las Vegas, Nevada. Wynn Resorts' stock is publicly traded on NASDAQ under the ticker symbol "WYNN."

1 16. Counterdefendant Steve Wynn is the Chairman of the Board and Chief Executive
2 Officer of Wynn Resorts and is a resident of Nevada. Mr. Wynn owns 10,026,708 shares of the
3 common stock of Wynn Resorts.²

4 17. Counterdefendant Kimmarie Sinatra is the General Counsel, Secretary, and a
5 Senior Vice President of Wynn Resorts and, on information and belief, is a resident of Nevada.
6 Ms. Sinatra owns 40,887 shares of the common stock of Wynn Resorts.

7 18. Counterdefendant Elaine P. Wynn is a director of Wynn Resorts and, on
8 information and belief, is a resident of Nevada. Elaine Wynn is Mr. Wynn's ex-spouse. Elaine
9 Wynn owns 9,742,150 shares of the common stock of Wynn Resorts.

10 19. Counterdefendant Linda Chen was a director of Wynn Resorts and, on information
11 and belief, is a resident of Macau. Ms. Chen owns 265,000 shares of the common stock of Wynn
12 Resorts. Ms. Chen stepped down as a director of Wynn Resorts on December 13, 2012.

13 20. Counterdefendant Ray R. Irani is a director of Wynn Resorts and, on information
14 and belief, is a resident of California. Mr. Irani owns 18,000 shares of the common stock of
15 Wynn Resorts.

16 21. Counterdefendant Russell Goldsmith was a director of Wynn Resorts and, on
17 information and belief, is a resident of California. Mr. Goldsmith owns 40,000 shares of the
18 common stock of Wynn Resorts. Mr. Goldsmith stepped down as a director of Wynn Resorts on
19 December 13, 2012.

20 22. Counterdefendant Robert J. Miller is a director and Chair of the Gaming
21 Compliance Committee of Wynn Resorts and, on information and belief, is a resident of Nevada.
22 Mr. Miller owns 20,500 shares of the common stock of Wynn Resorts.

23 23. Counterdefendant John A. Moran is a director of Wynn Resorts and, on
24 information and belief, is a resident of Florida. Mr. Moran owns 190,500 shares of the common
25 stock of Wynn Resorts.

26
27 ² All references to the number of shares owned by Counterdefendants are as of March 1, 2012, as
28 disclosed in Wynn Resorts' Schedule 14A Proxy Statement, filed with the SEC on March 7,
2012.

1 24. Counterdefendant Marc D. Schorr was a director and Chief Operating Officer of
2 Wynn Resorts and, on information and belief, is a resident of Nevada. Mr. Schorr owns 250,000
3 shares of the common stock of Wynn Resorts. Mr. Schorr stepped down as a director of Wynn
4 Resorts on December 13, 2012.

5 25. Counterdefendant Alvin V. Shoemaker is a director of Wynn Resorts and, on
6 information and belief, is a resident of New Jersey. Mr. Shoemaker owns 40,500 shares of the
7 common stock of Wynn Resorts.

8 26. Counterdefendant D. Boone Wayson is a director of Wynn Resorts and, on
9 information and belief, is a resident of Maryland. Mr. Wayson owns 90,500 shares of the
10 common stock of Wynn Resorts.

11 27. Counterdefendant Allan Zeman was a director of Wynn Resorts and, on
12 information and belief, is a resident of Macau. Mr. Zeman owns 30,500 shares of the common
13 stock of Wynn Resorts. Mr. Zeman stepped down as a director of Wynn Resorts on December
14 13, 2012.

15 **GENERAL ALLEGATIONS**

16 **II. KAZUO OKADA AND STEVE WYNN LAUNCH WYNN RESORTS**

17 **A. Turned Out By Mirage Resorts, Steve Wynn Turns to Kazuo Okada to** 18 **Finance the New Wynn Project**

19 28. Mr. Wynn has a long history of involvement in Las Vegas as a casino operator.
20 As Las Vegas changed, Mr. Wynn sought to present himself as a representative of the new
21 “corporate” Las Vegas. Mr. Wynn developed Mirage Resorts, Inc., a casino conglomerate that
22 owned and operated the Mirage, Treasure Island, and Bellagio. On May 31, 2000, MGM Grand
23 Inc. completed a merger with Mirage Resorts, Inc. In June 2000, after a bruising boardroom
24 battle, which centered on allegations that Mr. Wynn misappropriated company funds, MGM
25 Grand, Inc. ousted Mr. Wynn as Chief Executive Officer of Mirage Resorts, Inc.

26 29. Humiliated by his public ouster, Mr. Wynn was anxious to re-enter the casino
27 business and rebuild his reputation and standing in Las Vegas. He purchased the old Desert Inn
28

1 casino and had plans to build a new casino on the site – it was to be a monument to himself,
2 called “Wynn.” But Mr. Wynn lacked the capital to fund the development of the casino, so he
3 undertook an extensive search for investors. Having recently been forced out of Mirage Resorts,
4 Inc., however, he was shunned by other sources of capital; Mr. Wynn eventually called on
5 Universal, Aruze USA, and Mr. Okada to become the means for Mr. Wynn to get back on his
6 feet.

7 30. Mr. Okada was and is a highly successful Japanese entrepreneur and himself a
8 pioneer in the gaming industry. After leaving high school, Mr. Okada attended an electronics
9 trade school. In 1969, Mr. Okada founded Universal Lease Co. Ltd., which is now Universal.
10 Mr. Okada became a leader in the businesses of pachinko. In addition, Mr. Okada founded a
11 company that created one of the first video poker machines. In fact, Mr. Wynn originally met
12 Mr. Okada when one of Mr. Okada’s affiliated companies, Aruze Gaming America, was selling
13 electronic gaming machines in Nevada.

14 31. Beginning in October 2000, Mr. Wynn used a Nevada limited liability company
15 called Valvino Lamore, LLC (“Valvino”) as the holding entity for his new Desert Inn casino
16 project. After in-person discussions between Mr. Wynn and Mr. Okada, Aruze USA made a
17 contribution of \$260 million in cash to Valvino in exchange for 50% of the membership interests
18 in Valvino effective October 3, 2000. This contribution was the seed capital that allowed for the
19 development of what is now Wynn Resorts. Valvino is referred to by Wynn Resorts as Wynn
20 Resorts’ “predecessor.”

21 32. In April 2002, Aruze USA made two additional contributions totaling \$120 million
22 to Valvino. Mr. Wynn told Mr. Okada that \$30 million was related to Macau, but Mr. Wynn did
23 not explain to Mr. Okada how Mr. Wynn actually spent the money. Serious questions now exist
24 about how Mr. Wynn used the money and whether Mr. Wynn used the funds for his personal
25 benefit and/or for other inappropriate purposes. There are also serious questions about the use of
26 the other \$90 million Aruze USA contributed.

1 **B. The Stockholders Agreement**

2 33. In 2002, all three owners of LLC interests in Valvino – Mr. Wynn, Aruze USA,
3 and Baron Asset Fund³ – understood that the Wynn organization was planning to go public as
4 Wynn Resorts. This required a series of legal steps by which the owners’ interests in Valvino
5 were converted into shares of a newly formed corporation, “Wynn Resorts, Limited,” that could
6 then sell additional shares to the public.

7 34. On April 11, 2002, prior to the filing of the Articles of Incorporation for Wynn
8 Resorts, Mr. Wynn, Aruze USA, and Baron Asset Fund entered into the Stockholders Agreement,
9 which imposed certain restrictions on the sale of the stock they were to receive in “NewCo,” the
10 entity that would become Wynn Resorts. As described in Wynn Resorts’ prospectus, dated
11 October 29, 2002, “the stockholders agreement establishes various rights among Mr. Wynn,
12 Aruze USA and Baron Asset Fund with respect to the ownership and management of Wynn
13 Resorts.”

14 35. Notably, the parties to the Stockholders Agreement stated that the terms of that
15 agreement were a condition of transferring their LLC interests in Valvino to Wynn Resorts. The
16 Stockholders Agreement stated “as a condition to their willingness to form [Wynn Resorts], either
17 through the contribution of their interests in the LLC or through a different technique, the
18 Stockholders are willing to agree to the matters set forth” in the Stockholders Agreement.

19 36. Under the Stockholders Agreement, Steve Wynn, Baron Asset Fund, and Aruze
20 USA each warranted and covenanted that “[t]he Stockholder shall be the record and Beneficial
21 Owner of all of the Shares” of Wynn Resorts’ common stock, and “shall have the *sole power of*
22 *disposition* [and] *sole power of conversion...*” of the shares “with no material limitations,
23 qualification or restrictions on such rights...” except as provided for under applicable securities
24 laws and the agreement. (Emphasis added.) The Stockholders Agreement “may not be amended,
25 changed, supplemented, waived or otherwise modified or terminated, except upon the execution
26

27 ³ Baron Asset Fund is a Massachusetts business trust comprised of a series of funds. It became a
28 member of Valvino pursuant to the First Amendment to Amended and Restated Operating
 Agreement of Valvino Lamore, LLC, dated April 16, 2001.

1 and delivery of a written agreement executed by the parties....” As described in further detail
2 below, Elaine Wynn made this same covenant to Aruze USA when she became a party to the
3 Amended and Restated Stockholders Agreement in 2010.

4 37. Wynn Resorts publicly acknowledged the impact of the Stockholders Agreement
5 on the Company and the shareholders. The Wynn Resorts share certificates issued to Aruze USA
6 on September 24, 2002, bear the following express, written legend, in bold and all caps: “**THE**
7 **SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS**
8 **AND CONDITIONS OF A STOCKHOLDERS AGREEMENT DATED AS OF APRIL 11,**
9 **2002....**” Additionally, in a Form S-1/A filed with the SEC on October 7, 2002, Wynn Resorts
10 disclosed that the Stockholders Agreement established “restrictions on the transfer of the shares
11 of Wynn Resorts’ common stock owned by the parties to the stockholders agreement.” In this
12 way, Wynn Resorts – and all other stockholders – were aware that there were limitations written
13 in the Stockholders Agreement on the transferability of the Wynn Resorts’ stock held by Aruze
14 USA.

15 38. The Stockholders Agreement removed Aruze USA from the purview of later-
16 adopted redemption provisions in Wynn Resorts’ Articles of Incorporation, as confirmed by, on
17 information and belief, Wynn Resorts’ own attorneys *before* the redemption provisions were
18 added to the Articles of Incorporation.

19 39. In addition to restricting the power of disposition and conversion of all stock
20 distributed pursuant to the Stockholders Agreement, the Stockholders Agreement also contained a
21 voting agreement, granting Mr. Wynn the right to nominate a bare majority of directors, and
22 Aruze USA the right to nominate all remaining directors. Each Stockholder covenanted to vote
23 all of their shares in favor of the directors nominated by Mr. Wynn and Aruze USA. Pursuant to
24 this voting agreement, Aruze USA repeatedly tried over the years to nominate directors to the
25 Board of Directors of Wynn Resorts. Each time, Mr. Wynn refused to endorse and vote his
26 shares in favor of Aruze USA’s proposed directors, instead nominating all of the directors himself
27 to ensure and perpetuate his complete control of the Board. Finally, the Stockholders Agreement
28

1 gave Mr. Wynn the power of attorney to sign all documentation necessary to transfer Aruze
2 USA's LLC interests in Valvino to Wynn Resorts in exchange for Wynn Resorts' stock, and
3 thereby created a fiduciary duty as between Mr. Wynn and Aruze USA.

4 **C. Wynn Resorts' Original Articles of Incorporation**

5 40. On June 3, 2002, Mr. Wynn, on behalf of Wynn Resorts, caused the filing of the
6 Company's initial Articles of Incorporation. Those Articles of Incorporation did not include any
7 provision establishing Wynn Resorts' purported right to redeem shares held by "Unsuitable
8 Person[s]."

9 41. Echoing a false statement made in a February 19, 2012 Wynn Resorts press
10 release, Matt Maddox, Wynn Resorts' Chief Financial Officer and Treasurer, erroneously stated
11 in a conference call with investors on February 21, 2012, that the redemption provision in the
12 Articles of Incorporation had "been there since the Company's inception."

13 **D. The Contribution Agreement**

14 42. Before Wynn Resorts could go public, the LLC interests in Valvino held by
15 Mr. Wynn, Aruze USA, and Baron Asset Fund had to be transferred to the new Wynn Resorts
16 entity. This was no small matter. By this point, Aruze USA had contributed some \$380 million
17 in exchange for its LLC interests in Valvino.

18 43. On June 10, 2002, Mr. Wynn, Aruze USA, Baron Asset Fund, Wynn Resorts and
19 the Kenneth R. Wynn Family Trust entered into the Contribution Agreement (the "Contribution
20 Agreement"), by which they agreed to contribute all of the Valvino membership interests to
21 Wynn Resorts in exchange for the capital stock of Wynn Resorts. The Wynn Resorts' stock
22 acquired by Aruze USA was subject to the provisions of the Stockholders Agreement.

23 44. Wynn Resorts further agreed that the existing restrictions could be altered only
24 with Aruze USA's express written consent. The Contribution Agreement stated: "This
25 Agreement may *not be modified or amended* except by an instrument in *writing* signed by the
26 corporation and all of the Holders." (Emphasis added).
27
28

1 **E. After Securing Aruze USA's Contribution, Steve Wynn Unilaterally Amends**
2 **the Articles of Incorporation**

3 45. After entering into the Contribution Agreement, but before transferring the LLC
4 interests in Valvino, Mr. Wynn unilaterally changed Wynn Resorts' Articles of Incorporation to
5 include a restriction that purportedly allows Wynn Resorts to "redeem" stock held by Wynn
6 Resorts' stockholders. At this time, Mr. Wynn was the sole stockholder and director of Wynn
7 Resorts. It was not until 2012, however, that Mr. Wynn and Wynn Resorts attempted to apply
8 this redemption restriction to Aruze USA's shares, even though the Stockholders Agreement
9 precluded Wynn Resorts from unilaterally adding restrictions to the shares.

10 46. Under the Stockholders Agreement, Mr. Wynn had power of attorney to transfer
11 the LLC interests in Valvino to Wynn Resorts. Although the Contribution Agreement obligated
12 Mr. Wynn to "as soon as practicable ... deliver or cause to be delivered to Holders certificates
13 representing the Common Stock[,]" Mr. Wynn delayed the contribution of the LLC interests in
14 Valvino to Wynn Resorts. On information and belief, the final closing condition under the
15 Contribution Agreement was met by July 9, 2002. Nevertheless, Mr. Wynn's delay meant that,
16 although he had already received Aruze USA's commitment via the Contribution Agreement and
17 the Stockholders Agreement, Mr. Wynn would continue to maintain unilateral control over Wynn
18 Resorts for the period of the delay. This enabled Mr. Wynn to improperly change the Company's
19 Articles of Incorporation in an apparent attempt to achieve Mr. Wynn's own long-term interests at
20 Aruze USA's expense. Through this deliberate delay, and the intervening acts taken by
21 Mr. Wynn before he fulfilled the terms of the Contribution Agreement, Mr. Wynn breached his
22 fiduciary duties to Aruze USA as the attorney-in-fact of Aruze USA under the Stockholders
23 Agreement and Contribution Agreement, as well as a director and officer of Wynn Resorts.

24 47. On September 10, 2002, Mr. Wynn amended Wynn Resorts' Articles of
25 Incorporation. Although this change would purport to alter the securities received by Aruze
26 USA, Mr. Wynn made the change unilaterally, without affording Aruze USA the opportunity to
27 vote on the changes, let alone expressly consent in writing to the added restrictions as required in
28

1 the Stockholders Agreement and Contribution Agreement, in order to make the provision
2 enforceable. The language Mr. Wynn unilaterally added to the Articles of Incorporation provided
3 a *discretionary* right of redemption, which the Board of Directors had the right to waive
4 whenever a waiver “would be in the best interests of the Corporation.” That provision provided,
5 in pertinent part:

6 The Securities Owned or Controlled by an Unsuitable Person or an
7 Affiliate of an Unsuitable Person shall be subject to redemption by
8 the Corporation, out of funds legally available therefor, by action of
9 the board of directors, to the extent required by the Gaming
 Authority making the determination of unsuitability or to the extent
 deemed necessary or advisable by the board of directors. ...

10 48. If Mr. Wynn had done what he was bound to do pursuant to the trust and duties
11 placed in him under the Stockholders Agreement and Contribution Agreement, and transferred
12 the LLC interests in Valvino to Wynn Resorts *before* adding the redemption restriction, Aruze
13 USA would have had the right under Nevada law to vote on the changes to Wynn Resorts’
14 Articles of Incorporation.

15 49. Years later, in February 2012, Mr. Wynn, Elaine Wynn, the individual directors,
16 and Wynn Resorts improperly applied the redemption provision to Aruze USA’s stock and acted
17 to redeem Aruze USA’s shares, thereby breaching and tortiously interfering with the Stockholders
18 Agreement. Prior to Wynn Resorts’ improper attempt to apply the redemption restriction to
19 Aruze USA’s stock, Aruze USA was not and could not have been aware that Wynn Resorts
20 would ever attempt to apply the discretionary redemption provision against Aruze USA because
21 the Stockholders Agreement, which predated the amended Articles of Incorporation, gave the sole
22 power of disposition and conversion of Aruze USA’s stock to Aruze USA, precluding any right
23 of redemption by the Wynn Resorts. Indeed, on information and belief, counsel for Mr. Wynn
24 informed Aruze USA’s counsel in or around June 2002, that any redemption restriction, if later
25 added to the Articles of Incorporation through an amendment, would *not* to apply to Aruze
26 USA’s shares.

1 50. Thus, although the first acts perpetrated in furtherance of this fraud occurred in
2 2002, the misconduct did not cause harm until recently, when Wynn Resorts purported to use the
3 redemption provision to redeem Aruze USA's shares in 2012 for a fraction of their true value.

4 **F. Wynn Resorts Goes Public**

5 51. On September 28, 2002, Mr. Wynn eventually contributed the LLC interests in
6 Valvino to Wynn Resorts. Thereafter, on October 21, 2002, Mr. Okada became a member of
7 Wynn Resorts' Board.

8 52. On October 25, 2002, Wynn Resorts conducted an initial public offering ("IPO")
9 on NASDAQ at \$13 per share. At this time, Mr. Okada and Mr. Wynn each owned about 30% of
10 the outstanding stock. Aruze USA contributed an additional \$72.5 million to Wynn Resorts by
11 purchasing stock through the IPO, and also invested \$2.5 million in bonds issued by two
12 Company subsidiaries, raising its total investment to \$455 million. Shortly thereafter, Mr. Okada
13 became Vice Chairman of Wynn Resorts' Board.

14 53. On April 28, 2005, Wynn Las Vegas opened. It was an instant success. On
15 September 10, 2006, Wynn Resorts opened in Macau. "Encore" hotels followed in both
16 locations. Again, each property has been very successful. None of this success would have been
17 possible without the capital funding, support, and expertise of Aruze USA and Mr. Okada.

18 54. As one form of recognition for Aruze USA's contributions, Wynn Resorts
19 included a high-end Japanese restaurant at both the Las Vegas and Macau resorts. These
20 restaurants were named "Okada."

21 **G. The Close and Trusting Relationship of Steve Wynn and Kazuo Okada**

22 55. Although they have very different backgrounds and educational experiences, both
23 Mr. Wynn and Mr. Okada are of similar ages, interests, and ambitions. Beyond their business
24 dealings, Mr. Wynn gave every indication that he considered Mr. Okada to be a close personal
25 friend, and repeatedly called him his "partner."

26 56. For example, at hearings before the Nevada State Gaming Control Board and
27 Nevada Gaming Commission, on June 4 and 17, 2004, respectively, Mr. Wynn affirmed that
28

1 “Mr. Okada was not only suitable” to receive a gaming license “but he was desirable.”

2 Repeatedly referring to Mr. Okada as his “partner,” Mr. Wynn said Mr. Okada was “dedicated to
3 the pursuit of excellence.”

4 57. In this sworn testimony, Mr. Wynn also affirmed Mr. Okada’s generosity and
5 unwavering trust in Mr. Wynn. Mr. Wynn said “I have never dreamed that there would be a man
6 as supportive, as long-term thinking, as selfless in his investment as Mr. Okada.” Mr. Wynn
7 recalled a conversation with Mr. Okada on a plane from Macau to Tokyo: Mr. Okada “told me
8 the most important thing, Steve ... is the right thing. Take the high road. Do the right thing.
9 Don’t worry about me. I’ll support any decision you may make.”

10 58. In recognition of this trust and in “the spirit of friendship and cooperation that
11 exists between [Steve] Wynn and Mr. Kazuo Okada . . .” on November 8, 2006, Mr. Wynn
12 caused Aruze USA to enter into an Amendment to the Stockholders Agreement, which purports
13 to contain a mutual restriction on the sale of stock without the other party’s written consent, with
14 all other relevant terms of the Stockholders Agreement remaining unchanged.

15 59. And, indeed, Mr. Okada trusted Mr. Wynn. Mr. Wynn knew this, and callously
16 and illegally set out to exploit this trust for his advantage.

17 **III. UNIVERSAL DISCLOSES AND ULTIMATELY PURSUES FOREIGN**
18 **DEVELOPMENT PROJECTS**

19 **A. In 2007, Universal Fully Discloses to Wynn Resorts Its Interest In Pursuing a**
20 **Casino Project in the Philippines**

21 60. Universal and Mr. Okada first began exploring the possibility of acquiring and
22 developing land in the Philippines in 2007, with one possible option for development being a
23 casino and hotel resort. Although the initial discussions were preliminary, Mr. Okada brought the
24 opportunity immediately to Mr. Wynn, hoping that Wynn Resorts might be interested in
25 undertaking the project. Mr. Wynn told Mr. Okada that Wynn Resorts was not interested at that
26 time in pursuing a project in the Philippines. However, Mr. Wynn voiced no concerns at all with
27
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1 Universal's pursuit of the project. Mr. Okada thereafter kept Mr. Wynn fully informed of the
2 project's progress.

3 61. On December 20, 2007, Universal publicly announced a planned casino project in
4 the Asian market.

5 62. On April 25, 2008, Universal announced its planned casino project in the
6 Philippines. While the plans were preliminary, they took shape in the months to come.

7 63. From that point on, Wynn Resorts and Universal had an agreement. Universal
8 could pursue a project in the Philippines, but at least for the time being, it would not formally be a
9 Wynn Resorts project. On a May 1, 2008 conference call with stock analysts, Mr. Wynn affirmed
10 that Wynn Resorts' Board and management team had longstanding knowledge of and fully
11 supported Universal's project in the Philippines:

12 Well, first of all, I love Kazuo Okada as much as any man that I've
13 ever met in my life. He's my partner and my friend. And there is
14 hardly anything that I won't do for him. Now, we are not at the
15 present time an investor, nor do we contemplate, an investment in
16 the Philippines. *This is something that Kazuo Okada and his*
17 *company, [Universal], has done on its own initiative. He consults*
18 *me and has discussed it with me extensively and I've given him my*
19 *own personal thoughts on the subject and advice. And, to the extent*
20 *that he comes to me for any more advice or input, all of us here at*
21 *the Company will be glad to give him our opinions. But that's short*
22 *of saying this is a Wynn Resorts project. It is a [Universal] project.*

23 (Emphasis added).

24 64. Importantly, Mr. Wynn voiced no concerns about the potential of the Philippine
25 project competing with Wynn Macau, Ltd. ("Wynn Macau"). As reflected in his public statement
26 to Wynn Resorts' shareholders and analysts, Mr. Wynn's attitude reflected Wynn Resorts'
27 official position on the Philippine project until at least late 2011 or early 2012 when Mr. Wynn
28 decided to use it as a pretext to deprive Aruze USA of its stock in Wynn Resorts.

65. As a further example of Wynn Resorts' knowledge and approval of Universal and
Aruze USA's activities in the Philippines, on April 4, 2008, Kevin Tourek, a member of Wynn
Resorts' Compliance Committee, emailed Frank Schreck, the then-head of Universal's
Compliance Committee. The email was regarding Universal's investment in the Philippines.

1 Mr. Tourek confirmed that – so long as Universal was in compliance with the laws of the
2 Philippines – the investment would not be something that would concern Nevada regulators or
3 Wynn Resorts.

4 66. Once again, on September 24, 2009, Wynn Resorts acknowledged Universal's
5 project in the Philippines. Wynn Macau's IPO prospectus explicitly acknowledged Universal's
6 plans to develop a casino in the Philippines:

7 In addition to its investment in Wynn Resorts, Limited, [Universal]
8 has invested in the construction of a hotel casino resort in the
9 Philippines, which is anticipated to open to the public in 2010.
10 Mr. Okada confirms that, as at the Latest Practicable Date, except
11 for his indirect shareholding interests in Wynn Resorts, Limited
12 through Aruze USA, Inc., neither he nor his associates holds, owns
13 or controls more than 5% voting interests in an entity which,
14 directly or indirectly, carries on, engages, invests, participates or
15 otherwise is interested in any company, business or operation that
16 competes, or is reasonably expected to compete, with the business
17 carried on by us in Macau.

18 67. In this way, Wynn Macau's prospectus acknowledged and ratified Universal's
19 plans to open a casino in the Philippines and – by adopting Universal's statement – affirmed that
20 a casino in the Philippines will not materially compete with Wynn Macau.

21 **B. With the Blessing of Wynn Resorts, Universal Commits Significant Funds**
22 **and Energy to the Philippine Project**

23 68. As was disclosed fully to Wynn Resorts and the Nevada Gaming Commission,
24 Universal went about the difficult process of acquiring land and approvals to build a casino in the
25 Philippines.

26 69. In 2008, after negotiations with private landowners that spanned several months,
27 Universal purchased contiguous land in and about a special economic zone in Manila Bay that
28 was specifically zoned for casinos. It made this purchase with a Philippine-based partner, and at
all times (contrary to statements in the Complaint and by Mr. Freeh) has complied with the laws
of the Philippines requiring the citizenship for landholding.

70. The Philippine government approached Universal as early as 2006 and courted
Universal for years. The Philippine government ultimately secured an agreement that Universal

1 would employ significant numbers of local people to work in the casinos. Press reports estimated
2 that Universal's project and surrounding development could create as many as 250,000 jobs for
3 Filipinos, and generate billions of dollars in tax revenues for the Philippine government. When
4 Universal delayed the project in the wake of the 2008 financial crisis, the Philippine government
5 again stepped up its efforts to encourage Universal to advance the development of its project.
6 While Universal certainly expects the Manila Bay Project to be a "win-win" for the Philippines
7 and Universal, the idea that Universal needed to curry special favor with Philippine government
8 officials is profoundly mistaken.

9 **C. Steve Wynn and Elaine Wynn Divorce**

10 71. In March 2009, Mr. Wynn divorced Elaine Wynn. The divorce proved to be
11 damaging to Mr. Wynn's financial position and standing within Wynn Resorts. By early 2010,
12 Mr. Wynn had reached an agreement to split his ownership of Wynn Resorts' stock with Elaine
13 Wynn. As a result of the divorce settlement, Aruze USA was now by far Wynn Resorts' largest
14 stockholder, owning some 24,549,222 shares of Wynn Resorts, or 19.66% of the outstanding
15 stock. Mr. Wynn would now own less than half what Aruze USA owned of Wynn Resorts' stock.
16 While neither Aruze USA nor Mr. Okada ever made any threats against Mr. Wynn, the possibility
17 loomed that Mr. Wynn could be losing control of Wynn Resorts, as had happened ten years
18 earlier, when Mr. Wynn lost control of Mirage Resorts, Inc.

19 72. On January 6, 2010, Mr. Wynn obtained an Amended and Restated Stockholders
20 Agreement ("Amended Stockholders Agreement,") which made Elaine Wynn a party to the
21 Stockholders Agreement. The Amended Stockholders Agreement carried forward the covenant
22 of all the Stockholders that the "Stockholder shall be the record and Beneficial Owner" of all
23 Wynn Resorts common shares and "shall have *the sole power of disposition* [and] *sole power of*
24 *conversion*" of the shares "with no material limitations, qualifications, or restrictions on such
25 rights" except under applicable securities laws and the terms of the Stockholders Agreement.
26 (Emphasis added.)
27
28

1 73. The amended agreement also altered the Stockholders Agreement language
2 regarding Aruze USA's right to nominate directors. Aruze USA could endorse nominees so long
3 as the majority of nominees were endorsed by Mr. Wynn. Although the agreement required
4 Mr. Wynn to support a minority slate of directors proposed by Aruze USA, he never did so. On
5 information and belief, Mr. Wynn obtained the Amended and Restated Stockholders Agreement,
6 with the intention of never supporting any director proposed by Aruze USA. In fact, Mr. Wynn
7 consistently refused efforts to consider Aruze USA directors for the Board, in an effort to
8 continue to monopolize control over Wynn Resorts. [ADD EXAMPLES FROM CLIENT]

9 74. In addition, the Amended and Restated Stockholders Agreement continued to
10 contain a non-compete clause that prohibited Mr. Okada, Aruze USA, and Universal only from
11 operating casinos in Clark County, Nevada and in Macau, and certain Internet gaming ventures.
12 Neither this version of the Stockholders Agreement, nor any prior or subsequent agreements,
13 contained any prohibition or concerns regarding the Philippines or Korea.

14 75. In January 2010, Mr. Okada indicated that he was willing to move ahead with the
15 amendments provided that Mr. Wynn reciprocated by allowing Aruze USA to sell publicly the
16 same number of shares as Mr. Wynn and Elaine Wynn. In this way, Mr. Okada expected to
17 receive liquidity for Aruze USA whenever Mr. Wynn and Elaine Wynn asked permission to sell
18 or transfer their stock.

19 **D. Steve Wynn and Kazuo Okada Visit the Philippines in 2010, as Wynn Resorts**
20 **Considers Involvement with the Philippine Project**

21 76. Though Mr. Wynn had consistently declined to involve Wynn Resorts formally in
22 the Philippine project, he began to reconsider the opportunity in 2010. On June 14, 2010,
23 Mr. Wynn and Mr. Okada jointly visited Manila to conduct due diligence on behalf of Wynn
24 Resorts and Universal. On information and belief, Mr. Wynn was considering pursuing the
25 project in his individual capacity as well as on behalf of Wynn Resorts.
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1 77. As illustrated in the photographs, this pre-arranged trip involved meetings with
2 dignitaries and officials and informational presentations on the project.
3





78. Mr. Wynn never formally committed Wynn Resorts to the Manila Bay project, but was clearly interested in pursuing the opportunity. The idea – promulgated by Mr. Wynn in press conferences following the purported redemption – that Mr. Okada and Universal were off “doing their own thing” unbeknownst to anyone at Wynn Resorts, is not true.

E. Over Kazuo Okada’s Objection, Wynn Resorts Makes an Unprecedented \$135 Million Donation For Wynn Macau

79. In May 2011, Wynn Macau pledged to donate HK\$1 billion (about \$135 million) to the University of Macau Development Foundation. This contribution consisted of a \$25 million contribution made in May 2011, and a commitment for additional donations of \$10 million each year for the calendar years 2012 through 2022 inclusive. Suspiciously, Wynn Macau’s current gaming concession covers essentially the same 10-year period expiring in

1 June 2022. Wynn Macau and Wynn Resorts also disclosed that Wynn Macau was in the process
2 of seeking to obtain land in Macau and the rights to develop a third casino in the area.

3 80. At a Board meeting in April, 2011, Mr. Okada objected to and voted against this
4 donation, which appears to be unprecedented in the annals of the University of Macau, and in the
5 history of Wynn Resorts. Mr. Okada objected to the unprecedented size and duration of the
6 commitment. It was unclear how the University of Macau would use the funds. Mr. Okada
7 wondered why a wealthy university that sits on government land and largely caters to non-Macau
8 residents might need or want such a large donation. Mr. Okada, who is himself a significant
9 philanthropist, wondered whether such a donation actually benefits the people who live in Macau.
10 He was concerned about the lack of deliberation of the boards of Wynn Resorts and Wynn Macau
11 (the donation was approved at a joint meeting in Macau of the two boards), and that pending
12 approvals in Macau related to a new development in Cotai, and the coincidence of the date of the
13 donation and the term of Wynn Macau's gaming license in Macau, might make it appear that
14 Wynn Macau and Wynn Resorts were paying for benefits.

15 81. Notably, for example, the Chancellor of the University of Macau is also the head
16 of Macau's government, with ultimate oversight of gaming matters. The only other charitable
17 donation Wynn Resorts has disclosed in SEC filings in its history was a \$10 million Ming
18 dynasty vase donated to the Macau Museum in 2006—the same year in which Wynn Resorts first
19 applied for a land concession on the Cotai Strip in Macau.

20 82. While Wynn Resorts claims to have received a legal opinion sanctioning the
21 unprecedented University of Macau donation, Wynn Resorts did not provide that legal opinion to
22 Mr. Okada or, on information and belief, to any other members of the board of either Wynn
23 Macau or Wynn Resorts. On information and belief, Mr. Wynn – and potentially others – misled
24 the Wynn Resorts Board by securing its consent to the donation, without disclosing his personal
25 knowledge of the close connection between the University of Macau and officials responsible for
26 regulatory decisions related to Wynn Macau's gaming operations.

1 83. Mr. Okada's opposition to this donation caught the attention of the U.S. Securities
2 and Exchange Commission ("SEC"). According to Wynn Resorts 2011 Form 10-K, Wynn
3 Resorts received a letter from the Division of Enforcement of the SEC indicating the SEC has
4 commenced an "informal inquiry" regarding matters in Macau. Mr. Wynn, Ms. Sinatra (Wynn
5 Resorts' General Counsel), and Mr. Miller (head of Wynn Resorts' Compliance Committee) did
6 not take kindly to Mr. Okada's scrutiny of the donation. On information and belief, Mr. Wynn,
7 Ms. Sinatra, and Mr. Miller set out to discredit Mr. Okada, in an effort to distract attention from
8 the problematic Macau donation.

9 **F. Steve Wynn and Kimmarie Sinatra Fraudulently Promise Kazuo Okada**
10 **Financing for the Philippine Project**

11 84. On or about April 29, 2011, Mr. Wynn married his current wife Andrea Hissom.
12 Shortly thereafter, on May 16, 2011, Mr. Wynn and Mr. Okada met in Macau. Ms. Sinatra was
13 present at the meeting, as was Matt Maddox ("Mr. Maddox"), the Chief Financial Officer of
14 Wynn Resorts, and Michiaki Tanaka ("Mr. Tanaka") of Aruze USA, who prepared a transcript of
15 the meeting.

16 85. According to the transcript of the meeting, Mr. Wynn told Mr. Okada that Elaine
17 Wynn was very angry at Mr. Wynn for remarrying. Knowing she was going through a difficult
18 time, Mr. Okada expressed sympathy for Elaine Wynn. Mr. Wynn said that Elaine Wynn had a
19 desire to transfer her shares to a new owner, and that there was an urgent need for Mr. Okada to
20 immediately consent on Aruze USA's behalf to the transfer of the securities under the
21 Stockholders Agreement.

22 86. Mr. Okada was amenable to allowing Elaine Wynn to transfer her stock because of
23 this exigency but in return, Mr. Okada wanted to pledge some of Aruze USA's Wynn Resorts
24 stock in order to obtain a measure of liquidity from the stock.

25 87. Mr. Wynn suggested that instead of having Aruze USA pledge its shares, he had
26 "good answers to solve [Mr. Okada's] ... requests." Mr. Wynn suggested that Wynn Resorts
27 would make a loan to Aruze USA. Mr. Wynn told Mr. Okada that this was better than Aruze
28

1 USA liquidating its stock (which could have hurt Wynn Resorts' stock value), and much better
2 than a bank loan because a bank: (1) would set a credit line of only 50% of the market value of
3 Aruze USA's stock; (2) would require additional guarantees if the market value of Aruze USA's
4 stock decreases; and (3) could require forfeiture of Aruze USA's stock if there was any delay in
5 payment.

6 88. Mr. Wynn gave Mr. Okada an explicit personal assurance that financing would
7 occur. Mr. Wynn stated that this proposal would be good for Mr. Okada and good for Wynn
8 Resorts, because it will contribute to the stability of Wynn Resorts. And, based on such
9 assurances, Mr. Okada agreed to financing from Wynn Resorts, rather than pledging Aruze
10 USA's stock.

11 89. Unbeknownst to Mr. Okada, Universal, or Aruze USA at the time, Mr. Wynn was
12 simultaneously orchestrating Wynn Resorts' "investigation" to have Mr. Okada, Aruze USA, and
13 Universal deemed unsuitable. Indeed, Wynn Resorts has publicly asserted that it began its
14 "investigation" into the Philippines as early as February 2011, well before Mr. Okada proposed to
15 pledge Aruze USA's shares of Wynn Resorts' stock. Through his assurances, however,
16 Mr. Wynn took deliberate steps to keep Aruze USA, Universal, and Mr. Okada associated with
17 Wynn Resorts. If Wynn Resorts and Mr. Wynn were truly concerned with any risk that Aruze
18 USA, Universal, and Mr. Okada supposedly posed to their gaming licenses, they would have
19 allowed Aruze USA to liquidate its position. Instead, to perpetrate the fraudulent scheme, and
20 seek to forcibly redeem Aruze USA's shares at a vast discount under extremely oppressive terms,
21 Mr. Wynn instead misled Aruze USA into not liquidating its shares.

22 90. Ms. Sinatra was present at the meeting, and participated in this fraudulent scheme.
23 On information and belief, Ms. Sinatra is a highly sophisticated and knowledgeable attorney, and
24 is one of the highest-paid general counsels in the United States. Toward the end of the meeting,
25 Ms. Sinatra stated that draft loan agreements would be provided to Aruze USA within 10 days to
26 support the agreement reached between Mr. Okada and Mr. Wynn. Neither Mr. Wynn nor
27 Ms. Sinatra said anything about internal or external limitations on loans to directors and officers.
28

1 For example, neither of them made any mention of Section 402 of the Sarbanes-Oxley Act
2 (“SOX”). Unlike Japanese law that has no such prohibition, on information and belief,
3 Ms. Sinatra believed Section 402 barred any loan to Aruze USA by Wynn Resorts. On
4 information and belief, at the time of this meeting, Ms. Sinatra was intimately familiar with SOX
5 and Section 402, having overseen the implementation of SOX compliance policies at Wynn
6 Resorts that specifically addressed prohibitions on loans to officers and directors.

7 91. At the conclusion of the meeting, and in reliance on the assurances by Mr. Wynn
8 and Ms. Sinatra that Wynn Resorts would make a loan to provide liquidity for Aruze USA and
9 that loan documents would be forthcoming, Mr. Okada signed a waiver and consent granting
10 Elaine Wynn the option to transfer her stock. Simultaneously, Mr. Tanaka of Aruze USA made a
11 handwritten note to memorialize the agreement that Wynn Resorts would provide financing to
12 Aruze USA.

13 92. Later that day, in response to Mr. Tanaka’s note and after Mr. Okada had signed
14 the waiver and consent about Elaine Wynn’s stock, Ms. Sinatra prepared a draft “Side Letter” to
15 replace the one prepared by Mr. Tanaka. The “Side Letter” prepared by Ms. Sinatra stated that
16 Wynn Resorts would negotiate a loan from Wynn Resorts to Aruze USA secured by Aruze
17 USA’s stock “*to the extent compliant with all state and federal laws.*” (Emphasis added.) On
18 information and belief, Ms. Sinatra inserted this language because she believed Section 402 of
19 SOX prohibited the loan proposed by Mr. Wynn and agreed to by both Mr. Wynn and Mr. Okada.

20 93. At the time, Wynn Resorts had extensive SOX compliance policies. Yet,
21 Ms. Sinatra said nothing to Mr. Okada or Aruze USA concerning any purported loan prohibitions
22 under SOX, leading Mr. Okada and Aruze USA to believe that financing through Wynn Resorts
23 was not only possible, but would be forthcoming in the near future. Ms. Sinatra’s role in this
24 transaction makes clear that she was not working on Wynn Resorts’ behalf. Rather, in breach of
25 her duty to Wynn Resorts, she intentionally sought to deceive Mr. Okada for the personal benefit
26 of Mr. Wynn, who would benefit from stringing along Aruze USA.

1 94. On June 9, 2011, Ms. Sinatra emailed Aruze USA's attorneys regarding the "Side
2 Letter," expressing "concern." For the first time, Ms. Sinatra specifically referred to Section 402
3 of SOX. She provided no further explanation (although this confirmed that she understood the
4 issue). Ms. Sinatra urged Aruze USA to "obtain sophisticated US securities lawyers to assist."
5 Ms. Sinatra also disputed that Mr. Wynn had committed to provide financing at the meeting, a
6 statement that she knew to be false.

7 95. On June 20, 2011, Ms. Sinatra asked Aruze USA's counsel if Mr. Okada's consent
8 to Elaine Wynn's transfer of shares was conditioned on Aruze USA receiving the loan. On
9 July 13, 2011, Aruze USA's lawyer emailed Ms. Sinatra stating that Aruze USA, through
10 Mr. Okada, would allow the immediate transfer of Elaine Wynn's shares because he understood
11 that approval was needed urgently, but stated that the consent was "based upon the mutual
12 understanding between Mr. Okada and Mr. Wynn that Mr. Wynn would pursue avenues for
13 Mr. Okada to obtain financing." Ms. Sinatra immediately sent an email back: "Thank you very
14 much for this."

15 96. In the same email, Ms. Sinatra then explained that Wynn Resorts was negotiating
16 with Deutsche Bank on a margin loan transaction, with Wynn Resorts acting as a "backstop."
17 Ms. Sinatra suggested holding a telephone conference with Aruze USA's counsel to discuss the
18 proposed transaction further. She did not dispute that Mr. Okada's consent to the amendment in
19 the Stockholders Agreement was based on Wynn Resorts' agreement to continue to pursue
20 financing for a loan to Aruze USA (using Aruze USA's Wynn Resorts shares as collateral). At
21 no point in time did Ms. Sinatra call into question the Philippine project.

22 97. On July 15, 2011, Ms. Sinatra and Aruze USA's counsel held a telephone
23 conference to discuss the proposed financing from Deutsche Bank. Ms. Sinatra provided
24 background information on the state of the negotiations, and explained that Deutsche Bank was
25 considering a margin loan of \$800 million to Aruze USA. She stated that Deutsche Bank
26 expected that they would be able to provide draft documentation within two to three weeks, and
27 that the loan would be proposed to the Wynn Resorts Compliance Committee thereafter.
28

1 98. On or about September 23, 2011, Ms. Sinatra called Aruze USA. Ms. Sinatra
2 informed Aruze USA that Wynn Resorts' Compliance Committee would be meeting the
3 following week regarding the Philippines, which could impact whether Wynn Resorts would
4 allow the loan.

5 99. Wynn Resorts' Compliance Committee is not an independent committee of the
6 Board. Rather, it is made up of one Wynn Resorts director, former Nevada Governor Bob Miller,
7 and two Wynn Resorts insiders. On information and belief, each member of Wynn Resorts'
8 Compliance Committee depends on Mr. Wynn for his livelihood and each is beholden to
9 Mr. Wynn. On information and belief, Mr. Wynn has plenary control over the Compliance
10 Committee. On September 30, 2011, the Compliance Committee refused to permit the loan to
11 Aruze USA.

12 **G. The Chair of Universal's and Aruze Gaming America's Compliance**
13 **Committee Resigns**

14 100. Also, on or about September 27, 2011, Frank A. Schreck, who had been the
15 Chairman of the Universal Compliance Committee for years, abruptly resigned his position. In
16 addition to being the Chair of the Universal Compliance Committee, he was (and, on information
17 and belief, still is) a long-time lawyer for Mr. Wynn.

18 101. Richard Morgan, the new Chairman of the Universal Compliance Committee,
19 spoke with Mr. Schreck regarding his reasons for resignation. Mr. Schreck told Mr. Morgan that
20 he did not resign from the Committees because of any suitability concerns about Mr. Okada.
21 Mr. Morgan asked Mr. Schreck if he knew of any facts that gave Mr. Schreck concerns about
22 Mr. Okada's suitability; Mr. Schreck told Mr. Morgan that he knew of no such facts.

23 102. Notably, Mr. Schreck's law firm thereafter appeared as litigation counsel for
24 Wynn Resorts on January 27, 2012, representing Wynn Resorts in the Nevada state court in
25 seeking to deny Mr. Okada his right as a director of Wynn Resorts to review Wynn Resorts'
26 records regarding the enormous donation it made to the University of Macau.

1 **IV. STEVE WYNN DIRECTS WYNN RESORTS TO CONDUCT A PRETEXTUAL**
2 **INVESTIGATION FOR THE PURPOSE OF REDEEMING ARUZE USA'S**
3 **SHARES**

4 **A. Wynn Resorts Seeks Kazuo Okada's Resignation and Threatens Redemption**
5 **in an Attempt to Secure a Personal Benefit for Steve Wynn**

6 103. On September 30, 2011, Aruze USA's lawyers, Robert Faiss and Mark Clayton of
7 the Lionel Sawyer & Collins law firm, met with Ms. Sinatra and Kevin Tourek of Wynn Resorts.
8 The conversation took a very unexpected turn.

9 104. First, Ms. Sinatra and Mr. Tourek said that Wynn Resorts' Compliance Committee
10 had commissioned two "investigations" and that the Compliance Committee had produced an
11 investigative "report." Ms. Sinatra and Mr. Tourek were concerned that Universal had purchased
12 land from a person in the Philippines who was now under indictment for tax evasion. Neither
13 Ms. Sinatra nor Mr. Tourek explained how Universal or Mr. Okada could bear any responsibility
14 for another man's alleged failure to pay his taxes.

15 105. Second, Ms. Sinatra and Mr. Tourek said that Wynn Resorts has a "policy" that
16 officers and directors cannot pledge their Company stock. This was the first mention of such a
17 policy, despite extensive discussions of a loan secured by Aruze USA's stock.

18 106. Third, Ms. Sinatra and Mr. Tourek stated that, if there was a loan, Mr. Okada
19 would have to step down from the Board and then would have the right to pledge or sell Aruze
20 USA's shares subject to the voting agreement. Again, this was the first mention of such a
21 requirement.

22 107. Fourth, Ms. Sinatra and Mr. Tourek proposed to change the Stockholders
23 Agreement to allow Aruze USA to sell or pledge shares, but subject to a voting trust, which
24 would allow Mr. Wynn to vote the shares, and a right of first refusal for Mr. Wynn to purchase
25 the shares. This proposal was improper. Ms. Sinatra and Mr. Tourek were again advocating for
26 Mr. Wynn, not for Wynn Resorts. This was another breach of duty by Ms. Sinatra to Wynn
27 Resorts and to its largest shareholder, Aruze USA.
28

1 108. Fifth, Ms. Sinatra and Mr. Tourek stated that Mr. Okada has a fiduciary duty to
2 present to Wynn Resorts any proposed competitive opportunities. Further, they stated that if
3 Mr. Okada has a competing casino business, he should consider stepping down from the Board.
4 This was the first mention of any “competitive” concerns. Mr. Wynn and Wynn Resorts (and,
5 indeed, Ms. Sinatra and Mr. Tourek) had known about Universal’s Philippine project for years.
6 Universal had committed hundreds of millions of dollars to pursuing the project. Wynn Resorts
7 and Mr. Wynn had never objected to the Philippine project.

8 109. Sixth, toward the end of the meeting, Ms. Sinatra gave Mr. Okada’s counsel a
9 copy of the Articles of Incorporation of Wynn Resorts, with certain provisions highlighted in
10 yellow. The highlighted portions included the redemption provision. That was the first time that
11 redemption was ever obliquely mentioned to Mr. Okada or his counsel.

12 110. Ms. Sinatra then brought her threat into stark relief. She stated that the
13 Compliance Committee would meet on October 31, 2011 (in advance of a November 1 Board
14 meeting). She told Mr. Okada’s counsel that she hoped a “resolution” would be reached before
15 those meetings regarding Mr. Okada’s directorship and the voting rights of Aruze USA’s stock,
16 so as to avoid presenting this matter to the Compliance Committee and the Board. Ms. Sinatra’s
17 threat was clear: if Aruze USA did not agree to sell its shares in Wynn Resorts to Mr. Wynn or
18 pledge its shares – subject to both a voting trust that would allow Mr. Wynn to vote the shares
19 and to a right of first refusal for Mr. Wynn to purchase the shares – then Ms. Sinatra and Mr.
20 Wynn would, as officers of Wynn Resorts, (a) inform the Board of alleged concerns regarding
21 Universal’s and Mr. Okada’s project in the Philippines, and (b) request that the Board redeem
22 Aruze USA’s shares in Wynn Resorts on the basis of yet undisclosed investigative “findings” that
23 Defendants had not been allowed to review or permitted any opportunity to rebut.

24 **B. Steve Wynn and Kimmarie Sinatra Try to Intimidate and Threaten Kazuo**
25 **Okada While Hiding Supposed Evidence of Wrongdoing**

26 111. On an October 3, 2011 telephone call, Aruze USA’s counsel asked Ms. Sinatra to
27 provide Aruze USA with a copy of the Compliance Committee’s investigative report regarding
28

1 Mr. Okada. Ms. Sinatra replied that she would have to check to see if a copy could be provided;
2 in fact, she did not and has never provided a copy of the investigative report to Aruze USA,
3 Mr. Okada, or their counsel.

4 112. On October 4, 2011, Mr. Wynn and Ms. Sinatra met with Mr. Okada and his
5 counsel. At the meeting, Mr. Wynn stated that Wynn Resorts' other directors had already
6 decided that Mr. Okada must be removed as Vice Chairman of the Company's Board and as a
7 director of both the Wynn Macau and Wynn Resorts Boards. It apparently did not matter to
8 Mr. Wynn and Ms. Sinatra that in Nevada *only stockholders can remove directors*. Based on a
9 false threat, Mr. Wynn demanded Mr. Okada's resignation as a director.

10 113. Mr. Okada's counsel told Mr. Wynn that in all his years, he had never before
11 experienced a situation where the subject of an investigative report had never been formally
12 questioned or even permitted to respond to the accusations being levied against him. Mr. Okada's
13 counsel once again requested a copy of the investigative report so that he and Mr. Okada's other
14 attorneys could ensure they were advising Mr. Okada properly and that the Wynn Directors could
15 make a decision based on accurate information. Over the course of the remainder of the
16 October 4 meeting, counsel for Mr. Okada asked at least two additional times for a copy of the
17 investigative report. Ms. Sinatra finally replied that Mr. Okada and his counsel could not see a
18 copy of the investigative report because it was "privileged." On information and belief,
19 Ms. Sinatra once again intentionally misrepresented the law (Mr. Okada, as a director of the
20 Company, has a right to see the Company's books and records, including its communications
21 with counsel), in breach of her duties to Wynn Resorts.

22 114. During the October 4, 2011 meeting, Mr. Wynn stated that the purported
23 "grounds" upon which the other directors based their decision to move against Mr. Okada were as
24 follows:

- 25 • That the Philippines were so corrupt that no one could possibly do business in that
26 country without violating the FCPA;

- That “research” showed Mr. Okada owned land without a Philippines partner, and that this violated Philippines law;
- That the other directors were “convinced” that Mr. Okada’s use of his Wynn Resorts business card in other countries had caused a belief that Wynn Resorts was involved in the Philippine project and that the Company would not be in this position had he instead used his Universal business card;
- That Mr. Okada had used the Wynn Resorts building design and other trade secrets without permission; and
- That Mr. Okada had associated with persons who had later been indicted in the Philippines on charges unrelated to the Philippine project.

115. Mr. Wynn’s characterizations of the allegations are telling for several reasons. First, many of these claims were not ultimately used as a basis to redeem Aruze USA’s stock. Rather, Wynn Resorts had an ever-changing list of supposed transgressions it claimed against Mr. Okada, strongly suggesting that Mr. Wynn and Wynn Resorts were seeking to find something – anything – to justify a predetermined outcome. Second, many of these claims are demonstrably false – as one example, the acquisition of the land in the Philippines was entirely compliant with Philippine law.

116. Mr. Wynn closed the meeting by telling Mr. Okada that if he had any respect for Mr. Wynn and the other members of the Board, he would voluntarily step down from his role as a director and Vice Chairman of Wynn Resorts. At this time, Mr. Okada’s counsel explained to Mr. Wynn that Mr. Okada should not be required to respond to his demand for resignation until he had time to further consider it. Mr. Wynn agreed and the meeting was adjourned.

117. Around this same time, the Chairman of Universal’s Compliance Committee also requested a copy of the investigative report through the Chairman of Wynn Resorts’ Compliance Committee. This request has been ignored.

1 **C. A Letter From Steve Wynn’s Outside Lawyer Confirms that, While Wynn**
2 **Resorts Had Already Determined the Outcome, a Pretextual “Investigation”**
3 **was Only Just Starting**

4 118. On October 13, 2011, Robert L. Shapiro, Esq., an attorney retained by Wynn
5 Resorts, sent a letter to Aruze USA. Without any elaboration, the letter reiterated the same
6 mistaken – and soon to be abandoned – conclusions that Mr. Wynn outlined in the October 4
7 meeting. Mr. Shapiro also explicitly stated that Universal’s Manila Bay project “raises questions”
8 regarding “possible violations of the Foreign Corrupt Practices Act.” The letter again demanded
9 Mr. Okada’s resignation.

10 119. Curiously, Mr. Shapiro’s letter admitted that the Compliance Committee was only
11 then beginning the very investigation that Mr. Wynn and Ms. Sinatra claimed to have already
12 been concluded. They also claimed to have already generated a report. Yet Mr. Shapiro wrote
13 that “The Compliance Committee of Wynn Resorts must fully investigate the foregoing acts and
14 have retained Louis J. Freeh ... to conduct an independent investigation.” On information and
15 belief, as of the date of Mr. Shapiro’s letter, Mr. Freeh had not started his investigation.

16 **D. Wynn Resorts Refuses to Allow Kazuo Okada and Aruze USA to Review Any**
17 **Supposed “Evidence”**

18 120. On October 24, 2011, Mr. Okada through his counsel made an initial demand for
19 documents regarding the Philippine investigation. Although he was plainly entitled to such
20 documents as a director under Nevada law, Wynn Resorts refused this and numerous subsequent
21 demands for documents. Wynn Resorts aimed to conduct a secret investigation and never allow
22 Mr. Okada or his counsel to scrutinize or respond to the supposed “evidence” against him.

23 **E. The Board Summarily Removes Kazuo Okada As Vice-Chairman**

24 121. At the Board’s November 1, 2011 meeting, Mr. Miller presented an oral report of
25 an alleged investigation by the Compliance Committee into Mr. Okada’s and Universal’s
26 activities in the Philippines. The report disclosed that the Compliance Committee had allegedly
27 conducted one internal and two “independent” investigations into allegations of suitability,
28

1 conflicts of interest, and possible breaches of fiduciary duties related to acquisition of land for the
2 Philippine project and charitable contributions made by Universal. To date, the contents of these
3 purported investigations have not been presented to Mr. Okada.

4 122. Mr. Miller reported that the Compliance Committee (and not a committee
5 consisting of the independent directors) had retained Freeh Sporkin & Sullivan LLP (“Freeh
6 Sporkin”) as a special investigator to conduct an investigation into the allegations against
7 Mr. Okada. The Board – without debate, deliberation, or allowing Mr. Okada a chance to
8 respond – summarily eliminated Mr. Okada’s position as Vice-Chairman of the Board and ratified
9 the decision to hire Freeh Sporkin.

10 **F. Kazuo Okada Seeks More Information Regarding Wynn Macau**

11 123. The vehemence of the actions by Mr. Wynn, Ms. Sinatra, Mr. Miller, and the
12 Board against Mr. Okada is highly suspicious. After all, Mr. Okada had raised concerns about the
13 donation to the University of Macau before Wynn Resorts had raised any type of unsuitability
14 allegations against Mr. Okada and before anyone associated with Wynn Resorts even mentioned
15 the word “redemption” to him. Mr. Okada made several requests for access to Wynn Resorts’
16 books and records for information relating to the donation made by Wynn Resorts to the
17 University of Macau, all of which were denied without a valid basis. In the state court of Nevada,
18 Mr. Okada even filed a petition for a writ of mandamus on January 11, 2012 to compel Wynn
19 Resorts to grant him access to Wynn Resorts’ books and records. *Okada v. Wynn Resorts, Ltd.*,
20 case number A-12-65422-B, Department XI (the “Inspection Action”). At a hearing on
21 February 9, 2012, the Court ordered Wynn Resorts to comply with Mr. Okada’s reasonable
22 requests. In an order dated October 12, 2012, the Court further ordered that Wynn Resorts
23 produce to Mr. Okada documentation regarding expenditures advanced directly or indirectly by
24 Mr. Wynn in pursuit of gaming concessions in Macau.

1 **G. Aruze USA Nominates Directors, But Steve Wynn Refuses to Endorse Them**
2 **Despite His Obligation to Do So**

3 124. To further address the concerns about Wynn Resorts management, on January 18,
4 2012, pursuant to Section 2(a) of the Stockholders Agreement, Aruze USA, submitted a letter to
5 the Nominating and Corporate Governance Committee of the Company designating three
6 individuals as candidates to be considered for nomination as directors of the Company and
7 included in the Company's proxy statement relating to the Company's 2012 annual meeting of
8 the stockholders or any stockholder meeting held for the purpose of electing Class I directors.
9 Despite numerous written requests to Mr. Wynn to endorse the slate of directors nominated by
10 Aruze USA, as required by the Stockholders Agreement, Mr. Wynn refused to do so.

11 **H. The Freeh Investigation Proceeds Without Seeking Any Input From Kazuo**
12 **Okada**

13 125. In early November 2011, counsel for Mr. Okada contacted Freeh Sporkin
14 requesting further information regarding how its investigation would proceed and to request
15 copies of documents, evidence, or reports related to the allegations against Mr. Okada.
16 Mr. Okada requested the documents so that he could address the allegations made against him.
17 Freeh Sporkin declined to provide any materials and instead directed counsel for Mr. Okada to
18 make such requests of Mr. Shapiro. When such requests were made of Mr. Shapiro, they were
19 rejected.

20 126. Freeh Sporkin did not contact Mr. Okada or his counsel about an interview until
21 January 9, 2012, at which time it demanded (not requested) an interview of Mr. Okada during the
22 week of January 30 (*i.e.*, January 30-February 5). On January 15, 2012, four days after
23 Mr. Okada filed his Inspection Action, Freeh Sporkin informed Mr. Okada's counsel that the
24 "schedule has changed" and pressured Mr. Okada to agree to an interview *before* the week of
25 January 30.

26 127. On January 19, 2012, Mr. Miller, Chair of Wynn Resorts' Compliance Committee,
27 wrote directly to Mr. Okada, threatening that if Mr. Okada failed to make himself available for
28

1 interviews with Freeh Sporkin on January 30 or 31, the Compliance Committee “can only
2 conclude that you have refused participation.” The letter stated that the Compliance Committee
3 originally had a goal of receiving a report by the end of 2011, which was extended to January 15,
4 2012. In addition to this being the first time anyone shared the Compliance Committee’s
5 purported deadlines with Mr. Okada, these dates are inconsistent with Freeh Sporkin making its
6 initial request to conduct an interview of Mr. Okada that would take place in the first week of
7 February. It proved not to be the first time Mr. Miller was “confused” about the “investigation”
8 that was supposedly operating under his direction.

9
10 128. Mr. Okada had only recently hired new counsel to assist with the response to the
11 Freeh Sporkin investigation. In order to prepare for the interview, the new counsel requested that
12 the parties seek a mutually convenient date for an interview by February 15, 2012. Freeh Sporkin
13 then agreed to schedule the interview on February 15th.

14 **I. Freeh Sporkin Refuses to Provide Meaningful Information Regarding the**
15 **Investigation to Kazuo Okada**

16 129. While attempting to set a date to schedule the Freeh Sporkin interview,
17 Mr. Okada’s counsel requested that Freeh Sporkin identify the specific matters under review so
18 that Mr. Okada could prepare appropriately for his interview. After all, Mr. Okada is the
19 Chairman of a publicly traded corporation – and cannot be expected to know every operational
20 detail in his organizations. In addition, translations between Japanese and English are notoriously
21 difficult because of subtleties in language. Mr. Okada’s counsel repeatedly requested documents
22 that Freeh Sporkin might use in the interview and topics so Mr. Okada could prepare for the
23 interview and be ready to provide information and documents that could help Freeh Sporkin (and
24 the Board) understand the facts concerning whatever topics and issues it wanted to discuss with
25 Mr. Okada.

26 130. Freeh Sporkin refused to provide anything more than a statement that it was
27 investigating “all matters related to Mr. Okada’s, Universal’s, and Aruze’s activities in the
28 Philippines and Korea.” This was the first time that Korea was even mentioned as the subject of

1 any investigation by the Company. Again – the basis of Aruze USA’s supposed “unsuitability”
2 kept changing.

3 131. Instead of sharing the topics of the interview with Mr. Okada, Mr. Freeh chose to
4 conduct the interview as an ambush, not unlike the hostile interrogation of a suspected criminal,
5 rather than a respectful and cooperative interview seeking information from a director of Wynn
6 Resorts. If he was afforded the opportunity to do so, Mr. Okada could have helped Mr. Freeh and
7 Freeh Sporkin avoid the public embarrassment of a report that is riddled with factual and legal
8 errors.

9 **J. Kazuo Okada Voluntarily Sits For A Full-Day Interview With Freeh Sporkin**

10 132. On February 15, 2012, Mr. Okada sat for a full-day interview with Mr. Freeh and
11 other lawyers for Freeh Sporkin.

12 133. The questions focused mainly on expenses that Mr. Freeh claimed had been paid
13 by Universal for lodging and meals at Wynn Resorts properties on behalf of persons Mr. Freeh
14 identified as foreign officials. This was a subject that had never been mentioned in the months
15 before when Ms. Sinatra asserted that an investigation had already been conducted by the
16 Company, or when Mr. Wynn or Mr. Shapiro, in a subsequent letter, listed the supposed bases for
17 the directors taking action to eliminate Mr. Okada’s position as Vice Chairman. Other than
18 allegations regarding such purported expenses, Mr. Freeh also asked questions about Universal’s
19 compliance with Philippine landownership requirements, which had been handled for Universal
20 by one of the Philippines’ leading law firms.

21 134. The interview went well into the evening, hours past the time originally estimated
22 by Mr. Freeh. At the end of the interview, Mr. Okada stated that he would look into the matters
23 raised during the interview, and that he would be willing to report back with detailed information
24 once it could be assembled.

1 **K. Wynn Resorts Allows No Opportunity for A Reasonable Response**

2 135. At a press conference following the redemption of Aruze USA's stock. Mr. Miller
3 made a number of statements that will prove to be false. One stood out in particular. Mr. Miller
4 said:

5 Following the interview, [Mr. Freeh] informed Mr. Okada that he
6 would be finalizing the report on Friday, February 17, and offered
7 [Mr. Okada] an opportunity to present any exculpatory evidence
8 prior to that time frame. [Mr. Freeh] determined that no additional
exculpatory evidence was presented, and thus a final report was
presented.

9 136. Similarly, the Wynn Resorts Seconded Amended Complaint states that "Freeh
10 advised Mr. Okada and his counsel that he would be reporting his findings to the Wynn Resorts
11 Board on February 18, 2012...." (SAC at ¶ 47.)

12 137. Neither statement is true. Mr. Freeh said nothing regarding the date of the
13 completion of his report at the interview, and, in fact, said at the February 15, 2012 interview of
14 Mr. Okada that his investigation was not complete and that his report was not complete.

15 138. On February 16, 2012, Mr. Okada's counsel emailed Mr. Freeh stating:

16 Louis:

17 I hope you had a good trip back to the US. Following your
18 interview of Mr. Okada, we understand that you will be drafting a
report for submission to the Wynn Resorts Compliance Committee.
19 I am writing to request an opportunity for Mr. Okada and Universal
Entertainment to submit additional material for your consideration,
20 prior to the submission of your report. Please let me know as soon
as you are able if you will allow us to do.

21 139. In response, on February 17, 2012, Mr. Freeh, acting as an agent for Wynn
22 Resorts, offered two options to Mr. Okada's counsel:

23 Joel Friedman called you about 900a today (PT) and left a message
24 for you to call a well as an email.

25 I can suggest two possibilities in response to your letter:

26 First, that you provide me as soon as possible, and no later than
27 600p PacT today, with a proffer of what Mr. Okada and Universal
wish to submit for additional consideration. Your very able firm
28 has represented Mr. Okada now for several weeks and you know
the principal areas of our investigation based on Wednesday's
interview. So I would expect you can make such a proffer.

1 *Secondly, Mr. Okada will have the opportunity to respond to my*
2 *report after he receives a copy, along with the other Wynn Resorts'*
3 *directors. I will certainly consider and evaluate whatever*
4 *information may be provided.*

5 ...

6 I also note that Mr. Okada's litigation against Wynn Resorts has
7 now predicated an SEC inquiry and no doubt drawn the proper
8 attention of other regulatory agencies. Consequently, the
9 Compliance Committee has given me instructions to conclude my
10 report with all deliberate speed.

11 ...

12 Anyway, I have a great deal of respect for you and believe the
13 above alternatives allow for a fair resolution at this stage.

14 Best regards.

15 Louie

16 (Emphasis added.)

17 140. Given the timing, Mr. Okada elected to respond to the Freeh Sporkin report once
18 he was able to see it, responding through his counsel:

19 Louis:

20 Thanks for your response. I am still traveling in Asia, and did not
21 have a chance to review Joel's message or contact him. I appreciate
22 your willingness to review any supplemental information that we
23 provide and to consider it in your findings. *Under the*
24 *circumstances, and in particular the tight time framework, I think it*
25 *makes the most sense for Mr. Okada, UE, Aruze USA, and our Firm*
26 *to review your report and to use it to focus our efforts in providing*
27 *you additional information.* So, we accept the second of the two
28 proposals in your letter, and would expect that the opportunity to
respond will include an opportunity for our law firm to work with
Mr. Okada, UE, and Aruze USA in order to be able to respond in a
complete and helpful fashion. Thanks very much.

(Emphasis added.)

141. Mr. Freeh responded "Thanks Tom and safe travels."

142. Curiously, about an hour and half later (now late in the day on Friday,
February 17), Mr. Freeh sent a second response, stating:

Just to confirm, I will now deliver my report to the Compliance
Committee having completed my investigation regarding the
matters under inquiry. It is my understanding that the Compliance
Committee will thereafter provide all of the Directors, including

1 Mr. Okada, with a copy of the report. As we both stated,
2 Mr. Okada can then submit any responses to the report which will
3 be considered and evaluated. However, the report I am submitting
4 is not a 'draft' subject to being finalized after Mr. Okada provides
5 any response. Rather this is akin to a final brief being submitted
6 with the opportunity for a response to be made.

7 Please let me know if you have any questions.

8 Best regards

9 Louie

10 143. This statement would prove to be misleading. As it turned out, Wynn Resorts
11 refused to give Mr. Okada a copy of the Freeh Sporkin report and then purported to redeem Aruze
12 USA's stock (at a nearly \$1 billion discount) *on the day the other Wynn Directors received the*
13 *report*, without giving Mr. Okada any reasonable opportunity to respond.

14 144. In addition, Mr. Freeh's statement that he was preparing a "final brief" is very
15 telling about how Mr. Freeh viewed his role in the process. Mr. Freeh was not preparing an
16 objective report of the facts by an "independent" investigator – he was providing the Board with
17 an argumentative document as an *advocate* against Mr. Okada. But even so, Mr. Freeh clearly
18 contemplated that Mr. Okada would and should have the opportunity for a response.
19 Nevertheless, spurred on by Mr. Wynn, the Board ignored Mr. Freeh's promise of an opportunity
20 to respond to the report (and the express statements in Mr. Freeh's report that further
21 investigation would be needed on certain topics), and instead acted rashly to redeem Aruze
22 USA's stock on an incomplete factual record and a faulty understanding of governing legal
23 principles, including, for example, the application of the FCPA to the facts, as well as Wynn
24 Resorts' (lack of) contractual rights to attempt to redeem Aruze USA's stock.

25 **L. Steve Wynn Hurriedly Schedules Board of Directors Meeting**

26 145. On February 15, 2012, scant hours after the completion of Mr. Freeh's interview
27 of Mr. Okada, Wynn Resorts noticed a special meeting of its Board. The meeting was set for
28 Saturday, February 18, 2012, at 9:00 a.m. in Las Vegas – which is 2:00 a.m. Sunday morning in
Japan. Although the notice for the Board meeting went out immediately following the conclusion

1 of the interview of Mr. Okada, and was scheduled to occur a mere three days after the interview,
2 Mr. Wynn and Ms. Sinatra included on the agenda a review of the Freeh Sporkin report.

3 **M. Steve Wynn Tries to Use the Threat of Redemption to Buy Aruze USA's**
4 **Stock at a Substantial Discount**

5 146. Following the interview, Mr. Wynn communicated to Aruze USA through
6 intermediaries that, instead of having the Board consider the Freeh Sporkin report, Mr. Wynn
7 would be willing to buy Aruze USA's stock for his benefit at a significant discount off of the fair
8 value of the shares. Mr. Wynn, through his intermediaries stated that in exchange for Aruze USA
9 selling its stock to Mr. Wynn, Mr. Wynn would ensure that the Freeh Sporkin report would not be
10 disclosed. A sale to Mr. Wynn was presented as an alternative to the public embarrassment and
11 regulatory issues attendant to possible disclosure of the Freeh Sporkin report. Aruze USA did not
12 accede to these demands, ultimately causing Wynn Resorts, Mr. Wynn, and Ms. Sinatra to make
13 good on their threats and commence a systematic process of defaming Mr. Okada, Aruze USA,
14 and Universal and precipitating the redemption Aruze USA's shares at a \$1 billion discount off
15 the fair value of the shares.

16 147. On information and belief, this is not the first time Mr. Wynn has attempted to co-
17 opt state gaming regulations to consolidate his ownership and control over a gaming company.
18 According to published reports, in 1980, Mr. Wynn forced out the second largest shareholder of
19 the Golden Nugget, Inc., Mr. Edward Doumani. Mr. Doumani was also a board member, and had
20 expressed concerns about Mr. Wynn's practices as CEO of the Golden Nugget. Mr. Wynn
21 eventually strong-armed Mr. Doumani into selling his stake by threatening to instigate an
22 investigation of Mr. Doumani, contending that his continued association with the company
23 caused a risk to a potential gaming license in Atlantic City. Three decades later, Mr. Wynn
24 attempted the same scam, only this time Aruze USA refused to accede to Mr. Wynn's demand to
25 sell him its stock on the cheap.
26
27
28

1 **V. WYNN RESORTS' UNFOUNDED AND UNPRECEDENTED REDEMPTION OF**
2 **MORE THAN \$2.9 BILLION OF ARUZE USA'S SHARES**

3 **A. Wynn Resorts Publicly Asserts That the Value of Aruze USA's Stock Is \$2.9**
4 **Billion**

5 148. In a letter to Aruze USA's counsel dated December 15, 2011, Mr. Shapiro asserted
6 that Aruze USA's shares were worth approximately \$2.7 billion.

7 149. Hardly a month later (and a mere 22 days before purporting to redeem the shares),
8 on January 27, 2012, Wynn Resorts filed its opposition papers in response to Mr. Okada's
9 Petition for a Writ of Mandamus. In that court filing, Wynn Resorts declared that Aruze USA's
10 holdings were worth *more* than \$2.7 billion, stating that Aruze USA's shares are "valued at
11 approximately \$2.9 billion[.]" In the 22 days following Wynn Resorts' \$2.9 billion valuation of
12 Aruze USA's stock, Aruze USA's stock was not sold, transferred, or further encumbered by any
13 additional restrictions.

14 **B. The Board Hurriedly Meets and Rushes to Redeem Aruze USA's Stock**

15 150. On February 17, 2012, Mr. Okada's counsel contacted Wynn Resorts'
16 representatives to express Mr. Okada's concerns with the substantive and procedural process for
17 the Company's investigation, and stated that any discussion of unsuitability or redemption,
18 including any discussion involving the Freeh Sporkin report at the February 18 Board meeting,
19 would be premature.

20 151. Rather than addressing the substantive and procedural issues raised by Mr. Okada
21 and his counsel, Wynn Resorts responded briefly, informing Mr. Okada's counsel that additional
22 accommodations would not be made to facilitate translation to enable Mr. Okada's participation
23 by teleconference. The Company also informed Mr. Okada's counsel that, despite the seriousness
24 of the accusations against him, Mr. Okada was not permitted to have counsel present for the
25 Board call.

26 152. When it came time for the meeting, at 2:00 a.m. on Sunday morning, Mr. Okada
27 sat ready to participate by telephone. Mr. Wynn yelled at Mr. Okada's counsel when he
28

1 introduced himself. Mr. Wynn also said that Mr. Okada's counsel could not be present to advise
2 Mr. Okada even though counsel made clear that he would not address the meeting. (At the threat
3 of having Mr. Okada's telephone connection to the meeting severed, Mr. Okada's counsel had to
4 sit outside the room while the meeting went on, despite Wynn Resorts having a battery of lawyers
5 from multiple law firms present on its end of the line.) Mr. Wynn and a company lawyer
6 informed Mr. Okada that – despite prior assurances that Mr. Okada would receive a copy of the
7 Freeh Sporkin report along with the other directors – he would not receive a copy of the report
8 unless both he and his legal counsel signed a nondisclosure agreement. The nondisclosure
9 agreement would have arguably precluded Mr. Okada from using the report in legal proceedings.
10 Mr. Okada did not sign the nondisclosure agreement.

11 153. As alleged in detail below, a few hours after demanding that Mr. Okada sign the
12 nondisclosure agreement claiming confidentiality, Wynn Resorts “leaked” a copy of the Freeh
13 Sporkin report to the *Wall Street Journal* and attached a copy to its Complaint in this action.

14 154. There were numerous translation problems during the Board meeting. Mr. Wynn
15 provided a translator who was woefully unable to perform an accurate simultaneous translation.
16 Mr. Okada requested that the translation be provided sequentially (with each speaker and the
17 translator speaking in turn) rather than simultaneously (with the translator speaking at the same
18 time as the speaker at the meeting), but this request was denied. As a result, Mr. Okada could not
19 follow or participate in the proceedings.

20 155. In this way, Mr. Okada sat and listened while Mr. Freeh made a presentation in
21 English that Mr. Okada could not understand. After Mr. Freeh completed his presentation, the
22 Board asked if Mr. Okada had any questions. Mr. Okada stated that he could not understand the
23 presentation, and that he would be able to address the claims of the report only after receiving a
24 copy and discussing with counsel. Mr. Okada also asked the Board to delay making any
25 resolutions until he could respond to the Freeh Sporkin report.

26 156. At some point, someone at Wynn Resorts hung up the telephone, cutting
27 Mr. Okada off from the meeting. Mr. Okada waited to be reconnected, staying up until the sun
28

1 rose in Asia, all the while not knowing whether the Board had resolved anything following the
2 presentation by Mr. Freeh. Ms. Sinatra later claimed that cutting off the telephone connection to
3 Mr. Okada was a “misunderstanding.” No other contact was made with Mr. Okada.

4 157. At 1:45 am PT on February 19, 2012, Aruze USA’s counsel received
5 correspondence, containing a notice of determination of unsuitability and a purported redemption
6 notice. In the redemption notice, the Company stated that it would redeem Aruze USA’s stock
7 for a promissory note of approximately \$1.936 billion, a discount of exactly 30% off the \$2.7
8 billion value measured by the stock market’s valuation of the stock based on the prior day’s
9 closing price and 33% less than the value (*i.e.*, \$2.9 billion) Wynn Resorts had publicly
10 proclaimed three weeks before.

11 158. Although Wynn Resorts had claimed the Freeh Sporkin report was confidential
12 and tried to extract a signature from both Mr. Okada and his legal counsel in order to see the
13 report prior to redemption, a copy of the report was leaked to the *Wall Street Journal* in the early
14 morning Eastern Time of February 19, 2012. Almost immediately, reports appeared on the *Wall*
15 *Street Journal* website regarding the contents of the report.

16 159. In addition, at 2:14 a.m. PT on February 19, 2012, Wynn Resorts electronically
17 filed a complaint attaching the supposedly confidential Freeh Sporkin report (without exhibits).

18 160. Despite repeated requests to Ms. Sinatra and Mr. Shapiro, Mr. Okada’s counsel
19 only obtained a copy of the “confidential” report when it sent a messenger to court on
20 February 21, 2012, the first court day following the weekend Board meeting. Wynn Resorts
21 refused to provide the Freeh Sporkin report’s exhibits to Mr. Okada or Aruze USA until ordered
22 to do so by this Court.

23 **C. Aruze USA Disputes That Redemption Has Occurred**

24 161. In public statements, representatives of Wynn Resorts have claimed redemption is
25 complete and that the securities formerly held by Aruze USA have been cancelled. Aruze USA
26 disputes that this has happened. Among other reasons, as explained elsewhere in this
27 Counterclaim, the purported redemption is void *ab initio* because it is in violation of the
28

1 Stockholders Agreement, which predates the amended Articles of Incorporation purporting to
2 grant Wynn Resorts a right of redemption.

3 **D. The Board Redeems on False Premises**

4 162. Even if Aruze USA were bound by the redemption provision (which Aruze USA
5 disputes), the Articles of Incorporation only purport to allow redemption in three situations.

6 163. First, according to the Articles of Incorporation, Wynn can redeem when it “is
7 determined by a Gaming Authority to be unsuitable to Own or Control any Securities or
8 unsuitable to be connected or affiliated with a Person engaged in Gaming Activities in a Gaming
9 Jurisdiction.” This has not occurred. In fact, Aruze USA has been found to be “suitable” by the
10 Nevada gaming authorities.

11 164. Second, according to the Articles of Incorporation, Wynn can redeem when a
12 person “causes the Corporation or any Affiliated Company to lose or to be threatened with the
13 loss of any Gaming License.” This has not occurred.

14 165. Third, Wynn Resorts’ Articles of Incorporation profess that the Company can
15 redeem where a person “in the sole discretion of the board of directors of the Corporation, is
16 deemed likely to jeopardize the Corporation’s or any Affiliated Company’s [a] application for,
17 [b] receipt of approval for, [c] right to the use of, or [d] entitlement, to any Gaming License.”
18 Subsections [a] and [b] do not apply because, on information and belief, at the time of redemption
19 Wynn Resorts had no present plan to apply for a license and was not awaiting approval of any
20 pending application. So, even under the standards of the Articles of Incorporation, Wynn Resorts
21 could only seek redemption upon a showing that Aruze USA’s stock ownership was “likely to
22 jeopardize” Wynn Resorts’ “right to the use of, or entitlement to” its existing gaming licenses.

23 166. No such showing was made in the rushed Freeh Sporkin report. In fact, in the
24 gaming industry, any impact on the right to use or entitlement to a gaming license requires action
25 by the cognizant gaming authority. No gaming authority has found Aruze USA, Universal, or
26 Mr. Okada to be “unsuitable.” Furthermore, association with an “unsuitable” person would only
27 conceivably create a problem for a gaming license *after* that person has been found by a gaming
28

1 authority to be unsuitable. Even then, such concerns can be addressed via a voting trust or
2 orderly sale of shares. If Wynn Resorts' true aim was to disassociate itself from Aruze USA in
3 order to protect its interests, it failed miserably. Even if the redemption were effective, Aruze
4 USA would now be Wynn Resorts' largest holder of debt – a circumstance which would be
5 impermissible under Nevada law if Aruze USA were truly "unsuitable." Under the
6 circumstances, it is obvious that the supposed redemption of Aruze USA's shares was simply a
7 pretext to seek to quiet a potential dissident shareholder and director, increase the relative
8 ownership interests of the Board members by virtue of their shareholdings in Wynn Resorts, and
9 to enhance and maintain Mr. Wynn's personal control over Wynn Resorts.

10 **E. Even if Aruze USA Were Subject to the Redemption Provision (Which it is**
11 **Not), the Wynn Parties are Still Liable for Breaching and/or Tortiously**
12 **Interfering with the Stockholders Agreement and Amended Stockholders**
13 **Agreement.**

14 167. Even if Aruze USA were subject to the redemption provision, which it is not, the
15 Wynn Parties are not excused from breaching and/or tortiously interfering with the Stockholders
16 Agreement when they purported to redeem Aruze USA's shares. Steve Wynn was bound by the
17 terms of the Stockholders Agreement before he unilaterally amended the Articles of Incorporation
18 to include a purported redemption right. The remainder of the Wynn Parties also knew or
19 reasonably should have known that Aruze USA's shares were subject to the limitations of the
20 Shareholders Agreement and Amended Shareholders Agreement when they purported to utilize
21 their discretionary authority under the Articles of Incorporation to redeem Aruze USA's shares.
22 Thus, even if the redemption provision of the Articles of Incorporation applies to Aruze USA, the
23 Wynn Parties are liable for all harm caused to Aruze USA as a result of the redemption.
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1 170. Nevertheless, hoping to unilaterally decide on a “clearance” price for Aruze
2 USA’s almost 20% shareholder interest in the Company, Wynn Resorts relied solely on one
3 opinion from Moelis & Company (“Moelis”), *which has done business with Wynn Resorts in the*
4 *past.*

5 171. Mr. Wynn and Kenneth Moelis (“Mr. Moelis”) – the founder of Moelis – go way
6 back. Mr. Moelis first worked with Mr. Wynn when Mr. Moelis worked at the investment
7 banking firm of Drexel Burnham Lambert (“Drexel”). At Drexel, Mr. Moelis was the banker
8 who helped Mr. Wynn finance his Golden Nugget Casino in Atlantic City and Mirage casino in
9 Las Vegas. On information and belief, Mr. Wynn has a close personal and professional
10 relationship with Mr. Moelis. According to press reports, Mr. Moelis has stated that he would
11 take the first flight out of LAX to rush to the assistance of Mr. Wynn. Mr. Wynn reciprocates
12 Mr. Moelis’ loyalty and support. Among other things, Mr. Wynn engaged Mr. Moelis to serve as
13 the lead underwriter of Wynn Resorts’ \$210 million common stock offering in March 2009.

14 172. Mr. Wynn called on Mr. Moelis’ loyalty in this case. Despite the fact that at least
15 some of the stock was exempted from the Stockholders Agreement, Moelis discounted Aruze
16 USA’s more than \$2.7 billion shares of Wynn Resorts’ stock by around 30%.

17 173. The terms of the note are unreasonable and one-sided in the extreme, completely
18 lacking reasonable and customary terms used to protect and preserve the interests of the note
19 holder. Among other things, the amount of compensation paid for Aruze USA’s shares do not
20 reflect the “fair value” of the shares under the Articles of Incorporation and/or under governing
21 law. Additionally, the hastily issued, ten-year \$1.936 billion promissory note is unsecured and
22 fully subordinated, not merely to current outstanding Wynn Resorts debt, but potentially to all
23 future debt Wynn Resorts may incur, and pays a mere 2% interest per annum. In contrast, for
24 example, less than a month after the purported redemption, Wynn Resorts issued \$900 million
25 aggregate principal amount in collateralized notes paying 5.375% interest. Moreover, though
26 Nevada gaming regulations do not permit an “unsuitable” person from holding debt of a publicly-
27 traded licensee, by its terms the note sent to Aruze USA is not even transferable. Wynn Resorts
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1 prepared the promissory note without any input from Mr. Okada, or any representative at Aruze
2 USA, forcibly imposing an unsecured, non-transferrable, non-voting, un-marketable, severely
3 discounted and oppressive debt instrument on its largest shareholder.

4 **G. The Timing of the Redemption Demonstrates that Wynn Resorts Redeemed**
5 **Aruze USA's Shares Based on Material, Non-Public Information that Was**
6 **Not Incorporated Into the Redemption Price**

7 174. On March 2, 2012, Wynn Resorts released a Form 8-K.

8 175. The Form 8-K purported to disclose positive news regarding Wynn Resorts'
9 efforts in Macau to receive certain land concessions related to Cotai:

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11 As previously disclosed ... Wynn Macau, Limited ("WML"), an
12 indirect subsidiary of the Registrant with ordinary shares of its
13 common stock listed on The Stock Exchange of Hong Kong
14 Limited, announced that Palo Real Estate Company Limited
15 ("Palo") and Wynn Resorts (Macau) S.A. ("Wynn Macau"), each
16 an indirect subsidiary of the Registrant, formally accepted the terms
17 and conditions of a land concession contract (the "Land Concession
Contract") from the government (the "Macau Government") of the
Macau Special Administrative Region of the People's Republic of
China ("Macau") in respect of approximately 51 acres of land in the
Cotai area of Macau (the "Cotai Land"). The Land Concession
Contract permits Palo and Wynn Macau to develop a resort
containing a five-star hotel, gaming areas, retail, entertainment,
food and beverage, spa and convention offerings on the Cotai Land.

18 The Land Concession Contract was published in the official gazette
19 of Macau (the "Gazette") on January [•] 2012. Effective from such
20 publication date, Palo will lease the Cotai Land from the Macau
21 Government for an initial term of 25 years with the right to renew
22 the Land Concession Contract for additional successive periods,
23 subject to applicable legislation. The Land Concession Contract
24 also requires that Wynn Macau, as a gaming concessionaire,
25 operate and manage gaming operations on the Cotai Land. In
26 addition, as previously disclosed in the Registrant's filings with the
Commission, on August 1, 2008, Palo and certain affiliates of the
Registrant entered into an agreement (the "Agreement") with an
unrelated third party to make a one-time payment in the amount of
US \$50 million in consideration of the latter's relinquishment of
certain rights in and to any future development on the Cotai Land.
The Agreement provides that such payment be made within 15 days
after the publication of the Land Concession Contract in the
Gazette.

27 The foregoing description of the Land Concession Contract is
28 qualified in its entirety by reference to the full English translation of
the Land Concession Contract (originally published in the Gazette

1 in traditional Chinese and Portuguese), which is filed as
2 Exhibit 10.1 hereto and incorporated herein by reference. Dollar
amounts in the Land Concession Contract refer to Macau Patacas.

3 176. Such a land concession is significant positive development for Wynn Resorts. In
4 fact, Wynn Resorts' stock immediately spiked 6% on this news.

5 177. After initially attempting to backtrack from the filing as a "mistake," Wynn
6 Resorts filed another Form 8-K on May 2, 2012. The Form 8-K reconfirmed the material
7 information Wynn Resorts disclosed on March 2, 2012.

8 178. On information and belief, these positive developments in Macau (or elsewhere in
9 Wynn Resorts operational sphere) were imminent and known by Wynn Resorts. To the extent
10 that the redemption of Aruze USA's stock actually occurred, Wynn Resorts redeemed Aruze
11 USA's stock based on this material, non-public information. Although Wynn Resorts claims to
12 have purchased Aruze USA's stock using the current stock market value, Wynn Resorts knew,
13 but failed to disclose, that the stock market value did not reflect the land concession contract that
14 it had obtained in Macau. Therefore, Wynn Resorts continued its fraudulent and misleading
15 omission of this information in calculating the redemption price knowingly based on materially
16 misleading information.

17 **CLAIMS FOR RELIEF**

18 **COUNT I**

19 **Declaratory Relief**

20 **(By Aruze USA and Universal Against Wynn Resorts and the Wynn Directors)**

21 179. Aruze USA and Universal reassert and reallege Paragraphs 4 through 178 above as
22 if set forth in full below.

23 180. Aruze USA and Universal seek a judicial declaration that the purported
24 redemption of Aruze USA's shares is void *ab initio*, and that Aruze USA is the owner of
25 24,549,222 shares or 19.66% of the total outstanding common stock of Wynn Resorts, with all
26 rights and privileges appurtenant thereto (including, but not limited to, payment of dividends and
27 voting rights). This declaration is appropriate because, as alleged above: (1) the redemption
28 provision in the Articles of Incorporation is inapplicable to the Wynn Resorts' stock owned by

1 Aruze USA because Aruze USA entered into the Stockholders Agreement, which prevented any
2 further restrictions without agreement of the parties and vested in Aruze USA the “sole power of
3 disposition” of its shares, before the enactment of the redemption provision; (2) the redemption
4 provision in the Articles of Incorporation is inconsistent with Nevada law and public policy, and
5 thus void; (3) the Board lacked a sufficient basis for a finding of “unsuitability” or for
6 redemption; and/or, (4) the redemption provision as written and as applied is unconscionable.

7 181. In addition or alternatively, Aruze USA and Universal seek a judicial declaration
8 that the redemption provision in Wynn Resorts’ Articles of Incorporation is invalid as a matter of
9 law because it is impermissibly vague, contrary to law and public policy, and/or unconscionable.
10 This declaration is appropriate because, among other things, Nevada gaming regulators are given
11 the authority under the laws of Nevada to make determinations regarding “suitability.” The
12 redemption provision in Wynn Resorts’ Articles of Incorporation purportedly relied on here by
13 the Wynn Directors improperly and illegally usurps that authority. Furthermore, if and when
14 Nevada gaming regulators were to make such a determination, redemption that simply replaces
15 equity with debt is ineffective to effect a disassociation; the redemption provision, therefore,
16 would not comply with Nevada law.

17 182. In addition or alternatively, Aruze USA and Universal seek a judicial declaration
18 that the Board resolution finding Aruze USA, Universal, and Mr. Okada “unsuitable” was
19 procedurally and/or substantively defective and contrary to the Articles of Incorporation and/or
20 Nevada law. As alleged in detail above, this declaration is appropriate because the Wynn
21 Directors’ finding that there was a likely jeopardy to Wynn Resorts’ gaming licenses lacked a
22 sound foundation and was made without a thorough and complete review of relevant law, facts,
23 and evidence.

24 183. In addition or alternatively, Aruze USA and Universal seek a judicial declaration
25 that the Board resolution to redeem Aruze USA’s shares was procedurally and/or substantively
26 defective, and contrary to law and public policy. As alleged in detail above, this declaration is
27 appropriate because (1) the Stockholders Agreement, executed before the redemption provision
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1 was added to the Articles of Incorporation, prevented any further restrictions on Aruze USA's
2 shares without agreement of the parties and vested in Aruze USA the "sole power of disposition"
3 of its shares; (2) the Board lacked a sufficient basis for a finding of "unsuitability" or redemption
4 and made its findings without a thorough and complete review of relevant law, facts, and
5 evidence; (3) the redemption provision in the Articles of Incorporation is inconsistent with
6 Nevada law and public policy, and thus void; and, (4) the redemption provision, as written and as
7 applied, is unconscionable.

8 184. Alternatively, to the extent that redemption is not otherwise barred, Aruze USA
9 and Universal seek a judicial declaration that the form and amount of compensation paid for
10 Aruze USA's shares was improper and/or inadequate and that Aruze USA is entitled to cash in an
11 amount equivalent to at least the closing price of the stock on February 17, 2012. Indeed, Wynn
12 Resorts asserted in a court filing dated January 27, 2012, that "[w]ith holdings valued at
13 approximately \$2.9 billion, Aruze is one of Wynn's largest shareholders." As alleged in detail
14 above, this declaration is appropriate because simply converting Wynn Resorts' largest
15 shareholder to Wynn Resorts' largest creditor serves no valid legal purpose. Furthermore, the
16 discount applied to Aruze USA's shares based on the transfer restrictions of the Stockholder
17 Agreement is invalid because of Steve Wynn's and Elaine Wynn's prior breach of the
18 Stockholders Agreement. Moreover, the amount and form of compensation paid for Aruze
19 USA's shares does not represent the "fair value" of the shares under the Articles of Incorporation
20 and governing law. The "fair value" of the Aruze USA's stock at the time of the redemption
21 should not have included any discount for the transfer restrictions or lack of marketability of
22 Aruze USA's stock. In addition, the valuation by Moelis was not objective, independent, or the
23 product of sound financial analysis, and, among other things, did not consider material non-public
24 information available to Wynn Resorts that would militate in favor of a higher valuation, did not
25 account for the premium that would be applied to such a large block of shares, and did not
26 consider the extent to which transfer restrictions were not valid as to Aruze USA.

185. Aruze USA and Universal bring this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim, including injury arising from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA and Universal did not and could not reasonably have discovered earlier the facts giving rise to this claim.

186. An actual justifiable controversy has arisen between parties whose interests are adverse, and the dispute is ripe for adjudication. Wynn Resorts acted unlawfully when it purported to “redeem” Aruze USA’s equity interest in Wynn Resorts.

187. It has been necessary for Aruze USA and Universal to retain the services of attorneys to prosecute this action, and Aruze USA and Universal are entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT II

Permanent Prohibitory Injunction

(By Aruze USA Against Wynn Resorts and the Wynn Directors)

188. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

189. Aruze USA seeks a permanent injunction enjoining and restraining Wynn Resorts and the Wynn Directors, their agents, servants, employees, attorneys, and all those acting in concert or in active participation with Wynn Resorts, from enforcing a redemption notice upon Aruze USA, and from engaging in any efforts to redeem Aruze USA's equity holdings in Wynn Resorts, including but not limited to making any demands that Aruze USA surrender its Wynn Resorts stock, instructing any transfer agent for Wynn Resorts' stock to effect any transfer or cancellation of Aruze USA's Wynn Resorts stock, and/or making any other changes to Wynn Resorts' stock ledger regarding Aruze USA's stock.

190. For the reasons alleged above, the purported redemption is invalid as a matter of law and violated applicable contracts, and/or depends on provisions of contracts that are unenforceable as a matter of law. Even if there were a potentially valid legal mechanism to

1 redeem Aruze USA's stock, which there is not, redemption would be inappropriate in this case
2 because the Board lacked sufficient basis to find Aruze USA or any of its affiliates or employees
3 "unsuitable."

4 191. Harm will result if relief is not granted because Aruze USA's interest in Wynn
5 Resorts is not fungible and Aruze USA's status as the largest shareholder in Wynn Resorts cannot
6 be fully remedied through damages.

7 192. Injunctive relief poses no appreciable risk of undue prejudice to Wynn Resorts and
8 the Wynn Directors.

9 193. Aruze USA brings this claim within the relevant statute of limitations under
10 Nevada law, having discovered facts giving rise to this claim, including injury arising from the
11 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,
12 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
13 reasonably have discovered earlier the facts giving rise to this claim.

14 194. It has been necessary for Aruze USA to retain the services of attorneys to
15 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said
16 services performed and to be performed in a sum to be determined.

17 **COUNT III**

18 **Permanent Mandatory Injunction**

19 **(By Aruze USA Against Wynn Resorts and the Wynn Directors)**

20 195. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth
21 in full below.

22 196. To the extent it might be determined that Wynn Resorts' purported redemption has
23 already occurred, Aruze USA seeks a permanent mandatory injunction directing Wynn Resorts
24 and the Wynn Directors, their agents, servants, employees, attorneys, and all those acting in
25 concert or in active participation with Wynn Resorts, to restore Aruze USA's ownership interest
26 in Wynn Resorts. The injunction sought should restore both Aruze USA's ownership interest, as
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1 well as the value of Aruze USA's stock, and all dividends and other rights and privileges accruing
2 to the shares.

3 197. For the reasons alleged above, the purported redemption was contrary to law and
4 violated applicable contracts, and/or depends on provisions of contracts that are unenforceable as
5 a matter of law. Even if there were a potentially valid legal mechanism to redeem Aruze USA's
6 stock, redemption would be inappropriate in this case because the Board lacked sufficient basis to
7 find Aruze USA or any of its affiliates or employees unsuitable.

8 198. Harm will result if relief is not granted because Aruze USA's interest in Wynn
9 Resorts is not fungible and Aruze USA's status as the largest shareholder in Wynn Resorts cannot
10 be fully remedied through damages.

11 199. Injunctive relief poses no appreciable risk of undue prejudice to Wynn Resorts and
12 the Wynn Directors.

13 200. To the extent that Aruze USA cannot be restored to its status and/or its full rights
14 as a Wynn Resorts shareholder, and to the extent further compensation is warranted or punitive or
15 exemplary damages are warranted, Aruze USA seeks damages from Wynn Resorts in an amount
16 to make Aruze USA whole, as alleged in multiple damages counts below.

17 201. Aruze USA brings this claim within the relevant statute of limitations under
18 Nevada law, having discovered facts giving rise to this claim, including injury arising from the
19 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,
20 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
21 reasonably have discovered earlier the facts giving rise to this claim.

22 202. It has been necessary for Aruze USA to retain the services of attorneys to
23 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said
24 services performed and to be performed in a sum to be determined.

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COUNT IV

Breach of Contract in Connection with Wynn Resorts' Involuntary Redemption

(By Aruze USA Against Steve Wynn and Elaine Wynn)

203. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

204. The Stockholders Agreement, with Mr. Wynn in 2002, and as amended in 2010 to include Ms. Wynn as a party, forms a contractual relationship and understanding between, *inter alia*, Aruze USA, Mr. Wynn, and Elaine Wynn.

205. The Stockholders Agreement between Aruze USA, Mr. Wynn, and Elaine Wynn prohibits the involuntary disposition of any shares of Wynn Resorts held by Aruze USA. Specifically, the Stockholders Agreement provides that Aruze USA "shall be the record and Beneficial owner of all of the [Wynn Resorts' common] Shares. . . [and] shall have the *sole power of disposition* [and] sole power of conversion..." over its shares in Wynn Resorts and there are "no material limitations, qualification or restrictions on such rights...." (Emphasis added.)

206. Any redemption of Aruze USA's shares of Wynn Resorts is an involuntary disposition of Aruze USA's shares in violation of the Stockholders Agreement. By voting in favor of the redemption, Steve Wynn and Elaine Wynn did knowingly, willfully, and intentionally breach the Stockholders Agreement.

207. Aruze USA has been damaged in excess of \$10,000.

208. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim, including injury arising from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

209. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT V

**Breach of Articles of Incorporation/Breach of Contract in Connection with Wynn Resorts'
Discounting Method of Involuntary Redemption
(By Aruze USA Against Wynn Resorts)**

210. Aruze USA reasserts and realleges Paragraphs 4 through 172 above as if set forth in full below.

211. In the alternative, to the extent the Court finds that the redemption provision in the Articles of Incorporation applies to Aruze USA's shares, Wynn Resorts' involuntary redemption breaches the terms of the Agreement.

212. Wynn Resorts' Articles of Incorporation provides that fair value will be provided for shares redeemed under its provisions.

213. On or about February 18, 2012, Wynn Resorts purportedly redeemed Aruze USA's shares for far less than the value of the shares, *e.g.*, as reflected by the closing market price of Wynn Resorts' stock on NASDAQ.

214. Wynn Resorts improperly discounted the fair value of the Aruze USA stock to the extent the Stockholders Agreement is not enforceable as a result of Mr. Wynn's and Elaine Wynn's breach of the Stockholders Agreement. In addition, the purported stock restrictions impose an unreasonable restraint on alienation and are therefore unenforceable.

215. In the alternative, if the Stockholders Agreement is enforceable, Wynn Resorts used an excessive discount amount and failed to provide fair value for Aruze USA's stock.

216. Among other things, although known to Wynn Resorts, Wynn Resorts did not take into account material non-public information concerning positive developments for Wynn Resorts regarding the Cotai land concession in Macau, as well as other positive non-public information, when redeeming Aruze USA's shares for far less than the value of the shares. Furthermore,

1 Wynn Resorts' unilateral valuation did not account for the premium that would be applied to such
2 a large block of shares.

3 217. Aruze USA has been damaged in excess of \$10,000.

4 218. Aruze USA brings this claim within the relevant statute of limitations under
5 Nevada law, having discovered facts giving rise to this claim, including injury arising from the
6 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,
7 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
8 reasonably have discovered earlier the facts giving rise to this claim.

9 219. It has been necessary for Aruze USA to retain the services of attorneys to
10 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said
11 services performed and to be performed in a sum to be determined.

12 **COUNT VI**

13 **Breach of Fiduciary Duty**

14 **(By Aruze USA Against the Wynn Directors)**

15 220. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth
16 in full below.

17 221. Directors of a corporation owe a fiduciary duty to the corporation and to its
18 shareholders, including a duty of care and a duty of loyalty toward the corporation and each
19 shareholder.

20 222. Under Nevada law, directors of a corporation are individually liable to a
21 stockholder for any act or failure to act that constitutes a breach of fiduciary duty.

22 223. The terms of the Wynn Resorts' Articles of Incorporation purported to define an
23 "Unsuitable Person" as a person who "in the sole discretion of the board of directors of the
24 [Wynn Resorts], is deemed likely to jeopardize [Wynn Resorts'] or any Affiliated Company's ...
25 right to the use of, or entitlement to, any Gaming Licenses."

26 224. The Wynn Directors abused their discretion in finding Aruze USA, Universal, and
27 Mr. Okada "unsuitable" and resolving to have the Company cause the purported redemption of
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1 Aruze USA's shares of Wynn Resorts' stock. The outcome of the Compliance Committee's
2 "investigation" was already determined prior to engaging a supposedly "independent"
3 investigator, which then openly acted as an advocate against Aruze USA, Universal, and
4 Mr. Okada rather than providing an objective, balanced, and fully informed review of the facts
5 and law. Despite the fact that Freeh Sporkin informed the Board that further investigation would
6 be required with respect to matters encompassed by its report, and despite assurances that Aruze
7 USA, Mr. Okada, and Universal would be permitted to respond substantively to the report, the
8 Wynn Directors deprived them of an opportunity to understand and to present any information to
9 address the allegations against them prior to the vote on redemption.

10 225. On information and belief, the Wynn Directors acted at the direction of Mr. Wynn
11 and abandoned their own independence and objectivity in evaluating the allegations. The Wynn
12 Directors failed to conduct a fair, comprehensive, and thoughtful investigation, and failed to
13 ensure that they were properly and adequately informed before acting.

14 226. Wynn Resorts, at the direction of Mr. Wynn, conducted an "investigation" that
15 was hurried, incomplete, one-sided, and unfair to Aruze USA, with a result that was preordained
16 by Mr. Wynn and his cohorts before the "investigator" was even hired. Aruze USA was not
17 given an opportunity to review the allegations against it or rebut or address any findings of
18 improper conduct or any other supposed basis for redemption. The entire process was tainted by
19 the desire to serve Mr. Wynn's pretextual goals of removing Aruze USA as the largest single
20 shareholder of the Company, silencing Mr. Okada, and consolidating and maintaining
21 Mr. Wynn's control over Wynn Resorts. Such actions do not withstand any standard of
22 fundamental fairness or due process.

23 227. Further, the purported redemption was voted on by persons with irreconcilable
24 conflicts of interest, including breaches of the duty of loyalty, the duty of care, and the duty of
25 good faith.

26 228. Through their acts, the Wynn Directors have acted in a manner that seeks to
27 deprive Aruze USA alone from its right to vote its shares, receive dividends, elect directors, and
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1 to utilize other privileges incident to controlling the largest single block of shares in a publicly
2 traded company.

3 229. Harm will result if relief is not granted because Aruze USA's more than \$2.7
4 billion equity stake in Wynn Resorts will be instantaneously and irreversibly damaged by the
5 Company's purported action to convert Aruze USA's substantial ownership interest into a wholly
6 subordinated ten-year promissory note in a principal amount 30% less than the fair market value
7 of the stock, and paying a mere 2% percent interest, without providing Aruze USA any voting
8 rights, rights to dividends, or the right to transfer the note.

9 230. As a further direct and proximate result of the wrongful conduct by the Wynn
10 Directors, as alleged herein, Aruze USA was and continues to be damaged in an amount in excess
11 of \$10,000.

12 231. Aruze USA brings this claim within the relevant statute of limitations under
13 Nevada law, having discovered facts giving rise to this claim, including injury arising from the
14 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,
15 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
16 reasonably have discovered earlier the facts giving rise to this claim.

17 232. It has been necessary for Aruze USA to retain the services of attorneys to
18 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said
19 services performed and to be performed in a sum to be determined.

20 **COUNT VII**

21 **Imposition of a Constructive Trust and Unjust Enrichment**

22 **(By Aruze USA Against Wynn Resorts)**

23 233. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth
24 in full below.

25 234. By engaging the in the wrongful conduct alleged herein, Wynn Resorts
26 purportedly redeemed Aruze USA's stock in exchange for a wholly subordinated, unsecured ten-
27 year promissory note in a principal amount at least 30% less than the fair value of Aruze USA's
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1 stock, and paying a mere 2% interest, without providing Aruze USA any voting rights, rights to
2 dividends, or the right to transfer the note.

3 235. As a result of the relationship between the parties and the facts stated above, Wynn
4 Resorts will be unjustly enriched if it is permitted to retain Aruze USA's stock and dividends and,
5 therefore, a constructive trust should be established over Aruze USA's stock, and all dividends
6 that would be paid on such shares if held by Aruze USA. These shares and dividends are
7 traceable to Wynn Resorts.

8 236. Aruze USA brings this claim within the relevant statute of limitations under
9 Nevada law, having discovered facts giving rise to this claim, including injury arising from the
10 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,
11 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
12 reasonably have discovered earlier the facts giving rise to this claim.

13 237. It has been necessary for Aruze USA to retain the services of attorneys to
14 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said
15 services performed and to be performed in a sum to be determined.

16 **COUNT VIII**

17 **Conversion**

18 **(By Aruze USA Against Wynn Resorts)**

19 238. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth
20 in full below.

21 239. Wynn Resorts did not have a legal right to redeem and in addition lacked a proper
22 and sufficient basis to find that the allegations in the Freeh Sporkin report against Aruze USA,
23 Mr. Okada, and Universal were activities that "were likely to jeopardize [the Company's] or any
24 Affiliated Company's ... right to the use of, or entitlement to any Gaming License."

25 240. As a result, Wynn Resorts' Board lacked a fair, proper, and sufficient basis for
26 seizing Aruze USA's stock.

27 241. Wynn Resorts wrongfully exercised dominion over Aruze USA's stock.
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242. Wynn Resorts' dominion over Aruze USA's stock without a valid basis for redemption is inconsistent with the Articles of Incorporation and Aruze USA's rights in the stock under the Contribution Agreement and the Stockholders Agreement.

243. Wynn Resorts converted Aruze USA stock, damaging Plaintiff in an amount in excess of \$10,000.

244. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim, including injury arising from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

245. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT IX

Fraud/Fraudulent Misrepresentation in Connection with Financing for Aruze USA

(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kimmarie Sinatra)

246. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

247. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading statements and omissions of material facts to Aruze USA. Specifically, on or about May 16, 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading statements and omissions concerning the ability of Wynn Resorts to loan money to Aruze USA, which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by shares of Wynn Resorts' stock held by Aruze USA.

248. Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as agents of Wynn Resorts, made these false and misleading statements and omissions knowingly or without sufficient basis of information because they believed Wynn Resorts was not permitted to enter

1 into such a lending transaction pursuant to the restrictions in Section 402 of SOX. As alleged
2 above, Mr. Wynn and Ms. Sinatra engaged in this wrongful conduct for the purpose of
3 maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's shares in the Company
4 were split with Elaine Wynn following their divorce, and keeping alive the opportunity to later
5 have Wynn Resorts seek to redeem Aruze USA's shares at a discount.

6 249. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as
7 agents of Wynn Resorts, made these false and misleading statements and omissions knowingly or
8 without sufficient basis of information regarding the immediate need for Elaine Wynn to transfer
9 her shares under the Stockholders Agreement. On information and belief, Mr. Wynn and
10 Ms. Sinatra knew or were without a sufficient basis to make those material statements.

11 250. Aruze USA relied on the false and misleading statements and omissions made by
12 Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze USA's reliance on the false and misleading
13 statements and omissions was reasonable and justifiable, especially in light of Mr. Okada's
14 trusting relationship with Mr. Wynn.

15 251. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew that
16 Aruze USA intended to rely on this information as a reason for Aruze USA to consent to Elaine
17 Wynn's transfer of shares under the Stockholders Agreement, and for Aruze USA to refrain from
18 taking steps to invalidate the purported restrictions on alienability contained in the Stockholders
19 Agreement. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew
20 and intended that, in reliance on these misrepresentations, Aruze USA would relinquish its own
21 opportunity to liquidate its own shares of Wynn Resorts' stock to fund Universal's project in the
22 Philippines or seek other financing. Therefore, Aruze USA relied on the fact that Wynn Resorts
23 was a committed lender to the project at the expense of pursuing other financing options.

24 252. As a further direct and proximate result of the wrongful conduct by Wynn Resorts,
25 Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to be damaged in an
26 amount in excess of \$10,000 to be proven at trial.
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253. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless, misleading, malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms. Sinatra, Aruze USA is entitled to punitive damages not to exceed three times the amount of compensatory damages awarded.

254. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim, including injury arising from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about September 30, 2011.

255. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim on or about September 30, 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

256. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT X

Negligent Misrepresentation in Connection with Financing for Aruze USA

(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kimmarie Sinatra)

257. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

258. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading statements and omissions of material facts to Aruze USA. Specifically, on or about May 16, 2011, and for months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading statements and omissions concerning the ability of Aruze USA to obtain a loan from Wynn Resorts, which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by shares of Wynn Resorts' stock held by Aruze USA.

1 259. The false statements of facts alleged herein were material because had Wynn
2 Resorts, Mr. Wynn, and Ms. Sinatra provided Aruze USA with truthful and correct information,
3 Aruze USA would not have consented to Elaine Wynn's transfer of shares under the Stockholders
4 Agreement, and would have taken steps to invalidate the purported restrictions in the Shareholder
5 Agreement.

6 260. Wynn Resorts, Mr. Wynn, and Ms. Sinatra failed to exercise reasonable care or
7 competence in obtaining or communicating the false statements of fact alleged herein.

8 261. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made the false statements or omissions
9 of fact alleged herein with the intent to induce Aruze USA to consent to Elaine Wynn's transfer
10 of shares under the Stockholders Agreement without pledging its own shares in a manner that
11 would reduce Mr. Wynn's control over those shares. Furthermore, Wynn Resorts, Mr. Wynn,
12 and Ms. Sinatra made the false statements of fact alleged herein with the intent of gaining their
13 own financial advantage to the disadvantage of Aruze USA, including, but not limited to, the
14 opportunity to seek to have Wynn Resorts redeem Aruze USA's shares at a discount.

15 262. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as
16 agents of Wynn Resorts, made these materially false and misleading statements and omissions
17 knowingly or without sufficient basis of information regarding the immediate need for Elaine
18 Wynn to transfer her shares under the Stockholders Agreement.

19 263. Aruze USA relied upon the false statements of fact alleged herein by providing
20 consent for Elaine Wynn to transfer her shares under the Stockholders Agreement. Aruze USA's
21 reliance on these representations and concealment of facts was reasonable and justifiable,
22 especially in light of Mr. Okada's trusting relationship with Mr. Wynn.

23 264. Wynn Resorts, Mr. Wynn, and Ms. Sinatra aided and abetted each of the others in
24 making the false statements of fact set herein by each failing to exercise reasonable care or
25 competence in obtaining or communicating those statements.

26 265. Aruze USA has suffered and continues to suffer economic and non-economic
27 losses because of Wynn Resorts', Mr. Wynn's, and Ms. Sinatra's false statements of fact. The
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1 amount of losses will be determined according to proof at trial, but damages are in an amount in
2 excess of \$10,000.

3 266. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless, misleading,
4 malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms. Sinatra, Aruze
5 USA is entitled to punitive damages not to exceed three times the amount of compensatory
6 damages awarded.

7 267. Aruze USA brings this claim within the relevant statute of limitations under
8 Nevada law, having discovered facts giving rise to this claim on or about September 30, 2011.
9 Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have
10 discovered earlier the facts giving rise to this claim.

11 268. It has been necessary for Aruze USA to retain the services of attorneys to
12 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said
13 services performed and to be performed in a sum to be determined.

14 **COUNT XI**

15 **Civil Conspiracy in Connection with Financing for Aruze USA**

16 **(By Aruze USA Against Steve Wynn and Kimmarie Sinatra)**

17 269. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth
18 in full below.

19 270. Aruze USA, Mr. Wynn and Elaine Wynn entered into an agreement regarding the
20 disposition of shares pursuant to the January 6, 2010 Amended and Restated Stockholders
21 Agreement.

22 271. Ms. Sinatra, as General Counsel for Wynn Resorts, had knowledge of the
23 Stockholders Agreement and its restriction on transfer of shares.

24 272. On information and belief, Ms. Sinatra had knowledge that Mr. Wynn needed
25 Aruze USA to waive the restriction in order to permit Elaine Wynn to transfer her shares.

26 273. On information and belief, Ms. Sinatra and Mr. Wynn agreed to persuade Aruze
27 USA to permit Elaine Wynn to transfer her shares without permitting Aruze USA to transfer or
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1 pledge any shares to anyone outside the control of Mr. Wynn. In fact, upon receiving an email
2 from Aruze USA's representative on July 13, 2011 permitting the immediate transfer of Elaine
3 Wynn's shares, Ms. Sinatra expressed happiness for Mr. Wynn, stating, "Thank you very much
4 for this. I'm sure Mr. Wynn will be happy about the clarification."

5 274. Wynn Resorts, Mr. Wynn, and Ms. Sinatra made false and misleading statements
6 and omissions of material facts to Aruze USA. Specifically, on or about May 16, 2011, and for
7 months thereafter, Mr. Wynn and Ms. Sinatra made false and misleading statements and
8 omissions concerning Wynn Resorts' ability and/or willingness to loan money to Aruze USA,
9 which Wynn Resorts, Mr. Wynn, and Ms. Sinatra agreed would be backed by shares of Wynn
10 Resorts' stock held by Aruze USA.

11 275. Mr. Wynn and Ms. Sinatra, acting in concert with Wynn Resorts, made these false
12 and misleading statements and omissions knowingly or without sufficient basis of information
13 because they believed Wynn Resorts was not legally permitted to enter into such a lending
14 transaction pursuant to the restrictions in Section 402 of SOX. As alleged above, Mr. Wynn and
15 Ms. Sinatra engaged in this wrongful conduct for the purpose of maintaining Mr. Wynn's control
16 over Wynn Resorts after Mr. Wynn's shares in the Company were split with Elaine Wynn
17 following their divorce, and keeping alive the opportunity to later have Wynn Resorts seek to
18 redeem Aruze USA's shares at a discount.

19 276. Furthermore, Mr. Wynn and Ms. Sinatra, acting in their individual capacity and as
20 agents of Wynn Resorts, made these false and misleading statements and omissions knowingly or
21 without sufficient basis of information regarding the immediate need for Elaine Wynn to transfer
22 her shares under the Stockholders Agreement. On information and belief, Mr. Wynn and
23 Ms. Sinatra knew or were without a sufficient basis to make those material statements.

24 277. Aruze USA relied on the false and misleading statements and omissions made by
25 Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze USA's reliance on the false and misleading
26 statements and omissions was reasonable and justifiable, especially in light of Mr. Okada's
27 trusting relationship with Mr. Wynn.
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278. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew that Aruze USA intended to rely on this information as a reason for Aruze USA to consent to Elaine Wynn's transfer of shares under the Stockholders Agreement. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew and intended that, in reliance on these misrepresentations, Aruze USA would relinquish its own opportunity to liquidate its own shares of Wynn Resorts' stock to fund Universal's project in the Philippines or seek other financing. Therefore, Aruze USA relied on the fact that Wynn Resorts was a committed lender to the project at the expense of pursuing other financing options.

279. As a further direct and proximate result of the wrongful conduct by Wynn Resorts, Mr. Wynn, and Ms. Sinatra, as alleged herein, Aruze USA was and continues to be damaged in an amount in excess of \$10,000 to be proven at trial.

280. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim on or about September 30, 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

281. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless, misleading, malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms. Sinatra, Aruze USA is entitled to punitive damages not to exceed three times the amount of compensatory damages awarded.

282. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT XII

Promissory Estoppel in Connection with Financing for Aruze USA

(By Aruze USA Against Wynn Resorts, Steve Wynn, and Kimmarie Sinatra)

283. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

1 284. On or about May 16, 2011, Mr. Wynn, in the presence of Ms. Sinatra, gave
2 Mr. Okada an explicit personal assurance that Wynn Resorts would provide a loan or facilitate the
3 lending of money to Aruze USA, which would be backed by shares of Wynn Resorts' stock held
4 by Aruze USA. As alleged above, Mr. Okada agreed to the financing from Wynn Resorts –
5 rather than causing Aruze USA to attempt to liquidate or pledge its shares of Wynn Resorts or
6 seek alternative financing – based on assurances made by Mr. Wynn. Ms. Sinatra agreed to
7 provide draft loan agreements to Aruze USA within 10 days to support the agreement reached
8 between Mr. Wynn and Mr. Okada.

9 285. Based on the foregoing agreement, on July 13, 2011, Ms. Sinatra stated in an email
10 to Aruze USA's counsel that Wynn Resorts was negotiating with Deutsche Bank on a margin
11 loan transaction on Aruze USA's behalf, with Wynn Resorts acting as a "backstop."

12 286. Mr. Wynn and Ms. Sinatra, acting in their individual capacities and as agents of
13 Wynn Resorts, made these statements knowingly or without sufficient basis of information
14 because they believed Wynn Resorts was not legally permitted to enter into such a lending
15 transaction pursuant to the restrictions in Section 402 of SOX. As alleged above, Mr. Wynn and
16 Ms. Sinatra engaged in this wrongful conduct with the intent to induce Aruze USA to consent to
17 Elaine Wynn's transfer of shares under the Stockholders Agreement. Mr. Wynn and Ms. Sinatra
18 acted with the purpose of maintaining Mr. Wynn's control over Wynn Resorts after Mr. Wynn's
19 shares in the Company were split with Elaine Wynn following their divorce, and keeping alive
20 the opportunity to later have Wynn Resorts seek to redeem Aruze USA's shares at a discount.

21 287. At the time, Aruze USA was not aware that Wynn Resorts would take the position
22 that it was not legally permitted to enter into such a lending transaction pursuant to the
23 restrictions in Section 402 of SOX. Aruze USA relied on the false and misleading statements and
24 omissions made by Wynn Resorts, Mr. Wynn, and Ms. Sinatra. Aruze USA's reliance on the
25 false and misleading statements and omissions was reasonable and justifiable, especially in light
26 of Mr. Okada's trusting relationship with Mr. Wynn.
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288. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra knew that Aruze USA intended to rely on this information as a reason for Aruze USA to forego seeking to liquidate its shares or seeking another source of financing backed by its Wynn Resorts shares. On information and belief, Wynn Resorts, Mr. Wynn, and Ms. Sinatra further knew and intended that in reliance on these misrepresentations, Aruze USA would relinquish its opportunity to liquidate its own shares of Wynn Resorts' stock to fund Universal's project in the Philippines or seek other financing. Therefore, Aruze USA relied on the fact that Wynn Resorts was a committed lender to the project at the expense of pursuing other financing options.

289. On September 30, 2011, Wynn Resorts' Compliance Committee refused to permit the loan to Aruze USA or to otherwise serve as a "backstop" for a margin loan transaction on Aruze USA's behalf.

290. As a further direct and proximate result of the wrongful conduct by Wynn Resorts, Mr. Wynn, and Ms, Sinatra, as alleged herein, Aruze USA was and continues to be damaged in an amount in excess of \$10,000 to be proven at trial.

291. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim on or about September 30, 2011. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

292. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT XIII

Fraud/Fraud in the Inducement of the Stockholders Agreement

(By Aruze USA Against Steve Wynn)

293. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

1 294. In the alternative, to the extent the Court finds that the redemption provision in the
2 Articles of Incorporation applies to Aruze USA's shares, Aruze USA asserts the claim of
3 fraudulent inducement against Steve Wynn. Aruze USA thus brings this claim in the alternative
4 to Aruze USA's claims that assert the purported redemption by Wynn Resorts is void *ab initio*.

5 295. On or about April 11, 2002, Aruze USA, Baron Asset Fund, and Mr. Wynn
6 entered into the Stockholders Agreement in recognition of their desire to form Wynn Resorts. On
7 June 3, 2002, Mr. Wynn caused Wynn Resorts to file its Articles of Incorporation with Nevada's
8 Secretary of State without including a redemption provision.

9 296. On behalf of Aruze USA, on or about June 10, 2002, Mr. Wynn caused Aruze
10 USA to enter into a Contribution Agreement between Aruze USA, Baron Asset Fund, Kenneth R.
11 Wynn Family Trust, Wynn Resorts, and Mr. Wynn. The Contribution Agreement committed
12 Aruze USA's LLC interests in Valvino in exchange for Wynn Resorts common stock.

13 297. Prior to causing the exchange to occur, on or about September 10, 2002,
14 Mr. Wynn unilaterally filed amended Articles of Incorporation that, for the first time, included a
15 redemption provision. On information and belief, Mr. Wynn deliberately delayed in causing the
16 exchange in order to allow Mr. Wynn to unilaterally amend the Articles of Incorporation without
17 affording Aruze USA a shareholder vote as would have been required pursuant to N.R.S.
18 § 78.390. At the time of the amendment, Mr. Wynn was the sole stockholder of Wynn Resorts.
19 On or about September 28, 2002, about eighteen days after Mr. Wynn unilaterally amended the
20 Articles of Incorporation, Mr. Wynn caused the exchange of Aruze USA's LLC interests in
21 Valvino to Wynn Resorts for Wynn Resorts common stock.

22 298. Mr. Wynn intentionally made materially false and/or misleading representations to
23 Aruze USA regarding Wynn Resorts' stockholder obligations under the Articles of Incorporation
24 to induce Aruze USA to enter into the Stockholders Agreement. The Stockholders Agreement
25 expressly provided that Aruze USA would have the sole power of disposition of its stock in
26 Wynn Resorts and there were to be no other provisions regarding the disposition of Aruze USA's
27 stock, voluntarily or involuntary. Mr. Wynn misrepresented and/or failed to disclose that Wynn
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1 Resorts' amended Articles of Incorporation would seek to impose substantial financial risk on
2 Aruze USA's shares of Wynn Resorts stock by providing Wynn Resorts' Board – which was
3 controlled by Mr. Wynn – purported discretion to redeem Aruze USA's stock on potentially
4 onerous terms.

5 299. The misrepresentations and concealment of facts alleged herein were material.

6 300. Mr. Wynn knew the misrepresentations and concealment of facts alleged herein
7 were false, or alternatively, made misrepresentations of facts with reckless disregard for whether
8 those representations were true.

9 301. Wynn Resorts and Mr. Wynn made the misrepresentations and concealed facts as
10 set forth herein with the intent to induce Aruze USA to enter into the Stockholder Agreement.
11 Furthermore, Mr. Wynn made the misrepresentations and concealment of facts alleged herein
12 with the intent of gaining his own financial advantage to the disadvantage of Aruze USA.

13 302. Aruze USA relied upon the misrepresentations and concealment of facts made by
14 Mr. Wynn regarding Wynn Resorts' common stock at the time Aruze USA entered into the
15 Stockholders Agreement. Aruze USA's reliance on these representations and concealment of
16 facts was reasonable and justifiable, especially in light of Mr. Okada's trusting relationship with
17 Mr. Wynn.

18 303. Aruze USA was not aware of and could not have known about the
19 misrepresentations until September 30, 2011, when Wynn Resorts, for the first time, indicated
20 that it might attempt to apply the redemption restriction to Aruze USA's shares.

21 304. Aruze USA has suffered and continues to suffer injury because of Mr. Wynn's
22 misrepresentations and concealment of facts set forth herein. As a direct and proximate result of
23 Mr. Wynn's wrongful conduct, Aruze USA suffered injury when the redemption provision was
24 purportedly invoked by Wynn Resorts' Board on or about February 18, 2012.

25 305. As a remedy for Mr. Wynn's fraudulent inducement, Aruze USA seeks imposition
26 of a constructive trust over Aruze USA's Wynn Resorts shares purportedly redeemed by the
27 Board, or, in the alternative, recovery of unjust enrichment/restitution.
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306. Pursuant to N.R.S. § 42.005, by reason of the fraudulent, reckless, misleading, malicious, willful, and wanton misconduct of Wynn Resorts, Mr. Wynn, and Ms. Sinatra, Aruze USA is entitled to punitive damages not to exceed three times the amount of compensatory damages awarded.

307. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim, including injury arising from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

308. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT XIV

Negligent Misrepresentation in Connection with the Stockholders Agreement

(By Aruze USA Against Steve Wynn)

309. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

310. In the alternative, to the extent that the redemption provision in the later amended Articles of Incorporation is found to apply to Aruze USA's shares, Aruze USA asserts the claim of negligent misrepresentation in connection with the Stockholders Agreement against Steve Wynn. Aruze USA thus brings this claim in the alternative to Aruze USA's claims that assert the purported redemption by Wynn Resorts is void *ab initio*.

311. On or about April 11, 2002, Aruze USA, Baron Asset Fund, and Mr. Wynn entered into the Stockholders Agreement in recognition of their desire to form Wynn Resorts. On June 3, 2002, Mr. Wynn caused Wynn Resorts to file its Articles of Incorporation with Nevada's Secretary of State without including a redemption provision.

1 312. On behalf of Aruze USA, on or about June 10, 2002, Mr. Wynn caused Aruze
2 USA to enter into a Contribution Agreement between Aruze USA, Baron Asset Fund, Kenneth R.
3 Wynn Family Trust, Wynn Resorts, and Mr. Wynn. The Contribution Agreement committed
4 Aruze USA's LLC interests in Valvino in exchange for Wynn Resorts common stock.

5 313. Prior to causing the exchange to occur, on or about September 10, 2002,
6 Mr. Wynn unilaterally filed amended Articles of Incorporation that, for the first time, included a
7 redemption provision. On information and belief, Mr. Wynn deliberately delayed in causing the
8 exchange in order to allow Mr. Wynn to unilaterally amend the Articles of Incorporation without
9 affording Aruze USA a shareholder vote as would have been required pursuant to N.R.S.

10 § 78.390. At the time of the amendment, Mr. Wynn was the sole stockholder of Wynn Resorts.

11 314. On or about September 28, 2002, about three months after Aruze USA entered into
12 the Contribution Agreement, and eighteen days after Mr. Wynn amended the Articles of
13 Incorporation, Mr. Wynn caused the contribution of Aruze USA's LLC interests in Valvino to
14 Wynn Resorts in exchange for Wynn Resorts common stock.

15 315. Mr. Wynn made materially false representations and/or omissions to Aruze USA
16 regarding Wynn Resorts' stockholder obligations under at the time Aruze USA entered into the
17 Stockholders Agreement. The Stockholders Agreement expressly provided that Aruze USA
18 would have the sole power of disposition of its stock in Wynn Resorts and there were to be no
19 other provisions regarding the disposition of Aruze USA's stock, voluntarily or involuntary.
20 Mr. Wynn misrepresented and/or failed to disclose that Wynn Resorts' amended Articles of
21 Incorporation would seek to impose substantial financial risk to Aruze USA by providing Wynn
22 Resorts' Board (which was controlled by Mr. Wynn) purported discretion to redeem Aruze
23 USA's stock on potentially onerous terms.

24 316. Aruze USA was not aware of and could not have known about the
25 misrepresentations until September 30, 2011, when Wynn Resorts, for the first time, indicated
26 that it might attempt to apply the redemption restriction to Aruze USA's shares.

1 317. The false statements and/or omissions of facts alleged herein were material
2 because, had Mr. Wynn provided Aruze USA with truthful and correct information, Aruze USA
3 would not have entered into the Stockholders Agreement.

4 318. Mr. Wynn failed to exercise reasonable care or competence in obtaining or
5 communicating the false statements of fact alleged herein.

6 319. Aruze USA relied on the false and misleading statements and omissions made by
7 Mr. Wynn regarding Wynn Resorts' common stock at the time Aruze USA entered into the
8 Stockholders Agreement. Aruze USA's reliance on the false and misleading statements and
9 omissions was reasonable and justifiable, especially in light of Mr. Okada's trusting relationship
10 with Mr. Wynn.

11 320. On information and belief, Mr. Wynn knew that Aruze USA intended to rely on
12 this information as a reason for Aruze USA to enter into the Stockholders Agreement.

13 321. Aruze USA has suffered and continues to suffer injury because of Mr. Wynn's
14 false and misleading statements and omissions alleged herein. As a direct and proximate result of
15 Mr. Wynn's wrongful conduct, Aruze USA suffered injury when the redemption provision was
16 purportedly invoked by Wynn Resorts' Board on or about February 18, 2012.

17 322. As a remedy for Mr. Wynn's negligent misrepresentations, Aruze USA seeks
18 imposition of a constructive trust over Aruze USA's Wynn Resorts shares purportedly redeemed
19 by the Board, or, in the alternative, unjust enrichment/restitution.

20 323. Aruze USA brings this claim within the relevant statute of limitations under
21 Nevada law, having discovered facts giving rise to this claim, including injury arising from the
22 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,
23 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
24 reasonably have discovered earlier the facts giving rise to this claim.

25 324. It has been necessary for Aruze USA to retain the services of attorneys to
26 prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said
27 services performed and to be performed in a sum to be determined.
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COUNT XV

Breach of Contract in Connection with the Stockholders Agreement

(By Aruze USA Against Steve Wynn)

325. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

326. Mr. Wynn, Elaine Wynn, and Aruze USA are parties to the Stockholders Agreement.

327. Section 2(a) of the Stockholders Agreement provides that Mr. Wynn must endorse and vote for Aruze USA's proposed slate of directors so long as the resulting Board is composed of a simple majority of directors selected by Mr. Wynn.

328. Mr. Wynn has failed and refused to endorse Aruze USA's slate of directors in violation of his obligations under the Stockholders Agreement and failed and refused to provide assurances of his intent to vote his and Elaine Wynn's stock in favor of those nominees.

329. Mr. Wynn's actions constitute a material breach of the Stockholders Agreement without justification and has frustrated the essential purpose of the Stockholders Agreement.

330. The Stockholders Agreement provides that each of the parties to it recognizes and acknowledges that a breach by any party of any covenants or agreements contained in the Agreement will cause the other parties to sustain damages for which they would not have an adequate remedy at law for money damages, and therefore each of the parties agrees that in the event of any such breach the parties shall be entitled to appropriate equitable relief.

331. On account of Mr. Wynn's material breach of the Stockholders Agreement, Aruze USA was excused and completely discharged from any further performance of its obligations contained therein.

332. Further, the breaches by Mr. Wynn have frustrated the entire purpose of the Stockholders Agreement, and have instead served to further entrench Mr. Wynn's control over the Company to the detriment of the other parties to the Agreement.

333. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim, including injury arising from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

334. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT XVI

Breach of Covenant of Good Faith and Fair Dealing in Stockholders Agreement

(By Aruze USA Against Steve Wynn)

335. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

336. In every contract, there exists an implied covenant of good faith and fair dealing.

337. Aruze USA and Mr. Wynn are parties to the Stockholders Agreement, between Mr. Wynn, Elaine Wynn, and Aruze USA.

338. Aruze USA has properly sought to exercise its rights under the Stockholders Agreement in seeking to designate directors for endorsement by Mr. Wynn while complying with the contractual condition that the Board will consist of a majority of directors nominated by Mr. Wynn.

339. Mr. Wynn has materially breached the Stockholders Agreement by failing to endorse Aruze USA's slate of nominees for directors to the Wynn Resorts Board and by failing to confirm his intent to vote his and Elaine Wynn's stock in favor of those nominees, thereby frustrating the essential purpose of the Stockholders Agreement.

340. Mr. Wynn has breached the reasonable and justifiable expectations of Aruze USA with respect to Aruze USA's ability to successfully designate director candidates, an essential purpose of the Stockholders Agreement.

341. Mr. Wynn also has breached the reasonable and justifiable expectations of Aruze USA by unreasonably withholding his consent for Aruze USA to liquidate stock, and by falsely promising financing in order to persuade Aruze USA to delay its demands for liquidity.

342. Accordingly, Mr. Wynn's conduct has breached the covenant of good faith and fair dealing. On account of Mr. Wynn's material breach, Aruze USA is entitled to contract damages, or in the alternative, Aruze USA is entitled to be excused and discharged from its obligations under the Stockholders Agreement.

343. By virtue of his purported position as power of attorney under the Stockholders Agreement, Mr. Wynn owed fiduciary duties to Aruze USA. Given the existence of this “special relationship” between Mr. Wynn and Aruze USA, Mr. Wynn is also liable for a tortious breach of the implied duty of good faith and fair dealing and the accompanying tort damages.

344. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim, including injury arising from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

345. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT XVII

Breach of Fiduciary Duty

(By Aruze USA Against Steve Wynn)

346. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

347. In the alternative, to the extent the Court finds that the redemption provision in the Articles of Incorporation applies to Aruze USA's shares, Aruze USA asserts the claim of breach

1 of fiduciary duty against Steve Wynn. Aruze USA thus brings this claim in the alternative to
2 Aruze USA's claims that assert the purported redemption by Wynn Resorts is void *ab initio*.

3 348. Section 2(c) of the Stockholder Agreement provided that "Aruze [USA] hereby
4 constitutes and appoints [Mr.] Wynn as its true and lawful attorney-in-fact and agent, with full
5 power of substitution and reconstitution for it and in its name, place and stead, in any and all
6 capacities, to execute and deliver any and all documents in connection with or related to the
7 formation of [Wynn Resorts]." As Aruze USA's attorney-in-fact and agent, Mr. Wynn had a
8 fiduciary duty to Aruze USA to act in good faith and in Aruze USA's best interest.

9 349. By virtue of his purported position as power of attorney under the Stockholders
10 Agreement, Mr. Wynn owed fiduciary duties to Aruze USA. In breach of these duties, on or
11 about September 10, 2002, Mr. Wynn caused to be filed amended Articles of Incorporation that
12 included, for the first time, a redemption provision.

13 350. Mr. Wynn's act of unilaterally amending the Articles of Incorporation
14 demonstrated that Mr. Wynn possessed a conflict of interest in his dual roles of sole shareholder
15 in Wynn Resorts and attorney-in-fact and agent of Aruze USA. If applied to Aruze USA, the
16 redemption provision would violate the Stockholders Agreement and impose substantial financial
17 risk on Aruze USA's shares of Wynn Resorts stock by providing Wynn Resorts' Board – which
18 was controlled by Mr. Wynn – purported discretion to redeem Aruze USA's stock on potentially
19 onerous terms. Despite the conflict of interest, Mr. Wynn included the redemption provision in
20 the Articles of Incorporation to the detriment of Aruze USA in breach of his fiduciary duties as
21 attorney-in-fact to Aruze USA. Further, as Aruze USA's attorney-in-fact, Mr. Wynn had a duty
22 to inform Aruze USA that the redemption provision could be used against Aruze USA. In
23 violation of this duty, Mr. Wynn not only failed to inform Aruze USA of this risk, but, on
24 information and belief, his attorneys represented to Aruze USA's attorneys that such a
25 redemption provision would *not* apply to Aruze USA's shares.

26 351. Mr. Wynn's fiduciary obligations to Aruze USA as attorney-in-fact are not subject
27 to the business judgment rule.
28

352. Aruze USA was not aware of and could not have known about the breach of fiduciary duties until September 30, 2011, when Wynn Resorts, for the first time, indicated that it might attempt to apply the redemption restriction to Aruze USA's shares.

353. As a further direct and proximate result of the wrongful conduct by the Mr. Wynn, as alleged herein, Aruze USA was and continues to be damaged in an amount in excess of \$10,000.

354. Aruze USA brings this claim within the relevant statute of limitations under Nevada law, having discovered facts giving rise to this claim, including injury arising from the purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18, 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not reasonably have discovered earlier the facts giving rise to this claim.

355. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT XVIII

Tortious Interference of Contract

**(By Aruze USA Against Wynn Resorts, Linda Chen, Russell Goldsmith, Ray R. Irani,
Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson,
and Allan Zeman)**

356. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

357. In the alternative, to the extent the Court finds the redemption of Aruze USA's shares enforceable, Aruze USA asserts the claim of tortious interference of contract against Wynn Resorts, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, and Allan Zeman.

358. On or about February 18, 2012, Wynn Resorts purportedly redeemed Aruze USA's Wynn Resort shares for 30% less than the market value of the shares as measured by the closing

1 price of Wynn Resort's stock on the Friday prior to the Saturday Board meeting. Wynn Resorts
2 announced that it arrived at the 30% discounted value because of the existence of the
3 Stockholders Agreement.

4 359. Wynn Resorts, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller,
5 John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, and Allan Zeman knew of
6 the existence of the Stockholders Agreement between Aruze USA, Mr. Wynn, and Ms. Wynn,
7 and believed the Stockholders Agreement to be valid and enforceable prior to voting to redeem
8 Aruze USA's stock in Wynn Resorts.

9 360. By voting in favor of the redemption of Aruze USA's shares, Wynn Resorts, Linda
10 Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin
11 V. Shoemaker, Boone Wayson, and Allan Zeman knew or should have known that the
12 redemption would violate the Stockholders Agreement by denying Aruze USA the right to have
13 the "sole power of disposition" of its shares in Wynn Resorts.

14 361. To the extent the Court finds that the redemption of Aruze USA's stock actually
15 occurred, Wynn Resorts, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A.
16 Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, and Allan Zeman intentionally and
17 tortiously interfered with contractual relations, which resulted in injury to Aruze USA.

18 362. As a further direct and proximate result of the wrongful conduct by Wynn Resorts,
19 Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr,
20 Alvin V. Shoemaker, Boone Wayson, and Allan Zeman as alleged herein, Aruze USA was and
21 continues to be damaged in an amount in excess of \$10,000 to be proven at trial.

22 363. Aruze USA brings this claim within the relevant statute of limitations under
23 Nevada law, having discovered facts giving rise to this claim, including injury arising from the
24 purported redemption of Aruze USA's shares of Wynn Resorts' stock, on or about February 18,
25 2012. Despite having exercised reasonable diligence, Aruze USA did not and could not
26 reasonably have discovered earlier the facts giving rise to this claim.

364. It has been necessary for Aruze USA to retain the services of attorneys to prosecute this action, and Aruze USA is entitled to an award of the reasonable value of said services performed and to be performed in a sum to be determined.

COUNT XIX

Unconscionability/Reformation of Promissory Note

(By Aruze USA Against Wynn Resorts)

365. Aruze USA reasserts and realleges Paragraphs 4 through 178 above as if set forth in full below.

366. In the alternative, to the extent that the redemption provision in the Articles of Incorporation is found to apply to Aruze USA's shares and the redemption is found to be lawful, Aruze USA asserts that the promissory note is unconscionable and therefore subject to reformation.

367. On January 27, 2012, Wynn Resorts declared in a publicly filed Opposition to Mr. Okada's Petition for Writ of Mandamus that Aruze USA's nearly 20% stake in Wynn Resorts was "valued at approximately \$2.9 billion."

368. Just 22 days later, on February 18, 2012, Wynn Resorts acted to forcibly acquire Aruze USA's stake in Wynn Resorts in exchange for a \$1.936 billion promissory note, paying a mere 2% interest per annum over a ten-year term.

369. The promissory note is unconscionably vague, ambiguous, and oppressive.

370. Aruze USA was never permitted the opportunity to negotiate the amount of the promissory note given the market value of its shares, nor was Aruze USA permitted the opportunity to negotiate the terms of the promissory note, including, but not limited to, the interest rate, the restrictions on transfer, and the subordination provisions.

371. Wynn Resorts received a grossly one-sided windfall by forcibly redeeming \$2.9 billion of securities at a deep discount, transforming equity into a 2 percent per annum debt instrument that Aruze USA may not transfer, retaining the ability to issue additional debt at any

1 time and provide any new lender priority rights above Aruze USA's note, and removing voting
2 and other rights from Aruze USA.

3 372. Aruze USA, therefore, seeks reformation of the promissory note, including but not
4 limited to its principal, duration, interest rate, restrictions on transfer, restrictions on
5 subordination, and inclusion of other customary and reasonable terms, conditions, and covenants.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Aruze USA and Universal each expressly reserves its and their right to
8 amend these Counterclaims before or at the time of the trial of this action to include all items of
9 injury and damages not yet ascertained. Aruze USA and Universal pray that the Honorable Court
10 enter judgment in favor of each of them, and against Wynn Resorts, Mr. Wynn, Ms. Sinatra, and
11 the other Wynn Directors, as follows:

- 12 a. For general damages in an amount in excess of \$10,000;
13 b. For consequential damages;
14 c. For treble and statutory damages;
15 d. For punitive damages three times the amount of compensatory damages awarded;
16 e. For disgorgement of profits;
17 f. For constructive trust and unjust enrichment;
18 g. For preliminary and/or permanent injunctive relief;
19 h. For declaratory relief;
20 i. For reformation of the promissory note;
21 j. For costs and expenses of this action, prejudgment and post-judgment interest, and
22 reasonable attorneys' fees incurred herein; and
23 k. Any and all such other and further equitable and legal relief as this Court deems
24 just and proper.

25 **JURY DEMAND**

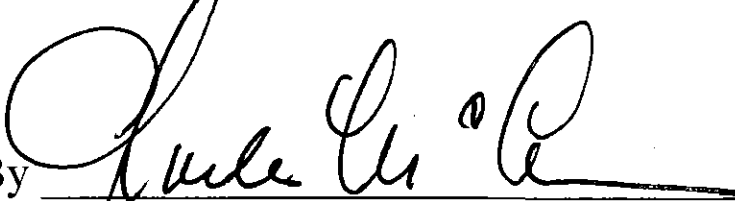
26 Defendants and Counterclaimants hereby demand a trial by jury on all claims and issues
27 so triable.
28

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Dated: November 26, 2013

LIONEL SAWYER & COLLINS
SAMUEL S. LIONEL (SBN 1766)
CHARLES H. McCREA, JR. (SBN 104)
STEVEN C. ANDERSON (SBN 11901)

MORGAN, LEWIS & BOCKIUS LLP
MARC J. SONNENFELD
ROLLIN B. CHIPPEY, II
JOSEPH E. FLOREN
BENJAMIN P. SMITH
CHRISTOPHER J. BANKS

By 
Charles H. McCrea, Jr.

Attorneys for Defendants and Counterclaimants
ARUZE USA, INC. and UNIVERSAL
ENTERTAINMENT CORP.

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that I am an employee of LIONEL SAWYER & COLLINS and that on this 26th day of November, 2013, I caused documents entitled FOURTH AMENDED COUNTERCLAIM OF ARUZE USA, INC. AND UNIVERSAL ENTERTAINMENT CORP. to be served as follows:

☐ by depositing same for mailing in the United States Mail, in a sealed envelope addressed to:

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Todd L. Bice, Esq., Bar # 4534
Debra L. Spinelli, Bar # 9695
PISANELLI BICE PLLC
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* *admitted pro hac vice*

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William R. Urga, Esq., Bar # 1195
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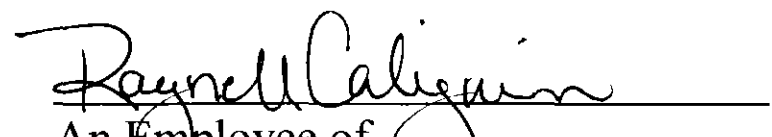
Ronald L. Olson, Esq.*
Mark B. Helm, Esq.*
Jeffrey Y. Wu, Esq.*
MUNGER, TOLLES & OLSON LLP
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* *admitted pro hac vice*

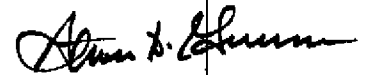
☐ pursuant to Nev. R. Civ. P. 5(b)(2)(D) to be sent via facsimile as indicated:

☐ to be hand delivered to:

and/or

☒ by the Court's ECF System through Wiznet.


An Employee of
LIONEL SAWYER & COLLINS


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

WYNN RESORTS, LIMITED,)
)
Plaintiff(s),)
vs)
)
KAZUO OKADA, ET AL,)
)
Defendant(s).)
)
AND ALL RELATED CROSSCLAIMS.)
)

Case No. 12 A 656710
Coordinated W/13 A 678658
Dept. No. XI

ELECTRONIC FILING CASE

2nd AMENDED BUSINESS COURT SCHEDULING ORDER
and ORDER SETTING CIVIL JURY TRIAL,
PRE-TRIAL CONFERENCE AND CALENDAR CALL

This BUSINESS COURT SCHEDULING ORDER AND TRIAL SETTING ORDER ("Scheduling Order") is entered following the filing of the *Stipulated Scheduling Order* on 09/22/14. Pursuant to NRCP 16.1(f) this case has been deemed complex and all discovery disputes will be resolved by this Court. Filing of the JCCR has been waived. This Order may be amended or modified by the Court upon good cause shown.

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

Disclosure Experts are Due	04/01/16
Disclosure Rebuttal Experts are Due	05/31/16
Close of Discovery	08/01/16
Motions in Limine and Dispositive Motions to be filed by	08/31/16

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried to a Jury on a **Five week stack** to begin,

February 6, 2017 at 1:30 p.m.

1 B. A Pre-Trial Conference with the designated attorney and/or parties in proper
2 person will be held on **January 20, 2017 at 8:30 a.m.**

3
4 C. A calendar call will be held on **February 2, 2017 at 8:45 a.m.** Parties
5 must bring to Calendar Call the following:

- 6 (1) Typed exhibit lists;
7 (2) List of depositions;
8 (3) List of equipment needed for trial, including audiovisual equipment;¹ and
9 (4) Courtesy copies of any legal briefs on trial issues.

10 The Final Pretrial Conference will be set at the time of the Calendar Call.

11 D. Parties are to appear on the **3rd Monday of Every Month, starting**
12 **December 15, 2014 at 8:30 a.m.** for a Status Check on the matter.

13 E. The Pre-Trial Memorandum must be filed no later than **February 1, 2017,**
14 with a courtesy copy delivered to Department XI. All parties, (Attorneys and parties in proper
15 person) **MUST** comply with **ALL REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel
16 should include the Memorandum an identification of orders on all motions in limine or motions
17 for partial summary judgment previously made, a summary of any anticipated legal issues
18 remaining, a brief summary of the opinions to be offered by any witness to be called to offer
19 opinion testimony as well as any objections to the opinion testimony.

20
21 F. All motions in limine, must be in writing and filed no later than **August 31,**
22 **2016. Orders shortening time will not be signed except in extreme emergencies.**

23
24 G. All original depositions anticipated to be used in any manner during the trial
25 must be delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is
26 anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the

27 _____
28 ¹ If counsel anticipate the need for audio visual equipment during the trial, a request
must be submitted to the District Courts AV department following the calendar call. You
can reach the AV Dept at 671-3205 or via E-Mail at SLATW@clarkcountycourts.us

1 portions of the testimony to be offered must be filed and served by facsimile or hand, two (2)
2 judicial days prior to the final Pre-Trial Conference. Any objections or counterdesignations (by
3 page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial
4 day prior to the final Pre-Trial Conference commencement. Counsel shall advise the clerk prior
5 to publication.

6
7 H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits.
8 All exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in
9 three ring binders along with the exhibit list. The sets must be delivered to the clerk prior to the
10 final Pre-Trial Conference. Any demonstrative exhibits including exemplars anticipated to be
11 used must be disclosed prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-Trial
12 Conference, counsel shall be prepared to stipulate or make specific objections to individual
13 proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked
14 for identification but not admitted into evidence.

15
16 I. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to
17 be included in the Jury Notebook. Pursuant to EDCR 2.68, at the final Pre-Trial Conference,
18 counsel shall be prepared to stipulate or make specific objections to items to be included in the
19 Jury Notebook.

20
21 J. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions
22 to the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side
23 shall provide the Court, at the final Pre-Trial Conference, an agreed set of jury instructions and
24 proposed form of verdict along with any additional proposed jury instructions with an electronic
25 copy in Word format.


26
27 K. In accordance with EDCR 7.70, counsel shall file and serve by facsimile or hand,
28 two (2) judicial days prior to the final Pre-Trial Conference voir dire proposed to be conducted
pursuant to conducted pursuant to EDCR 2.68.

**Failure of the designated trial attorney or any party appearing in proper person to
appear for any court appearances or to comply with this Order shall result in any of the**

1 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)
2 vacation of trial date; and/or any other appropriate remedy or sanction.

3 Counsel is required to advise the Court immediately when the case settles or is otherwise
4 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate
5 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A
6 copy should be given to Chambers.

7
8 DATED this 17th day of November, 2014.

9
10
11 
12 ELIZABETH GONZALEZ, DISTRICT JUDGE

13 **Certificate of Service**

14 I hereby certify that on or about the date filed, this document was Electronically
15 Served or mailed to the proper party as follows:

16 Donald J Campbell, Esq. (Campbell & Williams)

17 J Stephen Peek, Esq. (Holland & Hart)

18 William R Urga, Esq. (Jolley, Urga, et al)

19 James J Pisanelli, Esq. (Pisanelli Bice)

20
21 
22 Dan Kutinac

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Russell Goldsmith, Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
Kimmarré Sinatra, D. Boone Wayson, and Allan Zeman

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 VIDEOTAPED
DEPOSITION OF KAZUO OKADA**

Dates: July 20-24, 27-31, 2015

Time: 10:00 a.m.

1 PLEASE TAKE NOTICE that at 10:00 a.m. on the dates of July 20-24, and July 27-31,
2 2015, at the law office of PISANELLI BICE PLLC, located at 400 South 7th Street, Suite 300,
3 Las Vegas, Nevada 89101, Plaintiff Wynn Resorts, Limited will take the videotaped deposition of
4 KAZUO OKADA upon oral examination, pursuant to Rules 26 and 30 of the Nevada Rules
5 of Civil Procedure, before a Notary Public or before some other officer authorized by law to
6 administer oaths.

7 Oral examination will continue from day to day until completed. You are invited to attend
8 and cross examine.

9 DATED this 14th day of April, 2015.

10 PISANELLI BICE PLLC

11 By: /s/ Debra L. Spinelli

12 James J. Pisanelli, Esq., Bar No. 4027

13 Todd L. Bice, Esq., Bar No. 4534

14 Debra L. Spinelli, Esq., Bar No. 9695

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

15 and

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17 Bradley R. Wilson, Esq. (*pro hac vice admitted*)

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18 New York, New York 10019

19 and

20 Robert L. Shapiro, Esq. (*pro hac vice admitted*)

GLASER WEIL FINK HOWARD

21 AVCHEN & SHAPIRO, LLP

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22 Los Angeles, California 90067

23 Attorneys for Wynn Resorts, Limited, Linda Chen,
24 Russell Goldsmith, Ray R. Irani, Robert J. Miller,
John A. Moran, Marc D. Schorr, Alvin V.
25 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 14th day of April, 2015, I caused to be **electronically served through the Court's e-service/e-filing system** true and correct copies of the foregoing **NOTICE OF VIDEOTAPED DEPOSITION OF KAZUO OKADA** to the following:

J. Stephen Peek, Esq.
Bryce K. Kunimoto, Esq.
Robert J. Cassity, Esq.
Brian G. Anderson, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

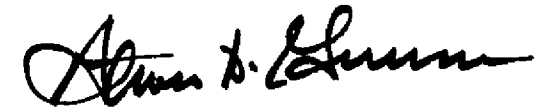
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Los Angeles, CA 90071-1560

/s/ Kimberly Peets
An Employee of PISANELLI BICE PLLC



CLERK OF THE COURT

MPOR

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*Attorneys for Defendant Kazuo Okada and
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and Universal Entertainment Corp.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,

v.

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

**DEFENDANT KAZUO OKADA'S
MOTION FOR A PROTECTIVE
ORDER TO (1) LOCATE HIS
DEPOSITION IN TOKYO AND
(2) SET IT FOR THREE DAYS**

**EX PARTE APPLICATION FOR
ORDER SHORTENING TIME AND
ORDER THEREON**

Electronic Filing Case
Hearing Date: June 4, 2015
Hearing Time: 8:30 am

1 Defendant Kazuo Okada, by and through his counsel of record, and pursuant to NRC
2 26(c), hereby moves the Court for a protective order to (1) locate his deposition in Tokyo and (2)
3 set it for three days.

4 This Motion is based upon the following Memorandum of Points and Authorities, the
5 Declaration of Robert J. Cassity, Esq., the papers and pleadings on file in this action, and any
6 oral argument this Court may allow.

7 DATED this 14th day of May, 2015.

8
9 

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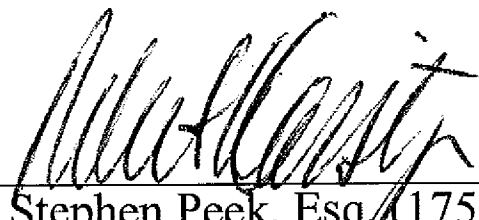
24 *Attorneys for Defendant Kazuo Okada and*
25 *Defendants/Counterclaimants Aruze USA, Inc.*
26 *and Universal Entertainment Corp.*
27
28

EX PARTE APPLICATION FOR ORDER SHORTENING TIME

Pursuant to EDCR 2.26, Defendant Kazuo Okada applies to the Court *ex parte* for an Order Shortening Time for the hearing of his Motion for a Protective Order to (1) Locate his Deposition in Tokyo and (2) Set if for Three Days ("Motion").

As set forth in the Declaration of Robert J. Cassity, Esq., below, good cause supports Defendant Okada's request for an order shortening time for the hearing on the Motion. Defendant Okada's Motion moves for a protective order regarding the unreasonable and unduly burdensome Notice of Deposition served on him by Plaintiff Wynn Resorts, Limited ("WRL"), which seeks to impose on Defendant Okada a two week deposition in July, thousands of miles away from his residence and his co-defendant companies' places of business in Tokyo. The Motion requests that the deposition instead be held in Tokyo (or Osaka), Japan and for no more than three days. A timely resolution of Defendant Okada's Motion for protective order is warranted to determine the location and length of Defendant Okada's deposition sufficiently in advance of the noticed date in order to permit Defendant Okada and the parties' counsel time to set their schedule and prepare. Counsel for Defendant Okada has conferred with counsel for WRL, who has agreed to schedule the hearing on this Motion for June 4, 2014. Therefore, Defendant Okada respectfully requests that the Court set a hearing on the Motion for June 4, 2015.

DATED this 14th day of May, 2015.



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1 **DECLARATION OF ROBERT J. CASSITY, ESQ. IN SUPPORT OF EX PARTE**
2 **APPLICATION FOR ORDER SHORTENING TIME**

3 I, Robert J. Cassity, Esq., declare as follows:

4 1. I am over 18 years of age and am competent to testify as to the matters set forth in
5 this Declaration based upon my own personal knowledge, except as to those matters stated on
6 information and belief, and I believe them to be true.

7 2. I am an attorney at Holland & Hart LLP, counsel for Defendant Kazuo Okada in
8 this action.

9 3. I make this Declaration in support of Defendant Kazuo Okada's Motion for a
10 Protective Order to (1) Locate his Deposition in Tokyo and (2) Set if for Three Days (the
11 "Motion") and *Ex Parte* Application for Order Shortening Time.

12 4. Good cause supports Defendant Okada's request to have his Motion's request for a
13 protective order heard on shortened time.

14 5. Defendant Okada's Motion moves for a protective order regarding the
15 unreasonable and unduly burdensome Notice of Deposition served on him by Plaintiff Wynn
16 Resorts, Limited ("WRL"), which seeks to impose on Defendant Okada a two week deposition in
17 July, thousands of miles away from his residence and his co-defendant companies' places of
18 business in Tokyo. The Motion requests that the deposition instead be held in Tokyo and for no
19 more than three days. A timely resolution of Defendant Okada's Motion for Protective Order is
20 warranted to determine the location and length of Defendant Okada's deposition sufficiently in
21 advance of the noticed date in order to permit Defendant Okada and the parties' counsel time to
22 set their schedule and prepare.

23 6. I understand that Ms. Spinelli, on behalf of the Wynn Parties, has agreed to
24 schedule the hearing of the Motion on June 4, 2015.

25 7. Therefore, Defendant Okada requests that the Court set the hearing on the Motion
26 for June 4, 2015.

27 8. Attached as Exhibit A is a true and correct copy of WRL's NRCP 16.1
28 Disclosures, specifically The Wynn Parties' Seventh Supplemental Disclosures Pursuant to NRCP

1 16.1 (omitting the production log attached as Exhibit A to the Disclosures), served by WRL on
2 April 13, 2015.

3 9. Attached as Exhibit B is a true and correct copy of WRL's Notice of Videotaped
4 Deposition of Kazuo Okada.

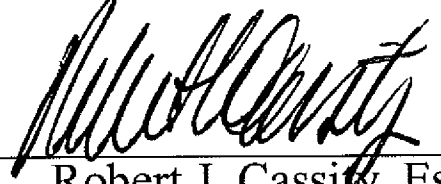
5 10. Attached as Exhibit C is a true and correct copy of the Foreign Gaming Quarterly
6 Report before the Nevada Gaming Commission and the State Gaming Control Board In the
7 Matter of Universal Entertainment Corporation / Aruze USA, Inc.

8 11. Attached as Exhibit D is a form of proposed order based upon a form developed by
9 the U.S. Department of State for a deposition in Japan.

10 12. Pursuant to EDCR 2.34, counsel for the parties met and conferred regarding the
11 proposed deposition of Mr. Okada, but were unable to reach agreement on the location or length
12 of the deposition, thereby necessitating the subject Motion for a Protective Order. Attached as
13 Exhibit E is a true and correct copy of an email from WRL's counsel, Ms. Spinelli, dated April
14 14, 2015.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed this 14th day of May, 2015, in Clark County, Nevada.

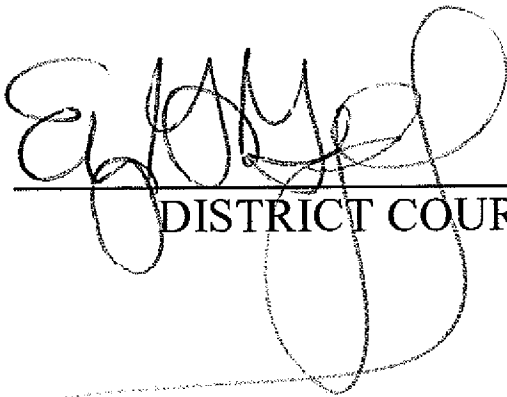
17 
18 Robert J. Cassidy, Esq.

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ORDER SHORTENING TIME


Good cause appearing, it is hereby Ordered that the Defendant Kazuo Okada's Motion for a Protective Order to (1) Locate his Deposition in Tokyo and (2) Set it for Three Days shall be heard on shortened time on the 4th day of June, 2015, at the hour of 8:30 a.m. in Department XI of the Eighth Judicial District Court.

Dated this 15th day of May, 2015



DISTRICT COURT JUDGE

Respectfully submitted by:

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and Universal Entertainment Corp.*

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **DEFENDANT KAZUO OKADA'S MOTION FOR A PROTECTIVE ORDER TO**
3 **(1) LOCATE HIS DEPOSITION IN TOKYO AND (2) SET IT FOR THREE DAYS**

4 **I. INTRODUCTION**

5 Defendant Kazuo Okada respectfully moves for a protective order regarding the Notice of
6 Deposition (the "Notice") served on him by Plaintiff Wynn Resorts, Limited ("WRL") on April
7 14, 2015. The Notice locates the deposition in Las Vegas — thousands of miles away from his
8 residence and his co-defendant companies' places of business in Tokyo. The Notice also purports
9 to subject Defendant Okada to questioning over 10 consecutive business days (in late July). Both
10 the location and length of the proposed deposition are unreasonable and unduly burdensome.
11 Defendant Okada therefore respectfully requests that his deposition instead be held in Tokyo and
12 for no more than three days. There is good cause to grant that relief for the following reasons:

13 *First*, well-settled presumptions point to Tokyo for the location of the deposition. There is
14 a strong presumption that individual defendants be deposed at or near their residence. Defendant
15 Okada resides in Hong Kong and he travels monthly to Tokyo to conduct the business of his co-
16 defendant companies; he has no residence outside Asia. It is also well-settled that a corporate
17 representative, which Defendant Okada almost certainly will be for many purposes at the
18 deposition, is generally deposed at the company's principal place of business (not where it is
19 incorporated). That presumption applies to plaintiff representatives, and it is much stronger here,
20 where the corporations are defendants. The corporate-representative presumption also points to
21 Tokyo, the principal place of business of the parent corporate entity that Defendant Okada will
22 represent, Universal Entertainment Corporation ("UEC"). The principal place of business of the
23 other corporate Defendant, Aruze USA, Inc. ("Aruze USA"), also is in Tokyo. Thus, the
24 presumptions point to Tokyo rather than Las Vegas for the location of Defendant Okada's
25 deposition, and there are no unusual circumstances here that would require a different result. To
26 the contrary, because virtually all of Plaintiff WRL's allegations of misconduct either took place
27 in Tokyo (or elsewhere in Asia) or concern alleged statements (or omissions) about activities
28 there, WRL clearly expects that discovery will include travel to Asia as indicated by its
 submission pursuant to NRCP 16.1.

1 *Second*, WRL's request to depose Mr. Okada for 10 consecutive business days is
2 extraordinary and entirely unreasonable.¹ The default rule is that depositions should be
3 completed in one day. Given the complexities of this case, and the issues posed by the fact that
4 Defendant Okada does not speak English, it is appropriate to extend the deposition to three days.
5 That would provide more than enough time for an efficient examination by able counsel
6 representing clients whose interests align, and minimize disruption of the schedule of a busy
7 executive. Anything more is unreasonable and without any support in law.

8 **II. FACTUAL BACKGROUND**

9 **A. WRL's Complaint and the Compulsory Counterclaims**

10 **1. The Parties**

11 Plaintiff WRL initiated this action by filing a Complaint against Mr. Okada, Aruze USA
12 and UEC (the "Aruze Parties") on February 19, 2012, principally to seek judicial sanction for its
13 extraordinary forced redemption the previous day of approximately \$3 billion in WRL stock held
14 by Aruze USA. The compulsory counterclaim provision of NRCP 13(a) then required Aruze
15 USA and UEC to assert all related claims they held against WRL as counterclaims, which Aruze
16 USA and UEC did.²

17 WRL's Second Amended Complaint ("SAC") names the same three defendants.
18 Similarly, Aruze USA's and UEC's now-operative Fourth Amended Counterclaim also contains
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23 ¹ Given the realities of international travel and jet lag, and the need to prepare for the
24 deposition, WRL's request that Defendant Okada appear for ten days of deposition over two
25 weeks in Nevada would in fact require him to devote, at a minimum, *three consecutive weeks* to
this deposition. Imposing such a burden would be extremely unreasonable.

26 ² NRCP 13(a) provides that a "pleading *shall* state as a counterclaim any claim which at the
27 time of serving the pleading the pleader has against any opposing party, if it arises out of the
28 transaction or occurrence that is the subject matter of the opposing party's claim," with exceptions
not relevant. (emphasis added)).

1 compulsory counterclaims (and only counterclaims that are compulsory).³ As a result, the status
2 of the relevant parties is:

- 3 • WRL: Plaintiff
- 4 • Mr. Okada: Defendant
- 5 • Aruze USA and UEC: Defendants and Compulsory Counterclaimants.

6 **2. Plaintiff WRL's Alleges Wrongful Conduct in Asia**

7
8 Virtually every allegation of purported misconduct in WRL's SAC either took place in
9 Tokyo or elsewhere in Asia (*see e.g.*, WRL's SAC ¶¶ 16-18, 21-22, 24, 26-27, 31-33, 38-39, 45-
10 46, 48-49, 55-61), or concerns an alleged statement (or omission) about activities there (*see e.g.*,
11 *id.* ¶¶ 19-20, 25, 28-29, 34, 40, 49). For example, WRL based its redemption of Aruze USA's
12 stock on Louis Freeh's "investigation of Mr. Okada's *business activities in the Philippines*"
13 through his Tokyo-based "companies." (*Id.* at 2 (emphasis added).) WRL's post-redemption
14 claims, too, entirely concern Defendant Okada's and his Tokyo-based companies' "*project in the*
15 *Philippines*." (*Id.* ¶ 55 (emphasis added); *see id.* ¶¶ 56-61.) Consistent with its allegations, a
16 majority of the individuals and companies identified on WRL's NRCP 16.1 disclosures were at
17 the relevant time in Tokyo or elsewhere in Asia. (*See* The Wynn Parties' Seventh Supp'l
18 Disclosures Pursuant to NRCP 16.1, dated Apr. 13, 2015 at 2-5, 11, 12-27, 30.)

19 **B. Plaintiff WRL's Deposition Notice**

20 On April 14, Plaintiff WRL noticed Defendant Okada's deposition for Las Vegas, Nevada,
21 to last for a two-week period (July 20-24 and July 27-31). (Exhibit B to Declaration of Robert J.
22 Cassity ("Cassity Decl.") The Notice contains no reference to NRCP 30(b)(6). (*Id.*) Thus, WRL
23 proposes to depose Defendant Okada in his individual capacity and, presumably and as
24 appropriate, as a representative of Defendants-Counterclaimants Aruze USA (of which he is the
25

26 ³ WRL filed its SAC on April 22, 2013. Aruze USA and UEC filed their Fourth Amended
27 Counterclaim on Nov 26, 2013). Because the counterclaims in Aruze USA's and UEC's first
28 pleading were asserted in federal court following removal, that first pleading technically was
governed by Fed. R. Civ. P. 13(a), but that rule is substantively identical to NRCP 13(a).

1 President, among other roles) and UEC (of which he is Chairman of the Board of Directors).⁴

2 **C. Defendant Okada's Residence and His Co-Defendant Companies' Principal**
3 **Places of Business are All in Asia**

4 Defendant Okada, a Japanese citizen, now maintains his residence in Hong Kong.
5 Previously, his principal residence was in Tokyo where he travels at least once each month to
6 conduct the business of Defendant-Compulsory-Counterclaimants UEC and Aruze. Tokyo also is
7 the principal place of business of Defendant-Compulsory-Counterclaimant UEC, of which
8 Defendant Okada is Chairman of the Board of Directors.⁵ Indeed, more than 90% of UEC's sales
9 revenue comes from customers in Japan,⁶ and neither it nor any of its subsidiaries have operations
10 anywhere in the United States.

11 Defendant-Compulsory Counterclaimant Aruze USA's principal place of business also is
12 in Tokyo. Defendant Okada is the subsidiary's President, Secretary, Treasurer and Director
13 (WRL's SAC ¶ 6), and he conducts Aruze USA business on his frequent trips to Tokyo. Aruze
14 USA's only other director, Tomohiro Okada,⁷ resides and works in Tokyo. Indeed, Aruze USA is
15 solely a financial holding company, whose only purpose is to hold securities in WRL. It has no
16

17 ⁴ So long as an individual is either an officer, director or managing agent of a corporate
18 party, as Defendant Okada is here with respect to Aruze USA and UEC, he may be deposed as a
19 representative of that corporate party under the general deposition provision of NRCP 30(b)(1).
20 WRL did not, and did not have to, resort to the more particular corporate-representative
deposition provision, NRCP 30(b)(6). *See 1st Tech., LLC v. Rational Enters. Ltd.*, 2007 WL
5596705, *7 (D. Nev. 2007); 7 MOORE'S FEDERAL PRACTICE § 30.03[2] (Matthew Bender 3d ed.
2014)).

21 ⁵ *See also e.g.* UEC Website ("Head Office: Ariake Frontier Building A, 3-7-26 Ariake,
22 Koto-ku, Tokyo 135-0063, Japan"), available at <http://www.universal-777.com/en/corporate/overview/>; UEC, Financial Information as of March 31, 2014, Cover pages
(published Jul. 18, 2014) ("Location of Headquarters: Ariake Frontier Building Tower A, 7-26,
23 Ariake 3-chome, Koto-ku, Tokyo"), available at http://www.universal-777.com/en/ir/financial_rpt/pdf/financial_20140718_e.pdf.

24 ⁶ UEC, Financial Information as of March 31, 2014, at 72 (published Jul. 18, 2014),
25 available at http://www.universal-777.com/en/ir/financial_rpt/pdf/financial_20140718_e.pdf.

26 ⁷ Nevada Secretary of State Entity Details for Aruze USA, available at
27 <http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=onEbFjxt2cfHKWz7EIoVPA%253d%253d&nt7=0>.

1 operations, either in the United States or otherwise. And during the only time when it did (late
2 2009-10), the operations were in Asia through a Japan branch, run by Tokyo-based employees.
3 (Ex. C (Foreign Gaming Quarterly Report).)

4 **D. Mr. Okada's Deposition in the *Books and Records* Action**

5 The location of a deposition of Mr. Okada was litigated three years ago in the related
6 "*Books and Records*" action.⁸ The circumstances were entirely different there and illuminate why
7 the location of Mr. Okada's deposition in this litigation must be in Tokyo. In that case, Mr.
8 Okada was the *plaintiff*, whereas he is only a defendant in this action. That point is central and
9 often dispositive in determining deposition location. Indeed, WRL's counsel stressed Mr.
10 Okada's plaintiff status when arguing for a deposition in Las Vegas:

11 ... *you come in here as the plaintiff*, you come here with
12 responsibilities and with duties and with obligations, and one of
13 them, one of the many is that *you come here to be deposed if you*
14 *came to this courtroom for relief.*

15 (Hr'g Tr. at 19:15-19 (Case No. A-12-654522-B) (Jun. 28, 2012) (emphasis added).) Another
16 important difference from *Books and Records* is that, unlike here, Mr. Okada was not representing
17 Tokyo-based UEC and Aruze USA. Nor were the claims in *Books and Records* centrally focused
18 on activity in Tokyo and elsewhere in Asia, as they are here.

19 In the context of those very different facts, the Court ordered and WRL conducted a
20 deposition in Las Vegas. Relevant to WRL's current request for another 10 days with Mr. Okada,
21 however, the Court also ordered that "[t]here will be no duplication of examination ... at any
22 subsequent deposition of Okada in" the instant lawsuit. (See Order Regarding Wynn Resorts,
23 Limited's Motion for Leave to Depose Kazuo Okada (Aug. 22, 2012) ("Aug. 22 Order"), at 2.)

24 **III. LEGAL STANDARD**

25 Under Rule 26, the court may, upon a showing of good cause, enter a protective order "to
26 protect a party or person from annoyance, embarrassment, oppression, or undue burden or
27 expense." NRCP 26(c). Such orders may require particular forms of discovery to be "had only

28 ⁸ *Okada v. Wynn Resorts, Ltd.*, Case No. A-12-654522-B (filed Jan. 11, 2012).

on specified terms and conditions, including a designation of the time or place.” NRCP 26(c)(2).⁹

IV. ARGUMENT

A. Defendant Okada’s Deposition Should Proceed in Tokyo

1. Courts Presume that Defendants — Particularly Corporate Representatives — Should be Deposed at Their Residence or Principal Place of Business

Depositions of defendants presumptively take place at their principal place of business or residence. Though there are no Nevada state cases governing the location of a deposition, the NEVADA CIVIL PRACTICE MANUAL clearly formulates these presumptions:

As a general rule, barring a court order to the contrary (for reasons of demonstrated hardship of one of the parties, etc.), depositions ... of a defendant (and in the case of a corporate defendant, the corporation’s employees and other representatives) *must* be taken at *the defendant’s place of residence or principal place of business*.

Id. § 16.06[2] (LexisNexis 5th ed. 2014) (citing 7 MOORE’S FEDERAL PRACTICE § 30.20[1][b][ii] (Matthew Bender 3d ed. 2014)).

The MOORE’S FEDERAL PRACTICE treatise elaborates that the “deposition of a nonresident [individual] defendant,” like Mr. Okada, “is generally conducted at the defendant’s ‘place of residence.’” *Id.* § 30.20[1][b][ii]. Further, “[t]he deposition of a corporation through its officers or agents normally must be taken at its principal place of business” — a presumption that is even stronger here, where the corporate representative is a defendant rather than a plaintiff. *Id.* The case law is unanimous about these presumptions. *See, e.g., Thomas v. Int’l Bus. Machines*, 48 F.3d 478, 483 (10th Cir. 1995) (“the normal procedure [is] that the ‘deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business.’” (quoting 8A Charles Alan Wright, et al., FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2112 at 81 (1994))); *Petersen v. Petersen*, 2014 WL 6774293, at *2 (E.D. La. Dec. 2, 2014) (“[D]efendants are

⁹ NRCP 26(c) provides in relevant part as follows: “Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: . . . (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place”

1 generally not required to demonstrate any particular hardship in order to have a court order their
2 deposition take place where they work or live.”); *Motion Games v. Nintendo Co.*, 2014 WL
3 5306961, at *2 (E.D. Tex. Oct. 16, 2014) (“It is well-settled that ‘[t]he deposition of a corporation
4 by its agents and officers should ordinarily be taken at its principal place of business, especially
5 when ... the corporation is a defendant.”) (quoting *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th
6 Cir. 1979)); *Stonebreaker v. Guardian Life Ins. Co.*, 820 F. Supp. 2d 1096, 1098 (S.D. Cal. 2011)
7 (corporate representative’s “deposition should ordinarily be taken at the corporation’s principal
8 place of business”).

9 Moreover, “insofar as a foreign defendant may be more inconvenienced by having to
10 travel to the United States than a defendant who merely resides in another state or in another
11 judicial district, the presumption that the deposition should occur at a foreign defendant’s place of
12 residence may be even stronger.” *E.g.*, *In re Outsidewall Tire Litig.*, 267 F.R.D. 466, 471 (E.D.
13 Va. 2010) (citing *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist. of*
14 *Iowa*, 482 U.S. 522, 546 (1987) (“American courts, in supervising pretrial proceedings, should
15 exercise special vigilance to protect foreign litigants from the danger that ... unduly burdensome[]
16 discovery may place them in a disadvantageous position.”)). Only “unusual” or “peculiar”
17 circumstances may justify a departure from the general rules set by these presumptions. NEVADA
18 CIVIL PRACTICE MANUAL § 16.06[2]; *Motion Games*, 2014 WL 5306961, at *2 (quoting *Salter*,
19 593 F.2d at 651); *see also, e.g.*, *Morin v. Nationwide Fed. Credit Union*, 229 F.R.D. 362, 363 (D.
20 Conn. 2005) (when plaintiff seeks to depose defendant at location other than defendant’s place of
21 business, plaintiff has affirmative burden of demonstrating “peculiar” circumstances that compel
22 deposition to be held in alternative location). As discussed further below, there are no “unusual”
23 or “peculiar” circumstances here. To the contrary, because virtually every allegation of purported
24 misconduct in WRL’s SAC either took place in Tokyo or elsewhere in Asia, or else concerns an
25 alleged statement (or omission) about activities there, WRL already has recognized that it will
26 need to conduct some discovery there.

27 ///

28 ///

2. In this Action, the Presumptions All Point to Tokyo

As noted above, Defendant Okada is a Japanese citizen who resides in Hong Kong now, having resided previously in Tokyo; he travels monthly to Tokyo, which also is the principal place of business of Defendant-Compulsory Counterclaimant UEC.

The principal place of business of UEC's wholly-owned subsidiary, Defendant-Compulsory Counterclaimant Aruze USA, also is in Tokyo. (WRL's SAC ¶ 6; Ex. C.) There should be no dispute that Tokyo- and other Asia-based officers direct and control Aruze USA because, as WRL has noted, Defendant Okada is the subsidiary's President, Secretary, Treasurer and Director (WRL's SAC ¶ 6), and he travels to Tokyo monthly to conduct Aruze USA business. Aruze USA's only other director, Tomohiro Okada,¹⁰ resides and works in Tokyo. Indeed, Aruze USA is solely a financial holding company, which holds securities in WRL. It has no operations, either in the United States or otherwise. And during the only time when it did (late 2009-10), the operations were in Tokyo through a "Japan branch," run by Tokyo-based employees. (Ex. C.)¹¹

It is not relevant to the "principal place of business" determination that Aruze USA is incorporated in Nevada — just as incorporation in Delaware would not be relevant to the determination for the many large U.S. companies that are incorporated there. As the U.S. Supreme Court has explained, "principal place of business" does not mean state of incorporation, but is rather "the place where the corporation's high level officers direct, control, and coordinate the corporation's activities" — in "metaphorical[]" terms, "the corporation's 'nerve center.'" *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010) (construing the federal diversity-jurisdiction statute). As explained above, that "place" for Aruze USA is in Tokyo.¹²

¹⁰ Nevada Secretary of State Entity Details for Aruze USA, available at <http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=onEbFjxt2cfHKWz7EI-oVPA%253d%253d&nt7=0>.

¹¹ The fact that UEC and Aruze USA have filed counterclaims does not change the analysis because the counterclaims were compulsory rather than permissive. *See, e.g., Zuckert v. Berkly Corp.*, 96 F.R.D. 161, 162 (N.D. Ill. 1982) ("If a counterclaim is compulsory, a defendant remains entitled to protection from deposition anywhere but his or her residence or business location.").

¹² For undetermined reasons, prior counsel to the Aruze Parties incorrectly identified Aruze USA's principal place of business as Las Vegas in its pleadings. That assertion was in error. Under the U.S. Supreme Court's definition of "principal place of business," the principal place of

(continued ...)

3. The Presumptions Consistently Favoring Tokyo Cannot be Rebutted Here

There are no “unusual” or “peculiar” circumstances here that would rebut the presumptions that all point to Tokyo. Listed below are the other factors commonly considered by courts, *Stonebreaker*, 820 F. Supp. 2d at 1098; *see* 7 MOORE’S FEDERAL PRACTICE § 30.20[1][b][ii]:

- ***“Location of counsel in the forum district.”*** The parties here all have counsel both outside and inside the District of Nevada, and counsel to the Aruze Parties are of course ready to travel to Tokyo. Regarding WRL’s counsel specifically, courts have recognized repeatedly that “the convenience of counsel is less compelling than any hardship to the witnesses.” *Morin*, 229 F.R.D. at 363 (quoting *Devlin v. Transp. Comms. Int’l Union*, 2000 WL 28173, at *3–4 (S.D.N.Y. Jan. 13, 2000)).
- ***“Number of corporate representatives to be deposed.”*** There will be other individuals in Japan that the parties will wish to depose, as is apparent from Plaintiff WRL’s NRCP 16.1 disclosures. (Ex. A) *See Stonebreaker*, 820 F. Supp. 2d at 1099 (holding that this factor tipped in favor of a deposition of corporate representative at the principal place of business because party seeking discovery likely would have to go there anyhow to conduct other depositions).
- ***“Likelihood of significant discovery disputes arising which would necessitate resolution by the forum.”*** Counsel to Mr. Okada is not aware of any issues that would make a significant dispute likely at the deposition. To the contrary, counsel for the parties have worked cooperatively to prepare for this deposition. For example, counsel have jointly begun work on a translation protocol that will

(... continued)

business for UEC and Aruze USA is Tokyo, as explained above. The Aruze Parties anticipate amending their pleading to correct this error.

1 streamline the process for interpretation disputes and translations of exhibits. If
2 any of those matters require the Court's time to be resolved, that can be done in
3 advance of the deposition, which is still months away. If there are still disputes
4 that come up at the deposition itself, the deposition's multiple-day schedule will
5 allow counsel to confer with the court at the end of each day.

6 In any event, the fact "[t]hat discovery disputes may arise does not justify
7 ... requiring depositions to be taken in the forum; such a conclusion would collapse
8 the presumption in favor of deposing corporate defendants in their place of
9 business and amounts to overprotection of a court's interest." *United States v. One*
10 *Gulfstream G-V Jet Aircraft*, 304 F.R.D. 10, 15 (D.D.C. 2014); *see Snow Becker*
11 *Krauss P.C. v. Proyectos E Instalaciones De Desalacion, S.A.*, 1992 WL 395598,
12 at *3 (S.D.N.Y. Dec. 11, 1992) (same). With regard to foreign witnesses in
13 particular, the effect of "the time difference [on any communication with the court]
14 is not sufficient to justify a departure from the general rule [that corporate
15 representatives should be deposed near their principal place of business] because
16 such a finding would allow plaintiffs to require nearly all foreign witnesses to be
17 deposed in the United States." *Motion Games*, 2014 WL 5306961, at *3.

- 18 • ***"Whether the persons sought to be deposed often engage in travel [to the forum]***
19 ***for business purposes."*** Since WRL's redemption of Aruze USA's WRL shares in
20 2012, Defendant Okada only has travelled to the continental United States once or
21 not at all per year.
- 22 • ***"The equities with regard to the nature of the claim and the parties'***
23 ***relationship."*** As noted, virtually all of Plaintiff WRL's allegations of misconduct
24 either took place in Tokyo (or elsewhere in Asia) (*see* WRL's SAC. ¶¶ 16-18, 21-
25 22, 24, 26-27, 31-33, 38-39, 45-46, 48-49, 55-61), or concerns an alleged
26 statement (or omission) about activities there (*see e.g., id.* ¶¶ 19-20, 25, 28-29, 34,
27 40, 49). Consistent with those allegations, a majority of the individuals and
28

1 companies identified on WRL's NRCP 16.1 disclosures were at the relevant time
2 in Tokyo or elsewhere in Asia. (See The Wynn Parties' Seventh Supp'l
3 Disclosures Pursuant to NRCP 16.1, dated Apr. 13, 2015 at 2-5, 11, 12-27, 30.)

4 After considering these and similar factors, U.S. courts have routinely ordered that
5 depositions be conducted in Japan. See, e.g., *Motion Games*, 2014 WL 5306961, at *1; *Six West*
6 *Retail Acquisition v. Sony Theatre Mgmt. Corp.*, 203 F.R.D. 98, 107-08 (S.D.N.Y. 2001); *Chris-*
7 *Craft Indus. Prods., Inc. v. Kuraray Co., Ltd.*, 184 F.R.D. 605, 607-08 (N.D. Ill. 1999).

8
9 **4. A Deposition in Tokyo is Authorized by Nevada Rules and Can Be**
10 **Conducted as It Would Be in Las Vegas**

11 NRCP 28(b) provides that "[d]epositions may be taken in a foreign country (1) pursuant to
12 any applicable treaty or convention; or ... (3) on notice before a person authorized to administer
13 oaths in the place where the examination is held, either by the law thereof or by the law of the
14 United States." Here, the U.S.-Japan Consular Convention and Protocol authorizes a U.S.
15 consular officer to administer oaths for depositions at the U.S. embassy in Tokyo.¹³ After
16 administering the oaths, the officer will yield to the attorneys, who may then commence a U.S.-
17 style deposition.¹⁴ Attached to this Motion is a proposed order (Ex. D), based on a sample
18 developed by the State Department.¹⁵ In sum, with this Court's approval, Plaintiff WRL may
19 conduct the deposition in Tokyo, after the consular officer's introduction, just as it would in Las

20 ¹³ See Consular Convention and Protocol, U.S.-Japan, art. 17(1)(e), Mar. 22, 1963, 15 U.S.T.
21 768; see also *Depositions in Japan*, Embassy of the United States (Tokyo, Japan),
<http://japan.usembassy.gov/e/acs/tacs-7116.html#cou>.

22 ¹⁴ See ABA Section of Antitrust Law, *Obtaining Discovery Abroad* 175 (2005); Jeffrey
23 Soble and Masahiro Tanabe, *Conducting Discovery in Japan: Depositions, Letters Rogatory, and*
24 *Production of Documents*, The Corporate Counselor, 2 (Sept. 1, 2012). A Japanese consulate or
the embassy here will grant the attorneys a special deposition visa before they travel to Japan.
See U.S. Embassy Web-site (Tokyo, Japan); see also *Obtaining Discovery Abroad* at 175-76.

25 ¹⁵ *Taking Voluntary Depositions of Willing Witnesses, Legal Considerations: Japan*, U.S.
26 Department of State: Bureau of Consular Affairs, available at
27 <http://travel.state.gov/content/travel/english/legal-considerations/judicial/country/japan.html>.
The draft Order lists Osaka as a possible alternative to Tokyo, because there is a larger deposition
28 room in the Osaka site.

1 Vegas.

2 **B. Mr. Okada's Deposition Should Last No More Than Three Days**

3 The rule in Nevada is that depositions are presumptively limited to one day of seven
4 hours. NRCPP 30(d)(1). WRL bears the burden of justifying a departure from that limit. *Cohan v.*
5 *Provident Life & Accident Ins. Co.*, 2014 WL 4231238, *2 (D. Nev. Aug. 26, 2014) (holding,
6 under the identical federal rule, that "[a]nalysis begins with the presumption that extensions to the
7 seven-hour limit are the exception, not the rule.").¹⁶ The seven-hour limit "was carefully chosen
8 and extensions of that limit should be the exception, not the rule." *Roberson v. Bair*, 242 F.R.D.
9 130, 138 (D.D.C. 2007). Although courts may and do grant additional time when necessary to
10 "fairly examine the deponent," NRCPP 30(d)(1), they also must "guard against redundant or
11 disproportionate discovery." *Cohan*, 2014 WL 4231238, *2 (citing *U-Haul Co. v. Gregory J.*
12 *Kamer, Ltd.*, 2013 U.S. WL 5278523, *3 (D. Nev. Sept. 17, 2013)).

13 Here, Defendant Okada does not dispute that his deposition should be for more than one
14 day, but the 10 days sought by WRL is excessive in the extreme. The few reported decisions
15 addressing the length of depositions generally deal with whether a second day is warranted. *See,*
16 *e.g., Unwired Planet, LLC v. Square, Inc.*, 2014 WL 1159833, *5 (D. Nev. Mar. 17, 2014)
17 (ordering that depositions of the inventors in a patent infringement case be limited to 10 hours and
18 all other depositions to seven hours); *Dow Chem. Co. v. Reinhard*, 2008 WL 1735295, *2-4 (E.D.
19 Mich. Apr. 14, 2008) (allowing deposition of Dow's CEO to continue for two days where he
20 "had a central role in the events giving rise to [the] claims").

21 Undersigned counsel is not aware of any court ordering an individual to be deposed for the
22 length of time sought by WRL in this case. WRL's counsel has explained that its request for 10
23

24
25 ¹⁶ There are no reported decisions applying the one day of seven hours provision of NRCPP
26 30(d)(1), which became effective in 2014. In the absence of Nevada authority, federal decisions
27 interpreting the identical language in Fed. R. Civ. P. 30(d)(1) are "strong persuasive authority,
28 because the Nevada Rules of Civil Procedure are based in large part upon their federal
counterparts." *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (Nev.
1990)

1 days of deposition is “due to the number of parties who will question Defendant Okada and also
2 the interpretation issues.” (Ex. E (Email from D. Spinelli (Apr. 14, 2015)).) For the reasons that
3 follow, no additional time is needed to account for the number of parties; some additional time is
4 warranted based on the need for interpretation and the general breadth of issues, but not anything
5 close to the extraordinary amount of time sought by WRL.

6 *First*, it is axiomatic that the lawyers conducting the examination have an obligation to
7 proceed efficiently and prioritize the areas that matter most to them. The seven-hour limit
8 “encourages efficiency; it has been said that a writer’s best friends are a deadline and a page
9 limitation. The same may be said of lawyers conducting depositions.” *Roberson*, 242 F.R.D. at
10 138. Thus, “[i]n every deposition, choices have to be made about the subject matter to be
11 covered. The 7-hour rule necessitates, especially in complex cases, that almost all depositions
12 will be under-inclusive. The examiner, therefore, must be selective and carefully decide how to
13 apportion her time.” *In re Sulfuric Acid Antitrust Litig.*, 230 F.R.D. 527, 532 (N.D. Ill. 2005).

14 *Second*, WRL’s reliance on the “number of parties who will question Mr. Okada” is
15 misplaced. All of the counter-defendants have interests that are virtually indistinguishable from
16 those of WRL. Indeed, WRL’s counsel represents all of them except for Mr. Wynn (who is
17 essentially synonymous with the company) and Ms. Wynn.¹⁷ In such circumstances, counsel
18 have an affirmative obligation to coordinate among themselves to avoid duplication and
19 inefficiency. *See* Fed. R. Civ. P. 30 Adv. Comm. Note (2000) (“In multi-party cases, the need for
20 each party to examine the witness may warrant additional time, although duplicative questioning
21 should be avoided and parties with similar interests should strive to designate one lawyer to
22 question about areas of common interest.”). Noticing the deposition of Mr. Okada for 10 days
23 suggests that counsel for WRL has no intention to coordinate the questioning with co-counsel to
24 avoid duplicative questioning, nor to make the necessary choices to prioritize the examination.

25
26 ¹⁷ The lone issue where their interests do not overlap involves the Stockholders Agreement.
27 Counsel for Mr. Wynn and Ms. Wynn should be afforded some time to question Defendant Okada
28 on that subject, but this does not justify a full second day, much less 10 days.

1 Rather, it indicates a strategic plan to wear down the Defendant, that is to gain a tactical
2 advantage through harassment.

3 *Third*, courts generally increase the time for depositions requiring interpretation by a
4 factor of two or less. *See Balu v. Costa Crociere S.P.A.*, 2011 WL 3359681, *2 (S.D. Fla. Aug. 3,
5 2011) (10 hours of deposition time); *Marlborough Holdings Group, Ltd. v. Pliske Marine, Inc.*,
6 2010 WL 4614704, at *1 (S.D. Fla. 2010) (two days); *General Electric Co. v. SonoSite, Inc.*, 2008
7 WL 4062098 (W.D. Wis. 2008) (10 hours); *Womack v. Nissan North America, Inc.*, 2007 WL
8 5160790, at *3 (E.D. Tex. 2007) (two days). This case is no different than the precedent.

9 *Fourth*, WRL's counsel already has had an opportunity to depose Defendant Okada for a
10 full day in the *Books and Records* suit. When this Court ordered that deposition, it specifically
11 provided that "[t]here will be no duplication of examination that occurs during the limited
12 deposition [in *Books and Records*] at any subsequent deposition of Okada in [the instant
13 lawsuit]." (Aug. 22, 2012 Order at 2.) The questioning at that deposition addressed subjects
14 relevant to this litigation, such as Mr. Okada's duties as a director of WRL and his knowledge of
15 WRL's donation to the University of Macau Development Foundation.¹⁸ Thus, there will be no
16 need for duplicative questioning on those matters.

17 *Fifth*, as the Chairman of a very large company in Japan, Defendant Okada has substantial
18 business responsibilities. This does not relieve Defendant Okada of his obligation to participate
19 in discovery, but "permitting unlimited access to corporate executives [for depositions] could
20 disrupt their businesses and create a tool for harassment." *Consol. Rail Corp. v. Primary Indus.*
21 *Corp.*, 1993 WL 364471, at *1 (S.D.N.Y. Sept. 10, 1993). Accordingly, courts often have
22 imposed limits on a party's ability to depose high-ranking corporate executives. *See Paice, LLC*
23 *v. Hyundai Motor Co.*, 2014 WL 3613394, *5 (D. Md. June 27, 2014) (limiting deposition of

24
25 ¹⁸ WRL's donation to the University of Macau Development Foundation is a key aspect of
26 Aruze USA's Counterclaim, which alleges that the real reason for Mr. Okada's ouster from the
27 company was to prevent him from uncovering Mr. Wynn's corrupt misdeeds in Macau. *See*
28 Fourth Amended Counterclaim of Aruze USA, Inc. and Universal Entertainment Corp., ¶ 123;
The Aruze Parties' Motion to Compel Supplemental Responses to Their Second and Third Set of
Requests for Production of Documents to Wynn Resorts, Limited (April 28, 2015) at 7-15.

1 senior corporate officer to three hours); *Guzman v. News Corp.*, 2012 WL 2511436, at *1
2 (S.D.N.Y. June 29, 2012) (precluding deposition of defendant's chairman where he did not have
3 any unique relevant knowledge because "courts have recognized an additional layer of protection
4 for senior corporate executives subject to depositions"); *Holman v. ICN Pharms., Inc.*, 1999 WL
5 1267459, at *1-2 (S.D.N.Y. Dec. 29, 1999) (limiting deposition of defendant corporation's
6 president to four hours to avoid undue burden because relevance was questionable); *Tri-Star*
7 *Pictures, Inc. v. Unger*, 171 F.R.D. 94, 102 (S.D.N.Y. 1997) (allowing second day of questioning
8 of senior executive on limited topics because of, among other things, "the burdens which
9 appearing for a deposition can impose upon a senior corporate executive"); *Mulvey v. Chrysler*
10 *Corp.*, 106 F.R.D. 364, 366 (D.R.I. 1985) (ordering that plaintiffs submit written questions to
11 chairman of the board of defendant company before seeking oral deposition).

12 As stated above, Defendant Okada agrees the need for interpretation justifies additional
13 time. But in view of his prior deposition, his responsibilities to his companies, and the
14 efficiencies and required coordination that the able lawyers for WRL, Mr. Wynn and Ms. Wynn
15 will supply, Defendant Okada submits that three days is a reasonable amount of time for his
16 deposition. Anything further would be excessive and simply would give the examiners license to
17 engage in unnecessary harassment and/or fishing expeditions.


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V. CONCLUSION

For the foregoing reasons, Defendant Okada respectfully requests that the Court grant his motion for a protective order and direct that his deposition take place in Tokyo for no more than three days.

DATED this 14th day of May, 2015.



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CERTIFICATE OF SERVICE

I hereby certify that on the ^{18th} 14th day of May 2015, a true and correct copy of the foregoing
**DEFENDANT KAZUO OKADA'S MOTION FOR A PROTECTIVE ORDER TO (1)
LOCATE HIS DEPOSITION IN TOKYO AND (2) SET IT FOR THREE DAYS,
EX PARTE APPLICATION FOR ORDER SHORTENING TIME AND ORDER
THEREON**

was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth
Judicial District Court's e-filing system and served on counsel electronically in
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Please see the attached E-Service Master List

☐ U.S. Mail: by depositing same in the United States mail, first class postage fully
prepaid to the persons and addresses listed below:

☐ Facsimile: by faxing a copy to the following numbers referenced below:



An Employee of Holland & Hart LLP

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EXHIBIT A

EXHIBIT A

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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

**THE WYNN PARTIES' SEVENTH
SUPPLEMENTAL DISCLOSURES
PURSUANT TO NRCP 16.1**