

Gaming Commission, the Nevada State Gaming Control Board, and the Clark County Liquor and Gaming Licensing Board.

- (h) "Gaming Laws" means those laws pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over gaming within any jurisdiction and, within the State of Nevada, specifically, the Nevada Gaming Control Act, as codified in NRS Chapter 463, as amended from time to time, and the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, and the Clark County Code, as amended from time to time.
- (i) "Gaming Licenses" means all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises and entitlements issued by any Gaming Authority necessary for or relating to the conduct of activities under the Gaming Laws.
- (j) "Gaming Problem" means any circumstances that are deemed likely, in the sole and absolute discretion of SAW, based on verifiable information or information received from any Gaming Authority or otherwise, to preclude or materially delay, impede or impair the ability of Wynn or any subsidiary of Wynn to obtain or retain any Gaming Licenses, or to result in any disciplinary action, including without limitation the imposition of materially burdensome terms and conditions on any such Gaming License.
- (k) "Independent Qualified Appraiser" means an independent outside qualified appraiser appointed by Wynn to determine the fair market value of certain Shares or Wynn itself, in all cases considering Wynn as a going concern. Any determination by an Independent Qualified Appraiser as to fair market value shall be binding upon all parties.
- (l) "Non-Compete Termination Date" means the date upon which SAW and EW have sold substantially all of their respective Shares.
- (m) "NRS" means the Nevada Revised Statutes, as amended from time to time.
- (n) "Percentage Interest" means, with respect to a specified Stockholder, the percentage computed by dividing the number of Shares held by such Stockholder by the Total Shares.
- (o) "Permitted Transferee" means (a) Kazuo Okada; (b) an immediate family member of Kazuo Okada, EW or SAW; (c) a revocable, inter vivos trust of which Kazuo Okada, EW or SAW, or a family member of Kazuo Okada, EW or SAW is a beneficiary; (d) another Stockholder or an entity wholly owned by such Stockholder; or (e) if the Transfer is being made by Aruze, then in addition to the Permitted Transfers described in (a) through (d), any wholly-owned subsidiary of Aruze Parent where the Transfer has the effect of substituting a foreign corporation for Aruze with respect to all of Aruze's Shares.

- (p) "Person" means an individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization or other entity.
- (q) "Prohibited Transferee" means (a) any owner, operator, or manager of, or Person primarily engaged in the business of owning or operating, a hotel, casino, or an internet or interactive gaming site, (b) any "non-profit" or "not-for-profit" corporation, association, trust, fund, foundation or other similar entity organized and operated exclusively for charitable purposes that qualifies as a tax-exempt entity under federal and state tax law or corresponding foreign law, (c) any federal, state, local or foreign governmental agency, instrumentality or similar entity, (d) any Person that has been convicted of a felony, (e) any Person regularly engaged in or affiliated with the production or distribution of alcoholic beverages, or (f) any Unsuitable Person.
- (r) "Shares" means the shares of common stock of Wynn.
- (s) "Specified Affiliate" means with respect to a specified Person, any other Person who or which is (a) directly or indirectly controlling, controlled by or under common control with the specified Person, or (b) any member, stockholder, director, officer, manager, or comparable principal of, or relative or spouse of, the specified Person. For purposes of this definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, more than fifty percent of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.
- (t) "Stockholder" means any one of SAW, EW, Aruze, or any Permitted Transferee of any Shares and any additional Persons made a party to this Agreement. "Stockholders" means all of the foregoing, collectively.
- (u) "Stockholder's Shares" means all Shares held of record or Beneficially Owned by such Stockholder, whenever acquired.
- (v) "Termination Date" means the earlier of the date of SAW's death or the date upon which SAW sells substantially all of his Shares in Wynn.
- (w) "Total Shares" means the total number of Shares held by the Stockholders, whenever acquired.
- (x) "Transfer" means any transfer, sale, conveyance, distribution, hypothecation, pledge, encumbrance, assignment, exchange or other disposition, either voluntary or involuntary, or by reason of death, or change in ownership by reason of merger or other transformation in the identity or form of business organization of the owner, regardless of whether such change or

transformation is characterized by state law as not changing the identity of the owner.

- (y) "Unsuitable Person" means any Person (i) who is denied a Gaming License by any Gaming Authority, (ii) who is disqualified from eligibility for a Gaming License, (iii) who is determined to be unsuitable to own or control Shares or to be connected or affiliated with a Person engaged in gaming activities in any jurisdiction by a Gaming Authority, (iv) who has withdrawn an application to be found suitable by any Gaming Authority, or (v) whose continued involvement in the business of Wynn as a stockholder, manager, officer, employee or otherwise has caused or may cause a Gaming Problem.
- (z) "Voting Stock" means capital stock of Wynn of any class or classes, the holders of which are entitled to vote on any matter required or permitted to be voted upon (either in writing or by resolution) by the stockholders of Wynn.

2. Covenants of Designated Stockholders. Each Designated Stockholder hereby covenants to each other Designated Stockholder as follows.

- (a) Voting Agreement. On any and all matters relating to the election of directors of Wynn (including the filling of any vacancies), the Designated Stockholders each agree to vote all Shares held by them and subject to the terms of this Agreement (or the holders thereof shall consent pursuant to an action by written consent of the holders of capital stock of Wynn) in a manner so as to elect to Wynn's Board of Directors each of the nominees contained on each and every slate of directors endorsed by SAW.

SAW agrees to include EW as one of his endorsed nominees so long as she is not "unable to serve" or "unfit to serve." As used herein, "unable to serve" shall mean medically incapacitated so as to be unable to serve as a director, and "unfit to serve" shall mean a violation of rules and laws so as to prohibit one from serving as a director of a public company engaged in the gaming business. In the event of a disagreement between SAW and EW regarding these matters, determination of either of the preceding conditions shall be made and confirmed by an independent third party to be jointly selected by SAW and EW.

SAW also agrees to endorse a slate of directors that includes nominees approved by Aruze and to vote SAW's and EW's Shares in favor of such directors so long as such slate results in a majority of all directors at all times being director candidates endorsed by SAW.

- (b) Restrictions on Sale or Transfer. Other than as expressly set forth in Section 11 and the last sentence of this Section 2(b), none of EW, SAW or Aruze (nor any of their respective Permitted Transferees) shall Transfer, or permit any of their respective Affiliates to Transfer, any Shares Beneficially Owned by such Person without the prior written consent of each of the others.

Notwithstanding anything to the contrary set forth in this Agreement, SAW and Aruze confirm that on August 13, 2009, each agreed that the other could sell up to two million Shares (the "Released Shares"). As of the date hereof, SAW has sold two million shares under this waiver. Accordingly, Aruze shall have the right to sell up to two million Shares free and clear of the requirements of this Agreement.

- (c) Restriction on Proxies and Non-Interference. From and after the date of this Agreement and ending as of the Termination Date, the Designated Stockholders shall not, and shall cause each of their Affiliates who Beneficially Own any of the Designated Stockholder's Shares not to, directly or indirectly without the consent of the other Designated Stockholder: (A) grant any proxies or powers of attorney, deposit such Designated Stockholder's Shares into a voting trust or enter into a voting agreement with respect to any of such Designated Stockholder's Shares, (B) enter into any agreement or arrangement providing for any of the actions described in clause (A) above, or (C) take any action that could reasonably be expected to have the effect of preventing or disabling such Designated Stockholder from performing such Designated Stockholder's obligations under this Agreement.

3. Representations and Warranties of the Stockholders. Each Stockholder hereby represents and warrants and covenants to each other Stockholder as follows:

- (a) Ownership. The Stockholder shall be the record and Beneficial Owner of all of the Shares. The Stockholder shall have the sole power of disposition, sole power of conversion, sole power to demand appraisal rights and sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of the Shares, with no material limitations, qualifications or restrictions on such rights, subject to applicable securities laws and the terms of this Agreement.
- (b) No Encumbrances. All of the Stockholder's Shares will be held by such Stockholder, or by a nominee or custodian for the benefit of such Stockholder, free and clear of all liens, claims, security interests, proxies, voting trusts or agreements, understandings or arrangements or any other encumbrances whatsoever, except for any liens, claims, understandings or arrangements that do not limit or impair the Stockholder's ability to perform its obligations under this Agreement.
- (c) Execution, Delivery and Performance by the Stockholder. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Board of Directors of Aruze, as applicable, and Aruze has taken all other actions required by law, its Articles of Incorporation and its Bylaws or other organizational documents, as applicable, to consummate the transactions contemplated by this Agreement. This Agreement constitutes the valid and binding obligations of the Stockholder and is enforceable in accordance with its terms, except as enforceability may be subject to bankruptcy, insolvency,

reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally.

- (d) No Conflicts. No filing with, and no permit, authorization, consent or approval of, any state or federal public body or authority is necessary for the execution of this Agreement by the Stockholder and the consummation by the Stockholder of the transactions contemplated hereby, except where the failure to obtain such consent, permit, authorization, approval or filing would not interfere with the Stockholder's ability to perform its obligations hereunder, and none of the execution and delivery of this Agreement by the Stockholder, the consummation by the Stockholder of the transactions contemplated hereby or compliance by the Stockholder with any of the provisions hereof shall violate any order, writ, injunction, decree, judgment, statute, rule or regulation applicable to the Stockholder or any of its properties or assets, in each such case except to the extent that any conflict, breach, default or violation would not interfere with the ability of the Stockholder to perform the obligations hereunder.
 - (e) Preemptive Rights. If a Stockholder purchases Shares from Wynn (the "**Purchasing Stockholder**") in a private placement (the "**Purchase**") and another Stockholder who is not a Permitted Transferee of the Purchasing Stockholder is not extended the same offer by Wynn on the same terms and conditions, the Purchasing Stockholder shall allow such other Stockholder to purchase the number of Shares in the Purchasing Stockholder's allotment of Shares from Wynn that is necessary to maintain their Shares in the same proportion to each other as that which existed prior to the Purchase.
- 4. Transferee Bound by Agreement. Notwithstanding anything to the contrary in this Agreement, Shares may not be transferred or sold by the Designated Stockholder unless the transferee (including a Permitted Transferee) both executes and agrees to be bound by both this Agreement and the Proxy, including, without limitation, in a sale or transfer made pursuant to Rule 144 under the Securities Act ("Rule 144"); provided, however, that this Section 4 shall not apply to any sale or transfer and all other sales and transfers made by such Stockholder pursuant to Rule 144 during the term of this Agreement which do not exceed, in the aggregate, ten percent of the Shares held by such Stockholder, but the provisions of Section 2(b) shall continue to apply.
 - 5. Stop Transfer. From and after the date of this Agreement and ending as of the Termination Date, each Stockholder acknowledges that SAW may instruct Wynn to not register the transfer (book-entry or otherwise) of any certificate or uncertificated interest representing any of such Stockholder's Shares that are transferred in violation of this Agreement.
 - 6. Aruze Non-Compete. Aruze covenants to EW and SAW that until the Non-Compete Termination Date and so long as Aruze is a stockholder of Wynn (or of a successor entity to Wynn), Aruze, Aruze Parent, and Kazuo Okada agree that (other than through Wynn) Aruze, Aruze Parent, and Kazuo Okada shall not without SAW's

consent, directly or indirectly, engage in the development of or own, operate, lease, manage, control or invest in, act as consultant or advisor to or otherwise assist any Person that engages in (a) casino operations in Clark County, Nevada, or Macau or (b) Internet gaming anywhere in the world; provided, however, that either Aruze Parent or Kazuo Okada may operate a business offering Internet gaming if the forms of gaming offered by such business are restricted to games derived from pachinko or pachislot machines or other games not authorized for manufacture or distribution in the State of Nevada or Macau and any of Aruze, Aruze Parent, Kazuo Okada or an entity which is at least 80% owned by Kazuo Okada or Aruze Parent ("Okada Entity") may license content from any gaming device manufactured by Aruze, Aruze Parent or Okada Entity to a business offering Internet gaming. Nothing herein shall preclude Aruze, Aruze Parent, an Okada Entity and/or Kazuo Okada from engaging in the sale of gaming devices in the aforementioned jurisdictions.

7. Stockholders' Option to Purchase Bankrupt Stockholder's Shares.

- (a) Upon the institution of a Bankruptcy by or against a Stockholder (a "**Bankrupt Stockholder**"), the Stockholders, not including the Bankrupt Stockholder, shall have the option (the "**Purchase Option**") to purchase the Bankrupt Stockholder's Shares in Wynn for a price agreed upon by the Stockholders, not including the Bankrupt Stockholder, on the one hand, and the Bankrupt Stockholder, on the other hand, or if no price can be agreed upon, the Fair Market Value of such Shares at the time of such Bankruptcy. If information is not available to determine the Fair Market Value of such Shares at the time of such Bankruptcy, the price shall be the fair market value as determined by an Independent Qualified Appraiser. The Stockholders wishing to purchase all or a part of the Shares of the Bankrupt Stockholder (the "**Purchasing Stockholders**") shall pay the agreed price, the Fair Market Value or the fair market value as determined by an Independent Qualified Appraiser, as applicable, of such Shares to the Bankrupt Stockholder, in cash or its equivalent, by one hundred and twenty (120) days after the date the Bankruptcy petition is filed by or against the Bankrupt Stockholder. Each Purchasing Stockholder must notify the other Stockholders of such Purchasing Stockholder's desire to purchase all or a portion of the Bankrupt Stockholder's Shares in writing by twenty (20) days after the date the Bankruptcy petition is filed by or against the Bankrupt Stockholder. Unless they agree otherwise, if there is more than one Purchasing Stockholder, each Purchasing Stockholder may purchase the proportion of the Bankrupt Stockholder's Shares that such Purchasing Stockholder's Percentage Interest bears to the aggregate Percentage Interests of all Purchasing Stockholders. If neither any remaining Stockholder wishes to purchase the Bankrupt Stockholder's Shares, or the Purchasing Stockholders do not purchase the Bankrupt Stockholder's Shares within the earlier of the time periods set forth above, then all rights to purchase the Bankrupt Stockholder's Shares pursuant to this Section shall terminate.

- (b) Any Stockholder that exercises its right under this Section 7 to purchase the Bankrupt Stockholder's Shares may, in its sole and absolute discretion, assign such rights to Wynn.

8. Restrictions on Transfer of Ownership Interests in Stockholders.

- (a) Except for a Transfer to a Permitted Transferee, any Transfer or issuance of an ownership interest in Aruze or in any entity that directly or indirectly owns a majority ownership interest in a Stockholder an "**Upstream Ownership Interest**") shall be prohibited unless in compliance with the procedures and requirements set forth in this Section 8.
- (b) The Shares that would be indirectly transferred by the transfer of the Upstream Ownership Interest shall be referred to as the "**Indirect Transfer Shares**". If any holder of an Upstream Ownership Interest (an "**Upstream Transferor**") intends to Transfer all or any part of its Upstream Ownership Interest pursuant to a bona fide offer received from any Person (the "**Upstream Offeror**"), prior to accepting such offer the Upstream Transferor shall provide written notice to each Stockholder, other than the Stockholder holding the Indirect Transfer Shares, which notice shall set forth the terms and conditions of the offer so received, including the purchase price and the identity of the Upstream Offeror. If the Upstream Transferor does not provide such notice, the Stockholder holding the Indirect Transfer Shares shall provide such notice to each other Stockholder promptly upon learning that such transaction will occur or has occurred. Within 15 days following receipt of such notice by the Stockholders other than the Stockholder holding the Indirect Transfer Shares, or if later, within 30 days of such other Stockholders learning that the Transfer of the Upstream Ownership Interest has occurred, such other Stockholders (i) if information is available to determine the Fair Market Value of such Indirect Transfer Shares, may elect to purchase the percentage of the Indirect Transfer Shares available for purchase equal to such holder's Percentage Interest (determined for this purpose by excluding the Indirect Transfer Shares) at the Fair Market Value of such Shares, or (ii) if information is not available to determine the Fair Market Value of such Indirect Transfer Shares, may, by notice to the Stockholder holding the Indirect Transfer Shares, elect to obtain an appraisal by an Independent Qualified Appraiser of the fair market value of the Indirect Transfer Shares. Within 15 days following receipt by the Stockholders other than the Stockholder holding the Indirect Transfer Shares of the results of the appraisal, each such other Stockholder may elect to purchase the percentage of the Indirect Transfer Shares available for purchase equal to such holder's Percentage Interest (determined for this purpose by excluding the Indirect Transfer Shares) at the appraisal price of such Shares. To the extent a Stockholder shall determine not to purchase all the Indirect Transfer Shares available to that Stockholder, the other Stockholders exercising the right to purchase the Indirect Transfer Shares may purchase additional Indirect Transfer Shares on a pro rata basis in proportion to their Percentage Interests (and the foregoing procedure shall be repeated in respect of any Indirect

Transfer Shares not purchased until such other Stockholders have had an opportunity to purchase any remaining Indirect Transfer Shares).

Notwithstanding anything to the contrary in this Section 8, any Transfer or issuance of shares in Aruze Parent shall not constitute an Upstream Transfer if immediately following such Transfer or issuance Kazuo Okada has the right to directly or indirectly exercise more than fifty percent of the voting power of the shareholders of Aruze Parent.

- (c) The closing of a purchase of Indirect Transfer Shares by a Stockholder under this Section 8 shall occur within 10 days following the expiration of the last period during which a Stockholder might elect to purchase any of the Indirect Transfer Shares, or at such later date when all approvals required by the Gaming Laws are obtained (such approvals to be obtained as soon as is reasonably practicable).
- (d) Any Stockholder that exercises its right under this Section 8 to purchase the Indirect Transfer Shares may, in its sole and absolute discretion, assign such rights to Wynn.

9. Right of First Refusal.

- (a) Any Stockholder (a "**Transferor**") who wishes to Transfer any or all of its Shares (the "**Offered Shares**") to any Person other than a Permitted Transferee and who receives a bona fide offer from any Person (the "**Offeror**") who is not a Prohibited Transferee for the purchase of all or any portion of such Stockholder's Shares shall, prior to accepting such offer, provide written notice (the "**Notice of Offer**") thereof to each other Stockholder holding Shares, which notice shall set forth the terms and conditions of the offer so received, including the purchase price and the identity of the Offeror. Following the delivery to the other Stockholders of the Notice of Offer, each other Stockholder may elect to purchase that percentage of the Offered Shares which is equal to the Total Shares (excluding the Offered Shares) owned by each such Stockholder divided by the Total Shares (excluding the Offered Shares) owned by all such Stockholders ("**Applicable Percentage**") during a fifteen-day refusal period (the "**Refusal Period**") on the terms set forth in the Notice of Offer. To the extent any Stockholder shall determine not to purchase its Applicable Percentage prior to the expiration of the Refusal Period, the accepting Stockholders (the "**Accepting Purchasers**") may purchase such Shares on a pro rata basis in proportion to the number of Shares owned by each of them (and the foregoing procedure shall be repeated in respect of any Shares not purchased until all Accepting Purchasers have had an opportunity to purchase any remaining Shares).
- (b) Subject to the requirements of Section 4, including but not limited to the requirement that a transferee execute this Agreement and a Proxy, if all or any of the Offered Shares shall remain unsold after completion of the

procedures set forth in Section 9(a), the Transferor may sell such remaining Offered Shares to the Offeror within six months of the completion of such procedures on terms no more favorable than those set forth in the Notice of Offer; provided that the Offeror is not a Prohibited Transferee. To the extent any of the Offered Shares are not sold in accordance with the foregoing, the Stockholders shall continue to have a right of first refusal under this Section 9 with respect to any Transfers to any Person which are subsequently proposed by such Transferor.

- (c) The closing of a purchase by a Stockholder under this Section 9 shall occur within ten days after the end of the Refusal Period or at such later date when all approvals required by the Gaming Laws are obtained (such approvals to be obtained as soon as is reasonably practicable). At such closing the Transferor and the relevant Accepting Purchaser (and any or all other Stockholders as may be required) shall execute an assignment and assumption agreement and any other instruments and documents as may be reasonably required by such Stockholder to effectuate the transfer of such Shares free and clear of any liens, claims or encumbrances, other than as specifically permitted hereunder. Any Transfer to any Person that does not comply with the provisions of this Section 9, other than a Transfer expressly provided for in the other provisions of this Agreement, shall be null and void of no effect whatsoever.
- (d) Any Stockholder may, in its sole and absolute discretion, assign its right of first refusal under this Section 9 to purchase the Offered Shares to Wynn with respect to any incident in which its right of first refusal is triggered under this Section 9.
- (e) Except for Shares transferred pursuant to Sections 2(b), 4, 7, 8, 10 and 11, no Shares may be Transferred until the provisions of this Section 9 have been complied with.

10. Tag-Along Rights.

If any party is the Transferor required to provide the Notice of Offer under Section 9(a), then each of the other two non-selling parties to this Agreement shall each have a right (in addition to its rights under Section 9) to participate in such Transfer pursuant to the provisions of this Section 10. During the fifteen-day Refusal Period described in Section 9(a), each of non-selling parties may, by written notice to the Transferor, elect to participate in such Transfer and to sell that percentage of the Total Shares owned by each non-selling party as the case may be, which is equal to the Total Shares that will be sold by the Transferor in such Transfer divided by the Total Shares owned by the Transferor. The terms and conditions of such Transfer (including the purchase price per Share sold in such Transfer, the identity of the buyer(s), and the consequences resulting from the other Stockholder's exercise of any rights of first refusal) shall be no less favorable to the non selling parties than to the Transferor; provided, however, that in the event that SAW or Aruze is the Transferor, he or Aruze may enter into service, noncompetition, or similar

agreements with the buyer and receive appropriate consideration thereunder in which other Stockholders do not share.

11. Release of Shares. Each of SAW and Aruze agree that commencing on January 6, 2010, and continuing on each January 6 for a total of ten events, a number of Shares owned by EW equal to \$10,000,000 divided by the closing price of Wynn shares on January 5, 2010 (or if January 5 is not a trading day, the trading day immediately preceding January 5) shall be released from the restrictions set forth in this Agreement (once released, the "EW Released Shares"). If EW desires to sell any EW Released Shares, she shall provide written notice of such desire to SAW and, for a period of 48 hours from SAW's receipt of such notice, SAW shall have the right to purchase any or all of such Shares for a price equal to the closing price of the Shares on the trading day immediately preceding the date of notice. SAW shall notify EW of his election to purchase or not within 48 hours from the date of receipt of the original notice. If SAW elects to purchase hereunder, the purchase price shall be payable in cash no later than 3 business days after the date of election. Notices to SAW under this Section 11 shall be transmitted by fax and email to SAW at his last known business address and residence address (currently c/o cindy.mitchum@wynnresorts.com and 702.770.1111), with copies to the General Counsel of Wynn (currently Kim Sinatra (kim.sinatra@wynnresorts.com and 702.770.1349)) and to James J. Jimmerson, Esq., Jimmerson Hansen, P.C., 415 S. Sixth Street, Suite 100, Las Vegas, NV 89101 (jjj@jimmersonhansen.com and 702.387.1167) and notices to EW under this Section 11 shall be transmitted by fax and email to EW at her last known business address and residence address (currently c/o Elaine.Wynn@wynnresorts.com, and 702.770.1103), with copies to Donald Schiller, Esq., Schiller, DuCanto & Fleck, LLP, 200 North LaSalle Street, 30th Floor, Chicago, IL 60601 (dschiller@sdfllaw.com, and 312.641.6361) and Gary R. Silverman, Esq., Silverman, DeCaria & Kattelman, Chtd., 140 Plumas Street, Suite 200, Reno, NV 89519 (silverman@silverman-decaria.com and 775.322.3649). If SAW does not elect to purchase hereunder, the EW Released Shares will thereafter be held by EW free and clear of any further restrictions on sale under this Agreement.
12. Recapitalization. In the event of a stock dividend or distribution, or any change in the Shares (or any class thereof) by reason of any split-up, recapitalization, merger, combination, exchange of shares or the like, the term "Shares" shall include, without limitation, all such stock dividends and distributions and any shares into which or for which any or all of the Shares (or any class thereof) may be changed or exchanged as may be appropriate to reflect such event.
13. Stockholder Capacity. Notwithstanding any provisions to the contrary contained herein, no Stockholder or any of its Affiliates shall be deemed to make any agreement or understanding herein in a capacity other than that as stockholder of Wynn.
14. Miscellaneous.

- (a) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof, including without limitation, the Existing Agreement.
- (b) Legend. Certificates and all electronic records evidencing Shares subject to this Agreement shall each bear the following restrictive legend (the "Legend") (in addition to any other legend required by applicable gaming laws):

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF AN AMENDED AND RESTATED STOCKHOLDERS AGREEMENT DATED AS OF JANUARY 6, 2010, WHICH PLACES CERTAIN RESTRICTIONS ON THE VOTING AND TRANSFER OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO HAVE AGREED TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH STOCKHOLDERS AGREEMENT. A COPY OF SUCH STOCKHOLDERS AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS."

- (i) Each Stockholder agrees that, from and after the date of this Agreement and ending as of the Termination Date, it shall not, and shall cause each of its Affiliates who Beneficially Own any of the Designated Stockholder's Shares not to, allow Wynn to remove, and shall not permit to be removed (upon registration of transfer, reissuance or otherwise), the Legend from any such certificate and shall place or cause to be placed the Legend on any new certificate issued to represent Shares it or any of its Affiliates shall Beneficially Own.
- (c) Transfers in Violation Void Any transfer or sale of any Shares in violation of this Agreement shall be null and void *ab initio*.
- (d) Amendments, Waivers, Etc. This Agreement may not be amended, changed, supplemented, waived or otherwise modified or terminated, except upon the execution and delivery of a written agreement executed by the parties hereto.
- (e) Notices. Other than as provided in Section 11 above, all notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly received if so given) by hand delivery, telegram, telex or telecopy, or by mail (registered or certified mail, postage prepaid, return receipt requested) or by any courier

service, such as Federal Express, providing proof of delivery. All communications hereunder shall be delivered to the respective parties at the following addresses or the addresses set forth on the signature pages hereto:

If to Aruze: Aruze USA, Inc.
745 Grier Drive
Las Vegas, Nevada 89119
Facsimile: 702-361-3403
Attention: Sam Basile

With a copy to: Universal Entertainment Corporation
Ariake Frontier Bldg. A, 3-7-26 Ariake, Koto, Ku
Tokyo, Japan
Facsimile: 81-3-5530-3097
Attention: Kazuo Okada

If to SAW: Stephen A. Wynn
c/o Wynn Resorts, LLC
3131 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Facsimile: 702-770-1100

With a copy to: Wynn Resorts, Limited
3131 Las Vegas Boulevard South
Las Vegas, NV 89109
Facsimile: 702-770-1349
Attention: General Counsel

If to EW: Elaine P. Wynn
Box 17007
Las Vegas, NV
Facsimile: 702-770-1103

With copies to: Brentwood Management Group
11812 San Vicente Boulevard, Suite 200
Los Angeles, CA 90049
Facsimile: 310-820-5354
Attention: Matt Fishburn

Stan Maron
1250 Fourth Street, 5th Floor
Santa Monica, CA
Fascimile: _____

or to such other address as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

- (f) Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.
- (g) Specific Performance. Each of the parties hereto recognizes and acknowledges that a breach by any party hereto of any covenants or agreements contained in this Agreement will cause the other parties hereto to sustain damages for which they would not have an adequate remedy at law for money damages, and therefore each of the parties hereto agrees that in the event of any such breach the parties shall be entitled to the remedy of specific performance of such covenants and agreements and injunctive and other equitable relief in addition to any other remedy to which he may be entitled, at law or in equity.
- (h) Further Assurances. From time to time, the Stockholders shall execute and deliver such additional documents as may be necessary or desirable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.
- (i) Remedies Cumulative. All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such party.
- (j) No Waiver. The failure of any party hereto to exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other party hereto with its obligations hereunder, and any custom or practice of the parties at variance with the terms hereof, shall not constitute a waiver by such party of its right to exercise any such or other right, power or remedy or to demand such compliance.
- (k) No Third Party Beneficiaries. This Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person or entity who or which is not a party hereto; provided that, the obligations of the Designated Stockholders hereunder shall inure to their transferees, successors and heirs.
- (l) No Assignment. Except as otherwise explicitly provided herein, neither this Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by any Stockholder without the prior

written consent of the parties hereto and any attempt to do so will be void; provided, however, that the rights under this Agreement may be assigned to the transferee in connection with a Transfer that does not violate the terms of the Agreement.

- (m) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Nevada, without giving effect to the principles of conflicts of law thereof.
- (n) Jurisdiction. Each party hereby irrevocably submits to the exclusive jurisdiction of the state courts in the State of Nevada in any action, suit or proceeding arising in connection with this Agreement, and agrees that any such action, suit or proceeding shall be brought only in such court (and waives any objection based on forum non conveniens or any other objection to venue therein); provided, however, that such consent to jurisdiction is solely for the purpose referred to in this paragraph and shall not be deemed to be a general submission to the jurisdiction of the courts of the State of Nevada other than for such purposes. Each party hereto hereby waives any right to a trial by jury in connection with any such action, suit or proceeding.
- (o) Descriptive Headings. The descriptive headings used herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.
- (p) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. This Agreement shall not be effective as to any party hereto until such time as this Agreement or a counterpart thereof has been executed and delivered by each party hereto.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by Wynn and a duly authorized officer of Aruze and Baron on the day and year first written above.

/s/ Stephen A. Wynn
Stephen A. Wynn

/s/ Elaine P. Wynn
Elaine P. Wynn

ARUZE USA, INC.

By: /s/ Kazuo Okada

Name: Kazuo Okada
Title: President

Exhibit A

IRREVOCABLE PROXY

By its execution hereof, and in order to secure obligations under the Amended and Restated Stockholders Agreement of even date herewith among Stephen A. Wynn, an individual ("SAW"), Elaine P. Wynn, an individual ("EW"), and Aruze USA, Inc., a Nevada corporation (the "Agreement"), EW, Aruze USA, Inc. and each Designated Stockholder (as defined in the Agreement) other than SAW (collectively "Proxy Grantors"), hereby irrevocably constitutes and appoints SAW, with full power of substitution and resubstitution, from the date hereof to the termination of the Agreement, as such Proxy Grantors' true and lawful attorney and proxy (its "Proxy"), for and in such Proxy Grantors' name, place and stead to vote each of the Shares of each such Proxy Grantor as such Proxy Grantor's Proxy at every annual, special or adjourned meeting of stockholders of Wynn (as defined in the Agreement), and to sign on behalf of such Proxy Grantor (as a stockholder of Wynn) any ballot, proxy, consent, certificate or other document relating to Wynn that law permits or requires, for the election of directors as more specifically provided and in a manner consistent with the Agreement. This Proxy is coupled with interest and each Proxy Grantor intends this Proxy to be irrevocable to the fullest extent permitted by law. Each Proxy Grantor hereby revokes any proxy previously granted by such Proxy Grantor with respect to such Proxy Grantor's Shares. Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement. Each Proxy Grantor shall perform such further acts and execute such further documents and instruments as may reasonably be required to vest in SAW or any of his designees, the power to carry out and give effect to the provisions of this Proxy. This Irrevocable Proxy shall be in full force and effect until the Termination Date.

IN WITNESS WHEREOF, the undersigned has executed this Irrevocable Proxy this ____ day of January 2010.

ARUZE USA, INC.

By:

Name:

Title:

ELAINE P. WYNN

EXHIBIT H

FILED

UNDER SEAL

EXHIBIT H

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED	.	
	.	
Plaintiff	.	CASE NO. A-656710
	.	
vs.	.	
	.	DEPT. NO. XI
KAZUO OKADA, et al.	.	
	.	
Defendants	.	Transcript of
	.	Proceedings
.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, JUNE 4, 2015

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
DAVID KRAKOFF, ESQ.
WILLIAM R. URGAS, ESQ.
DONALD JUDE CAMPBELL, ESQ.

LAS VEGAS, NEVADA, THURSDAY, JUNE 4, 2015, 8:55 A.M.

(Court was called to order)

THE COURT: Wynn versus Okada.

(Pause in the proceedings)

MR. PEEK: Your Honor, I don't know if you had a particular order, but --

THE COURT: Hold on a second. I have an issue.

All right. I have on chambers calendar on June 19th and July 10th I have a bunch of motions to seal and/or redact. Do any of you oppose each other's motions to seal and/or redact?

MR. PEEK: We do not, Your Honor.

THE COURT: And I'm going to advance all of the motions currently on that date to today and hear them along with the Aruze party's motion to redact, which is on calendar today. And given the lack of opposition to any of them, I will grant them all.

MR. PEEK: Thank you, Your Honor.

THE COURT: Now what order do you want?

MR. PEEK: We'd like to have the motion for sanctions first and the motion for protective order second and the motion to compel third.

THE COURT: So the motion for expedited discovery.

MR. PEEK: And the status conference I guess --
pardon?

THE COURT: Motion for expedited discovery.

I wanted to talk about the translation IT protocol first.

MR. PEEK: Well, that's part of our status -- Ms. Spinelli and I have --

THE COURT: It's okay. I'll do it last.

MR. PEEK: We can do that first, if you'd like, Your Honor. Or last.

THE COURT: It has to do with some of the other issues --

MR. PEEK: We can do that first, Your Honor.

THE COURT: -- which is why I wanted to ask about it.

MR. PEEK: I think it'll be quick.

MS. SPINELLI: I think so, too. Yeah. Sure.

THE COURT: How are we doing on our translation IT protocol?

MS. SPINELLI: Well, actually, there's -- we got comments back from all of the parties just relatively recently, and the issues are very minor, Your Honor. And, quite frankly, I don't even know if they need to get into the protocol. I don't know if -- I think they are very minor. I think it'll take a conversation to work them out. And if they're not going to be worked out, I think that if we present the protocol to you as is, you would have zero problems with

it, quite frankly. So I think we're prepared to submit it after a couple of days.

THE COURT: Does that sound good to you, Mr. Peek?

MR. PEEK: It does, yeah.

THE COURT: Okay.

MR. PEEK: We have submitted comments to Ms. Spinelli, and I know she's been in trial, so I'm sure it's been a challenge to get back to us. But I think we can get it worked out.

MS. SPINELLI: It was just a week ago, so --

THE COURT: All right. So I'll --

Yes, Mr. Urga.

MR. URGA: Your Honor, my only comment was it was over a month before we got those comments back from the Okada parties, and they didn't give you any suggestions of the minor issues that need to be corrected. All I'm saying, it's easy to find issues. Let's also try to get up a solution.

THE COURT: You would like solutions?

MR. URGA: Yes.

THE COURT: Okay. Solutions are good. I'm in a problem-solving --

MR. PEEK: We could certainly schedule a conference call with Mr. Urga and Ms. Spinelli if Mr. Urga would like for what he thinks are the need for solutions. I haven't seen any comments from Mr. Urga's side recently.

MS. SPINELLI: Oh, no. They served, as well. I'm dark on Friday in trial, so I can [inaudible] on Friday, if you'd like.

THE COURT: So would you like to have a conference call together on Friday maybe?

MS. SPINELLI: I think that's a great idea.

THE COURT: That sounds like a lovely idea. Sounds like you're going to reach a solution on your translation IT protocol issues on Friday, and I'll schedule it for a week from Friday to hopefully on my chambers calendar see something from you for me to sign.

MS. SPINELLI: I think that that will be done, Your Honor, quite frankly.

THE COURT: Okay. Great. If it's not, we'll call and nag you. That was the only issue I wanted to discuss before I hit the motions, because to me it's interrelated with some of the motions.

MR. PEEK: Frankly, Your Honor, I don't think we have any other issues. We're progressing as we thought we were. There were certain timelines set out. Some of those are still out there. We expect on both sides to try to meet their timelines that we had proposed to the Court. So we'll do our best to meet those.

THE COURT: That's lovely.

Could we go to the motion for expedited discovery.

That's on your side of the table.

MR. PEEK: Mr. Krakoff is going to be arguing that.

THE COURT: Okay.

MR. KRAKOFF: Good morning, Your Honor.

THE COURT: Good morning.

MR. KRAKOFF: Always good to be back in your courtroom.

Your Honor, we're here on the motion for expedited discovery and for sanctions. We brought this motion, Your Honor, based on apparent discovery violations by Wynn Resorts and its director of security, Jim Stern. And we can see from declarations that were filed with the papers by Mr. Stern and by a senior universal accounting manager, Mr. Fujihara [phonetic], that there's more than credible evidence, Your Honor, that Mr. Stern contacted the highest-ranking accounting manager at Universal, defendant in this case, and directly or indirectly through a conduit sought to obtain information and/or obtain documents in an effort to initiate a government investigation and to gain a tactical advantage in this lawsuit.

Wynn's response, Your Honor, is that, yes, Mr. Stern did meet with the conduit, a disgruntled former Universal employee, repeatedly; yes, Mr. Stern did meet with the highest-ranking accounting manager the Universal numerous times. This is the man, Your Honor, who stole 35, at least,

confidential and proprietary documents from Universal. They acknowledge that Mr. Stern set up several meetings for this senior accounting manager with the Department of Justice and with the FBI, that he paid a substantial amount of money, that is, Wynn Resorts paid a substantial amount of money to transport him, travel expenses, hotel expenses, et cetera, and that he met, Mr. Stern met with the senior accounting official both before his meeting with the Justice Department and after. Essentially he chaperoned him while in San Francisco and in Los Angeles. And at that meeting, the first meeting with the Justice Department he showed -- he brought with him the 35 confidential and proprietary Universal documents, and he showed them to the Department of Justice.

THE COURT: And Mr. Stern was not in the room at the time --

MR. KRAKOFF: No, he was not.

THE COURT: -- they were shown to the Department of Justice.

MR. KRAKOFF: No, he was not in the room. And there's no --

THE COURT: I understand. But that I think is an important issue.

MR. KRAKOFF: And we don't -- it is an important issue. It's an important issue because what we are here for today, Your Honor, is really about what the appropriate

discovery should be and when it should be. Because --

So to go on, Your Honor, what Wynn says is that nothing about these efforts had anything to do with this lawsuit. And it's our view, Your Honor, that when you look at the history of the lawsuit, you look at the context of everything that's happened, that there's a totally different picture. As the Court knows, Wynn brought the lawsuit February 19th, 2012, after it had seized \$3 billion of shares owned by the Aruze USA, which is -- which Mr. Okada is the president of.

And beginning, Your Honor -- in the context of this case in 2009, beginning with Mr. Wynn's divorce, the Aruze parties owned 20 percent of the shares of Wynn Resorts, by far the largest shareholder, a threat to Mr. Wynn's control. So by 2010 it is apparent that Wynn Resorts wanted Mr. Okada out. Mr. Stern, the senior vice president, director of security, it appears that part of his responsibilities, Your Honor, was to help that happen. He worked for nearly two years, from the evidence that we can see, that is before the redemption to -- and before this lawsuit to dig up information that was disparaging and damaging about Mr. Okada. Beginning in 2010 his corporate security department did an investigation of Mr. Okada in the Philippines Project and found that there was no impropriety. In 2011 the company, that is, Wynn Resorts, hired another investigator, and that investigator investigated

Mr. Okada and the Philippines Project, and found no impropriety. And still in 2011, months before the redemption, months before the lawsuit, Mr. Stern was making connections with a group of enemies of Mr. Okada, disgruntled former employees, one of whom was the conduit Mr. Kosaka. And it was then, of course, February of 2012 that the lawsuit was filed, the lawsuit seeking -- that seized the shares, redeemed them, and ousted or sought to oust Mr. Okada on the grounds that he was not suitable -- based upon the Freeh Report he was not suitable to hold a gaming license in Nevada.

Your Honor, the very purpose of this lawsuit is judicial ratification of Universal -- of Wynn Resorts' finding that Okada was unsuitable. Undoubtedly a government investigation, undoubtedly a government investigation would damage the Aruze parties and serve Mr. Wynn's interests here. In March of 2010 -- 2012, only a month after the lawsuit was filed, Mr. Stern was encouraging the Justice Department to initiate an investigation, and months after that Mr. Kosaka, the conduit we know, was encouraging Mr. Fujihara, the highest-ranking accounting official at Universal to steal documents and to work against Mr. Okada, to meet with Mr. Stern.

Your Honor, we can see the strategy at work. Having an investigation by the government certainly helps -- helps them here because it would -- serves to establish that the

finding of unsuitability was appropriate. And we can see the strategy at work here. In every one of the pleadings that they file what we see is a reminder of the government investigation. Mr. Stern and Wynn Resorts don't deny that they wanted to initiate a government investigation, they don't -- they freely acknowledge that Mr. Stern worked to gain as much information as he could to turn over to the government, and there is -- we can see, Your Honor, as well, there's substantial agreement on the facts here between the parties.

What there is disagreement about is whether Mr. Stern promoted and encouraged the theft of documents, whether or not he did that directly or indirectly. There's disagreement on whether he reviewed and obtained those documents, and there's disagreement over who else was involved. And that's what, Your Honor, we suggest the unopposed discovery that we seek will help to determine. Interrogatories to Wynn Resorts or document requests, a 30(b)(6) deposition, and a deposition of Mr. Stern, as well as a letter rogatory to obtain the deposition of Mr. Kosaka, who is in Japan.

The only issue, Your Honor, we submit, before the Court today is when Wynn Resorts will meet its discovery obligations. We've been patient, we've been respectful of counsel's other professional obligations, but now we have a pressing need to determine what the facts are so that we can

determine what sanctions, if any, are appropriate.

In our reply, Your Honor, we set out a reasonable schedule for the interrogatories to be completed within five days, the document production within 30 days, the depositions, 30(b)(6) and Mr. Stern, in the month of August if that works for them or shortly thereafter if that is better for their schedules.

Also we've asked for the Court to issue a letter rogatory that we can take to the State Department to seek the deposition of Mr. Kosaka in Japan. That's what's before the Court, that's what we ask the Court to order. At this time, Your Honor, I'm happy to answer any questions. That's our position.

THE COURT: Thank you.

Mr. Pisanelli. And so I'll start with one question. How tough is it to move the Stern ESI up on the rolling schedule?

MR. PISANELLI: Well, I'll tell you how extraordinary this task is.

THE COURT: I'm sorry, Ms. Spinelli. I have to ask him.

MR. PISANELLI: Did you hear that sigh?

THE COURT: I did. I watched it, too.

MR. PISANELLI: Yeah. So put it in context. We're going to talk about some discovery in a moment which includes

from our client alone the ESI that we are managing for the company and the board of directors is approaching 1,000 requests for production of documents. We're going to debate what I think is a very modest objection to 80 of them that are so far afield as to, you know, approach the point of absurdity. But the point is we have, unfortunately, an army of people working to get this done. And because they have burdened us with nearly a thousand requests for production of documents, the task we've used in other contexts is herculean to manage them, to allocate them.

THE COURT: You're not sending people to Macau to look at them, are you?

MR. PISANELLI: Oh. Can you imagine how many people are going back and forth? You need to see what her passport looks like for going back and forth to Macau. So, yes, Your Honor, it is. And it would be an extra burden on top of what has already been I'll use the word "taxing" experience and exercise to begin with.

And let me say a few words of why we shouldn't be entertaining this. This motion -- you know, respectfully, I'm not going to be kind here. I think it's a sham motion that is just gilded with this phony righteous indignation that's coming from these defendants, because it's really some two what appears to me really transparent objectives of what we're really doing here. One, of course, is to shift the focus onto

Wynn and away from their clients, the Aruze party's clients who are the subject of many investigations and allegations about criminal conduct and is an attempt to try and even the playing field to say, oh, no, we don't have just one bad actor here, Wynn is bad, too. It sure feels that way with the mud that I've watched being slung back and forth, sometimes in footnotes, sometimes in headings.

And the second, of course, it certainly appears that this is an attempt to get behind the government investigation by trying to put all of their interests to find out what the government knows here inside this civil litigation without ever drawing the connection between the two.

So how do -- you know, what do we know about this motion that really shows that these are the real motivations and not any of this claim of victimhood that we're getting from this defendant? First of all, this motion, if you just look at it even superficially, asks Your Honor to do things that they could have done on their own. In other words, they didn't need this platform to come up here and stand and sling mud at Wynn and say that Mr. Stern and others are involved in this improper skullduggery. What we know is that you want to depose Mr. Stern, notice it up, go ahead, depose him. We've been trying to depose Mr. Okada since last year. We report to you I think every single status check that we're trying to get his depo noticed. We finally had do it on his own.

THE COURT: We're going to talk about that in a minute. We're not quite there.

MR. PISANELLI: But my point is with work with one another on depo dates. You want to depose him, go ahead, notice it up, and if we think you're doing it unreasonable, we'll come back to the Court. You want to depose Mr. Kosaka and get letters rogatory, go ahead. You want to issue requests for production of documents, they've done that, go ahead. There was no need to step up on this soap box, so to speak, and start saying how bad things are when they really don't know a single thing and it's all based upon this conjecture. Even Counsel today opened up his presentation saying, "apparent" discovery violations. Well, I would have thought before you come in asking for preliminary sanctions and later more draconian sanctions that you would have come in here with something more than "apparent," with some actual evidence.

So we also know, Your Honor, why there are some really ulterior motives here is that the motion itself I'm going to say goes -- is more than reckless and how far that they stretch these allegations. We can just stop -- I'm just going to use a couple of examples here. Right on page 5 of the motion we see the attack against Mr. Stern where they're saying he's making -- starting at line 11, that he's "making ex parte contact with this UE employee Mr. Fujihara with the

explicit purpose of obtaining internal confidential proprietary documents." Obtaining. "Stern persuaded Fujihara to breach his agreements by transmitting such documents to him," to Mr. Stern.

We then flip over -- I'm not going to go through all of them, but I think it's important to point this out. Footnote 7 they say that -- this is just an interesting side note -- that after all of this motion practice and this cry of victimhood they actually qualify to make sure they're on both sides of the fence and tell you, but, Your Honor, make sure you understand we're not affirming or denying that these really are our documents. In other words, I don't know what the government has seen and so we're not going to admit that they really were our documents although they did come into court today and without qualification adopted them and told Your Honor that they were stolen confidential documents for their company. So I guess we can scratch out Footnote 7.

But, in any event, we look now to page 11, third bullet point. "Stern was introduced to Fujihara by Kosaka. Stern asked for documents regarding the Philippines Project." Again on page 14, "Wynn's unauthorized conduct of viewing the defendants' documents." Here's where I'm going with this. I'm sure you see it already. The only evidence they have of any of this is this Fujihara declaration. And we go to paragraph 16, where it says, "He," referring to Mr. Stern,

"then asked me whether I knew about financial transactions relating to the Philippines Project." You don't find anywhere in this paragraph 16 or Mr. Fujihara's declaration anything that supports those allegations I just told you. They actually tell Your Honor in an introductory paragraph that Mr. Stern is persuading Fujihara to give him documents, that he has viewed these documents, and it was all unsupported by a single citation, because it's unsupported by evidence. They do in passing give a mea culpa in their reply, saying, oops, okay, he didn't ask for documents about the Philippines, he just asked if he knew about the transaction. Oops? We're in a sanctions hearing and they say oops? And all they have is a declaration that says that Mr. Stern asked about a transaction that they have now converted into allegations, unsupported allegations that Stern obtained and viewed them? Well, I would think before you make reckless allegations like that we don't come in here with that oops moment, sorry, Judge, we were overreaching and stretching our position.

Now, here's I think the point of all of this. Defendants come in here with this inflammatory allegation and brief, but forgot one major thing. They forgot to tell Your Honor about any wrongdoing. They like to tell you, we're suspicious, we think that, you know, maybe apparent discovery violations. But they forgot to tell you that we did anything wrong, because we didn't. I'll tell you this up front, and

I'm not going to change my position. We don't deny that we've cooperated with the Department of Justice, nor do we apologize to the defendants for it. This is not an unusual circumstance for a victim of criminal behavior to cooperate with law enforcement in their investigation. And that's exactly what's been going on here. And the law is quite clear that we've cited in our case that there is nothing inappropriate about cooperating with a government investigation, in particular where a company like Wynn has been victimized by someone like Mr. Okada and his teams.

I find it interesting that out of desperation, because they don't have any real allegations of wrongdoing, they actually refer to the Federal Anti-Gratuity Act and acting as if there was some bribes going on because someone's lunch was purchased or the hotel or airfare was purchased to come meet with the DOJ. And we know that the Federal Courts addressing the Anti-Gratuity Act say that reimbursement of food and lodging, quote, "hardly the stuff of bribery," end quote.

THE COURT: Reasonable food and lodging.

MR. PISANELLI: So what it goes to, if anything, Your Honor, is if, if, and this is what I'm going to get to in a minute, this had anything to do with this case, we can talk about whether it has a bias issue the same way we do with experts and witnesses of the like, but hardly an issue that

goes to sanctions and reckless allegations of bribery.

So we know, also, Your Honor, that there's no prohibition against Mr. Stern's communications with Mr. Fujihara. What's lost in the mix here is that Mr. Kosaka and other UE employees contacted Mr. Stern. This allegation to you that he's out there fishing around and trying to get to these high-ranking officers in the company who they distance themselves from only to confirm whether his documents are theirs or not, trying to suggest to you that, you know, it's Mr. Stern that's around there digging around where it's actually the opposite, they came to him. And Mr. Stern has no knowledge whatsoever of what Mr. Kosaka has said to Mr. Fujihara or the documents requested.

I found it interesting that Your Honor asked the same question I did when I started going through this stuff of what are they alleging that we possess, what are they alleging that we have even viewed, "we" being Mr. Stern. And it's a hollow anti response. The answer clearly is, nothing. Because they don't know anything. But they're saying that, we're suspicious, and so now want to turn this case where we're responding to nearly a thousand requests for production of documents already, put all that on hold because now we want to focus -- I think in a phony manner -- focus on Wynn to give the appearance that Wynn is the bad actor here.

Here's another big problem with this case as it

relates to, you know, wrongdoing. There is no allegations and no evidence anywhere here, Your Honor, that we've even seen this stuff. That's Issue Number 1. Mr. Stern is very clear that he never asked Mr. Kosaka or Fujihara for the documents related to the Philippines Project, and he's never seen any of them. And nobody's said he has. And so that's the only evidence before you. They can depose Mr. Stern. Fine. And ask him and see what you can come up with. But most importantly is that they've never tied that criminal investigation of the DOJ and Wynn's cooperation with the DOJ to the extent it could or the DOJ wanted our cooperation, they've never tied it to this litigation. They've never shown you that Mr. Stern's part of our litigation team. You I'm sure don't even know who he is. He's been at one hearing here.

THE COURT: I know Ms. Sinatra. That's it.

MR. PISANELLI: That's it; right? Here's an interesting thing about Mr. Stern. You know who this litigation team is. You see us every time we're here. I can tell you for whatever it's worth to you, Your Honor, I think I've met him once in this hallway when we were here when the DOJ wanted a stay. Certainly not a part of our litigation team. He doesn't attend our litigation meetings, he doesn't have access to our documents. There are two different things going on here. One is the cooperation with the DOJ's

investigation into the criminal behavior of Mr. Okada and his companies, and, secondly, we have a litigation -- civil litigation team that is in front of Your Honor, operating appropriately and as efficiently as we can under difficult circumstances with a lack of tie between these two. Even if they ever did come before you with any real evidence of wrongdoing, rather than the innuendo that they're throwing out there, there's no tie between these cases, and that's a fatal flaw in their attempt to turn this civil litigate upside down because they want to know what's going on on the criminal side.

THE COURT: So how hard is it to move Mr. Stern's ESI up in the rolling production schedule? Because I heard the sigh, but I didn't get the answer.

MS. SPINELLI: It's actually a little bit more difficult, Your Honor, because these requests ask for communications from January 1st, 2011, forward to the present. And, as you know, when we're imaging the hard drives at the start of a litigation the date is not -- my hard drives are not imaged to the present. Obviously we have preservation holds, but this starts a whole new process again. And so I don't know. I'll have to speak with Wynn IT, I'll have to have new images, I'll have to collect additional data, because this just is not within our time -- the time --

THE COURT: Okay. So it's not part of the ESI

that's currently on the rolling production schedule.

MS. SPINELLI: That's right. It has to be gathered.

THE COURT: Okay. That was part of what I needed to know. Okay.

Anything else, Mr. Pisanelli?

MR. PISANELLI: I'm sure Ms. Spinelli will tell you that there is not a resource we are not employing to get everything done.

THE COURT: No. I know how hard I've taxed you guys between this and the Jacobs case, and you're in trial with Judge Scann. So, believe me, I understand on all of the law firms that have been involved in both cases the stress that has been placed because of the scheduling order.

MR. PISANELLI: And I appreciate that, Your Honor.

My final point is that stopping what we're doing, changing what we're doing, or adding more labor to what we're doing on hollow allegations like this, where there is no urgency, there's no basis to even suggest that there's a preliminary sanction or that there's some form of order that is necessary to right our wrong, tells us that we should leave this process exactly where it is. If they want to come back some day with a new motion, fine, we'll have that debate at that point. But it's such hollow allegations. And I should repeat not just hollow, but reckless allegations that stretch their single declaration beyond any credible interpretation.

I think that hardly should be rewarded, and we certainly shouldn't be prejudiced by now having to go back and change the machinery that we've created for this case simply because they want to know what the government's up to.

THE COURT: Okay. Thank you.

Mr. Krakoff, anything else?

MR. KRAKOFF: Just a couple of comments, Your Honor.

This is hardly reckless, hardly hollow. You need look no further than the declarations to see the connection. You need look no further to see -- look no further than at Mr. Stern's declaration itself to see what he wanted to do, and that was to obtain information. And we'll find out what documents. That's what we will find out.

This is not a sham, this is not a pretext, this is not about trying to get information out of the government. The government has nothing to do with this other than Mr. Stern and Wynn Resorts had a purpose, and the purpose was to generate a government investigation. Why? Lots of reasons. But one of them was because it could help them right here with the board's finding of unsuitability. And there is an unmistakable connection, Your Honor. Discovery will find that out. We've waited. We put this on an expedited calendar -- or request why? Because to us it looks pretty egregious. And we're not trying to make allegations that are not founded in the declarations that are before the Court. We just want to

find out what Mr. Stern will tell us. We want to find out what his documents will show us. We don't want to wait until next year, Your Honor, and we don't -- and we certainly shouldn't have to.

THE COURT: Thank you.

MR. KRAKOFF: Thank you, Your Honor.

THE COURT: Based on the information currently before me I'm taking no action on the sanctions.

But with respect to the motion for expedited discovery I'm going to grant it in part. The letters rogatory will be issued. That is a cumbersome and lengthy process. Good luck.

With respect to the interrogatories and requests for production I'm not going to give those an expedited schedule. They are going to be on the 30-day response period. My guess is you're not going to get an extension if you ask for one, so you should be diligent in getting that information and providing it.

If you want to schedule a 30(b)(6) deposition and Mr. Stern's deposition, I would encourage you to wait until you get the responses to the discovery. But because of the length of time I think your letters rogatory is going to take you to get through the Japanese and the State Department processes, I don't think the schedule you've given me is one you're going to actually meet.

So I'm not going to set any further hearing on sanctions. If you want to file a separate sanctions motion and you believe it's appropriate after doing some discovery, do it. But in the meantime serve your discovery requests, and they'll be answered in the normal course.

Ms. Spinelli.

MS. SPINELLI: Just one point of clarification, Your Honor. For the 30-day response to the requests for production of documents, is that -- I understand and what we've been doing before is providing our objections to those responses and producing the documents in response to all the RPDs in the normal course, our deadline being --

THE COURT: My guess is you don't want to do that in this one. My guess is you want to actually respond and object in the 30 days. That's why I asked if this was part of your rolling production; because if it was part of your rolling production, I was going to try and negotiate with you some stuff. But it's not part of your rolling production.

MR. PISANELLI: Well, actually it is, because they've now been incorporated in. And so by saying that we're not going to --

THE COURT: It's not part of the current rolling production.

MS. SPINELLI: I don't even have the documents --

THE COURT: That's why I asked the question about

five times.

MR. PISANELLI: I guess all I'm saying is that -- and Ms. Spinelli will correct me if I get this wrong, but we get 900 or so requests for production of documents, we're creating the process to gather and do all that stuff, they now add more to it, and it's now coming in part of the process. Your Honor's suggestion, and I hope it's not what you intended to say, is that they do get special treatment, that it's not going to be part of the process. So our intention was --

THE COURT: It is a separate --

MR. PISANELLI: -- to take it in part of the rolling process.

THE COURT: It's a separate process, Mr. Pisanelli. That's all I'm saying. It's separate and apart from the rolling production you're currently doing. These are not going to be treated with the same way you've been doing your grand, the large, huge task, herculean, whatever word you want to use ESI. That's why I was hoping we could move it up in the process so I could pull it into the process. You can't do that, that's okay, I understand. So it's going to be separate from that process.

MR. PISANELLI: Well, pulling it into the process I think is the fair thing from our perspective, because what you're asking --

THE COURT: I understand what you're saying --

MR. PISANELLI: -- by making it separate --

THE COURT: -- and I said no.

MR. PISANELLI: I'm just trying to make sure I understand you. Because now we have to create a separate process --

THE COURT: Perhaps.

MR. PISANELLI: -- just for these based upon, in all fairness, nothing. Remember, we're not talking about a represented party and attorneys meeting with them, et cetera. We're talking one employee meeting with another employee. And there's no allegation whatsoever that there's back-door discovery going on in this case. It's the government that's investigating this group of defendants.

THE COURT: Mr. Pisanelli, I am familiar with victims assisting the government in their investigation. I am unfamiliar with victims paying for the travel and lodging for parties associated with the person who's being investigated. I'm not saying it's improper. I'm just saying I'm going to let them do the discovery. And then if they want to bring another motion, they can bring another motion, okay.

MR. PISANELLI: That's fair. And all we'll do is, as we always do with Your Honor, is I think I understand, and if we just can't get it done because of everything else we're doing for them --

THE COURT: Then you're going to tell me.

MR. PISANELLI: -- we'll come to you and let you know.

THE COURT: That's right.

MR. PISANELLI: Okay.

THE COURT: But we're going to do the best we can.

Okay. The next motion I want to do relates to the supplemental responses to the third -- to the second and third sets of requests for production.

Mr. Peek.

MR. PEEK: Thank you, Your Honor.

I think both parties have categorized the documents that the Okada parties seek to have produced. They're documents related to issues in Macau. Issues in Macau have been broken down by each of the parties into four categories, the licensure or the grant of the concession to Wynn, discovery related to the --

THE COURT: So can I stop you and ask you a question. I know it's -- why do I have blacked-out people on my certificate of mailing or my certificate of service?

MR. PEEK: Your Honor, I think that had to do with the fact that there were folks on there that weren't covered by the confidentiality.

MS. SPINELLI: Yeah. There's some non parties on there, Your Honor, have that have signed up with Wiznet.

MR. PEEK: There's some non parties on there. So

we wanted to make sure that those parties didn't get the unsealed --

THE COURT: So you're able to say, no, you're not getting this --

MR. PEEK: Correct.

THE COURT: -- on the people that have signed for eservice? You can say, don't serve this person?

MR. PEEK: Correct. Because they're --

THE COURT: Okay. I didn't know that.

MR. PEEK: -- non parties, Your Honor.

THE COURT: Remember, I don't use that service anymore. There are other people who do that stuff.

MR. PEEK: Yeah. We have to use the eservice, and so Ms. Spinelli pointed out at one time some six, eight months ago that, oh, by the way, guys, you're serving documents that should be otherwise sealed in an unsealed manner to parties who should not get unsealed documents.

THE COURT: Okay. I was just wondering, because I noticed it, and it was like, well, that's odd, what's going on. Thank you. Sorry to interrupt, Mr. Peek.

MR. PEEK: No, no, that's fine, Your Honor.

THE COURT: Thank you for the explanation.

MR. PEEK: Thank you.

The second category, Your Honor, relates to the grant of a concession on 52-plus-or-minus acres in Macau on

the Cotai Strip. And certainly the Court knows and is familiar with the Cotai Strip and how important it is to the operation of any casino in Macau.

THE COURT: I am.

MR. PEEK: The third category, Your Honor, is the University of Macau contribution, and the fourth is the sale of a subconcession. Those are the four items related to the --

THE COURT: Four categories.

MR. PEEK: -- four categories.

Within the other categories are just generalized documents related to, as you've already heard, the government investigation, what activities they undertook with respect to the government, issues related to suitability as to what other parties had been investigated by the Compliance Committee, board meetings, the relationship, and the termination of relationships by Mr. Wynn and Wynn Resorts. So those are the board categories, Your Honor.

But I want to focus, if you will, Your Honor, on what we categorize and characterize within the body of our counterclaim the pretextual activities on the part of Mr. Wynn in seeking and obtaining the redemption of almost \$3 billion worth of stock owned by Aruze USA. And I think it's important, Your Honor, to focus on the timeline of events that led up to that pretextual redemption of Chairman Okada's stock

through -- held by Aruze USA.

What we know, Your Honor, from the facts within the body both of the counterclaim, as well as in the motion, is that from 2005 to 2010 Wynn was seeking a concession on the Cotai Strip in Macau, unsuccessfully, I might add, Your Honor, in that period of time. And actually that goes all the way up to 2011. But starting in 2005 they had announced through various filings with the SEC that they were attempting to seek a concession on the Cotai Strip.

In July 2010, as we know from both the complaint, as well as in the papers on this motion, that management conducted its own investigation. We know from what we just heard Mr. Stern was in charge of that investigation retained to the Philippines. And it was related generally to the Philippines. It was not focused on Mr. Okada's activities within the Philippines, but it was focused generally on what is the political and economic environment within the country of the Philippines to determine whether or not it would be appropriate or not appropriate for Wynn Resorts to seek a gaming opportunity in the Philippines. Nothing within those reports that management had investigated related to Chairman Okada.

We know in December 2010 that the Arkin Group was retained to commence another investigation about the political and economic environment of the Philippines. We know from the

motion that the scope of the work of the Arkin Group did not include anything related to Chairman Okada within the body of that scope of the retainer letter. We've attached that.

In February 2011 we know that the Arkin report -- Arkin issued five reports to the board. Four of those reports say nothing about Mr. Okada. The fifth report, which was not contained within the opposition, but we referenced it in our reply, was a report by the Arkin Group that Chairman Okada had not in any way been involved in nefarious activities within the Philippines.

Let me back up just a minute in terms of this timeline of events. What we do know is the subject matter of the Freeh Report revolves around activities of UEC in Macau in September of 2010. September 2010, we know from the Freeh Report, that there are allegations of misconduct on the part of Chairman Okada in entertaining certain Philippine officials at the Macau resort in the Philippines. So that was something that was certainly known to both Wynn Resorts Macau and Wynn Resorts Limited, because they certainly, we know from all of the material that they gathered and they gave to Freeh from Wynn Resorts Macau that those activities had been undertaken and were known to both Wynn Resorts Macau and Wynn Resorts Limited.

I say that, Your Honor, because we know from some of the earlier timeline that I just showed you that the Arkin

Group was investigating the Philippines in December 2010 and then issued reports in February 2011.

We know that the Arkin Group reports were submitted to the board in February of 2011. The board met, the board discussed, and the board determined in February of 2011 that Wynn Resorts Limited did not and should not be making an investment in the Philippines, nor seek to operate gaming casinos in the Philippines.

Here's where it now gets a little bit dicey. In April of 2011 at a board meeting Mr. Okada objected to a contribution to the University of Macau, but not directly to the University of Macau, but instead to a foundation supporting the University of Macau, a \$135 million donation. Mr. Okada objected to that. We know in May of 2011 that the donation was approved. We know that shortly after the donation was approved that the donation for the first 25 million was funded. And I say it gets a little dicey now because what we now know is that beginning in the late summer and the early fall of 2011 Steve Wynn and his counsel begin to take action to force Chairman Okada to resign from the board, resign from his position as vice chairman, and to also sell his stock to Steve Wynn under threats of, we will investigate you, we will do bad things to you, we will make your life miserable. My words, not theirs. But that's what you glean and conclude.

We know that in September of 2011, shortly after the contribution to the UMDf, Wynn, after having sought for six previous years, from 2005 to 2011, is suddenly granted a concession. It is not finalized, because it has to be gazetted, published in the newspapers in Macau before it can be finalized and approved.

We know again in that fall period that there are meetings between Chairman Okada that include Mr. Wynn and Ms. Sinatra, as well as their outside counsel, Mr. Shapiro, who's in the courtroom here today, to discuss again, Mr. Okada, you should give up your directorship, you should give up your vice chairmanship, and, oh, by the way, you should sell your stock and if you don't sell your stock we're going to have Mr. Freeh investigate you and he will find out bad things for you -- about you in his investigation, resulting in potentially a redemption of your stock. Those are all events that happened in October -- starting in September and continuing through October of 2011.

We know that Mr. Freeh was retained in October of 2011 to conduct an investigation into the activities of Mr. Okada. But what we also know is in the letter from Mr. Shapiro to representatives of Mr. Okada he lists within his letter all of those items that will be investigated, none of which -- none of which on that list include activities of UEC and Okada and Aruze USA in Macau in September of 2010. That

list didn't include it as a reason for the investigation.

We know that over the course of the next three months -- I say three months because it apparently began sometime in the beginning of November 2011, based on documents sent from Macau Resorts to Mr. Freeh, that he was looking not at activities in the Philippines, but activities related to the entertainment of Philippines officials in Macau at the Macau Resorts -- at the Wynn Resorts in Macau. We know that that February 2011 -- we know that in February 2011 that the issuance of that report and submission of that report to the board resulted in the redemption.

We also know from the allegations of the complaint that that report was not submitted to Mr. Okada either during the board deliberations or even after, despite the numerous requests from Mr. Okada to receive that.

We believe, Your Honor, that all of those facts in that timeline support the inference, not just a suspicion, but an inference that based upon the fact that Mr. Wynn was losing control of Wynn Resorts as a result of his divorce in 2009 and the separation of the stock in 2010 between himself and his now former wife, Elaine Wynn, resulted in his loss of control.

We know from the allegations in the complaint that this was something that had been -- that had happened to Mr. Wynn when he was in charge of Mirage due to the takeover by MGM and Kirk Kerkorian. We know that from the allegations in

the complaint that there were allegations that the investigation or that the takeover by MGM was precipitated in part by MGM's accusation against Mr. Wynn of misuse and misappropriation of corporate benefits.

So all of those, Your Honor, draw inferences that the activities of Mr. Wynn with respect to Mr. Okada were pretextual, that he was concerned about the fact that Mr. Okada's investigation into the contribution of the UMDF might not only disclose improprieties with respect to that contribution, but also might investigate and show improprieties related to licensure or the grant of concession, might also relate to activities in the acquisition of the Cotai Strip, and might also relate to the sale of the subconcession. So it's -- and we have presented to you, Your Honor, documents that support the fact that there were improprieties, and we want to investigate those improprieties.

What do we know about the licensing? We know that there are payments made to the accountant, accounting firm that was involved in the advice to the committee that was going to award the concession; we know that there is a gentleman by the name of Francis Soh, who submitted and was reimbursed for payments that he had made in entertaining Macau officials. Wynn says, well, that was only \$1750. I don't think that FCPA violations are predicated upon the amount of the contribution, the amount of the alleged bribery, because

we do know that there were.

What we also know, Your Honor, we submitted to you and pointed out in our reply, is that the notion that there was only \$1750 is belied by at least a report on the reimbursements to Mr. Soh in the amount of some \$85,000. And when you look at that exhibit, I think it's Exhibit 33, you will see that there are payments made, and what it appears to me is that there is an allocation, if you will, of \$85,000 to the capital contribution of Mr. Wynn based upon his payments to Francis Soh of some \$85,000. We don't know enough about that, but we do know that not only was there \$1750 reimbursed, but there's another \$85,000 reimbursed to Mr. Soh. We don't know what those activities were or what the basis for the nature of those reimbursements were to Francis Soh. They say, well, he went to San Francisco, we paid for his travel to San Francisco, we paid for his travel to Hong Kong, we paid for all this other travel. But what we don't know is exactly what were those travels for. Did those travels include entertainment of Macau officials in Hong Kong or entertainment of officials in San Francisco. That's what we seek discovering.

With respect to the Cotai Strip what do we know about that? We know that there is a very close relationship between Edmund Ho and others in that company that was paid \$50 million. We know that from the documents that we

submitted. And you'll see, Your Honor, that you won't find in our I think it's Exhibit 43 the name Edmund Ho. But what you'll find is the name of Ho Hau Wah. And I don't know if I say that correctly. But we submitted at least evidence of five separate entities into which Mr. Ho is an investor and part of the same group that was receiving the \$50 million in the Cotai Strip.

We don't even know, Your Honor, whether the group, the Tam Chau group even had an interest in the 52 acres. It's not clear both from the disclosures that are submitted by Wynn, nor are they supported by any documents that we could find or have been found in Macau. And we also know that there is anti-corruption group that is at least investigating, and they also wonder, based upon reports from The Wall Street Journal, as to whether or not this entity that was paid \$50 million had any interest whatsoever that it could sell for \$50 million to Wynn Resorts to be able to develop on the Cotai Strip. What we do know, though, is that that group that was paid \$50 million had a very close relationship with Edmund Ho, the senior executive -- or the executive of Macau, if you will, the governor of Macau.

THE COURT: I've heard that name in other hearings.

MR. PEEK: You have heard that name in other hearings.

We certainly do know, Your Honor, that the

contribution to the UMDF was made. They don't debate that. They haven't given us all the documents. There's still some objections related to the UMDF contributions. But what do we know about the UMDF contributions? What we do know is that it was not directly to the university, it was to an entity that is supposedly going to fund the university. We don't know who's involved in that, we don't know why it wasn't made directly to the university, because generally those types of donations are made directly to the university. They say, well, we're just being philanthropic. Certainly we want to know what other contributions Wynn Resorts has made in the state of Nevada to our University of Nevada Las Vegas or to the University of Nevada in Reno, as opposed to outside our country. Because Wynn has certainly been a large part of the Nevada landscape for over 40 years.

So those, Your Honor, I think all support within the body of the allegations the inference of pretextual, and we want to go back and look at, well, were you engaged in improper activities.

They say to you, well, we disclosed all of these things in our 8K, we disclosed all these things to the board. Well, the last time I looked in both shareholder derivative cases, as well as security fraud cases, the defense of I disclosed it in my 8K really supports many inferences of the fraud of the company in its improper disclosures. Many

lawsuits, as the Court knows, have been brought by a number of companies both as shareholder derivative actions as well as in securities fraud cases that the information that you gave us in the 8K is not information that was truthful and that was accurate when it was given and therefore you caused the shareholders harm. In this case we're talking about the same thing. To say that, well, I gave you this information in my 8K does not relieve them of the obligation to produce documents that would support the accuracy and the truthfulness of those statements, as opposed to misrepresentations made in those statements about the Cotai Strip, about the UMDf contribution, about their licensing, and about their sale of the subconcession, all of which we say, Your Honor, supports an inference of pretextual activities on the part of Mr. Wynn and Wynn Resorts Limited.

They say, well, we gave information to the board. But they don't want to give us that information to the board. Well, what's important about that information they gave to the board? Again, did they disclose all information to the board that was necessary for the board to make informed decisions in good faith about contributions to Cotai, a concession agreement and the payment of \$50 million, about contributions to the UMDf? Was all that information given so that that board could make that informed, reasonable, and good-faith decision? If it wasn't, it certainly goes to the pretextual

argument that we make.

We also, Your Honor, in our complaint we do make statements that would support the requested discovery, because they're part of our counterclaim. On page 8, paragraph 32, we say, "Serious questions now exist about how Mr. Wynn used the money --" that's having to do with the money that Mr. Okada gave him in April of 2002, where he made two additional contributions totalling \$120 million, thirty of which apparently went directly to -- for Macau and I guess the other \$90 million went to Valvino. Anyway, "Serious questions now exist about how Mr. Wynn used the money and whether Mr. Wynn used the funds for his personal benefit and/or for other inappropriate purposes." Mr. Soh an inappropriate purpose. So we do have allegations within the complaint.

And I was reminded, Your Honor, as I was reading through the third amended complaint that there was also an order by this Court related to the production of those documents in the books and records case, none of which have been produced -- excuse me, not all of which have been produced. And there's allegations of that, Your Honor. Whether or not Mr. Pisanelli agrees with me is the subject of another discussion at another time.

THE COURT: Always.

MR. PEEK: If he wants to say me he has produced all documents related to --

THE COURT: So can I ask you a question. Can I stop you. Because this relates to that issue.

Documents relating to the formation of Wynn Macau and its acquisition of the original gaming license, a license that was granted in 2002 that relates to at least by one designation Requests Number 89, 114, 123 through 124, 126, and 249. I understand the other issues that are categorized, but that particular group, tell me how that relates or could lead to the discovery --

MR. PEEK: As to the formation?

THE COURT: The formation issues. How does that relate to this litigation?

MR. PEEK: Your Honor, we have a fraud complaint that relates to information that was given to Mr. Okada at the time of the formation about how the money was going to be spent, when the money was going to be spent, who those investors were. We have allegations, Your Honor, that relate to -- all of which surround the amendment to the articles of incorporation and the -- I'm trying to think -- search for the right word, but the -- we know that in June of 2002 there's a contribution agreement, and we know that before the contribution agreement is fully executed that Wynn, while he was still the founder and sole shareholder, before he'd made the contributions to equalize the ownership that he amended the articles to include now this new provision with respect to

redemption. Did that unilaterally.

THE COURT: But how does that relate to WRM?

MR. PEEK: You mean in terms of the licensure, Your Honor?

THE COURT: Yes. The formation --

MR. PEEK: In terms of the receipt of the concession to operate in Macau?

THE COURT: Its acquisition of the original gaming license in 2002.

MR. PEEK: I'm sorry. I missed the point, Your Honor. My apologies. What we have at least pointed out to the Court are two inferences that we've drawn. One is the moneys reimbursed to Francis Soh, who we know from the Exhibit 33 that Francis Soh, at least in his request for reimbursement, says -- I think there's two entries, one for \$250 and one for \$1500 -- that he was entertaining Macau officials. That's at or about the time that the concession is being granted. Concessions were granted, as I recall, in February 2002, and here we have Mr. Soh seeking reimbursement for entertainment of officials related to the grant of that concession to Wynn Resorts Macau.

What we also know from at least what we pointed out in our papers is that there were payments made to an accounting firm, that the accounting firm was a firm that had been retained by the committee for concessions to evaluate

each of the concessions. There was at least points scored -- and I know this actually from other litigation, Your Honor, in which Mr. Pisanelli and I have been involved, that this company made recommendations to the committee that was going to award the concessions. We know that that same firm, that same accounting firm was given payments by Wynn Resorts. So those draw the inference again, Your Honor, that there was misconduct and that we should be permitted based on the pretextual allegations that we've made within our counterclaim that it was to shut up Mr. Okada, not only to shut him up with respect to the UMDF contribution, but to shut him up further with respect to other improprieties of Wynn Resorts and Steve Wynn with respect to the concession, the Cotai Strip. So it's not just the UMDF, but it's also other improprieties.

So, Your Honor, when we look at the second category -- and I know I'm going longer than I had anticipated -- about government investigations, I think that's already been covered by Mr. Krakoff, so I think we're probably square on that one if we get some additional discovery on that one. And I'm sure that they will also now withdraw their objections to documents related to the government investigations and what they provided the government. But, if not, Your Honor, we certainly say that those documents that they gave to or correspondence with or commissions with or to the DOJ, the NDCB, and perhaps even to the DCIJ in Macau are fair game for

discovery in this case.

We come to the suitability issues, Your Honor. And this again goes to the pretextual. What we know is that there was this investigation by Freeh. They characterize it as an investigation beginning in 2010, extending into 2011 both internally and externally with the Arkin Group that went to the suitability of Mr. Okada, and they were looking at it very early on. And we want to know, well, okay, if you're going to be consistent in your investigations, tell us what other investigations you did conduct. I mean, for example, we know from what we've attached, Your Honor, that there is at least a complaint not from just some gadfly, but there's a complaint filed in Massachusetts by the City of Boston in which they point out what they believe in the City of Boston complaint of improprieties of Wynn in dealing with and purchasing property from known felons. That's the allegation in the complaint. What did the compliance committee do about that? What did Governor Miller and his group? And we know that the compliance committee is comprised of Mr. Miller and two senior people from Wynn Resorts. This is not an independent group. This is a group controlled and dominated by Wynn Resorts and Steve Wynn and its general counsel. So what did they do to conduct that investigation? That's important, as well, Your Honor, because it goes to the pretextual argument that we make, that this was done because he was going to lose control

and because of the fact that Mr. Okada threatened to and was going to blow the whistle on other activities.

This goes, Your Honor, not to -- and I know I'll hear this from my colleague, my respected colleague Mr. Pisanelli about we're trying to twist the direction here, were trying to shout out -- and I just heard it from him -- allegations of misconduct of Wynn in order to cover up our own allegations.

I'm reminded, and I won't say from which Shakespeare play, because Flo will correct me if I get it wrong, that we think the lady doth protest too much. What are they afraid of? Why don't they want us to know about these other activities? They say, well, it's unduly burdensome. And you'll hear the thematic of, well, we have a thousand requests for production. Well, we've put it -- we broke them down, Your Honor, in these so as to avoid the argument that, you lack specificity, that these are not focused, that we don't know what you mean, tell us what you mean. So we broke them down into small pieces, into baby steps so that they would understand them. And they say, well, gosh, it's unduly burdensome. Well, unduly burdensome is not a defense when you're dealing with a \$3 billion case, and it's not unduly burdensome when you look at the list of counsel representing Wynn. We know that there is at least the local firm of Pisanelli Bice, we know that we have Glaser Weil, as well.

And the Court's familiar with that firm. Mr. Shapiro's in the courtroom with us today. So you've got two very good firms. And then what do you also have? You have Wachtell Lipton, as well, on the pleadings. Certainly I haven't seen them here, but they're on the pleadings. So when they say, it's unduly burdensome and we can't get this all done, and, oh, by the way, we have all these other cases, well, I have those same cases. I have at least one other case with them that the Court has scheduled for trial and we've done no merits discovery. And I know that Ms. Spinelli and Mr. Pisanelli are very intimately involved in --

THE COURT: And you're going to be ready prior to the expiration of the five year rule unless somebody else orders a stay.

MR. PEEK: I'm going to do my best, Your Honor, to be prepared. But to use that as an excuse, I'm reminded as a young lawyer that I appeared in front of Judge Bruce Thompson -- that is going back, that just shows how old I am -- when a lawyer made sort of the same complaint to the judge, I have all these other things to do, Your Honor, this is too much for me to handle. And Judge Thompson looked down at that lawyer and said, well, then you shouldn't have taken this case. If you can't do the job, if you can't stand the heat, get out of the kitchen.

So to argue when you have three large firms managing

the discovery that it's unduly burdensome is not a good defense, particularly when, as we have shown Your Honor, that all of the documents that we request are not only relevant and for the jury to decide whether it was pretextual, but they are also reasonably calculated to lead to the discovery of additional evidence. That is the standard, not relevance. Because we see a lot of relevance objections here.

So, Your Honor, I would ask the Court to grant our motion, not in part, but in full to require them to produce all of these documents.

THE COURT: Thank you.

Mr. Pisanelli. And if you could be brief. Otherwise, I'm going to ask the two other parties who have short things if they want to go. Short things does not include the R-J and the Las Vegas Sun. Are you going to be brief, or long --

MR. PISANELLI: Whatever Your Honor wants to do.

THE COURT: -- compared to Mr. Peek?

MR. PISANELLI: I'm -- well, that's an easy [inaudible].

THE COURT: Judge Togliatti asked when you were going to stop talking, because I had said I would respond when you stopped talking. So --

MR. PISANELLI: When he stopped talking, or when I did?

THE COURT: No. I'm getting ready to respond to her right now, so --

MR. PISANELLI: I'll get to the point, Your Honor. But it's not going to be two minutes. There's lots of stuff that was thrown out there that has to be addressed, but I won't dwell on it.

The first thing, of course, that comes to mind is never let the facts get in the way of a good argument; right? Counsel tells us that the timeline supports the inference of pretext, "pretext" probably the most used word in the presentation, both in the briefs and today, because apparently that opens up discovery to anything the Okada team wants. Apparently, Your Honor, Mr. Okada, despite his own difficulties and troubles with the law, has appointed himself as the police of this company and the regulator and the auditor and that he's going to turn the company upside down even going back before it was created and long after he was dismissed from the company to try and find anything, whether it was somebody 10 years ago who may have had a citation or a problem with marijuana use to where did every dollar go that he brought into the company. I've yet to find any authority that entitles a party like Mr. Okada, who's no longer associated with this company, that allows him to appoint himself the auditor of this company with a blank check to go in and demand anything he wants. When you put it in the

context that this entire pretext is based upon this timeline then you realize that there really is no factual nor legal reason to allow him to go in and conduct this abusive discovery.

And let's be clear. You have not heard from me once, nor will you hear from me that my team is unable to respond to one of their requests for production of documents or a thousand that he's given us. That will not stop me ever from complaining that they're abusive and have no place in this discovery process or that they are not allowed under the rules. When I did suggest in our last argument that it shouldn't be allowed it's because this group of defendants has given us all of these requests for production of documents and now wants to stop the train and start a new process because they're worried about what the government has in their hands. That's not because we don't have the ability to do it. So I'll leave that issue alone for the time being.

So let me just point out the very big flaw in this pretext argument. First of all I think it's fundamentally flawed in and of itself, that we have to keep this in context. The central issue of this case, and Your Honor has said it before in some we'll call it peculiarly timed motions for summary judgment from these defendants that this is a business judgment rule case. Let's not ever lose focus on that, that we are going to decide that the central issue is whether the

board of directors appropriately exercised their business judgment when deciding that Mr. Okada was unsuitable and that he needed to be removed from the company in order to protect this company's main and primary asset, its gaming licenses. And so this audit to find any bad act before, during, or after his tenure cannot be the basis to sweep aside what the case is really about. It's a business judgment rule case. Is there 2 billion or \$3 billion, whatever the number is, that was in value that was redeemed short? But the dollar value in and of itself means nothing, all right. You have cases all the time that are highly complex that really don't have a lot of money at stake, and you have lots of cases that have the opposite, there's a ton of money and not so complex. And so the money doesn't dictate how much discovery you get. In other words, you don't get a request for production of documents with every dollar you're asking for in the case. We look to what the central issues in the case are, and that's what should govern the behavior of these parties.

So in this central -- or this business judgment rule case we have a party who wants you to say, that has nothing to do with the discovery. They want to audit. It's plain and simple they want to do an audit. And the law doesn't permit it.

Now, even if you were going to allow this type of pretext debate, the pretext doesn't apply here when you

actually put in context how these investigations, including Mr. Okada's behaviors, came about. Counsel has his timeline backwards. We didn't start any investigations or continue and follow up on investigations because of Mr. Okada's objection to the Macau donation. It actually is the other way around. The summer of 2010 is the Stern investigation that Counsel has referenced to where we were investigating the concept of doing business in the Philippines. What Counsel forgot to tell you, Your Honor, is that when that report was presented to the board of directors that's when alarms were going off everywhere because Mr. Okada wouldn't answer and was evasive about his experiences and activities in the Philippines.

Moving in that same year into the fall, that's where the articles, the Reuters articles were coming out about what has been called the midnight deals and certain companies seeking a license there. We went in in December of 2010, January of 2011, and February of 2011 to hire the Arkin firm. The Arkin firm was looking into Mr. Okada's activities in the Philippines. We didn't just get interested in Mr. Okada after he made what he is now characterizing as an objection. And I'll get to that in a minute. We were ahead of him and worried about him. In February of 2011, Your Honor, the same board meeting where Mr. Okada -- this is when the Arkin reports were presented to the board -- Mr. Okada at that time sent alarms throughout the company when he said in casual

terms, and I'm paraphrasing, that what are you so worried about, everybody knows that you just conduct your bribes through third-party conduits, you don't have to be so worried about it, no big deal. What? That is what preceded any of his claimed objection to the Macau donation. The Macau donation didn't come until April of 2011, and that's hardly an objection. This is the person who was objecting at the most to simply the duration of the donation, not the concept of it, and he actually was attending the ceremony, the presentation to the Macau -- to the University of Macau.

This concept, by the way, and this insinuation to Your Honor about the fact that the money was donated to a foundation really is I think outrageous. Any one of us in this room that donates money to our alma maters or otherwise, even our local university, knows that that you do through foundations for the support of any particular university. To claim that there is something nefarious because there was a foundation that supported the University of Macau is supported by nothing and only intended to suggest again to Your Honor, like the rest of this debate, that something is wrong at Wynn Resorts.

And so here's the point. Counsel says that we're trying to shut him up, that this is why he gets to do an audit of this company, because once objected to the University of Macau, then all of his bad behavior having to do with the

Philippines, all of his troubling and bad behavior having to do with his dealings with Philippine officials while in Macau shows an inference that this was just some -- having nothing to do with his bad behavior, but we wanted to shut him up. But we now know that it's the other way around. And since the timeline was so fundamentally flawed, his pretext, the license to go in and audit this company fails, fails factually and fails as a matter of law.

So, Your Honor, no one in this courtroom needs to tell you the standard of discoverability. But what we do know --

(Pause in the proceedings)

THE COURT: Mr. Pisanelli, I am sorry for the interruption, and so are my staff.

MR. PISANELLI: It's all right. That's not a worry, Your Honor.

My point was only this. We have for our company alone, I now have a calculation, we'll call it 918 requests for production of documents covering every possible issue in the history of this company that you can imagine, board and narrow alike. That doesn't count the requests for production of documents that went to Mr. Wynn, doesn't count the ones that went to Mrs. Wynn, which are 100-plus each, as far as I know. And so we have to ask the question -- whether we have one lawyer representing these defendants has nothing to do

with the issue. But we have to ask the question what is this defendant or these group of defendants up to here, what law can they possibly be relying upon that would allow and permit this type of behavior. We can look and we can parse through and see the ones that we've objected to. And you know what, Your Honor, had I come to you saying, I'm objecting to the whole slue of them, all right, different debate. But we're saying that these 80 are just beyond the pale and they're still complaining about them. We have to question whether there is not really just an interest to be the self-appointed auditor of this company, but whether there's actually an intent to inflict pain on this company by way of distraction, by way of attorneys' fees, et cetera. And those are not bad things. Again, I don't care who the party is and how much is at stake. If you are unnecessarily inflicting pain by way of the discovery process, using it as a sword, the law says that that's not permitted.

When we start looking at these many different categories of requests and just filter it through the standard of whether they are discoverable we see that they really are just so far afield that there's no good-faith foundation for them. We know that you cannot get a discovery campaign, I'll use that word, on mere suspicion or speculation. Let's assume there was real evidence, not an upside-down timeline that's been shuffled like a deck of cards to give this false

inference, but let's say that they actually came to you on one specific thing having to do with the exercise of the business judgment of these directors. All right. Let's have that discussion. But every single thing that Counsel went through with you -- and I'm prepared to rebut why every single one of them in their papers is not suspicious if you want to hear that, but every single one of them is just their opinion, the, oh, this looks like there might be something there, oh, that looks a little suspicious, I want to know who that person was that got that donation, I want to know who that person was entertaining for a \$12 reimbursement for a soda or whatever it is that they're complaining about. How about actual evidence on any particular topic that matters to this case? That's what we're asking of you. We took as liberal approach as we could in responding and moving forward with 800-something of these. But at some point these things are so board it has to come to an end.

Now, I don't want to tax your patience with me by going point by point on these categories, but I'll do that to show you that they're not suspicious at all, Your Honor. But the reason I hesitate and even offer it to Your Honor if you want hear it, because their opinion of suspicion with any tie, number one, to real evidence or tie to this actual case has nothing to do with the discovery, whether it be issues surrounding the formation of the company, whether it be these

issues surrounding again the formation of Wynn Macau or even the University of Macau has nothing to do with the business judgment of the directors when they were presented with the Freeh Report in February of 2012.

What we have in Wynn, Your Honor, which I think cannot be lost in this discussion, when they are talking about suspicions two things we should keep in mind. One is because of Mr. Okada in part and because we're a highly regulated company, Wynn Resorts is investigated seemingly by everyone, by Nevada Gaming for sure, by the SEC, and with these very allegations that he has lodged elsewhere not one thing has been found -- have we been found to have done anything wrong. And they ask you, oh, just dismiss that, and they come up with an excuse of why I guess the government agencies are not good at their own investigations. But also keep in mind for this company that they claim to be involved in these suspicious activities, do you notice how Counsel also wanted you to dismiss the fact that Wynn Resorts doesn't keep their business secret. Wynn Resorts is a highly transparent company that discloses all of these things, all of these things that they're claiming we'd like to get behind them and see if they can find some bad doing. We showed how we were disclosing these things at every step along the way in 8Ks and disclosing them in a timely manner. His response is, oh, ignore that, that doesn't mean that it's not suspicious. Suspicious in

whose view, Mr. Okada's? Is that really the standard for discoverability of conducting this audit because this transparent, highly regulated company is disclosing every aspect of these deals that they're hoping they can find some dirt about.

So, again, I defer to Your Honor, whether -- pick one. I don't care. We can show you why all of these different categories that are in the papers are not suspicious at all, are perfectly legitimate, perfectly disclosed in our public filings, and perfectly disclosed to our regulators, who keep an eye on virtually every single thing we do. At some point we have to tell the Okada team here that enough is enough. I certainly have never encountered a case with a thousand requests for production just to one set of defendants, forget the other ones. Not ever. I don't know that I can add up all of my cases currently pending right now that'll get me to a thousand. But we're doing it, and we're going to do it, and we're going to get it done. But that doesn't mean that we're willing to waive our objections. We've objected here on fair and appropriate grounds. They are stretching so far to find dirt -- that's really what this is about, fishing to find dirt. Well, fishing to find dirt, there is no law anywhere that says that you're entitled to do that simply because you come up with the word "pretext." Pretext. Pretext has nothing to do with this case. Business

judgment has something to do with this case. At least let's find some evidence of why these directors should have been suspicious about one transaction or another, or, more importantly, why any of these directors should not have relied upon the information that was brought to their attention or did not rely upon the information that was brought to their attention. Then we can have a fair debate of whether Mr. Okada should be the police here and do this audit. But short of that, this is beyond abusive. We've objected to a very, very small percentage of these. We're going to produce more documents than they ever really were entitled to in the first place, and we're asking Your Honor to just tell this team over here that enough is enough, you've got enough and after you get these rolling productions come back with a real excuse of why you need more and we'll have that discussion then.

THE COURT: Thank you.

Mr. Peek, five minutes or less. Then I'm doing One Trop, Cay Clubs, R-J-Las Vegas Sun while you all take a personal convenience break, and then I will resume with your last motion.

MR. PEEK: Thank you, Your Honor.

I think I'm hearing an argument on a motion for summary judgment, or maybe I'm hearing an argument on a motion in limine, as opposed to discovery, and it is that there's no genuine issue because I tell you --

THE COURT: Tell me why -- and I'm picking one -- Request for Production Number 89, which is in your Exhibit 2, is going to help me get to a decision point in this case some day. Do you want me to read it? Because it's really short. It says, "All documents concerning Steven A. Wynn, Wynn Macau, or WRL's obtaining the Macau land interests and license, including, but not limited to, any communications with consultants, finders, bankers, lobbyists, middlemen, or intermediaries of any type." And this is just the acquisition of the land interest.

MR. PEEK: The land interest in Cotai? Or are you talking about the concession?

THE COURT: I didn't do the question.

MR. PEEK: Well, I'm trying to -- Your Honor.

THE COURT: Land interests and license.

MR. PEEK: Well, because there are two things in there. So that -- I understand. All right.

THE COURT: It's your question, not mine.

MR. PEEK: All right. Let me look at it, Your Honor.

THE COURT: It's Number 89. So it's on page 15 of 46 of Exhibit 2.

MR. PEEK: Your Honor, that is focused on the original licensing, original concession that was granted, as opposed to the Cotai concession.

THE COURT: Correct.

MR. PEEK: So --

THE COURT: My question is how is this particular request going to move this case forward.

MR. PEEK: Okay. I'll go back, Your Honor. And one thing I did not provide you is that we believe that there were improprieties related to that. So if you want -- I want to know what those communications were with others, what those disclosures were with others. For example, what were the communications with the accounting firm, what were the communications with the investment bankers who may have been involved in this transaction? We know, as well, that there was -- and I didn't cover this earlier, but there was what I call the five for \$50 million transaction where an initial group of investors came in with five and two years later -- \$5 million, and two years later they \$50 million. That group still has connections, as well, with the government, so we want to know about that. That would be one of those groups. As to whether that group was bought by an investment banker or other consultants, because they say, well, we had to have a Macanese resident in order to be part of this initial formation and initial ownership, so that would certainly go to, okay, what investment bankers were you talking to, what consultants, who brought them, how did they bring them to you, how did they then up with a \$5 million interest that converted

later, two years later, to a \$50 million. So, yes, that answers that.

THE COURT: Thank you. That was what I had asked twice before. So I was just trying to get an answer to my question.

MR. PEEK: My apologies, Your Honor, if I misunderstood the question.

THE COURT: It's okay. Thank you. Is there anything else you wanted to add?

MR. PEEK: Your Honor, I want to focus on the business judgment rule, because they seem to want to hide behind the business judgment rule and say, that's all you get to find out is what did we know at the time that we made the decision to redeem. And, Your Honor, we're certainly entitled to know whether or not that decision was made on an informed and reasonable basis and made in good faith. And we say, Your Honor, also that the directors are not independent and it's a conflicted board. So when you have those allegations, that it's not informed, it's not reasonable, it's not made in good faith, and it's not made by an independent board, but in fact a board that is conflicted and under the domination and control of Mr. Wynn it takes it out of the business judgment rule and then should allow us, Your Honor, to get behind the curtain.

This is not a motion for summary judgment. This is

not a motion in limine that says all of these things about Cotai, all these things about the concession, all these things about University of Macau are not relevant for your decision, ladies and gentlemen of the jury, or fact finder, Your Honor, because of the fact that we hide behind the business judgment rule. We're entitled to go behind the curtain and look at the exercise.

With respect to the voluminous nature of the requests for admission what Mr. Pisanelli doesn't tell you is that we submitted requests for documents very similar, in fact many of them the same, to the individual members of the board of directors, and we told them that, if you've produced all of these other documents in your initial production by the company, you need not produce these additional ones. But we want to know -- we want to find out what it was that the individuals had that may be different than that which has already been produced. We also want to know what information that board had with respect to -- those board members had with respect to making decisions along the way on the Cotai land concession, on the original concession, as well as on the UMDF contribution.

So, Your Honor, this is not, again, an MSJ, this is not an MIL. This is what the purpose of discovery is, is to look behind the curtain to find out what documents they have that support and argue the pretextual decision made by the

Wynn board dominated by Steve Wynn. Thank you.

THE COURT: Thank you.

The motion is granted. The pretext issue that has been raised by the Aruze parties is one that is subject to discovery. While it may not be something that ultimately has any relevance in the -- after the motion practice in this case, I'm going to permit the discovery on the issue.

Anything else?

MR. PISANELLI: Your Honor, every single one of these?

THE COURT: Yeah. The only one -- after I'm sitting here reading through them again the only one I had serious questions about, Mr. Pisanelli, I had narrowed it down to 89, 122, 124, and I read through all those again and I asked Mr. Peek the question about 89 yet again, which had to do with that category, and he answered. And based upon his response I'm going to permit the discovery.

MR. PISANELLI: I mean, just as an example, we're talking about like every communication ever having to do with an IPO.

THE COURT: I understand, Mr. Pisanelli.

MR. PISANELLI: We're talking millions of pieces of paper per request here on things that -- one thing he's never said to you is why it has anything to do with this case other than this bad act audit.

THE COURT: I understand.

So I'm going to let you guys have a break for personal convenience. I'm going to go to One Trop, and then I'm going to go to Cay Clubs, and then I'm going to go to R-J-Las Vegas Sun, and then I'm going to go back to you and deal with the length of time for Mr. Okada's deposition and the location of his deposition. But you get a break for personal convenience. If you need some coffee, Dan may have some back there, but I'm not sure.

MR. PEEK: So half an hour, Your Honor?

THE COURT: Fifteen minutes.

(Court recessed at 10:28 a.m., until 11:08 a.m.)

THE COURT: Mr. Peek and company. Can somebody go find Mr. Pisanelli and company.

(Pause in the proceedings)

MR. CAMPBELL: May I approach, Your Honor?

THE COURT: Absolutely, Mr. Campbell. How are you doing?

MR. CAMPBELL: Good.

(Pause in the proceedings)

THE COURT: Okay. We are on the last of our -- I'm on the last issue, which is the motion for protective order, essentially, related to Mr. Okada's deposition. Two primary issues, since I dealt with translation earlier, which are how many days and location.

MR. KRAKOFF: We'll right at it, Your Honor.

THE COURT: If I'd known you were arguing, we would have kept going.

MR. KRAKOFF: Thank you very much, Your Honor.

Your Honor, this deposition notice is just unreasonable on its face. Ten days in Las Vegas. There's a presumption that a defendant is going to be deposed at his place of residence or his principal place of business. We have proposed a very reasonable, we think, length of three days. There is a translation issue. We recognize that. The cases say when there's a translation issue then double the amount of time, the one day rule. But we've proposed --

THE COURT: One day rule hasn't applied in my court since it passed. I've suspended it in every case.

MR. KRAKOFF: Understood.

THE COURT: There has yet to be a single case I have where one day works.

MR. KRAKOFF: And I had heard that, Your Honor. But I want to at least reference the rules.

THE COURT: You should have heard my comments when they were considering the amendment. It's like, can I just suspend all your new rules.

MR. KRAKOFF: Well, notwithstanding that, Your Honor, we think that three days is reasonable, it's enough. We have very able counsel on the other side. They're more

than willing -- more than able, I should say, to divide the issues up, to prioritize their issues. In any complex case you always leave some questions on the table. You have to. You've got to get right at the issues. Ten days is absolutely excessive, particularly, Your Honor, when the defendants are lock -- the plaintiffs are in lockstep. They all want the same thing, they all want ratification of the redemption, the finding of unsuitability, they all want -- they're in lockstep on the claims. Only Ms. Wynn has suggested that there is a separate issue that Ms. Wynn needs to address, and that is on the validity of the shareholders agreement in 2002. Surely counsel can find a way to question on that issue in less than one day, which is proposed.

Again, Your Honor, particularly in term -- well, we have addressed earlier the translation issue. The translation issue goes right to the heart of why they claim that they need as much time as they do. And it's different now. We know we're going to have a translation and interpretation protocol shortly. It's going to be presented to the Court for the Court's ratification. In the books and records deposition, which Wynn makes much of in its papers, there were problems. Obviously there were. But here's the difference. There were four different interpreters who were permitted to talk on the record in that case. It was a mess. By all accounts it was a mess. And that's not what we're going to have here, Your

Honor. We're going to have one certified court interpreter that everybody agrees on on a protocol that's going to be presented -- agreed upon by the parties, presented to the Court. So they're making way more about this translation issue. It doesn't apply here, Your Honor. Double the amount of time is enough. We suggest three days.

In addition, Your Honor, I think counsel, as we all do whenever we litigate, we learn from each matter, we learn from each deposition. And it's incumbent upon counsel, particularly when you're using an interpreter, to ask direct, concise, brief questions because of the translation issues. We had some issues with that in the books and records deposition, and I'm confident that counsel will present better questions, more direct, and we won't have those issues again. So, frankly, Your Honor, I think that they've blown this way out of proportion. Three days is plenty.

In terms of location and the presumption --

THE COURT: Where do you get that? Where do you get this presumption? Because it's not how it is in Nevada State Court. It's presumed the defendant will appear for deposition in the state of Nevada, and if the defendant in a civil case doesn't come for trial, that's okay, but they've got to show up for deposition in Nevada.

MR. KRAKOFF: Well, Your Honor, I certainly understand that for the purposes of a plaintiff, a foreign

plaintiff that comes --

THE COURT: No. This is a defendant.

MR. KRAKOFF: I understand that. The Nevada Civil Practice Manual, we quoted the presumption, the general rule is a presumption.

THE COURT: Not here. I understand what you're saying, but it hasn't been in the Eighth Judicial District Court for at least 25 years.

MR. KRAKOFF: And I accept that and respect that. That -- notwithstanding that, the issues that we see in all the cases that address why a foreign defendant should not have to come, particularly from across -- from overseas to a local location is because of the burden, the cost, the time, the time away from home, the time away from business. There's a recognition, Your Honor, in the cases that we cited, and I think it makes sense and I think it's legitimate, that when the defendant didn't bring himself to this courtroom, the defendant didn't --

THE COURT: The defendant started this when he filed the books and record action and the writ two years ago.

MR. KRAKOFF: But that's not the lawsuit we have, Your Honor.

THE COURT: I understand. But that was the beginning of my contact.

MR. KRAKOFF: While it was, this is a lawsuit filed

by the Wynn parties. It's a lawsuit to bring -- that brought him into this court. And he didn't ask for it. They forced the forum on him. And by any -- by any analysis there's a huge burden on someone, particularly when they want two weeks of a deposition, which means three weeks away from home and business, to conduct this deposition.

The points that they make, Your Honor, are that, well, you know, this is a -- that the presumption really doesn't -- I'll put aside the presumption, because I understand the Court's position. But looking at the issues that the Wynn parties have proposed and rely upon is that they say, well, location's controlled by the convenience of counsel. If that's the case -- and all the parties have counsel who are members of this court, and I recognize that and respect that. But that would -- that would mean that no foreign -- that every foreign defendant in every case would never be permitted to have his deposition at their principal place of business or in their residence. And I don't think -- I think, Your Honor, that that's -- that puts the burden, frankly, on the wrong place, again, because the defendant didn't decide upon the forum. Clearly the burden is much more on the defendant.

The Wynn parties complain about the expenses, and that's -- that it would cost overseas. That's kind of ironic, Your Honor, because it's the Wynn parties who want 10 days.

Totally unreasonable. They want 10 days. And when you add up all the billable hours from all of the lawyers for the Wynn parties, I haven't done the math, but it could approach another six-figure number. Moreover, respectfully, I note that the Wynn parties are hardly destitute. Wynn Resorts has a \$10 billion market cap. Mr. Wynn himself is ranked 174 on the Forbes list for -- in the United States with a net worth of \$2.8 billion. They're going to have to go to Japan anyhow, Your Honor, to do other depositions, according to their 16.1 disclosure. And certainly, Your Honor, they complain about the expense. They didn't have any trouble paying for a senior accounting manager at Universal to come to the United States business class and stay in a nice hotel a couple of times. So that is pretty hollow, Your Honor, their concern about expense.

Next they worry, well, Your Honor will not be able to supervise this deposition, and they -- again they make a lot out of, well, we're going to have a lot of discovery disputes.

THE COURT: I sure hope not. I sure hope you're professional and get along.

MR. KRAKOFF: We always -- we plan to be. I'm confident that we can get along, and I'm confident that we will not have to be seeking the Court's involvement. But even if we do, the 16 time zones is not an issue. Why? Because

it's 8:00 a.m. overseas when it's 4:00 p.m. here. And if the Court has time, and I know the Court --

THE COURT: I don't think you understand. I've spoken to Macau before. I know how it works. I know the issues. I've, you know, had people from Hong Kong testify by video conference. I'm aware of the time zone challenges. That's not the issue that concerns me. The issue that concerns me is I have a named party in a case who. admittedly in not the same case, decided to seek the assistance of the State of Nevada, and now you tell me he wants y'all to go to Japan. And that's just something I'm having a hard time with.

MR. KRAKOFF: Well, Your Honor, he -- if what you're -- I understand you to be referring to the fact that he was on the Wynn board, that Aruze USA was incorporated in the state of Nevada, and, as the Wynn parties say, therefore Mr. Okada reached into the state of Nevada.

THE COURT: Well, and he also filed Case Number A-678658 in the state of Nevada as a plaintiff.

MR. KRAKOFF: As a plaintiff, Your Honor. As a plaintiff. And, respectfully -- and I understand the Court has a concern about that -- that's not the lawsuit we have in front of us. When Mr. -- in that piece of litigation the plaintiff's counsel -- or now plaintiff's counsel, Wynn counsel, made the same argument that they're making now. They've said, well, he's the plaintiff, he reached into

Nevada, he subjected himself to the jurisdiction of this Court, he chose the forum, and there was -- the burden is on him. That's not what we have. We've got exactly the opposite. He didn't bring this lawsuit. I understand, Your Honor, when he brought his lawsuit he came to this Court and he invoked this Court. He didn't do that here. Not at all. And that I think is a fundamental difference. And the cases recognize that. They recognize the burden on a foreign defendant. There's lots of cases, Your Honor, that we cited where the depositions of Japanese defendants were held in Japan. And so it's not unusual at all.

One other issue that Wynn raises, Your Honor, is that it would be -- it's the inconvenience. And because Your Honor is so familiar with matters in Macau, Hong Kong, overseas, in Asia, this is probably -- you're probably fully aware of this, but there are issues with the location of a deposition in Japan. Has to be in the Consulate. And they raise the issue, well, you know, there's not a big enough room in Tokyo. Well, there's a bigger room in Osaka and for that matter -- and they also complain that we can't bring our cell phones, our iPhones, our laptops with us. Well, you know, in the old days we didn't have any of that. And I'm sure counsel can find their way to conduct a deposition without their laptops and iPhones. If they want them and need them, we can do it in Hong Kong, which is the residence of Mr. Okada.

Again, Your Honor -- and respectfully I understand the Court's concern that he's a defendant and any defendant should be deposed here. I think that there's a fundamental difference. The burden should not be placed on him. In fact, the cases say that there is a presumption. They also say that the presumption can only be departed from if there are peculiar or unusual circumstances. We don't have that here. What do they say are peculiar or unusual circumstances? They say, well, it's a complex case, there's multi parties, there's a lot of parties. That doesn't distinguish this case from any other case. And I dare say, Your Honor, that plaintiff counsel has many complex multi-party cases before this Court. So that doesn't distinguish it at all.

Your Honor, I think fundamentally the burden -- the cases recognize the burden on foreign defendants and there is a presumption that it should not be departed from other than for peculiar, unusual circumstances. And they have not made any case to establish that.

THE COURT: Thank you.

Mr. Pisanelli.

MR. PISANELLI: Thank you, Your Honor.

Counsel's first phrase in support of his client's motion is that our deposition notice is unreasonable on its face. The irony of that position cannot possibly be lost on the Court in light of today's proceedings. Counsel tells us

that we've learned from each case. Well, I think we all need to learn from each motion. In light of the discovery parameters that they have set through the requests for production of documents we now have discovery in this case going back 15 years, to the year 2000 through the present with multiple parties. And Counsel's response to that is, well, leave questions on the table, split it up so everybody gets to participate. I'm not sure I've ever read any court, any authority, any treatise, any Nevada practice manual that says it is incumbent upon counsel to leave questions on the table because of the convenience of the witness, certainly not anything I'm sure he or any of us have subscribed to as a manner in practicing commercial litigation on behalf of our clients. So the irony is rich indeed for a party who wants virtually every nonprivileged document this company possesses, but then wants a three-day deposition the other side of the planet.

So, Your Honor, one thing that can't be lost is Counsel's continual statement to you that Mr. Okada didn't choose this forum. What perhaps he is forgetting or maybe he doesn't know because he hasn't been here from the beginning as we all have, is that the books and records case, as Your Honor accurately pointed out, Mr. Okada came to this forum for that case. That case isn't over. As a matter of fact, Your Honor has coordinated discovery in that case with this case, and so

he is a plaintiff in this discovery process no different than we are. And so hiding behind the presumptions in other jurisdictions that he's a mere defendant doesn't work here. Even if he was right that Nevada had a different practice where defendants get to stay home, it doesn't work here in light of the history of this case.

You throw into the mix that Mr. Okada's contact -- and I don't mean this in a jurisdictional perspective, but really on the balance of equities, Mr. Okada's contact with this state is not limited to his plaintiff status nor defendant status in this present action. He has and has had --

THE COURT: I'm not worried about jurisdiction. Let's not talk about it --

MR. PISANELLI: Yeah. I'm not talking about jurisdiction. I'm just talking about the equities of him being here.

THE COURT: I understand he has other business activities here.

MR. PISANELLI: Exactly. So the 10 days, Your Honor, is not intended to be abusive. Let's keep one thing in mind. Let's give Counsel benefit of the doubt and I hope on this issue he is exactly correct, that the translation will be different now. It doesn't change the slow process, because what we're attempting to do is eliminate the debating of the

spotters or the checkers. We still have a question that will be posed that will be translated, there will be an answer that will be translated that will come back, and then there will be another question. By any --

THE COURT: Unless there's an objection.

MR. PISANELLI: Yeah. And then we'll go through the process of translating the objection so that the witness can understand what the objections were. So let's not fool ourselves that the best translation protocol that's ever been invented -- and maybe that's what we're doing, is creating the best there ever was -- will still result in an extraordinarily slow process with lots of parties with a 15-year discovery period with millions upon millions of records that we will all have to figure out how to pare down to use in the deposition. So this is not going to be one or two or three days. I've got to be frank on this one, Your Honor. We were being conservative on the 10 days. I fully expect that if this team of counsel -- and I don't mean this in an inflammatory manner, I assure you I don't. But if this group of counsel shows up and behaves the way the last group of counsel did with their obstructionist behavior, I'm certain that the delay associated with those arguments and interruptions will result in a deposition much longer than 10 days. We are taking into consideration the body of evidence, the issues, the amount of now even more documents than we expected, and the slow process

with the translation that we were conservative in our estimate. I don't get the impression that Your Honor is taking seriously that we should pack up all these lawyers and translators and videographers and go to Mr. Okada for his convenience.

THE COURT: I might order you to go to Tokyo under certain circumstances, but this probably isn't one of them.

So can I ask you guys a question.

MR. PISANELLI: Of course.

THE COURT: And this is as a group, because I knew what I was going to do last night. So have you discussed since my general rule in cases, and I have not been convinced to depart from my general rule, is that the defendant shows up and for a corporation one 30(b)(6) shows up in the state of Nevada, have you considered, since you might want more than that, agreeing to a neutral location on U.S. soil in Hawaii, where you have the protection of the U.S. courts for other witnesses beyond these?

MR. KRAKOFF: Your Honor, we haven't had those discussions.

THE COURT: Okay.

MR. KRAKOFF: But actually it is something we thought about proposing and we would be happy to discuss with Mr. Pisanelli and his team.

THE COURT: Okay.

MR. PISANELLI: You're talking about non Mr. Okada witnesses?

THE COURT: Well, no. I was asking if you had considered it. Because if you told me the answer was yes, I was going to ask what your agreement was, and then I was going to ask you a couple more questions. But you've just told me you haven't considered it. So that's okay.

Anything else?

Anything else, Mr. Krakoff?

MR. KRAKOFF: No.

THE COURT: Okay. Here's what --

MR. URGAS: Your Honor, please, if I may. I know I haven't said much in this case so far, so --

THE COURT: Okay. Mr. URGAS. How are you today?

MR. URGAS: I am good, Your Honor. First of all --

THE COURT: I am really sorry you had to wait for three hours to get up to the podium.

MR. URGAS: No, that's quite all right. This was very instructive, and I've kidded around with people, saying I'm getting CLE here even though I don't think I need it anymore. I think the rule is that I'm old enough that I don't -- I'm not required to.

Just another comment. I agree with you. And if you remember, Mr. Hejmanowski and I both objected vehemently to the seven-hour limitation when it was approved or adopted.

I will pass on talking about the location issue for a moment, but I am concerned about the time issue. And I want to emphasize the fact that I totally agree with Mr. Pisanelli that three days is insufficient in this case. But, more importantly, from my client's standpoint we have asked that we have at least one full day, because we are not in lockstep with the other people in this case. There are a lot of other issues that are involved. And I know that Mr. Campbell did not file anything in here, but obviously when it comes to this agreement, the shareholder agreement, there's going to be a lot of issues that have nothing to do with what Wynn Resorts and Mr. Okada may be dealing with separately. This has to do with something that is now going on for a decade or more. And I will say that if we talk about Japan, you're talking about having a very small room, 8:30 to 1:00 o'clock, you then have to leave the room, then you come back and you get 2:30 to 4:30 or 2:00 o'clock to 4:30. And what I don't want to have happen, because these are very competent counsel and they're very good at what they do and they're going to be very careful and very I'll say investigative in their questioning, and I don't want to have a situation where Mrs. Wynn all of a sudden is at the third day and it's 2:00 o'clock and we've got two and a half hours to try and examine somebody.

And I would also point out -- and I know that you just approved today the sealing of Exhibit 8, so I don't want

to go into details in it. But if you read through the transcripts that have been attached, you will realize that I think Mr. Pisanelli was being kind in talking about the issues that are going to be involved. I'm not talking about the counsel -- the prior counsel, which I thought was, you know, very inappropriate, what was going on with those speaking objections, et cetera. I'm talking about if you listen and look at the questions. And I won't go through all the details, but if you look at one of them, for example, apparently there's a Japanese word that applies to both -- either an officer or a director. So let's assume that the translator, the one that we selected, makes a decision that says I think it's director. Well, that may make a difference in the nature of the case of whether it's an officer or a director. So even if the translator says it's a director, I guarantee you there's going to have to be followup questions, either by the person asking the questions or somebody later, because it could make a big difference if it was an officer that did this or it was a director that did that. Those issues. Those are the kind of things that I think is going to make this case go much, much longer when it comes to the deposition process.

So what I'm saying, Your Honor, is I don't want to have a situation where whatever time limit you agree to or you instruct us on --

THE COURT: What day of the 10 days would you like in the best of all possible worlds?

MR. URGAL: Well, as a practical matter, Wynn Resorts is going to go first. They're noticing the depositions.

THE COURT: So you want Day 10 if I give day 10.

MR. URGAL: I would like the last day for sure, a full day, and I don't want to be limited to that if all of a sudden we start seeing, you know, obstruction issues or really problem translation issues. But in our motion we indicate -- or our opposition to this motion we indicated we wanted at least one full day for our protection.

The problem we're going to have, Your Honor, is there's a lot of conversations and a lot of communications that are going on, and we've got to back a decade or more.

THE COURT: I understand, Mr. Ural.

MR. URGAL: And that's going to take some time. So I don't even want to say I'm limited to one day, but I want to at least make sure that we're aware that we've said we want at least one full day, with the understanding if it goes longer we have the right to go longer. We need to have a fair opportunity to discuss our case and explore our issues.

THE COURT: I understand.

MR. URGAL: And there could be other issues that come up, Your Honor. Even though we're a defendant on the board of directors side, if somebody misses an issue, we should have

the ability to bring that up, too. So from that standpoint, Your Honor, I think that we want to make sure that we're not limited or prevented from having our full and fair opportunity to explore and question Mr. Okada.

If the Court wants to talk about location, I'm willing to talk about it based on --

THE COURT: I really don't, since you haven't agreed.

MR. URGAS: But I agree with the idea that we have it in Las Vegas, Your Honor.

THE COURT: Well, there have been cases where the parties have agreed to take those Asian depositions in Hawaii because it's U.S. soil. But you haven't reached that agreement here, so I'm not going to impose it, although it would be incredibly reasonable. All right.

MR. URGAS: Well, Your Honor, I will reserve any comments on that.

THE COURT: I'm waiting for Mr. Krakoff.

MR. URGAS: But I do object to having it in Japan.

THE COURT: I got that part.

MR. KRAKOFF: Your Honor, I'd just point out one thing.

THE COURT: Uh-huh.

MR. KRAKOFF: And that is that Mr. Okada is not a party to Ms. Wynn's lawsuit against Mr. Wynn. Only a witness

-- and this deposition should not be hijacked to make that -- make it into a deposition in that lawsuit.

THE COURT: Okay. Anything else?

The motion for protective order is denied. The deposition may proceed for up to 10 days, with the last of the up to 10 days being allocated to Ms. Wynn. The deposition may be either shortened or lengthened based upon the following occurrences that may occur during the deposition: harassing techniques, translation issues, or evasive techniques.

Anything else?

MR. PEEK: Your Honor, I --

THE COURT: It's going to occur in Las Vegas --

MR. PEEK: -- the only question that I have is I think Mr. Urga was correct that Mr. Campbell will want to ask some followup questions. So that one day that's allocated, is that also --

THE COURT: Mr. Campbell's part of the nine.

MR. PEEK: Mr. Campbell then will have to be part of that nine and ask whatever questions he needs --

THE COURT: Are you going to wrestle with Pisanelli for it?

MR. PEEK: No. But I know that he's going to -- not going to agree that once Mr. Urga asks questions that he shouldn't be entitled to ask questions, as well.

THE COURT: So do you want to go after Mr. Urga?

MR. CAMPBELL: No, Your Honor, I don't want to go after Mr. Urga. I'm suggesting to the Court that I may in fact need additional time, because I don't know what's going to be coming out of Mr. Okada's mouth with respect to issues that aren't directly involved in the main case. This is really sort of the tail wagging the dog case, and we've said that from day one. Irrespective --

THE COURT: You mean Mr. Urga's case?

MR. CAMPBELL: I'm sorry, Your Honor?

THE COURT: Mr. Urga's case?

MR. CAMPBELL: Yes, Your Honor.

THE COURT: Yes, I understand. I keep telling him that, too.

MR. CAMPBELL: Yeah. And --

THE COURT: His determination in this case is based upon the issues that are dissolved in this case --

MR. CAMPBELL: That's exactly right. So I really don't have any idea of what's going to be happening with Mr. Okada and Ms. Wynn. I'm going to reserve my right to maybe expand the Court's ruling with respect to that. I'd like to think about it some more. Quite frankly, I'm going to be very honest with you, the reason why I didn't file anything separate is that Mr. Pisanelli convinced me that we should just agree upon 10 days. I think 10 days is completely unrealistic. And I've been down this road in multiple civil

and criminal cases. That's just my -- so I didn't say anything.

THE COURT: Well, ask the two of them how my two-day evidentiary hearing went in the Sands case.

MR. CAMPBELL: Right. So I didn't say anything. But, I mean, with everything that's involved in this, with the counsel that are involved in this, with the issues that are involved in this, the number of people involved in this I'm just going to suggest to the Court that we're reserving our right on that, particularly as it involves dealing with issues raised by Mrs. Wynn.

THE COURT: Okay. So my decision is the same. Ten days, one day for Mrs. Wynn. So if you and Mr. Campbell need to arm wrestle Mr. Pisanelli, you will, unless we have the kinds of issues that I discussed. If it appears that the witness is evasive, like other witnesses we have had in other cases, it means the deposition may take longer. Or if it appears that, you know, Mr. Bice is being harassing when he's in the room, then that's a different issue and I'm happy to take a phone call and talk to you guys about it. I included him because he wasn't here.

When is your vacation, Mr. Peek?

MR. PEEK: 20th of June, hopefully to the 8th of July.

THE COURT: Okay. So this is after that.

MR. PEEK: Given your -- given the fact that I may have to prepare for trial, it may shorten my vacation a little bit. That's not -- Your Honor, I'm not arguing with your decision on that. I'm just saying --

THE COURT: You guys can do what you want to do. Go ask them in Carson City.

What? Anything else? Anything else? All right.

MR. PISANELLI: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 11:41 A.M.

* * * * *

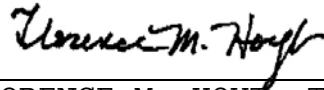
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

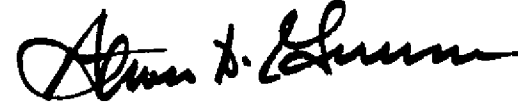
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

A handwritten signature in black ink, appearing to read "Florence M. Hoyt", written in a cursive style.

FLORENCE M. HOYT, TRANSCRIBER



CLERK OF THE COURT

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*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.

AND ALL RELATED CLAIMS.

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

**ORDER DENYING 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 Defendant Kazuo Okada's Motion for a Protective Order to (1) Locate His Deposition in
2 Tokyo and (2) Set it for Three Days (the "Motion for Protective Order"), filed on May 14, 2015,
3 came before this Court for hearing on June 4, 2015. James J. Pisanelli, Esq. and Debra L.
4 Spinelli, Esq. of Pisanelli Bice PLLC and Robert L. Shapiro, Esq. of Glaser Weil Fink Howard
5 Avchen & Shapiro, LLP appeared on behalf of Plaintiff/Counterdefendant Wynn Resorts,
6 Limited and Counterdefendants Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller,
7 John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kimmarie Sinatra, D. Boone Wayson, and
8 Allan Zeman (the "Wynn Parties"). Donald J. Campbell, Esq. and J. Colby Williams, Esq., of
9 Campbell & Williams, appeared on behalf of Counterdefendant/Cross-defendant Stephen A.
10 Wynn ("Mr. Wynn"). William R. Urga, Esq., of Jolley Urga Woodbury & Little and Jeffrey Y.
11 Wu of Munger, Tolles & Olson LLP appeared on behalf of
12 Counterdefendant/Counterclaimant/Cross-claimant Elaine P. Wynn ("Ms. Wynn"). And J.
13 Stephen Peek, Esq. and Robert J. Cassity, Esq., of Holland & Hart LLP, and David S. Krakoff,
14 Esq. and Adam Miller, Esq. of BuckleySandler LLP, appeared on behalf of Defendant Kazuo
15 Okada.

16 The Court having considered the Motion for Protective Order, the oppositions filed by the
17 Wynn Parties and Ms. Wynn, and the reply filed by Mr. Okada, as well as the arguments of
18 counsel presented at the hearing, and good cause appearing,

19 IT IS HEREBY ORDERED that the Motion for Protective Order is DENIED for the
20 reasons stated on the record at the hearing.

21 IT IS FURTHER ORDERED that Mr. Okada's deposition will proceed in Las Vegas for
22 up to ten (10) days, with the last of those days allocated to questioning by counsel for Ms. Wynn.
23 Counsel for the Wynn Parties and Mr. Wynn will divide the first nine (9) days of questioning
24 among themselves.

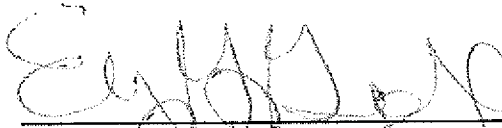
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1 IT IS FURTHER ORDERED that the deposition may be either shortened or lengthened by
2 the Court based upon any harassing techniques, translation issues or evasive techniques.

3 DATED this 23rd day of June 2015.

4 

5 THE HONORABLE ELIZABETH GONZALEZ
6 EIGHTH JUDICIAL DISTRICT COURT

7 Respectfully Submitted by:

8 

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25 *and Universal Entertainment Corp.*
26
27
28

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Las Vegas, Nevada 89134

AMENDMENT TO STOCKHOLDERS AGREEMENT

This AMENDMENT TO STOCKHOLDERS AGREEMENT (this "Amendment") is entered into as of November 8, 2006, between Stephen A. Wynn, an individual resident in Nevada ("Wynn"), and Aruze USA, Inc., a Nevada corporation ("Aruze"). This Amendment is intended to reflect the spirit of friendship and cooperation that exists between Wynn and Mr. Kazuo Okada, who is the primary representative of Aruze.

1. Definitions. Capitalized terms not otherwise defined herein shall have respective meanings ascribed to such terms in the Stockholders Agreement, dated April 11, 2002, among Wynn, Aruze and Baron Asset Fund (the "Stockholders Agreement").

2. Amendment to Stockholders Agreement. Section 2(c) is hereby added to the Stockholders Agreement, and shall read as follows:

"(e) *Mutual Restriction on Sale of Shares*. Neither Wynn nor Aruze (nor any of their respective Permitted Transferees) shall Transfer, or permit any of their respective Affiliates to Transfer, any Shares Beneficially Owned by such Person without the prior written consent of both Wynn and Aruze."

3. Authorization. This Amendment has been duly authorized and executed by each of Wynn and Aruze and is a valid and binding agreement of each such party, enforceable against each such party in accordance with its terms.

4. Entire Agreement. This Amendment and the Stockholders Agreement constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof. Except as expressly modified by this Amendment, the terms and obligations of the Stockholders Agreement remain unchanged and the Stockholders Agreement shall continue in full force and effect.

(Signature Page Follows)

SAW 000021

IN WITNESS WHEREOF, each the parties hereto has caused this Amendment to be duly executed on its behalf by its officer thereunto duly authorized, all as of the day and year first above written.

STEPHEN A. WYNN

By /s/ Stephen A. Wynn

ARUZE USA, INC.

By /s/ Kunihiro Yogo

Name: Kunihiro Yogo

Title: Chief Executive Officer

AMENDED AND RESTATED STOCKHOLDERS AGREEMENT

This Amended and Restated Stockholders Agreement (the "**Agreement**"), is made as of the 6th day of January, 2010, by and among Stephen A. Wynn ("**SAW**"), an individual, Elaine P. Wynn ("**EW**"), an individual, and Aruze USA, Inc., a Nevada corporation ("**Aruze**").

WITNESSETH:

WHEREAS, SAW, Baron Asset Fund ("Baron") and Aruze entered into that certain Stockholders Agreement as of April 2002, which Stockholders Agreement was amended by that certain Amendment to Stockholders Agreement dated as of November 8, 2006, Waiver and Consent dated as of July 31, 2009, and Waiver and Consent dated as of August 13, 2009 (the "Existing Agreement");

WHEREAS, SAW has agreed to transfer to EW, 11,076,709 (the "EW Shares") shares of common stock of Wynn Resorts, Limited ("Wynn") as permitted by the Existing Agreement;

WHEREAS, pursuant to the terms of the Existing Agreement, EW is to become a party to the Existing Agreement in connection with her ownership of the EW Shares; and

WHEREAS, the parties have agreed to further amend the terms of the Existing Agreement and have agreed to amend and restate the terms and provisions of the Existing Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth below, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

- (a) "Affiliate" of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.
- (b) "Aruze Parent" means Universal Entertainment Corporation (formerly known as Aruze Corp.), a Japanese public corporation, of which Kazuo Okada is Chairman of the Board and, together with his family members, a 67.5% shareholder.
- (c) "Bankruptcy" means, and a Stockholder shall be referred to as a "Bankrupt Stockholder" upon, (a) the entry of a decree or order for relief against such Stockholder, by a court of competent jurisdiction in any voluntary or involuntary case brought against the Stockholder under any bankruptcy, insolvency or similar law (collectively, "**Debtor Relief Laws**") generally affecting the right of creditors and relief of debtors now or hereafter in effect; (b) the appointment of a receiver, liquidator, assignee, custodian,

trustee, sequestrator or other similar agent under applicable Debtor Relief Laws for such Stockholder or for any substantial part of such Stockholder's assets or property; (c) the ordering of the winding up or liquidation of such Stockholder's affairs; (d) the filing of a voluntary petition in bankruptcy by such Stockholder or the filing of an involuntary petition against such Stockholder, which petition is not dismissed within a period of 180 days; (e) the consent by such Stockholder to the entry of an order for relief in a voluntary or involuntary case under any Debtor Relief Laws or to the appointment of, or the taking of any possession by, a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent under any applicable Debtor Relief Laws for such Stockholder or for any substantial part of such Stockholder's assets or property; or (f) the making by such Stockholder of any general assignment for the benefit of such Stockholder's creditors.

- (d) "Beneficially Own" or "Beneficial Ownership" with respect to any securities shall mean having "beneficial ownership" of such securities (as determined pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) including pursuant to any agreement, arrangement or understanding, whether or not in writing. Without duplicative counting of the same securities by the same holder, securities Beneficially Owned by a Person shall include securities Beneficially Owned by all other Persons who together with such Person would constitute a "group" within the meaning of Section 13(d)(3) of the Exchange Act.
- (e) "Designated Stockholders" means SAW, EW, Aruze, any additional Persons made a party to this Agreement and Permitted Transferees of any such Person and their Permitted Transferees.
- (f) "Fair Market Value" means, with respect to each Share of any class or series for any day, (i) the closing price on the principal national securities exchange on which such Shares are listed or admitted for trading, in either case as reported by Bloomberg Financial Markets ("**Bloomberg**") or The Wall Street Journal if Bloomberg is no longer reporting such information, or a similar service if Bloomberg and The Wall Street Journal are no longer reporting such information or (ii) if such Shares are not listed or admitted for trading on any national securities exchange, the last reported sale price or, in case no such sale takes place on such day, the average of the highest reported bid and the lowest reported asked quotation for such class or series of Shares, in either case as reported by Bloomberg or The Wall Street Journal if Bloomberg is no longer reporting such information, or a similar service if Bloomberg and The Wall Street Journal are no longer reporting such information.
- (g) "Gaming Authority" means those federal, state and local governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities in any jurisdiction and, within the State of Nevada, specifically, the Nevada

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. **Electronically Filed**
B Jun 29 2015 08:47 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

**VOL. II of III
(APP0226-0374)**

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

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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. II of III (APP0226-0374)** 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
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

WYNN RESORTS, LIMITED, a Nevada
corporation,

Plaintiff,

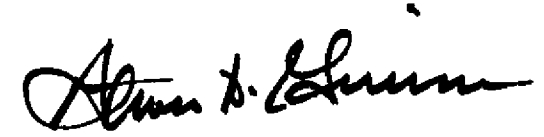
v.

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

Defendants.

AND ALL RELATED CLAIMS.

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CLERK OF THE COURT

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

**DEFENDANT KAZUO OKADA'S
REPLY IN SUPPORT OF HIS
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 Defendant Kazuo Okada respectfully submits this Reply in support of his Motion for a
2 protective order to (1) locate his deposition in Tokyo and (2) set it for three days (“Mot.” or “the
3 Motion”).

4 Defendant Okada’s Motion was based on the irrefutable fact that the deposition notice
5 served on him by Plaintiff Wynn Resorts, Limited (“WRL”) demanded a *10-day* deposition held
6 over *5,000 miles* from his corporate headquarters, and *7,000 miles* from his residence. That
7 deposition notice is unreasonable on its face, and a protective order is appropriate. As an
8 individual defendant – indeed, a foreign defendant – and representative of corporate defendants,
9 case law is crystal clear that Defendant Okada’s deposition should presumptively be held near
10 either his residence or the location of his businesses. Mot. at 12-14. And the 10 days of
11 deposition time demanded by WRL would be unprecedented – no court has ever ordered what
12 WRL asks the Court to do here. WRL offers nothing close to the sort of compelling justification
13 that would be required to impose such a burden on Mr. Okada. Mot. at 18-21.

14 Against these common sense arguments, WRL’s strategy is to minimize to the point of
15 nonexistence the presumption in the law against forcing defendants to travel thousands of miles
16 to a forum they have not chosen. To WRL, the “presumption” is merely something a court pays
17 lip service to in an opinion before automatically giving the plaintiff its desired result
18 (notwithstanding the dozens of cases honoring that presumption and ordering defendant
19 depositions at their place of business or residence). Every one of WRL’s arguments in favor of
20 forcing Defendant Okada to travel to Las Vegas would be equally applicable to all foreign
21 defendants; accepting WRL’s position would result in every foreign defendant being forced to
22 travel untold distance for their depositions. As to the extraordinary length, WRL simply asserts
23 that this is a complex case without explaining why so much time is necessary. It complains
24 about the difficulties it experienced when it deposed Defendant Okada in a prior lawsuit, but
25 those were largely problems of its own making.

26 Notably, Defendant Okada is not seeking a Protective Order to delay the deposition from
27 its currently noticed date. But WRL should not be permitted to strategically use the litigation
28 process they initiated – one Defendant Okada did not choose – to unreasonably disrupt his life

and businesses. The Court should grant the relief requested by Defendant Okada.

I. DEFENDANT OKADA’S DEPOSITION IS NOT PROPERLY LOCATED IN LAS VEGAS

WRL’s strategy for opposing Defendant Okada’s reasonable Motion is, first, to deny that courts looking at this issue actually meant what they held, that there is a presumption against forcing a defendant to travel to the forum of a lawsuit for a deposition, particularly a foreign defendant. Second, WRL claims that the only factors this Court should consider in its discretion are those inherently weighted against all foreign defendants. Neither argument should be credited, and the relief sought by Defendant Okada should be granted.

A. Courts Apply a Presumption Against Unduly Burdening Foreign Defendants for Good Reason

WRL admits that numerous courts have applied a presumption “that a non-resident defendant’s deposition will be held where he or she resides.” Opp. at 5. Instead of addressing that presumption head-on, though, WRL tries to pretend that those courts did not actually mean what they said, and have just “loosely referred to a ‘presumption.’” *Id.* (Meanwhile, WRL wholly ignores the cases cited in the Motion regarding the similar presumption that defendant corporate executives are deposed near the corporation’s place of business.¹ Mot. at 12-13.) Apparently WRL has not reviewed the Nevada Civil Practice Manual, which plainly states the presumption is far more than “loose[],” it is a general rule:

¹ WRL has not challenged the fact that Defendant Universal Entertainment Corporation (“UEC”) and Defendant, Aruze USA, Inc. (“Aruze USA”)’s counterclaims in this case were compulsory, therefore both corporate entities – and their representatives – must be analyzed solely as defendants. Similarly, WRL has not challenged that UEC’s principal place of business is in Japan. And while WRL has no evidence to support the idea that UEC “does business in Nevada” (Opp. at 3), that is ultimately irrelevant to the question of deposition location, which hinges instead on “principal place of business.” Mot. at 14.

WRL erroneously asserts that Aruze USA’s past principal place of business is Nevada, Opp. at 3, but does not contest that Aruze USA **currently** has no operations anywhere. (In reality, Aruze USA’s principal place of business is Japan, and the erroneous pleading stating otherwise will be amended. Mot. at 14 n.12). WRL itself states that Aruze USA is “control[led]” by Defendant Okada – who works out of Japan and Hong Kong. Opp. at 9.

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)) (emphasis added). When Defendant Okada was the plaintiff in the prior books and records action, WRL did not hesitate to argue to the Court that his plaintiff status was dispositive in determining the location of his deposition. Yet now that he is the defendant, WRL acts as if party status has no relevance to the issue. *But see id.*; *see also Farquhar v. Sheldon*, 116 F.R.D. 70, 72 (E.D. Mich. 1987) ("[T]he rule [is] that in federal litigation, in the absence of special circumstances, a party seeking discovery must go where the desired witnesses are normally located."); *Petersen v. Petersen*, 2014 WL 6774293, at *2 (E.D. La. Dec. 2, 2014) ("[D]efendants are generally not required to demonstrate any particular hardship in order to have a court order their deposition take place where they work or live.").

There are compelling reasons why a defendant's status as a defendant, and the location of his residence and place of business, are taken into account as part of a court's exercise of discretion. A defendant has not chosen the forum of the lawsuit; it is forced upon him. *Cf. Farquhar*, 116 F.R.D. at 72 ("[I]t is the plaintiffs who bring the lawsuit and who exercise the first choice as to the forum. The defendants, on the other hand, are not before the court by choice. Thus, courts have held that plaintiffs normally cannot complain if they are required to take discovery at great distances from the forum."). He must incur unwanted costs traveling to that jurisdiction. He is more likely to have lawyers outside the forum jurisdiction. When the defendant is a foreign defendant, travel to the forum jurisdiction requires spending days or weeks away from his home and business, surrounded by a language not his own. *See In re Outsidewall Tire Litig.*, 267 F.R.D. 466, 471 (E.D. Va. 2010) "[I]nsofar as a foreign defendant may be more inconvenienced by having to travel to the United States than a defendant who merely resides in another state or in another judicial district, the presumption that the deposition should occur at a foreign defendant's place of residence may be even stronger."); *Morin v. Nationwide Fed. Credit Union*, 229 F.R.D. 362, 363 (D. Conn. 2005) (requiring corporate defendant's executive to travel

1 to forum district where defendant averred that such travel “would result in disrupting [his]
2 department, causing significant burdens and hardship to not only [him]self, but [his] staff as
3 well”). In the context of an employee of a defendant corporation, the choice is doubly out of his
4 hands. Absent overriding factors to the contrary, it would not be just to force Defendant Okada to
5 be subjected to a 10-day deposition in Las Vegas. *See Greenspun v. Eighth Judicial Dist. Court*,
6 91 Nev. 211, 216-17, 533 P.2d 482, 485 (1975) (“Not only does equal justice require that the
7 defending party’s convenience be considered, but presumably the search for truth will be
8 advanced rather than injured, if a deposition environment compatible with the witness’s
9 concentration and comfort is structured.”).

10 **B. The Factors Cited By WRL Cannot Overcome the Presumption Against**
11 **Unduly Burdening Foreign Defendants**

12 WRL proffers a 7-factor test that, it believes, should lead the Court to order Defendant
13 Okada to be deposed in Las Vegas. Putting aside that factors (3) and (6) are identical, were WRL
14 correct in its interpretation of those factors, no depositions would ever be held abroad, let alone in
15 Japan. WRL indeed ignores a case cited in the Motion applying the very same factors offered by
16 WRL, in which the court ordered a deposition to occur in Japan instead of the United States.
17 *Motion Games, LLC v. Nintendo Co.*, 2014 WL 5306961 (E.D. Tex. Oct. 16, 2014). Yet as much
18 as WRL would like to deny it, courts do still apply the well-settled presumption – the “general
19 rule” in Nevada – that foreign defendants must be deposed at their residence or place of business.
20 And courts also routinely order depositions to be conducted in Japan. *See* Mot. at 17. The Court
21 should reject WRL’s biased interpretation and focus on whether there are particular factors in *this*
22 *case* relevant to *this defendant* that are somehow different from most foreign defendants.

23 **1. What Matters is the Burden on the Deponent – Not on Counsel**
24

25 WRL first argues that the deposition must take place in Las Vegas because all parties have
26 counsel in Las Vegas. Opp. at 6-7. That, of course, is the situation in almost all large litigation
27 matters – parties engage local counsel. Defendants, especially foreign defendants unfamiliar with
28 U.S. court procedures, cannot be punished for engaging counsel who are intimately conversant

1 with local rules and practices. There is no difference between Defendant Okada's situation and
2 those of all foreign defendants; WRL's argument is, again, an argument against any kind of
3 dispensation for any foreign defendant.

4 More fundamentally, though, as much as WRL tries to shift the inquiry, the question is the
5 burden to the *deponent/defendant*, not the convenience of counsel. *Morin*, 229 F.R.D. at 363
6 (“[T]he convenience of counsel is less compelling than any hardship to the witnesses.” (quoting
7 *Devlin v. Transp. Comms. Int’l Union*, 2000 WL 28173, at *3-4 (S.D.N.Y. Jan. 13, 2000))). It is
8 irrelevant whether counsel from Washington, D.C. can more easily reach Nevada than Japan.
9 Opp. at 7. Neither is the cost of counsel’s travel particularly relevant. In the context of a \$3
10 billion case, plane tickets to Japan are a relative drop in the bucket. WRL, a \$5 billion company,
11 chose to bring this lawsuit and had to assume that it would bear the cost of at least some travel to
12 Asia, given the large number of potential witnesses in Japan and the Philippines.² Mot. at 15.
13 The larger set of counsel costs are those WRL seeks to impose by extending what should be a
14 three-day deposition to ten days – adding over 50 billable hours for each and every lawyer
15 attending. It also is more than a little hypocritical for WRL to complain about the cost of plane
16 fare and hotels when it was more than willing to pay for multiple business class tickets and hotels
17 for Yoshitaka Fujihara and Toshihiko Kosaka to fly from Japan to the United States to provide
18 information against the Aruze Parties, and untold number of trips by its security director to Japan
19 for the same purpose. See WRL Opp. to UEC and Aruze USA’s Motion for Expedited Discovery
20 and Sanctions.

21 **2. There Will Be Numerous Japanese Witnesses, Including Employees of**
22 **UEC, Deposed in the Future**

23 Defendant Okada pointed out in his Motion that WRL will be deposing numerous

24
25 ² WRL, of course, makes frequent use of its own corporate jet, and indeed provided Steve
26 Wynn, himself a party in this litigation, with \$1.05 million in personal use of the WRL corporate
27 jet in 2014, with another \$250,000 contemplated for 2015. Madeline McMahon, *Aramark CEO*
28 *Tops U.S. Executives With \$800,000 Plane Tab in 2014*, *Bloomberg*, April 23, 2015,
<http://www.bloomberg.com/news/articles/2015-04-23/aramark-ceo-tops-u-s-executives-with-800-000-plane-tab-in-2014>.

1 Japanese witnesses, including other employees of UEC; therefore, at least some travel to Japan
2 must be assumed and can efficiently be combined with travel to depose Defendant Okada. Mot.
3 at 15. In response, WRL tries to hide behind the fact that Defendant Okada is the first noticed
4 deponent, and claims that it is therefore irrelevant whether other Japanese witnesses and UEC
5 employees may be deposed. Opp. at 7-8. Unless WRL intends to forswear deposing any other
6 Japanese witnesses or UEC employees in the future, though, this argument must be seen for what
7 it is – an attempt to string out Japanese depositions and argue in each situation that because only
8 one deposition is sought at that particular moment, that deposition should be held in Las Vegas.
9 Here again, WRL is the one arguing *against* efficiency.

10 WRL also retreats to semantics, arguing that because it has not served a Notice of Rule
11 30(b)(6) deposition, Defendant Okada’s status as a corporate representative is irrelevant to the
12 Court’s inquiry. Opp. at 7-8. As previously noted, though, WRL ignores the separate
13 presumption in favor of deposing corporate employees – not just 30(b)(6) deponents – at the
14 principal place of business of the company. *See, e.g., Morin*, 229 F.R.D. at 363 (ordering
15 deposition of corporate defendant’s executive to occur at defendant’s principal place of business
16 because plaintiffs “failed to describe any peculiar reasons” to deviate from the presumption). As
17 long as WRL intends to try to bind UEC and Aruze USA through the statements of Defendant
18 Okada at his deposition, Defendant Okada surely deserves the protection of the corporate
19 employee presumption favoring deposing him in Japan.

20 **3. The Court Will Be Able to Exercise Control Over a Deposition in Japan**

21

22 WRL repeatedly claims that because the parties have had discovery disputes in the past, it
23 is likely that there will be disputes during Defendant Okada’s deposition. Opp. at 8-9, 11-12.
24 WRL ignores that *every major case has discovery disputes*, not just this one, yet there is still a
25 presumption against holding depositions of foreign defendants in the forum jurisdiction. *See*
26 *United States v. One Gulfstream G-V Jet Aircraft Displaying Tail Number VPCES*, 304 F.R.D.
27 10, 15 (D.D.C. 2014) (“[T]hat discovery disputes may arise does not justify . . . requiring
28 depositions to be taken in the forum; such a conclusion would collapse the presumption in favor

1 of deposing corporate defendants in their place of business and amounts to overprotection of a
2 court's interest.” (quoting *Snow Becker Krauss P.C. v. Proyectos E Instalaciones De Desalacion*,
3 *S.A.*, 1992 WL 395598, at *3 (S.D.N.Y. Dec. 11, 1992)). WRL also ignores its own role in
4 creating past discovery disputes, essentially permitting it to manufacture the grounds to prevail on
5 its own argument here.

6 WRL then asserts that the time difference between Japan and Las Vegas will make it
7 impossible for the Court to resolve discovery disputes at the end of each day, and notes that at
8 5:00 p.m. in Tokyo, it would be 1:00 a.m. in Las Vegas. Opp. at 11-12 & n.9. Of course, that
9 same time difference means that at 8:00 a.m. in Japan, it would be 4:00 p.m. in Las Vegas; there
10 is no rule that Defendant Okada is aware of that requires consultations with the Court to be at the
11 end of each day, rather than before the beginning of the next day. Defendant Okada is not
12 arguing for a one-day deposition where consultation at the end of the day would be the only
13 opportunity for court intervention. Again, though, if time difference were enough to disqualify a
14 foreign deposition, no depositions of foreign defendants would ever be held in a different time
15 zone from the forum court. *Motion Games*, 2014 WL 5306961, at *3-4 (“[T]he time difference
16 [between Texas and Japan] is not sufficient to justify a departure from the general rule because
17 such a finding would allow plaintiffs to require nearly all foreign witnesses to be deposed in the
18 United States”).

19 **4. Defendant Okada and UEC’s Past Contacts with Las Vegas Are**
20 **Relevant to Personal Jurisdiction – Not the Location of his Deposition**

21 WRL next attempts to distract the Court by conflating personal jurisdiction with the
22 question of whether it is fair to force a foreign defendant to travel to the U.S. for deposition. Opp.
23 at 9-10. According to WRL, the test is whether a defendant “reached into” and has sufficient
24 contacts with a forum jurisdiction, and WRL cites Defendant Okada’s limited past corporate
25 activities in Nevada.³ *Id.* But minimum contacts is the test for personal jurisdiction. In every

26
27 ³ Indeed, the main case cited by WRL on this issue proves that for a truly foreign defendant,
28 “reaching into” and having minimum contacts with the forum is not the test. WRL cites *SEC v.*
Banc de Binary, 2014 WL 1030862 (D. Nev. Mar. 14, 2014), for, among other things, the

(continued ...)

case, personal jurisdiction must be established over the defendant. If having personal jurisdiction over the foreign defendant is enough to require locating his deposition near the Court, then *every* deposition would be held in the forum jurisdiction – again eviscerating the presumption in the opposite direction.⁴ Clearly, then, the dispositive factor cannot be whether a defendant had sufficient past contacts with the jurisdiction.

5. It Would Be Inequitable to Permit WRL as Plaintiff to Force All Japanese Defendants and Witnesses to Travel to Las Vegas

To WRL, the only equitable factor that matters in this case is its belief that it has been wronged. Opp. at 10-11 (citing WRL’s allegations that Defendant Okada breached Nevada corporate laws and jeopardized WRL’s Nevada gaming suitability). According to WRL, that apparently justifies permitting WRL to make all choices in this litigation without consideration of any burden on the defendants. But Defendant Okada, UEC, and Aruze USA *did not choose this forum* – WRL did. The defendants did not ask the Court to apply Nevada laws to validate their actions – WRL did. These are the very reasons for the presumption against forcing defendants and corporate defendant representatives to travel to the forum for a deposition – they did not choose to be in this position, the plaintiff did. *Cf. Tailift USA, Inc. v. Tailift Co., Ltd.*, 2004 WL 722244, at *2-3 (N.D. Tex. Mar. 26, 2014) (“[T]he burden to show sufficient circumstances to overcome the presumption that Defendant’s corporate representative should be deposed at its

(... continued)

proposition that Mr. Okada should be deposed in Las Vegas because he “reached into the forum to conduct business.” (Opp. at 9). Yet the defendant at issue in *Banc de Binary* was a U.S. citizen, and the court emphasized that he therefore was not “a typical foreign defendant.” *Banc de Binary*, 2014 WL 1030862, at *9. As a U.S. citizen, that defendant “retains certain responsibilities to the country while abroad.” *Id.*

⁴ WRL’s focus on minimum contacts, including Defendant Okada’s status as a shareholder of WRL and Nevada licensee, is puzzling, given that the fourth factor it is purporting to apply is “whether the persons sought to be deposed often engage in travel for business purposes.” Opp. at 6. Presumably, WRL realized that evidence of only one trip by Defendant Okada to the U.S. in the last two years would be insufficient to meet this factor, and instead changed the question. Opp. at 10 n.7 (citing an appearance before the Mississippi Gaming Commission, with no allegation of travel to Nevada). Nor does WRL disclose to the Court that the appearance was for less than two hours; such a short trip cannot fairly be the trigger for now requiring Defendant Okada to spend *three weeks* forcibly in the U.S.

1 principal place of business is on Plaintiff. . . . Courts have held that plaintiffs normally cannot
2 complain if they must take discovery at great distances from the forum.”).

3 And again, application of this factor in the manner urged by WRL would result in *every*
4 deposition of a foreign defendant being held in the forum jurisdiction – by definition, it will
5 always be the case that the court is interpreting and applying the laws of the forum jurisdiction.

6 **6. WRL is Seeking to Protract this Case and Impose Unwarranted Costs**
7 **on the Aruze Parties – Not Defendant Okada**

8 As a last resort, WRL ironically tries to claim the moral high ground, alleging that
9 Defendant Okada is “attempt[ing] to prevent the just, speedy, and inexpensive (or most efficient)
10 determination of this action.” Opp. at 2, 12-14. The Court should not be distracted by WRL’s
11 counter-intuitive rhetoric. WRL is the party seeking 10 days for a deposition when three are more
12 than adequate. WRL wants to force Defendant Okada to spend three weeks apart from his
13 companies, five thousand miles away. While WRL objects to the cost of flying lawyers to Japan,
14 it has no explanation for how requiring those same lawyers to sit in a 10-day deposition – seven
15 days longer than the reasonable deposition sought by Defendant Okada – will be more
16 “inexpensive.” Nor does WRL have an explanation for why 10 days of overlapping questioning
17 is more “efficient” than requiring the various plaintiffs’ attorneys to coordinate and avoid
18 repetition, a standard requirement in multi-party cases.

19 We are not aware of any case law stating that the process for taking a deposition in a
20 foreign country must be exactly the same as in the U.S. for a foreign deposition to be permissible.
21 Indeed, case law is to the contrary. *See, e.g., Motion Games*, 2014 WL 5306961, at *3
22 (“Although the costs of holding depositions in Japan are high and the rules are rigid, Motion
23 Games could have—and still can—mitigate these concerns with proper planning.”). Issues like
24 having only 6.5 hours of room availability each day in the Tokyo embassy⁵ (when Nevada rules
25

26 ⁵ In the Osaka embassy deposition hours are even longer, adding up to seven hours each
27 day. *See Deposition at U.S. Consulate General Osaka-Kobe – Specific Information*, Embassy of
28 the United States (Tokyo, Japan), <http://japan.usembassy.gov/e/acs/tacs-osakadepositions.html>.

1 permit only seven hours a day), and fitting only 15 people in the deposition room, are immaterial
2 differences that do not warrant the Court's serious consideration as a basis to order a deposition in
3 Nevada. Were WRL correct, no U.S. court would ever permit a deposition in Japan – yet courts
4 routinely order depositions to occur there. *See* Mot. at 17 (citing cases).

5 It is appropriate to order Defendant Okada's deposition to occur in Japan. Regardless, if
6 the Court determines that the procedures for taking depositions in Japan are too limiting,
7 Defendant Okada and counsel for the Aruze Parties would be willing to agree to a deposition held
8 in Hong Kong, the location of Defendant Okada's residence.

9
10 **II. DEFENDANT OKADA'S DEPOSITION SHOULD LAST NO MORE THAN
THREE DAYS**

11 WRL and Elaine Wynn (together, the "Wynn Parties") both oppose Mr. Okada's request
12 to limit his deposition to three days, but neither offers a persuasive justification for their position,
13 and neither comes anywhere close to justifying the unprecedented demand for *10 days* of
14 deposition time. They raise the exact same issues that Defendant Okada already addressed in his
15 Motion, but argue without explanation or authority that those issues warrant extending this
16 deposition beyond what any court in the United States has ever ordered. The Wynn Parties have
17 failed to carry their burden of establishing that Defendant Okada should be deposed for 10 days.

18 **A. The Wynn Parties Cite No Authority Supporting a 10 Day Deposition**

19
20 The legal framework governing this issue is clear – the Wynn Parties bear the burden of
21 demonstrating "good cause" for the additional deposition time they seek. *See* Mot. at 18; Opp. at
22 14. Defendant Okada cited multiple cases emphasizing that the one day limit "was carefully
23 chosen and extensions of that limit should be the exception, not the rule." Mot. at 19. The Wynn
24 Parties say nothing about those cases.

25 The Wynn Parties likewise have no response to the assertion in the Motion that there are
26 no reported cases ordering a deposition for the length of time sought by WRL in this case. *See id.*
27 In fact, they cite only one case that required a deposition to last more than three days – and that
28 case is readily distinguishable because it involved the production of key documents on the eve of

1 the scheduled deposition. *Boston Scientific Corp. v. Cordis Corp.*, 2004 WL 1945643, at *1-2
2 (N.D. Cal. Sept. 1, 2004) (ordering five and a half days of deposition time spread over three
3 separate sessions). In other words, an order requiring Mr. Okada to testify for 10 days would
4 literally be unprecedented. The Court should expect that the Wynn Parties would offer a truly
5 compelling justification when asking for something that no other court has ever done, but they do
6 not come close.

7 **B. The Number of Parties and Subject Matter of the Deposition Do Not Support**
8 **a 10 Day Deposition**

9 WRL does not even attempt to justify its demand for 10 days of deposition time based on
10 the subject matter of the anticipated questioning. It asserts that its demand for 10 days was “a
11 thoughtful decision based upon the multiple parties who intend to examine Okada [and] the scope
12 of the deposition given the claims and many allegations in the counterclaim.” Opp. at 14.⁶ That
13 is all it can muster – no specifics about the different subject matters that must be covered, and no
14 explanation as to why the presence of multiple parties will make a difference.

15 This is a complex case, but there are many complex cases. Despite that, both the United
16 States Supreme Court and the Nevada Supreme Court have determined that the presumptive limit
17 for depositions should be one day. As one court stated: “In every deposition, choices have to be
18 made about the subject matter to be covered. The 7-hour rule necessitates, especially in complex
19 cases, that almost all depositions will be under-inclusive. The examiner, therefore, must be
20 selective and carefully decide how to apportion her time.” *In re Sulfuric Acid Antitrust Litig.*, 230
21 F.R.D. 527, 532 (N.D. Ill. 2005) (cited in Mot. at 19). WRL has no argument why this case is so
22 extraordinary that the normal limit should be multiplied by a factor of 10.

23 As to the number of parties, WRL avoids the relevant issue. It assures the Court that “it is
24 neither the desire nor the intent of counsel to repeat each other’s questions and examinations.
25 Each party has a different interest in examining Okada, and each party is entitled to examine
26

27 ⁶ WRL also refers here to the interpretation issue, which is addressed below.
28

1 Okada related to those interests, claims and defenses.” Opp. at 16. That is fine as a matter of
2 general principle, but the reality in this case is that the only party who has any substantial ground
3 to cover with Defendant Okada is WRL itself. Defendant Okada argued in the Motion that “all of
4 the counter-defendants have interests that are virtually indistinguishable from those of WRL.”
5 Mot. at 19. WRL does not respond in any way to this argument. Once again, it offers no
6 specifics in support of its extraordinary demand for 10 days.

7 As noted in Defendant Okada’s Motion, the one area where there is not total overlap
8 among the counter-defendants involves the Stockholders Agreement, which is the subject of Ms.
9 Wynn’s cross-claim against Mr. Wynn. Defendant Okada acknowledged that those parties should
10 be afforded some time to question him about that agreement. Ms. Wynn seizes on this, arguing
11 that her questioning on the Stockholders Agreement will require “at least one full day.” Elaine
12 Wynn Opp. at 1. With respect, Ms. Wynn is vastly overstating the time required to cover this
13 relatively simple agreement. The three iterations of the agreement, from 2002, 2006 and 2010,
14 are 30 pages combined. *See* Exhibit G.⁷ Moreover, Ms. Wynn’s claim that the Agreement is not
15 enforceable is premised on only a few specific provisions, namely the stock transfer restriction
16 and the board voting requirement. *See* Elaine Wynn Opp. at 3. Given counsel’s obligation to
17 prioritize and focus the questioning, the amount of time that Ms. Wynn will need to examine
18 Defendant Okada on these issues should not even approach one full day.

19 In any event, even if Ms. Wynn is correct that questioning about the Stockholders
20 Agreement will require a full day, that would only add a few hours to the time anticipated by
21 Defendant Okada. *See* Mot. at 19 n.17 (noting that Defendant Okada would be questioned about
22 the Stockholders Agreement). Ms. Wynn does not dispute that, aside from the Stockholders
23 Agreement, her interests are aligned with WRL and all the other counter-defendants represented
24 by WRL’s counsel. *See* Elaine Wynn Opp. at 4 n.2. And there is nothing in Ms. Wynn’s brief
25

26
27 ⁷ The Exhibits to this Reply are authenticated in the Declaration of Robert J. Cassity (“Cassity
28 Decl.”), attached as Exhibit F.

1 that even attempts to justify the demand for 10 days of deposition time.⁸

2 **C. The Interpretation Issues Do Not Support a 10 Day Deposition**

3 WRL's primary argument for extending the deposition is the need for interpretation. *See*
4 *Opp.* at 14-15. Defendant Okada acknowledged in the Motion that interpretation does warrant
5 some additional time – but nowhere near the amount of time sought by WRL. Nothing in WRL's
6 Opposition changes that.

7 While there are numerous reported cases dealing with depositions requiring interpretation,
8 WRL does not cite a single case that required a witness to sit for anything close to 10 days.
9 Defendant Okada cited several cases showing that "courts generally increase the time for
10 depositions requiring interpretation by a factor of two or less." *Mot.* at 19. WRL responds that
11 those cases are "factually distinct" or "procedurally distinct" because they were less complex.
12 *Opp.* at 15 n.12. But the subject matter is irrelevant to the court's decision to extend depositions
13 to account for interpretation.

14 WRL relies most heavily on the difficulties that it experienced when deposing Mr. Okada
15 in the Books and Records action in 2012. *See Opp.* at 15. But that reliance is misplaced because
16 there is no reason to believe that those difficulties will recur in this litigation. For instance, the
17 individual hired to serve as the official interpreter at the previous deposition was incompetent and
18 discharged by agreement of the parties at the first break. *See Tr. of Depo. of Kazuo Okada* (Sept.
19 18, 2012), Exhibit H, at 17-18.⁹ Thereafter, the parties had to proceed with a back-up interpreter,
20 who also had difficulties. *See id.* at 64:1-18 (misinterpreting "can" as "can't"). In this litigation,
21 the parties are currently working in good faith on a Translation and Interpretation Protocol (the
22 "TI Protocol"), which will require them to jointly select a certified translator for use throughout
23

24 ⁸ The Wynn Parties even go so far as to state that ten days may not be enough, and that they
25 reserve the right to continue the deposition as necessary. *See Opp.* at 14; Elaine Wynn *Opp.* at 2.
26 With this assertion, the Wynn Parties clearly misstate the law. They do not control unilaterally
the length of depositions – that is the Court's role.

27 ⁹ Many of the specific passages cited by WRL (*see Opp.* at 15) occurred before the first
28 interpreter was discharged.

1 the litigation. The Court can safely assume that this jointly-selected interpreter will be better than
2 any of the interpreters at the Books and Records deposition.

3 Similarly, the Books and Records deposition was slowed because, after the first interpreter
4 was dismissed, the parties agreed to put all of the “check interpreters” on the record. *See id.* at 20.
5 This led to numerous disputes over particular interpretation issues, as well as procedural dust-ups
6 about who could speak when. *See id.* at 30:9-31:16; 37:22-38:22; 72:11-73:23; 84:23-86:21;
7 93:11-94:20; 120:7-122:2; 132:3-133:22 (interpretation disputes); 39:12-40:7; 42:2-45:16; 87:19-
8 89:12 (procedural disputes). Once again, the TI Protocol should prevent the same kind of
9 disruptions in this case because, among other things, it bars check interpreters from speaking on
10 the record or consulting with the official interpreters.

11 Lastly, counsel for WRL spent a great deal of time at the Books and Records deposition
12 arguing with opposing counsel regarding various matters, including the propriety of the objections
13 (*see id.* at 27:1-29:20; 35:8-37:3) and whether particular questions were within the permissible
14 scope of the deposition and other matters (*see id.* at 116:20-119:9; 122:17-128:25; 139:20-
15 140:15). Counsel also chose to waste time on unnecessary matters, such as spending two full
16 transcript pages asking Mr. Okada about the meaning of use of the term “witch hunt” in a
17 document that Mr. Okada had not written. *See id.* at 112:14-114:5. Moreover, some of counsel’s
18 questions were cumbersome and difficult to understand. *See id.* at 66:7-69:7; 83:22-84:10;
19 104:17-106:16.

20 In sum, the vast majority of the unnecessary delay at the prior deposition was caused by (i)
21 problems that will be resolved through the TI Protocol and (ii) counsel’s tactical choices, which
22 we expect will be different the next time around. Not only the witness must make
23 accommodations for a deposition requiring interpretation, the examiner must do so as well by
24 asking short, focused, easily-translatable questions to minimize the likelihood of interpretation
25 disputes. At any rate, it would be unjust to penalize Mr. Okada by subjecting him to a prolonged
26 deposition because of problems at the prior deposition that were outside of his control.

27 **D. WRL Fails to Acknowledge the Burden of a 10 Day Deposition on Mr. Okada**

28 Finally, WRL fails to acknowledge that a 10 day deposition will impose an enormous

1 burden on Mr. Okada personally and professionally. *See* Opp. at 16. The presumptive one day
2 limit protects witnesses – even parties – from the burdens of excessive depositions. *Harris v.*
3 *Miracle Appearance Reconditioning Specialists Int’l, Inc.*, 2007 WL 2749434, at *1 (S.D. Ind.
4 Sept. 20, 2007) (“The Court is hard-pressed to imagine any circumstances that would justify a
5 pre-deposition order permitting a three-day deposition of a witness or even a party, as Plaintiffs
6 propose for Defendants Hall and Jones, much less the five days requested for Defendant Luigs”
7 even though the case involved multiple parties and allegations “spanning many years and
8 locations.”). Witnesses often find one day depositions grueling; a 10 day deposition, particularly
9 for a man in his 70s, would be far beyond anything reasonable. The burdens would only increase
10 if Defendant Okada is forced to travel to Las Vegas, as arduous international travel and jet lag are
11 added to the mix. This will be both personally exhausting and highly disruptive to Defendant
12 Okada’s business. WRL also fails to respond at all to the cases cited by Defendant Okada
13 showing that courts often limit the depositions of high-ranking executives to prevent harassment.
14 *See* Mot. at 20-21. Instead, it cites a single case holding that an officer of the *plaintiff* corporation
15 could be required to conduct his *one day* deposition in the forum state of Michigan rather than his
16 home state of California; the court held that it would not unduly disrupt his business to do so. *See*
17 *El Camino Res. Ltd. v. Huntington Nat. Bank*, 2008 WL 2557596, *4 (W.D. Mich. June 20,
18 2008). That is a far cry from requiring a *defendant* to travel half way around the world for a *10*
19 *day* deposition.
20
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27 ///
28 ///

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17

CERTIFICATE OF SERVICE

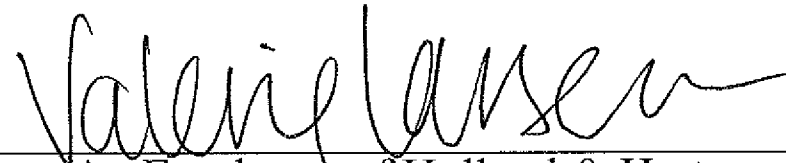
I hereby certify that on the 2d day of June 2015, a true and correct copy of the foregoing
**DEFENDANT KAZUO OKADA'S REPLY IN SUPPORT OF HIS MOTION FOR A
PROTECTIVE ORDER TO (1) LOCATE HIS DEPOSITION IN TOKYO AND (2) SET IT
FOR THREE DAYS** was served by the following method(s):

☒ 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
accordance with the E-service list to the following email addresses:

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

**E-Service Master List
For Case**

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EXHIBIT F

EXHIBIT F

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and Defendant/Counterclaimant 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

**DECLARATION OF ROBERT J.
CASSITY IN SUPPORT OF
DEFENDANT KAZUO OKADA'S
REPLY IN SUPPORT OF HIS
MOTION FOR A PROTECTIVE
ORDER**

Electronic Filing Case

Hearing Date: June 4, 2015
Hearing Time: 8:30 a.m.

I, Robert J. Cassity, Esq., declare as follows:

1. I am over 18 years of age and am competent to testify as to the matters set forth in this Declaration based upon my own personal knowledge.

2. I am an attorney at Holland & Hart LLP, counsel for the Aruze Parties (Kazuo Okada, Universal Entertainment Corporation and Aruze USA Inc.) in this action.

3. I make this Declaration in support of Defendant Kazuo Okada's Reply in Support of His Motion to Compel ("Reply").

4. Exhibit G to the Reply consists of the following three documents:

- a. A copy of the 2002 version of the Stockholders Agreement, attached as Exhibit 10.10 to WRL's June 17, 2002 S-1 filing, obtained from WRL's investor relations website (available at <http://phx.corporate-ir.net/phoenix.zhtml?c=132059&p=irol-secText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9maWxpbmcueG1sP2lwYWdlPTE3NzcuOTYmRFNFUT0xMyZTRVE9JINRREVTQz1TRUNUSU9OX0VYSElCSVQmZXhwPSZzdWJzaWQ9NTc%3d>) (last accessed June 2, 2015).
- b. A copy of the 2006 amendment to the Stockholders Agreement, which was produced by Counterdefendant Stephen A. Wynn and Bates labeled SAW000021-SAW000022.
- c. A copy of the 2010 Amended Stockholders Agreement, attached as Exhibit 10.1 to WRL's Jan. 6, 2010 8-K on WRL's investor relations website (available at <http://phx.corporate-ir.net/phoenix.zhtml?c=132059&p=irol-secText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9maWxpbmcueG1sP2lwYWdlPTY2ODQ5NzMmRFNFUT0yJINFUT0mU1FERVNDPVNFQ1RJT05fRVhISUJJVCZleHA9JnN1YnNpZD01Nw%3d%3d>) (last accessed June 2, 2015).

///

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1 5. Exhibit H to the Reply consists of excerpts from the transcript of the deposition of
2 Kazuo Okada taken on September 18, 2012 in *Okada v. Wynn Resorts, Limited*, Case No. A-10-
3 654522-B.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed this 2nd day of June 2015, in Clark County, Nevada.

6 

7 _____
Robert J. Cassity, Esq.

EXHIBIT G

EXHIBIT G

STOCKHOLDERS AGREEMENT

This STOCKHOLDERS AGREEMENT (the "**Agreement**"), dated as of this 11th day of April, 2002, is entered into by and among Stephen A. Wynn ("**Wynn**"), an individual, Baron Asset Fund ("**Baron**"), a Massachusetts business trust and Aruze USA, Inc., a Nevada corporation ("**Aruze**").

WITNESSETH:

WHEREAS, the Stockholders (as defined in Section 1) are members of Valvino Lamore, LLC, a Nevada limited liability company (the "**LLC**");

WHEREAS, the Stockholders have agreed to alter the organizational form of the LLC or form a successor entity to the LLC, and have agreed to do so by forming, either through the contribution of their interests in the LLC or through a different technique, a corporation ("**NewCo**"); and

WHEREAS, as a condition to their willingness to form NewCo, either through the contribution of their interests in the LLC or through a different technique, the Stockholders are willing to agree to the matters set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth below, the parties hereto agree as follows:

1. *Definitions.* For purposes of this Agreement:

(a) "Affiliate" of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

(b) "Aruze Parent" means Aruze Corp., a Japanese public corporation, of which Kazuo Okada is President and, together with his family members, an eighty percent shareholder.

(c) "Aruze/Wynn Group" means Aruze, Wynn, and any Stockholder who is a direct or indirect transferee of either Aruze or Wynn.

(d) "BAMCO" means BAMCO, Inc., a New York corporation. Without limiting the generality of the definition of Specified Affiliate, BAMCO shall be treated as a Specified Affiliate of Baron.

(e) "Bankruptcy" means, and a Stockholder shall be referred to as a "Bankrupt Stockholder" upon, (a) the entry of a decree or order for relief against such Stockholder, by a court of competent jurisdiction in any voluntary or involuntary case brought against the Stockholder under any bankruptcy, insolvency or similar law (collectively, "**Debtor Relief Laws**") generally affecting the rights of creditors and relief of debtors now or hereafter in effect; (b) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent under applicable Debtor Relief Laws for such Stockholder or for any substantial part of such Stockholder's assets or property; (c) the ordering of the winding up or liquidation of such Stockholder's affairs; (d) the filing of a voluntary petition in bankruptcy by such Stockholder or the filing of an involuntary petition against such Stockholder, which petition is not dismissed within a period of 180 days; (e) the consent by such Stockholder to the entry of an order for relief in a voluntary or involuntary case under any Debtor Relief Laws or to the appointment of, or the taking of any possession by, a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent under any applicable Debtor Relief Laws for such Stockholder or for any substantial part of such Stockholder's assets or property; or (f) the making by such Stockholder of any general assignment for the benefit of such Stockholder's creditors.

(f) "Beneficially Own" or "Beneficial Ownership" with respect to any securities shall mean having "beneficial ownership" of such securities (as determined pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) including pursuant to any agreement, arrangement or understanding, whether or not in writing. Without duplicative counting of the same securities by the same holder, securities Beneficially Owned by a Person shall include securities Beneficially Owned by all other Persons who together with such Person would constitute a "group" within the meaning of Section 13(d)(3) of the Exchange Act.

(g) "Designated Stockholders" means Wynn and Aruze and Permitted Transferees of any such Person and their Permitted Transferees.

(h) "Fair Market Value" means, with respect to each Share of any class or series for any day, (i) the last reported sale price on such day or, in case no such sale takes place on such day, the average of the closing bid and asked prices on such day, on

the principal national securities exchange on which such Shares are listed or admitted for trading, in either case as reported by Bloomberg Financial Markets ("**Bloomberg**") or The Wall Street Journal if Bloomberg is no longer reporting such information, or a similar service if Bloomberg and The Wall Street Journal are no longer reporting such information or (ii) if such Shares are not listed or admitted for trading on any national securities exchange, the last reported sale price or, in case no such sale takes place on such day, the average of the highest reported bid and the lowest reported asked quotation for such class or series of Shares, in either case as reported by Bloomberg or The Wall Street Journal if Bloomberg is no longer reporting such information, or a similar service if Bloomberg and The Wall Street Journal are no longer reporting such information.

(i) "Gaming Authority" means those national, state, local, and other governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities in any jurisdiction and, within the State of Nevada, specifically, the Nevada Gaming Commission, the Nevada State Gaming Control Board, and the Clark County Liquor and Gaming Licensing Board.

(j) "Gaming Laws" means those laws pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over gaming within any jurisdiction and, within the State of Nevada, specifically, the Nevada Gaming Control Act, as codified in NRS Chapter 463, as amended from time to time, and the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, and the Clark County Code, as amended from time to time.

(k) "Gaming Licenses" means all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises and entitlements issued by any Gaming Authority necessary for or relating to the conduct of activities under the Gaming Laws.

(l) "Gaming Problem" means any circumstances that are deemed likely, in the sole and absolute discretion of Wynn, based on verifiable information or information received from any Gaming Authority or otherwise, to preclude or materially delay, impede or impair the ability of NewCo, any subsidiary of NewCo, Wynn, or any business entity with respect to which Wynn holds a Gaming License, to obtain or retain any Gaming Licenses, or to result in any disciplinary action, including without limitation the imposition of materially burdensome terms and conditions on any such Gaming License.

(m) "Independent Qualified Appraiser" means an independent outside qualified appraiser appointed by Wynn to determine the fair market value of certain Shares or NewCo

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itself, in all cases considering NewCo as a going concern. Any determination by an Independent Qualified Appraiser as to fair market value shall be binding upon all parties.

(n) "Non-Compete Termination Date" means the date upon which both Baron and Wynn have sold substantially all of their respective Shares.

(o) "NRS" means the Nevada Revised Statutes, as amended from time to time.

(p) "Operating Agreement" means that certain Amended and Restated Operating Agreement of the LLC, as it may be amended and/or restated from time to time.

(q) "Percentage Interest" means, with respect to a specified Stockholder, the percentage computed by dividing the number of Shares held by such Stockholder by the Total Shares.

(r) "Permitted Transferee" means:

(i) in the case of a Transfer being made by a Stockholder who is part of the Aruze/Wynn Group, (a) Kazuo Okada; (b) an immediate family member of Kazuo Okada or Wynn; (c) a revocable, inter vivos trust of which Kazuo Okada or Wynn or a family member of Kazuo Okada or Wynn is trustee or Kazuo Okada or Wynn or a family member of Kazuo Okada or Wynn is a beneficiary; (d) another Stockholder or an entity wholly owned by such Stockholder; or (f) if the Transfer is being made by Aruze, then in addition to the Permitted Transferees described in clauses (a) through (e), any wholly owned subsidiary of Aruze Parent where the Transfer has the effect of substituting a foreign corporation for Aruze with respect to all of Aruze's Shares; or

(ii) in the case of a Transfer being made by a Stockholder who is not part of the Aruze/Wynn Group, (a) the Stockholders who are part of the Aruze/Wynn Group, provided that such Transfer is made to all Stockholders of the Aruze/Wynn Group on a pro rata basis in accordance with the respective Percentage Interest held by each Stockholder of the Aruze/Wynn Group, or (b) if the Transfer is being made by Baron, then in addition to the Permitted Transferees described in clause (a), any publicly traded, registered mutual fund managed by BAMCO.

(s) "Person" means an individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization or other entity.

(t) "Prohibited Transferee" means (a) any owner, operator, or manager of, or Person primarily engaged in the business

of owning or operating, a hotel, casino, or an internet or interactive gaming site, (b) any "non-profit" or "not-for-profit" corporation, association, trust, fund, foundation or other similar entity organized and operated exclusively for charitable purposes that qualifies as a tax-exempt entity under federal and state tax law or corresponding foreign law, (c) any federal, state, local or foreign governmental agency, instrumentality or similar entity, (d) any Person that has been convicted of a felony, (e) any Person regularly engaged in or affiliated with the production or distribution of alcoholic beverages, or (f) any Unsuitable Person.

(u) "Second Amendment" means that certain Second Amendment to Amended and Restated Operating Agreement of the LLC, dated February 18, 2002, by and between Wynn and Aruze.

(v) "Shares" means the shares of capital stock of NewCo.

(w) "Specified Affiliate" means with respect to a specified Person, any other Person who or which is (a) directly or indirectly controlling, controlled by or under common control with the specified Person, or (b) any member, stockholder, director, officer, manager, or comparable principal of, or relative or spouse of, the specified Person. For purposes of this

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definition, "control", "controlling", "controlled" mean the right to exercise, directly or indirectly, more than fifty percent of the voting power of the stockholders, members or owners and, with respect to any individual, partnership, trust or other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

(x) "Stockholders" means Wynn, Baron, Aruze, any Permitted Transferee of any Shares and any additional Persons made a party to this Agreement.

(y) "Stockholder's Shares" means all Shares held of record or Beneficially Owned by such Stockholder, whenever acquired.

(z) "Termination Date" means the earlier of the date of Wynn's death or the date upon which Wynn sells substantially all of his Shares.

(aa) "Total Shares" means the total number of Shares held by the Stockholders, whenever acquired.

(bb) "Transfer" means any transfer, sale, conveyance, distribution, hypothecation, pledge, encumbrance, assignment, exchange or other disposition, either voluntary or involuntary, or by reason of death, or change in ownership by reason of merger or other transformation in the identity or form of business organization of the owner, regardless of whether such change or transformation is characterized by state law as not changing the identity of the owner.

(cc) "Unsuitable Person" means any Person (i) who is denied a Gaming License by any Gaming Authority, (ii) who is disqualified from eligibility for a Gaming License, (iii) who is determined to be unsuitable to own or control Shares or to be connected or affiliated with a Person engaged in gaming activities in any jurisdiction by a Gaming Authority, (iv) who has withdrawn an application to be found suitable by any Gaming Authority, or (v) whose continued involvement in the business of NewCo as a stockholder, manager, officer, employee or otherwise has caused or may cause a Gaming Problem.

(dd) "Voting Stock" means capital stock of NewCo of any class or classes, the holders of which are entitled to vote on any matter required or permitted to be voted upon (either in writing or by resolution) by the stockholders of NewCo.

(ee) "Worldwide Wynn" means Worldwide Wynn, LLC, a Nevada limited liability company, which will be a wholly owned direct or indirect subsidiary of NewCo.

2. *Covenants of the Designated Stockholders.* Each Designated Stockholder hereby covenants to each other Designated Stockholder as follows:

(a) *Voting Agreement.* On all matters relating to the election of directors of NewCo, the Designated Stockholders agree to vote all Shares held by them (or the holders thereof shall consent pursuant to an action by written consent of the holders of capital stock of NewCo), respectively, so as to elect to NewCo's Board of Directors the nominees designated as follows:

(i) The number of nominees that equals the number of directors that NewCo determines shall constitute its Board of Directors, which number shall include that number of independent directors that NewCo determines is required by applicable law and regulations, the Securities and Exchange Commission, the securities exchanges on which Shares are listed or admitted for trading and appropriate practices for public corporations;

(ii) The nominees designated by Wynn (the number of such nominees shall be a majority of all nominees to NewCo's Board of Directors and shall include up to two independent directors); and

(iii) The nominees designated by Aruze (the number of such nominees shall be that number of remaining seats available on NewCo's Board of Directors after Wynn designates his nominees pursuant to Section 2(a)(ii) and shall include that number of remaining independent directors that are required to be elected after Wynn designates his nominees pursuant to Section 2(a)(ii)).

For example, under this Section 2(a), if NewCo determines that it shall have a Board of Directors comprised of nine members, three of which are independent, (i) Wynn shall designate five nominees, two of which are independent and (ii) Aruze shall designate four nominees, one of which is independent.

(b) *Bylaws.* The Designated Stockholders agree to cause the Bylaws of NewCo to provide that any actions involving (i) any voluntary dissolution or liquidation of NewCo, (ii) the sale of all or substantially all of the assets of NewCo, (ii) the merger or consolidation of NewCo and (iii) the commencement of a voluntary petition of bankruptcy by NewCo may be taken by NewCo only upon the approval of a super-majority of the directors of NewCo.

(c) *Power of Attorney.* Aruze hereby constitutes and appoints Wynn as its true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for it and in its name, place and stead, in any and all capacities, to execute and deliver any and all documents in connection with or related to the formation of NewCo, including, but not limited to, any documents necessary to transfer the LLC interests to NewCo, and to take any and all other actions as Wynn, as said attorney-in-fact and agent, may deem necessary or appropriate in connection therewith, granting unto Wynn, as said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary fully to all intents and purposes as Aruze might or could do in person, thereby ratifying and confirming all that Wynn, acting as said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof. The powers granted herein shall commence on the date hereof and shall terminate on the Termination Date.

(d) *Restriction on Proxies and Non-Interference.* From and after the date of this Agreement and ending as of the Termination Date, the Designated Stockholder shall not, and shall cause each of its Affiliates who Beneficially Own any of the Designated Stockholder's Shares not to, directly or indirectly without the consent of the other Designated Stockholder: (A) grant any proxies or powers of attorney, deposit such Designated Stockholder's Shares into a voting trust or enter into a voting agreement with respect to any of such Designated Stockholder's Shares, (B) enter into any agreement or arrangement providing for any of the actions described in clause (A) above, or (C) take any action that could reasonably be expected to have the effect of preventing or disabling such Designated Stockholder from performing such Designated Stockholder's obligations under this Agreement.

3. *Representations and Warranties and Covenants of the Stockholders.* Each Stockholder hereby represents and warrants and covenants to each other Stockholder as follows:

(a) *Ownership.* The Stockholder shall be the record and Beneficial Owner of all of the Shares issued or distributed to such Stockholder either in exchange for the contribution of the Stockholder's interests in the LLC or through a different technique. The Stockholder shall have the sole power of disposition, sole power of conversion, sole power to demand appraisal rights and sole power to agree to all of the matters set forth in this Agreement, in each case with respect to all of the Shares issued or distributed to such Stockholder either in exchange for the contribution of the Stockholder's interests in the LLC or through a different technique to form NewCo, with no material limitations, qualifications or restrictions on such rights, subject to applicable securities laws and the terms of this Agreement.

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(b) *No Encumbrances.* Except as required by Sections 2(a) and 2(b), and except for those certain options granted by Wynn to Marc D. Schorr and Kenneth R. Wynn, all of the Stockholder's Shares will be held by such Stockholder, or by a nominee or custodian for the benefit of such Stockholder, free and clear of all liens, claims, security interests, proxies, voting trusts or agreements, understandings or arrangements or any other encumbrances whatsoever, except for any liens, claims, understandings or arrangements that do not limit or impair the Stockholder's ability to perform its obligations under this Agreement.

(c) *Execution, Delivery and Performance by the Stockholder.* The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Board of Directors of the Stockholder, as applicable, and the Stockholder has taken all other actions required by law, its Articles of Incorporation and its Bylaws or other organizational documents, as applicable, to consummate the transactions contemplated by this Agreement. This Agreement constitutes the valid and binding obligations of the Stockholder and is enforceable in accordance with its terms, except as enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally.

(d) *No Conflicts.* No filing with, and no permit, authorization, consent or approval of, any state or federal public body or authority is necessary for the execution of this Agreement by the Stockholder and the consummation by the Stockholder of the transactions contemplated hereby, except where the failure to obtain such consent, permit, authorization, approval or filing would not interfere with the Stockholder's ability to perform its obligations hereunder, and none of the execution and delivery of

this Agreement by the Stockholder, the consummation by the Stockholder of the transactions contemplated hereby or compliance by the Stockholder with any of the provisions hereof shall violate any order, writ, injunction, decree, judgment, statute, rule or regulation applicable to the Stockholder or any of its properties or assets, in each such case except to the extent that any conflict, breach, default or violation would not interfere with the ability of the Stockholder to perform the obligations hereunder.

(e) *Preemptive Rights.* If a Stockholder purchases Shares from NewCo (the "**Purchasing Stockholder**") in a private placement (the "**Purchase**") and another Stockholder who is not a Permitted Transferee of the Purchasing Stockholder is not extended the same offer by NewCo on the same terms and conditions, the Purchasing Stockholder shall allow such other Stockholder to purchase the number of Shares in the Purchasing Stockholder's allotment of Shares from NewCo that is necessary to maintain their Shares in the same proportion to each other as that which existed prior to the Purchase.

4. *Transferee Bound by Agreement.* Notwithstanding anything to the contrary in this Agreement, Shares may not be transferred or sold by any Stockholder unless the transferee (including a Permitted Transferee) both executes and agrees to be bound by this Agreement, including, without limitation, in a sale or transfer made pursuant to Rule 144 under the Securities Act ("**Rule 144**"); provided, however, that this Section 4 shall not apply to any sale or transfer made by a Stockholder pursuant to Rule 144 if that sale or transfer and all other sales and transfers made by such Stockholder pursuant to Rule 144 during the term of this Agreement do not exceed, in the aggregate, ten percent of the Shares held by such Stockholder.

5. *Stop Transfer.* From and after the date of this Agreement and ending as of the Termination Date, each Stockholder acknowledges that Wynn may instruct NewCo to not register the transfer (book-entry or otherwise) of any certificate or uncertificated interest representing any of such Stockholder's Shares that are transferred in violation of this Agreement.

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6. *Aruze Non-Compete.* Aruze covenants to Wynn and Baron that until the Non-Compete Termination Date and so long as Aruze is a stockholder of NewCo (or of a successor entity to NewCo), Aruze, Aruze Parent, and Kazuo Okada agree that (other than through NewCo, Worldwide Wynn and their Specified Affiliates) Aruze, Aruze Parent, and Kazuo Okada shall not without Wynn's consent, directly or indirectly, engage in the development of or own, operate, lease, manage, control or invest in, act as consultant or advisor to or otherwise assist any Person that engages in (a) casino operations in Clark County, Nevada or, if NewCo is conducting gaming activities in Macau, Macau, or (b) Internet gaming anywhere in the world; provided, however, that either Aruze Parent or Kazuo Okada may operate a business offering Internet gaming if the forms of gaming offered by such business are restricted to games derived from pachinko or pachi-slot machines or other games not authorized for manufacture or distribution in the State of Nevada or, if NewCo is conducting gaming activities in Macau, Macau.

7. *Stockholders' Option to Purchase Bankrupt Stockholder's Shares.*

(a) Upon the institution of a Bankruptcy by or against a Stockholder (a "**Bankrupt Stockholder**"), the Stockholders, not including the Bankrupt Stockholder, shall have the option to purchase the Bankrupt Stockholder's Shares in NewCo for a price agreed upon by the Stockholders, not including the Bankrupt Stockholder, on the one hand, and the Bankrupt Stockholder, on the other hand, or if no price can be agreed upon, the Fair Market Value of such Shares at the time of such Bankruptcy. If information is not available to determine the Fair Market Value of such Shares at the time of such Bankruptcy, the price shall be the fair market value as determined by an Independent Qualified Appraiser. The Stockholders wishing to purchase all or a part of the Shares of the Bankrupt Stockholder (the "**Purchasing Stockholders**") shall pay the agreed price, the Fair Market Value or the fair market value as determined by an Independent Qualified Appraiser, as applicable, of such Shares to the Bankrupt Stockholder, in cash or its equivalent, within one hundred and twenty (120) days after the date the Bankruptcy petition is filed by or against the Bankrupt Stockholder. Each Purchasing Stockholder must notify the other Stockholders of such Purchasing Stockholder's desire to purchase all or a portion of the Bankrupt Stockholder's Shares in writing within twenty (20) days after the date the Bankruptcy petition is filed by or against the Bankrupt Stockholder. Unless they agree otherwise, if there is more than one Purchasing Stockholder, each Purchasing Stockholder may purchase the proportion of the Bankrupt Stockholder's Shares that such Purchasing Stockholder's Percentage Interest bears to the aggregate Percentage Interests of all Purchasing Stockholders. If no remaining Stockholder wishes to purchase the Bankrupt Stockholder's Shares, or the Purchasing Stockholders do not purchase the Bankrupt Stockholder's Shares within the time periods set forth above, then all rights to purchase the Bankrupt Stockholder's Shares pursuant to this Section shall terminate.

(b) Any Stockholder may, in its sole and absolute discretion, assign its rights under this Section 7 to purchase the Bankrupt Stockholder's Shares to NewCo.

8. *Restrictions on Transfer of Ownership Interests in Stockholders.*

(a) Except for a Transfer to a Permitted Transferee, any Transfer or issuance of an ownership interest in any Stockholder (other than Baron) or in any entity that directly or indirectly owns a majority ownership interest in a Stockholder (other than Baron) (an "**Upstream Ownership Interest**") shall be prohibited unless in compliance with the procedures and requirements set forth in this Section 8.

(b) The Shares that would be indirectly transferred by the transfer of the Upstream Ownership Interest (an "**Upstream**")

Transfer") shall be referred to as the **"Indirect Transfer Shares"**. If any holder of an Upstream Ownership Interest (an **"Upstream Transferor"**) intends to Transfer all or any part of its Upstream Ownership Interest pursuant to a bona fide

offer received from any Person (the **"Upstream Offeror"**), prior to accepting such offer the Upstream Transferor shall provide written notice to each Stockholder, other than the Stockholder holding the Indirect Transfer Shares, which notice shall set forth the terms and conditions of the offer so received, including the purchase price and the identity of the Upstream Offeror. If the Upstream Transferor does not provide such notice, the Stockholder holding the Indirect Transfer Shares shall provide such notice to each other Stockholder promptly upon learning that such transaction will occur or has occurred. Within 15 days following receipt of such notice by the Stockholders other than the Stockholder holding the Indirect Transfer Shares, or if later, within 30 days of such other Stockholders learning that the Transfer of the Upstream Ownership Interest has occurred, such other Stockholders (i) if information is available to determine the Fair Market Value of such Indirect Transfer Shares, may elect to purchase the percentage of the Indirect Transfer Shares available for purchase equal to such Stockholder's Percentage Interest (determined for this purpose by excluding the Indirect Transfer Shares) at the Fair Market Value of such Shares, or (ii) if information is not available to determine the Fair Market Value of such Indirect Transfer Shares, may, by notice to the Stockholder holding the Indirect Transfer Shares, elect to obtain an appraisal by an Independent Qualified Appraiser of the fair market value of the Indirect Transfer Shares. Within 15 days following receipt by the Stockholders other than the Stockholder holding the Indirect Transfer Shares of the results of the appraisal, each such other Stockholder may elect to purchase the percentage of the Indirect Transfer Shares available for purchase equal to such holder's Percentage Interest (determined for this purpose by excluding the Indirect Transfer Shares) at the appraisal price of such Shares. To the extent a Stockholder shall determine not to purchase all the Indirect Transfer Shares available to that Stockholder, the other Stockholders exercising the right to purchase the Indirect Transfer Shares may purchase additional Indirect Transfer Shares on a pro rata basis in proportion to their Percentage Interests (and the foregoing procedure shall be repeated in respect of any Indirect Transfer Shares not purchased until such other Stockholders have had an opportunity to purchase any remaining Indirect Transfer Shares). Notwithstanding anything to the contrary in this Section 8, any Transfer or issuance of shares in Aruze Parent shall not constitute an Upstream Transfer if immediately following such Transfer or issuance Kazuo Okada is more than a fifty percent shareholder in Aruze Parent and has the right to directly exercise more than fifty percent of the voting power of the shareholders of Aruze Parent.

(c) The closing of a purchase of Indirect Transfer Shares by a Stockholder under this Section 8 shall occur within 10 days following the expiration of the last period during which a Stockholder might elect to purchase any of the Indirect Transfer Shares, or at such later date when all approvals required by the Gaming Laws are obtained (such approvals to be obtained as soon as is reasonably practicable).

(d) Any Stockholder may, in its sole and absolute discretion, assign its rights under this Section 8 to purchase the Indirect Transfer Shares to NewCo with respect to any Upstream Transfer.

9. *Right of First Refusal.*

(a) Any Stockholder (a **"Transferor"**) who wishes to Transfer any or all of its Shares (the **"Offered Shares"**) to any Person other than a Permitted Transferee and who receives a bona fide offer from any Person (the **"Offeror"**) who is not a Prohibited Transferee for the purchase of all or any portion of such Stockholder's Shares shall, prior to accepting such offer, provide written notice (the **"Notice of Offer"**) thereof to each other Stockholder holding Shares, which notice shall set forth the terms and conditions of the offer so received, including the purchase price and the identity of the Offeror. Following the delivery to the other Stockholders of the Notice of Offer, each other Stockholder may elect to purchase that

percentage of the Offered Shares which is equal to the Total Shares (excluding the Offered Shares) owned by each such Stockholder divided by the Total Shares (excluding the Offered Shares) owned by all such Stockholders (**"Applicable Percentage"**) during a fifteen-day refusal period (the **"Refusal Period"**) on the terms set forth in the Notice of Offer. To the extent any Stockholder shall determine not to purchase its Applicable Percentage prior to the expiration of the Refusal Period, the accepting Stockholders (the **"Accepting Purchasers"**) may purchase such Shares on a pro rata basis in proportion to the number of Shares owned by each of them (and the foregoing procedure shall be repeated in respect of any Shares not purchased until all Accepting Purchasers have had an opportunity to purchase any remaining Shares).

(b) Subject to the requirements of Section 4, if all or any of the Offered Shares shall remain unsold after completion of the procedures set forth in Section 9(a), the Transferor may sell such remaining Offered Shares to the Offeror within six months of the completion of such procedures on terms no more favorable than those set forth in the Notice of Offer; *provided* that the Offeror is not a Prohibited Transferee. To the extent any of the Offered Shares are not sold in accordance with the foregoing, the Stockholders shall continue to have a right of first refusal under this Section 9 with respect to any Transfers to any Person which are subsequently proposed by such Transferor.

(c) The closing of a purchase by a Stockholder under this Section 9 shall occur within ten days after the end of the Refusal Period or at such later date when all approvals required by the Gaming Laws are obtained (such approvals to be obtained as

soon as is reasonably practicable). At such closing the Transferor and the relevant Accepting Purchaser (and any or all other Stockholders as may be required) shall execute an assignment and assumption agreement and any other instruments and documents as may be reasonably required by such Stockholder to effectuate the transfer of such Shares free and clear of any liens, claims or encumbrances, other than as specifically permitted hereunder. Any Transfer to any Person that does not comply with the provisions of this Section 9, other than a Transfer expressly provided for in the other provisions of this Agreement, shall be null and void and of no effect whatsoever.

(d) Any Stockholder may, in its sole and absolute discretion, assign its right of first refusal under this Section 9 to purchase the Offered Shares to NewCo with respect to any incident in which its right of first refusal is triggered under this Section 9.

(e) Except for Shares transferred pursuant to Sections 7, 8, and 10, no Shares may be Transferred, including, but not limited to, those Shares Transferred pursuant to Section 4, until the provisions of this Section 9 have been complied with.

10. *Tag-Along Rights.*

(a) If Wynn is the Transferor required to provide the Notice of Offer under Section 9(a), then Aruze and Baron shall each have a right (in addition to its rights under Section 9) to participate in such Transfer pursuant to the provisions of this Section 10(a). During the fifteen-day Refusal Period described in Section 9(a), each of Aruze and Baron may, by written notice to Wynn, elect to participate in such Transfer and to sell that percentage of the Total Shares owned by Aruze or Baron, as the case may be, which is equal to the Total Shares that will be sold by Wynn in such Transfer divided by the Total Shares owned by Wynn. The terms and conditions of such Transfer (including the purchase price per Share sold in such Transfer, the identity of the buyer(s), and the consequences resulting from the other Stockholders' exercise of any rights of first refusal) shall be no less favorable to Aruze or Baron, as the case may be, than to Wynn; provided, however, that Wynn may enter into service, noncompetition, or similar agreements with the buyer and receive appropriate consideration thereunder in which other Stockholders do not share.

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(b) If Aruze is the Transferor required to provide the Notice of Offer under Section 9(a), then Wynn and Baron shall each have a right (in addition to his or its rights under Section 9) to participate in such Transfer pursuant to the provisions of this Section 10(b). During the fifteen-day Refusal Period described in Section 9(a), each of Wynn and Baron may, by written notice to Aruze, elect to participate in such Transfer and to sell that percentage of the Total Shares owned by Wynn or Baron, as the case may be, which is equal to the Total Shares that will be sold by Aruze in such Transfer divided by the Total Shares owned by Aruze. The terms and conditions of such Transfer (including the purchase price per Share sold in such Transfer, the identity of the buyer(s), and the consequences resulting from the other Stockholders' exercise of any rights of first refusal) shall be no less favorable to Wynn or Baron, as the case may be, than to Aruze; provided, however, that Aruze may enter into service, noncompetition, or similar agreements with the buyer and receive appropriate consideration thereunder in which other Stockholders do not share.

11. *Aruze Shares.* Aruze and Wynn agree that each of them shall have rights and obligations with respect to Aruze's Shares that are the same as those that are reflected in the Second Amendment with respect to Aruze's membership interests in the LLC; provided, however, that in any purchase by Wynn of Aruze's Shares, Wynn may elect to give Aruze a promissory note in the same manner as described in paragraph 4 of the Second Amendment. Aruze and Wynn also agree to cause NewCo to have rights and obligations with respect to Aruze's Shares that are the same as those that are reflected in the Second Amendment with respect to Aruze's membership interests in the LLC; provided, however, that in any purchase by NewCo of Aruze's Shares with a promissory note, such promissory note shall have terms and be in a form that (i) the making of the promissory note and the payments with respect to the promissory note would not violate the terms, covenants or restrictions of any indenture or other debt or financing agreement to which NewCo or any subsidiary of NewCo is a party, or (ii) otherwise create or constitute a default, or a condition that with the passage of time would create or constitute a default, under any indenture or other debt or financing agreement to which NewCo or any subsidiary of NewCo is a party.

12. *Joinders.* The Stockholders acknowledge that Wynn shall have the right in his sole and absolute discretion to allow one or more additional Persons who become stockholders of NewCo to become a party to this Agreement as a Stockholder, through the execution of one or multiple joinders to this Agreement and that all provisions of this Agreement shall apply to such Persons; provided, however, that such Persons shall not have any rights under Sections 2, 3(e), 6 and 10 of this Agreement.

13. *Recapitalization.* In the event of a stock dividend or distribution, or any change in the Shares (or any class thereof) by reason of any split-up, recapitalization, merger, combination, exchange of shares or the like, the term "Shares" shall include, without limitation, all such stock dividends and distributions and any shares into which or for which any or all of the Shares (or any class thereof) may be changed or exchanged as may be appropriate to reflect such event.

14. *Stockholder Capacity.* No Stockholder or any of its Affiliates makes any agreement or understanding herein in any capacity it may have as a director or officer of NewCo and nothing herein shall limit or affect any action taken by any Stockholder in any such capacity.

15. *Miscellaneous.*

(a) *Entire Agreement.* This Agreement and the Operating Agreement constitute the entire agreement between the

parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

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(b) *Legend.* Concurrently with the issuance of the Shares issued in exchange for a Stockholder's interests in the LLC or through a different technique, such Stockholder shall request that NewCo imprint or otherwise place, on certificates representing such Shares the following restrictive legend (the "**Legend**") (in addition to any other legend required by applicable gaming laws):

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A STOCKHOLDERS AGREEMENT DATED AS OF APRIL 11, 2002, WHICH PLACES CERTAIN RESTRICTIONS ON THE VOTING AND TRANSFER OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO HAVE AGREED TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH STOCKHOLDERS AGREEMENT. A COPY OF SUCH STOCKHOLDERS AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS."

(i) Each Stockholder agrees that, from and after the date of this Agreement and ending as of the Termination Date, it shall not, and shall cause each of its Affiliates who Beneficially Own any of the Stockholder's Shares not to, allow NewCo to remove, and shall not permit to be removed (upon registration of transfer, reissuance or otherwise), the Legend from any such certificate and shall place or cause to be placed the Legend on any new certificate issued to represent Shares it or any of its Affiliates shall Beneficially Own.

(c) *Transfers in Violation Void.* Any transfer or sale of any Shares in violation of this Agreement shall be null and void *ab initio*, and the Stockholders acknowledge that Wynn may instruct NewCo to not register, recognize or give effect to any such transfer or sale, nor shall the intended transferee acquire any rights in such Shares for any purpose.

(d) *Amendments, Waivers, Etc.* This Agreement may not be amended, changed, supplemented, waived or otherwise modified or terminated, except upon the execution and delivery of a written agreement executed by the parties hereto; provided, however, that (i) Wynn and Aruze may by writing amend those provisions that address rights and obligations only between Wynn and Aruze and (ii) Wynn, Aruze and Baron may by writing amend those provisions that address rights and obligations only between Wynn, Aruze and Baron.

(e) *Notices.* All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly received if so given) by hand delivery, telegram, telex or telecopy, or by mail (registered or certified mail, postage prepaid, return receipt requested) or by any courier service, such as Federal Express, providing proof of delivery. All communications hereunder shall be delivered to the respective parties at the following addresses or the addresses set forth on the signature pages hereto:

If to Aruze:	Aruze USA, Inc. 745 Grier Drive Las Vegas, Nevada 89119 Facsimile: 702.361.3407 Attention: Koiki Ohba
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With a copy to:	Holland & Knight LLP 633 West Fifth Street, 21st Floor Los Angeles, California 90071 Facsimile: 213.896.2450 Attention: Tasha D. Nguyen
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If to Baron Asset Fund:	Baron Asset Fund c/o Baron Funds 767 Fifth Avenue, 49 th Floor New York, New York 10153 Facsimile: 212.583.2014 Attention: Linda S. Martinson, Esq.
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If to Wynn:	Stephen A. Wynn c/o Wynn Resorts, LLC 3145 Las Vegas Boulevard South Las Vegas, Nevada 89109 Facsimile: 702.791.0167
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With a copies to:

Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Facsimile: 310.203.7199
Attention: C. Kevin McGeehan, Esq.

Wynn Resorts, LLC
3145 Las Vegas Boulevard South
Los Vegas, Nevada 89109
Facsimile: 702.733.4596
Attention: Legal department.

or to such other address as the Person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

(f) *Severability.* Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

(g) *Specific Performance.* Each of the parties hereto recognizes and acknowledges that a breach by any party hereto of any covenants or agreements contained in this Agreement will cause the other parties hereto to sustain damages for which they would not have an adequate remedy at law for money damages, and therefore each of the parties hereto agrees that in the event of any such breach the parties shall be entitled to the remedy of specific performance of such covenants and agreements and injunctive and other equitable relief in addition to any other remedy to which he may be entitled, at law or in equity.

(h) *Further Assurances.* From time to time, the Stockholders shall execute and deliver such additional documents as may be necessary or desirable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.

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(i) *Remedies Cumulative.* All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such party.

(j) *No Waiver.* The failure of any party hereto to exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other party hereto with its obligations hereunder, and any custom or practice of the parties at variance with the terms hereof, shall not constitute a waiver by such party of its right to exercise any such or other right, power or remedy or to demand such compliance.

(k) *No Third Party Beneficiaries.* This Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person or entity who or which is not a party hereto; provided that, except as otherwise provided in this Agreement, the obligations of the Stockholders hereunder shall inure to their transferees, successors and heirs.

(l) *No Assignment.* Except as otherwise explicitly provided herein, neither this Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by any Stockholder without the prior written consent of Wynn and Aruze and any attempt to do so will be void; provided, however, that the rights under this Agreement may be assigned to any transferee in connection with a Transfer that does not violate the terms of this Agreement.

(m) *Governing Law.* This Agreement shall be governed and construed in accordance with the laws of the state of incorporation of NewCo, without giving effect to the principles of conflicts of law thereof.

(n) *Jurisdiction.* Each party hereby irrevocably submits to the exclusive jurisdiction of the state courts in the state of incorporation of NewCo in any action, suit or proceeding arising in connection with this Agreement, and agrees that any such action, suit or proceeding shall be brought only in such court (and waives any objection based on forum non conveniens or any other objection to venue therein); provided, however, that such consent to jurisdiction is solely for the purpose referred to in this paragraph and shall not be deemed to be a general submission to the jurisdiction of the courts of the state of incorporation of NewCo other than for such purposes. Each party hereto hereby waives any right to a trial by jury in connection with any such action, suit or proceeding.

(o) *Descriptive Headings.* The descriptive headings used herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

(p) *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. This Agreement shall not be effective as to any party hereto until such time as this Agreement or a counterpart thereof has been executed and delivered by each party hereto.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by Wynn and a duly authorized officer of Aruze and Baron on the day and year first written above.

/s/ STEPHEN A. WYNN

Name: Stephen A. Wynn

ARUZE USA, INC.

By: /s/ KAZUO OKADA

Name: Kazuo Okada

Title: *President*

BARON ASSET FUND

By: /s/ RONALD BARON

Name: Ronald Baron

Title: *Chairman and CEO*

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QuickLinks

Exhibit 10.10

STOCKHOLDERS AGREEMENT