

IN THE SUPREME COURT OF THE STATE OF NEVADA

KAZUO OKADA,

Petitioner,

vs.

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

Respondent,

and

WYNN RESORTS, LIMITED,

Real Party in Interest.

Case No. 68310

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Tracie K. Lindeman
Clerk of Supreme Court

**SUPPLEMENTAL APPENDIX
IN SUPPORT OF REAL
PARTY IN INTEREST
WYNN RESORTS, LIMITED'S
ANSWER TO PETITION FOR
WRIT OF PROHIBITION OR
MANDAMUS**

VOLUME III of VI

DATED this 21st day of July 2015.

PISANELLI BICE PLLC

By: /s/ James J. Pisanelli

James J. Pisanelli, Esq., Bar No. 4027

Todd L. Bice, Esq., Bar No. 4534

Debra L. Spinelli, Esq., Bar No. 9695

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Attorneys for Real Party in Interest

Wynn Resorts, Limited

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 21st day of July, 2015, I electronically filed and served a true and correct copy of the above and foregoing **SUPPLEMENTAL APPENDIX IN SUPPORT OF REAL PARTY IN INTEREST WYNN RESORTS, LIMITED'S ANSWER TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS** to the following:

J. Stephen Peek, Esq.
Bryce K. Kunimoto, Esq.
Robert J. Cassity, Esq.
Brian G. Anderson, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
*Attorneys for Real Parties in Interest
Kazuo Okada, Universal Entertainment
Corp. and Aruze USA, Inc.*

David S. Krakoff, Esq.
Benjamin B. Klubes, Esq.
Joseph J. Reilly, Esq.
BUCKLEY SANDLER LLP
1250 – 24th Street NW, Suite 700
Washington, DC 20037
*Attorneys for Real Parties in Interest
Kazuo Okada, Universal Entertainment
Corp. and Aruze USA, Inc*

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, NV 89101
Attorneys for Stephen A. Wynn

William R. Urga, Esq.
Martin A. Little, Esq.
JOLLEY URG & WOODBURY &
LITTLE
3800 Howard Hughes Parkway
16th Floor
Las Vegas, NV 89169
Attorneys for Elaine P. Wynn

Ronald L. Olson, Esq.
Mark B. Helm, Esq.
Jeffrey Y. Wu, Esq.
MUNGER TOLLES & OLSON LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
Attorneys for Elaine P. Wynn

VIA HAND-DELIVERY

The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

LIONEL SAWYER & COLLINS
Samuel S. Lionel (SBN 1766)
Paul R. Hejmanowski (SBN 94)
Charles H. McCrea, Jr. (SBN 104)
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 383-8888
Facsimile: (702) 383-8845

PAUL HASTINGS LLP
William F. Sullivan*
Thomas A. Zaccaro*
Howard M. Privette*
Thomas P. O'Brien*
John S. Durrant*
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Telephone: (213) 683-6000
Facsimile: (213) 683-0705

Attorneys for Defendants ARUZE USA, INC. and
UNIVERSAL ENTERTAINMENT CORPORATION
**Pro hac vice application forthcoming*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual; ARUZE
USA, INC., a Nevada corporation;
UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

Defendants.

CASE NO:

NOTICE OF REMOVAL

NOTICE OF REMOVAL, Page 1 of 7

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2
3 PLEASE TAKE NOTICE that Defendants ARUZE USA, Inc. ("Aruze
4 USA") and UNIVERSAL ENTERTAINMENT CORP. ("Universal") (collectively
5 "Removing Defendants"), pursuant to 28 U.S.C. § 1446(a), hereby remove this action
6 from Department XI of the Eighth Judicial District Court of the State of Nevada in and
7 for the County of Clark to the United States District Court for the District of Nevada.
8 The removal of this case is based upon the following grounds:

9
10 **SUMMARY**

11 1. "A state-created cause of action can be deemed to arise under federal
12 law (1) where federal law completely preempts state law; (2) where the claim is
13 necessarily federal in character; or (3) where the right to relief depends on the resolution
14 of a substantial, disputed federal question." *See ARCO Environmental Remediation, LLC*
15 *v. Dep't of Health and Environmental Quality of the State of Montana*, 213 F.3d 1108,
16 1114 (9th Cir. 2000) (internal citations omitted).

17 2. All claims and causes in this matter should be removed to this Court
18 under 28 U.S.C. § 1441(b) because the issues raised on the face of the Complaint involve
19 a resolution of a substantial federal question that plays a significant role in the
20 proceedings. *See id.*

21 3. In particular, the Complaint filed by Wynn Resorts, Ltd ("Plaintiff")
22 "makes clear, at a minimum, the right to relief depends on the resolution of a substantial,
23 disputed federal question[s]" regarding the scope and interpretation of the Foreign
24 Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq.* *Herman v.*
25 *Salomon Smith Barney, Inc.*, 266 F. Supp. 2d 1208, 1211 (S.D. Cal. 2003).

PROCEDURAL HISTORY AND BACKGROUND

4. On or about February 19, 2012, Plaintiff filed an action in the Eighth Judicial District, Clark County District Court for the State of Nevada entitled *Wynn Resorts, Limited v. Kazuo Okada, Aruze USA, Inc., and Universal Entertainment Corporation*, Case Number A-12-656710-B.

5. Defendants Aruze USA and Universal were served with a summons and complaint on or about February 21, 2012. To date, Defendant Kazuo Okada ("Mr. Okada") has not been served with the summons or complaint and no Defendant has yet made an appearance in the state court action. A copy of all process and pleadings in the state court action are attached hereto as Exhibit A.

6. Plaintiff purports to bring claims against Mr. Okada for breach of fiduciary duty, and against Aruze USA and Universal for aiding and abetting breach of fiduciary duty. Plaintiff alleges that Mr. Okada breached his fiduciary duty by engaging in unlawful activities with foreign government officials at Plaintiff's properties in violation of the FCPA. Further, Plaintiff seeks declaratory relief against Mr. Okada, Aruze USA, and Universal for an order that it acted lawfully in finding that Aruze USA was not "suitable" as a Wynn Resorts stockholder. In essence, Plaintiff purports to (improperly) seek a judicial declaration confirming its conclusion that Defendants are "unsuitable" because they violated the FCPA.

7. To allege its breach of fiduciary duty claims, Plaintiff purports to rely on a report produced by Freeh Sporkin & Sullivan LLP ("Freeh Sporkin"). The Freeh Sporkin report, Plaintiff contends, provides *prima facie* evidence that Aruze USA and Mr. Okada violated the FCPA, 15 U.S.C. § 78dd – 2. Plaintiff attached the Freeh Sporkin report to its Complaint and incorporates it by reference.

GROUND FOR REMOVAL

8. “Any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the . . . defendants . . . to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the Plaintiff’s allegations will require the Court to determine important substantive questions arising under federal law. *See* 28 U.S.C. § 1331.

10. All three claims asserted by Plaintiff rely on the assertion that Plaintiff’s Board of Directors was presented with “evidence that Mr. Okada had made unlawful payments to foreign gaming regulators who could advance Mr. Okada’s business interest.” (Complaint (“*Compl.*” ¶ 1).)

11. The Complaint is replete with allegations concluding that purported federal FCPA violations placed him in violation of state law and/or justify the declaratory relief Plaintiff seeks under state law. (*See, e.g. id.* ¶ 58 (“Mr. Okada breaches his fiduciary duties by engaging in unlawful activities. . . .”); *id.* ¶ 66 (“Aruze USA and Universal “knowingly participated in Mr. Okada’s breaches by facilitating the . . . committing unlawful acts that undermine Wynn Resorts’ good reputation as well as its business and gaming licenses”)).

12. Removal is proper where the interpretation of the FCPA (*i.e.*, a federal question) plays “a significant role in the proceedings.” *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1212 (9th Cir. 1998) (removal of state-law claims, including breach of express and implied contract, breach of the covenant of good faith and fair dealing, gross negligence, intentional misrepresentation, negligent misrepresentation, and interference with economic relations, proper where viability of the state law claim hinged on determination of violation of federal question); *Herman*, 266 F. Supp. 2d at 1211 (removal of state law claim proper where duties allegedly breached was established by federal securities laws); *T&E Pastornio Nursery v. Duke Energy*

1 *Trading and Market, LLC*, 268 F. Supp. 2d 1240, 1247 (S.D. Cal. 2003) (removal of state
2 law claim proper where claims were premised in part on a violation of federal law).

3 13. Plaintiff's breach of fiduciary duty claim and aiding and abetting
4 breach of fiduciary duty claim rely on alleged FCPA violations as an *ipso facto* basis for
5 the conclusion that Mr. Okada breached his fiduciary duties owed to Plaintiff.

6 14. Plaintiff's declaratory relief claim seeking an order that Plaintiff
7 acted lawfully and in full compliance with its Articles of Incorporation to redeem Aruze
8 USA's shares is wholly predicated upon the findings in the Freeh Sporkin report.
9 (Compl. ¶ 76 ("following Freeh's presentation, the Board of Directors deliberated" and
10 voted to redeem Aruze USA's Wynn Resorts stock).

11 15. Because Plaintiff's claims are predicated upon findings of violations
12 of federal law, and thus arise under federal law, this action is properly removed pursuant
13 to 28 U.S.C. § 1331.

14
15 **UNIFORM INTERPRETATION OF THE FCPA**

16 16. There is an important federal interest in the uniform interpretation of
17 the FCPA. The U.S. Department of Justice ("DOJ") has exclusive jurisdiction to
18 prosecute criminal violations of the FCPA. *See* 15 U.S.C. §§ 78dd-2(d)(1). Both the DOJ
19 and the U.S. Securities and Exchange Commission have authority to seek injunctive relief
20 to prevent bribery and recordkeeping violations of the FCPA. *Id.* at 78u(d)(1).

21 17. Courts recognize that the statutory language of the FCPA is
22 imprecise. *See United States v. Kay*, 359 F.3d 738, 743-44 (5th Cir. 2004) ("We agree
23 with the courts findings of ambiguity for several reasons. Perhaps our most significant
24 statutory construction problem results from the failure of the language of the FCPA to
25 give a clear indication of the exact scope of the business nexus element; that is, the
26 proximity of the required nexus between, on the one hand, the anticipated results of the
27 foreign official's bargained-for action or inaction, and, on the other hand, the assistance
28 provided by or expected from those results in helping the briber to obtain or retain

business.”); Mike Koehler, *The Façade of FCPA Enforcement*, 41 Geo. J. Int’l L. 907, 998 (2010) (recognizing that a significant difficulty in complying with the FCPA is that “several of [its] key elements are vague and ambiguous.”); James Doty, *Toward a Reg. FCPA: A Modest Proposal for Change in Administering the Foreign Corrupt Practices Act*, 62 Bus. Law 1233, 1239 (2007) (“Vagueness and ambiguity are the DNA of the FCPA . . .”).

18. Given the exclusive federal jurisdiction over criminal and injunctive relief for FCPA violations, and the potential for conflicting interpretations of the ambiguous statutory language, this Court should retain subject matter jurisdiction to ensure that the federal law relating to the FCPA is interpreted in a uniform manner.

JURISDICTION

19. This Court has removal jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1441.

OTHER PROCEDURAL REQUIREMENTS

20. Fewer than thirty (30) days have elapsed since service was effectuated upon Aruze USA and Univeral, and this Notice of Removal is timely. *See* 28 U.S.C. § 1446(b).

21. Pursuant to 28 U.S.C. § 1446(a), attached as Exhibit A is a copy of all process, pleadings, and orders served upon Removing Defendants in the state court action.

22. Removing Defendants and Mr. Okada all consent to the filing of this Notice of Removal.

23. Pursuant to 28 U.S.C. § 1446(d), Removing Defendants will serve a copy of this Notice of Removal on counsel for Plaintiff and will file a Notice of Filing of Removal with the Eighth Judicial District, District Court, Clark County, Nevada.

1 24. By filing this Notice of Removal, Removing Defendants do not
2 waive any defenses, including without limitation, lack of personal jurisdiction, improper
3 venue or forum, all defenses specified in Federal Rule of Civil Procedure 12, or any other
4 defense.

5 WHEREFORE, Removing Defendants remove the above-entitled action
6 from Department XI of the Eighth Judicial District Court of the State of Nevada in and
7 for
8 the County of Clark to the United States District Court for District of Nevada for the
9 reasons stated above, and/or for any other reasons the Court deems necessary and proper.
10

11 DATED: March 12, 2012.

12 Respectfully submitted,

13 LIONEL SAWYER & COLLINS

14
15 By: /s/Samuel S. Lionel
16 Samuel S. Lionel (SBN 1766)
17 Paul R. Hejmanowski (SBN 94)
18 Charles H. McCrea, Jr. (SBN 104)
19 1700 Bank of America Plaza
20 300 South Fourth Street
21 Las Vegas, Nevada 89101

22 PAUL HASTINGS LLP
23 William F. Sullivan*
24 Thomas A. Zaccaro*
25 Howard M. Privette*
26 Thomas P. O'Brien*
27 John S. Durrant*
28 515 South Flower Street, 25th Floor
Los Angeles, CA 90071

*Attorneys for Defendants ARUZE USA, INC.
and UNIVERSAL ENTERTAINMENT
CORPORATION
* Pro hac vice application forthcoming*

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
Jarrod L. Rickard, Esq., Bar No. 10203
JLR@pisanellibice.com
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
Telephone: 702.214.2100
Facsimile: 702.214.2100

Robert L. Shapiro, Esq. (*pro hac vice forthcoming*)
RS@glaserweil.com
GLASER WEIL FINK JACOBS HOWARD
AVCHEN & SHAPIRO, LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, CA 90067
Telephone: 310.553.3000
Facsimile: 310.556.2920

Attorneys for Wynn Resorts, Limited

Paul K. Rowe, Esq. (*pro hac vice forthcoming*)
pkrowe@wlrk.com
Stephen R. DiPrima, Esq. (*pro hac vice forthcoming*)
srdiprima@wlrk.com
Bradley R. Wilson, Esq. (*pro hac vice forthcoming*)
brwilson@wlrk.com
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019
Telephone: 212.403.1000
Facsimile: 212.403.2000

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WYNN RESORTS, LIMITED, a Nevada
Limited Liability Company,

Plaintiff,

vs.

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

Defendants.

ARUZE USA, INC., a Nevada Corporation,
UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

Counterclaimants,

vs.

WYNN RESORTS, LIMITED, a Nevada
Corporation, STEPHEN A. WYNN, an
individual; KIMMARIE SINATRA, an
individual; LINDA CHEN, an individual;
RAY R. IRANI, an individual; RUSSELL
GOLDSMITH, an individual; ROBERT J.

Case No.: 2:12-cv-00400-LRH-PAL

MOTION TO REMAND

1 MILLER, an individual; JOHN A.
2 MORAN, an individual; MARC D.
3 SCHORR, an individual; ALVIN V.
4 SHOEMAKER, an individual; D. BOONE
WAYSON, an individual; ELAINE P.
WYNN, an individual; ALLAN ZEMAN,
an individual,

5 Counterdefendants.

6
7 Plaintiff Wynn Resorts, Limited ("Wynn Resorts"), by and through its attorneys of record,
8 hereby moves this Court for an order remanding this action to state court pursuant to
9 28 U.S.C. § 1447. Defendants Aruze USA, Inc. and Universal Entertainment Corporation,
10 through and with their principal, Defendant Kazuo Okada, are improperly manipulating the legal
11 process through their unauthorized removal, as it has no colorable basis in law. Defendants sole
12 stated basis for the removal is federal question jurisdiction, based on the theory that references to
13 a federal statute (the Foreign Corrupt Practices Act) in a report considered by the Wynn Resorts
14 Board of Directors suffice to establish the existence of a federal question in the case brought by
15 Wynn Resorts. Defendants are wrong. Wynn Resorts did not assert any federal cause of action,
16 and did not state any claim that arises under federal law. Under Wynn Resorts' pleadings, the
17 state court would not have been obliged to resolve questions of federal law; specifically, the
18 Nevada court would not have been asked to resolve the issue of whether any defendant violated
19 the Foreign Corrupt Practices Act, or any other federal statute. Rather, the issues raised by
20 Wynn Resorts' Complaint are solely issues of state law. Thus, this Court lacks jurisdiction over
21 the subject matter and remand is required under 28 U.S.C. § 1447. Because Defendants' removal
22 was done to promote an improper purpose and is unsupported by law, Wynn Resorts' respectfully
23 requests that it be awarded its attorneys' fees and costs associated with this remand.

1 This Motion is made pursuant to Fed. R. Civ. P. 15 and 28 U.S.C. § 1447, and is based
2 upon all papers and pleadings on file, the attached Memorandum of Points and Authorities and
3 any oral argument that this Court wishes to entertain.

4 DATED this 29th day of March, 2012.

5 PISANELLI BICE PLLC

6
7 By: /s/ James J. Pisanelli

8 James J. Pisanelli, Esq., Bar No. 4027
9 Todd L. Bice, Esq., Bar No. 4534
10 Debra L. Spinelli, Esq., Bar No. 9695
11 Jarrod L. Rickard, Esq., Bar No. 10203
12 3883 Howard Hughes Parkway, Suite 800
13 Las Vegas, Nevada 89169

14 and

15 Paul K. Rowe, Esq. (*pro hac vice forthcoming*)
16 Stephen R. DiPrima, Esq. (*pro hac vice forthcoming*)
17 Bradley R. Wilson, Esq. (*pro hac vice forthcoming*).
18 WACHTELL, LIPTON, ROSEN & KATZ
19 51 West 52nd Street
20 New York, NY 10019

21 and

22 Robert L. Shapiro, Esq. (*pro hac vice forthcoming*)
23 GLASER WEIL FINK JACOBS HOWARD
24 AVCHEN & SHAPIRO, LLP
25 10250 Constellation Boulevard, 19th Floor
26 Los Angeles, CA 90067

27 Attorneys for Wynn Resorts, Limited
28

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

A. Wynn Resorts' Complaint Contains Only State Law Claims.

This action involves, at its heart, claims brought by Wynn Resorts, Limited ("Wynn Resorts") for a series of breaches of fiduciary duty committed by a member of its Board of Directors, Defendant Kazuo Okada ("Okada"). Okada, through his other companies, Aruze USA, Inc. ("Aruze USA") and Universal Entertainment Corp. ("Universal"), was Wynn Resorts' single largest shareholder. On February 18, 2012, after a year-long investigation into Okada's activities in foreign jurisdictions, the Board of Wynn Resorts concluded that Okada had breached his duties to Wynn Resorts and had committed a series of acts, including violations of Wynn Resorts' Code of Business Conduct and Ethics ("Code of Conduct") and Nevada law, that rendered Okada, Aruze USA, and Universal "unsuitable" within the meaning of certain provisions of Wynn Resorts' Articles of Incorporation.¹

Wynn Resorts' Articles of Incorporation permit the Board of Wynn Resorts, upon a finding of unsuitability of a stockholder, to redeem unilaterally the Wynn Resorts shares owned by such stockholder at a value determined pursuant to the redemption provisions of the Articles of Incorporation. The Wynn Resorts Board authorized and caused a redemption in this situation at a board meeting held on February 18, 2012. Following the board meeting, Wynn Resorts filed a state court complaint alleging that Okada – aided and abetted by Aruze USA and Universal – breached his fiduciary duties to Wynn Resorts, and seeking a declaratory judgment that the Board's decision to invoke the unsuitability and redemption provisions of the Wynn Resorts Articles of Incorporation was lawful and proper. Wynn Resorts' Complaint did not plead any federal claim or rely on any allegation of a violation of any federal statute. Aruze USA,

¹ The Wynn Resorts Articles of Incorporation define the term "Unsuitable Person" to mean "a Person who . . . in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License." (Ex. 1, Second Amended and Restated Articles of Incorporation of Wynn Resorts, Limited ("Articles of Incorporation"), Art. VII, § 1(l).)

1 Universal, and Okada responded by filing a notice of removal with respect to Wynn Resorts'
2 Complaint.

3 Critically, neither the Wynn Resorts Articles of Incorporation nor the decision-making
4 process by the Wynn Resorts Board involved any determination under federal law, and none was
5 required. Whether a director such as Okada has breached his fiduciary duties to a Nevada
6 corporation such as Wynn Resorts, or whether the conduct of a stockholder of a Nevada
7 corporation holding state gaming licenses renders it "unsuitable" within the meaning of the
8 corporation's Articles of Incorporation, are exclusively issues of state law. The Articles of
9 Incorporation are established under state law; the directors' fiduciary duties are created and
10 defined by state law; and the Board's power and discretion in applying the redemption provisions
11 of the Articles of Incorporation are governed by state law. In short, the pleading that Wynn
12 Resorts filed in state court did not rest on or invoke any federal question, and thus there is no
13 basis for removal.

14 **B. Defendants' Removal To Federal Court Was A Part Of Their Scheme To**
15 **Manipulate The Legal Process And To Forum Shop.**

16 Defendants' improper removal should be viewed in context with Okada's other actions in
17 state court so as to fully appreciate the impropriety of their maneuver. On January 11, 2012,
18 Okada commenced legal action against Wynn Resorts by filing a Petition for Writ of Mandamus
19 in the Eighth Judicial District Court, Clark County, Nevada. In his Petition, Okada personally
20 sought affirmative and extraordinary relief from the Nevada state court, claiming that, as a
21 director on Wynn Resorts' Board, he was entitled to review a wide variety of company books and
22 records from as far back as 2002. In truth, Okada's Petition was his best effort to strike
23 Wynn Resorts preemptively, gather discovery in anticipation of the legal battle all knew was
24 brewing, and sway the Nevada court into thinking that it was Wynn Resorts – not Okada – who
25 was the bad actor running afoul of Nevada law. Okada's plan backfired.

26 In his Petition and his argument before the state court, Okada failed to disclose to the
27 Honorable Elizabeth Gonzalez Wynn Resorts' then nine-month-long investigation into Okada's
28 activities. He also failed to acknowledge that Wynn Resorts' investigation (led by Louis Freeh,

1 former Director of the FBI and former federal judge) was reaching its concluding stages. Equally
2 important, Okada failed to disclose to Judge Gonzalez that he was aware that Wynn Resorts'
3 investigation and Director Freeh's report could result in a finding by the Board of his unsuitability
4 to own shares in Wynn Resorts and to sit as a director of Wynn Resorts and any of its related
5 entities.

6 Importantly, on February 19, 2012, Wynn commenced this action against Okada in the
7 Eighth Judicial District Court. This action was randomly assigned to the same state court judge
8 presiding over the writ proceeding, the Honorable Elizabeth Gonzalez. On March 8, 2012,
9 Judge Gonzalez heard continued argument on Okada's document demands. In a supplemental
10 brief filed in advance of the hearing (and at the court's direction), Wynn Resorts apprised the state
11 court of *all* events, including the history of the investigation of Okada, which long preceded his
12 document demands. At the conclusion of the hearing, Judge Gonzalez determined that
13 Wynn Resorts had largely complied with its obligations and ordered only that Wynn Resorts
14 produce a mere two additional pages of documents to Okada. Judge Gonzalez invited Okada to
15 resubmit more reasonable requests to Wynn Resorts, if he so desired. Notably, Okada has not
16 done so since his first failed attempt.

17 Within a matter of days of Judge Gonzalez's ruling – four to be precise – Okada and his
18 team took action to remove Judge Gonzalez from the process governing the real dispute between
19 the parties, i.e., this action. In other words, Defendants experimented in state court and, after
20 receiving an unquestionably adverse decision, moved to do whatever they could to start anew.²
21 Specifically, Aruze USA and Universal removed this action to federal court, and filed an answer
22 and counterclaim. (*See generally* Notice of Removal, Doc. 1; Answer & Countercl., ECF No. 2.)

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26 ² It is black letter law that "a defendant may not experiment in state court and then seek to
27 remove upon receiving an adverse decision." *Moore v. Permanente Med. Group, Inc.*, 981 F.2d
28 443, 447 (9th Cir. 1992). As the Ninth Circuit articulated in a similar scenario, federal courts
"have no interest in encouraging this practice." *Nakash v. Marciano*, 882 F.2d 1411, 1416-17
(9th Cir. 1989).

1 Despite Okada's refusal to authorize his counsel to accept service of the Complaint on his behalf,
2 he joined in his affiliates' removal efforts.³ (Notice of Removal ¶ 22, ECF No. 1.)

3 The one central problem with Defendants' plan is that there is no good faith basis to
4 remove Wynn Resorts' action to federal court as this Court lacks any jurisdiction to hear
5 Wynn Resorts' claims. There is no diversity, no federal cause of action, no federal statute that
6 creates a private right of action, and not one of Wynn Resorts' three state law claims depends or
7 turns on a finding that Okada, Aruze USA, and/or Universal violated a federal law. Remand is
8 entirely appropriate and necessary and Wynn Resorts should be awarded its fees and costs
9 associated with this remand.

10 **II. DISCUSSION**

11 **A. Standard For Removal On Federal Question Grounds.**

12 A defendant is entitled to remove an action to federal court only if the action could have
13 been brought in federal court at the very start. *E.g., Grable & Sons Metal Prods., Inc. v. Darue*
14 *Eng'g & Mfg.*, 545 U.S. 308, 313 (2005). In other words, if this Court had diversity jurisdiction
15 under 28 U.S.C. § 1332, or federal-question jurisdiction under 28 U.S.C. § 1331 at the time the
16 Complaint was filed, then Defendants' removal would have been proper. Here, it is undisputed
17 that the requirements of diversity jurisdiction are not and cannot be met.⁴ Thus, "the propriety of
18 removal turns on whether the case falls within the original 'federal question' jurisdiction of the
19 United States district courts: 'The district courts shall have jurisdiction of all civil actions arising

21
22 ³ While Okada's two related entities were served with process, Okada's counsel has rejected
23 requests to accept service of the Summons and Complaint on Okada's behalf. Thus, while seeking
24 *extraordinary* relief from Nevada state court in a writ proceeding, Okada now appears to be
25 ducking service altogether for the resolution of the real, substantive issues concerning his many
26 breaches and violations of Nevada law. Conversely, Stephen A. Wynn, the other members of
27 Wynn Resorts' Board of Directors, and Wynn Resorts' General Counsel – all of whom have been
28 named as individual counterdefendants by Aruze USA and Universal – readily agreed through
counsel to accept service of the counterclaim in this action when Okada's counsel so requested,
thereby underscoring the nature of Okada's game playing.

⁴ Defendants did not allege diversity jurisdiction as basis for removal because they could
not. Defendant Aruze USA is a Nevada corporation, as is Plaintiff Wynn Resorts. Therefore, the
complete diversity requirement under 28 U.S.C. § 1332 cannot be met. *E.g., Deleo v. Rudin*,
328 F. Supp. 2d 1106, 1110 (D. Nev. 2004).

1 under the Constitution, laws, or treaties of the United States.'" *Franchise Tax Bd. of State of Cal.*
 2 *v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 7-8 (1983) (citing 28 U.S.C. § 1331).

3 Doubts about removability must be resolved in favor of remanding the case to state court.
 4 *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009) (citing
 5 *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002)); *Shamrock Oil & Gas Corp. v.*
 6 *Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.* 980 F.2d 564, 566 (9th Cir. 1992). The
 7 removing defendants bear the burden of overcoming the strong presumption against removal and
 8 establishing that the requirements for removal have been satisfied. *See, e.g., Prize Frize, Inc. v.*
 9 *Matrix (U.S.) Inc.*, 167 F.3d 1261 (9th Cir. 1999); *McCaa v. Mass. Mut. Life Ins. Co.*,
 10 330 F. Supp. 2d 1143, 1146 (D. Nev. 2004). Defendants cannot meet their burden. In their
 11 removal papers, Defendants assert that removal is proper because Wynn Resorts' claims arise
 12 under federal law. Defendants are wrong.

13 A claim "arises under" federal law only when the plaintiff's well-pleaded complaint raises
 14 issues of federal law. *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). However, "the
 15 plaintiff is 'the master of the complaint,' [and] the well-pleaded-complaint rule enables him, 'by
 16 eschewing claims based on federal law, . . . to have the cause heard in state court.'" *Holmes*
 17 *Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002) (quoting
 18 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987)). Thus, "[f]or a case to 'arise under'
 19 federal law, a plaintiff's well-pleaded complaint must establish either (1) that federal law creates
 20 the cause of action or (2) that the plaintiff's asserted right to relief depends on the resolution of a
 21 substantial question of federal law." *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024,
 22 1029 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1098 (2012) (quoting *Peabody Coal Co. v. Navajo*
 23 *Nation*, 373 F.3d 945, 949 (9th Cir. 2004)); *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804,
 24 808 (1986).

25 Importantly, neither defenses nor counterclaims affect the removal jurisdiction analysis.
 26 *See Placer Dome*, 582 F.3d at 1086 ("[T]he federal question on which jurisdiction is premised
 27 cannot be supplied via a defense; rather, the federal question must be disclosed upon the face of
 28 the complaint, unaided by the answer.") (internal quotation omitted); *Merrell Dow*, 478 U.S.

1 at 808; *K2 Am. Corp.*, 653 F.3d at 1029 (same regarding counterclaim). Because Wynn Resorts'
 2 Complaint asserts neither a federal cause of action nor a claim that depends upon resolving a
 3 substantial question of federal law, this entire action must be remanded to state court.⁵

4 **B. All Of Wynn Resorts' Claims Are Created By State, Not Federal, Law.**

5 The "vast majority" of cases that fall within the "arising under" federal question
 6 jurisdiction are cases where federal law creates the cause of action. *Merrell Dow*, 478 U.S.
 7 at 808. However, *federal law does not create any of the causes of action* Wynn Resorts asserts
 8 in its Complaint. As the Complaint alleges, Wynn Resorts' first cause of action is for breach of
 9 fiduciary duty arising under Nevada law against Okada. (Compl. ¶¶ 47-63, ECF No. 1-1.) *See*,
 10 *e.g.*, *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137 P.3d 1171, 1178 (2006) (discussing
 11 fiduciary duties owed by directors of Nevada corporations). As its second cause of action,
 12 Wynn Resorts asserts a claim against Aruze USA and Universal for aiding and abetting Okada's
 13 breach of fiduciary duty, a claim that also arises under Nevada law. (Compl. ¶¶ 64-69,
 14 ECF No. 1-1.) *See In re Amerco Derivative Litig.*, 252 P.3d 681, 701-02 (Nev. 2011). Wynn
 15 Resorts' third and final cause of action is for declaratory relief, and the claim is expressly brought
 16 under Chapter 30 of the Nevada Revised Statutes against all three Defendants. (Compl. ¶¶ 70-79,
 17 ECF No. 1-1.) By this final cause of action, Wynn Resorts seeks a declaration that its Board
 18 "acted lawfully and in full compliance with its Articles of Incorporation, Bylaws, and other
 19 governing documents" in invoking the unsuitability and redemption provisions in Wynn Resorts'
 20 Articles of Incorporation. (*Id.* ¶ 78.) None of Wynn Resorts' causes of action is created by
 21 federal law. Therefore, Defendants cannot establish federal "arising under" jurisdiction by this
 22 most common means.

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 26 ⁵ The removal statute discusses orders remanding a "case," not individual claims.
 27 28 U.S.C. § 1447. Thus, "[c]ourts have remanded cases where a defendant's counterclaim . . .
 28 alleged claims that either would have otherwise created a federal question or alleged claims that
 were within the exclusive jurisdiction of the federal courts." *Mike Nelson Co. v. Hathaway*,
 No. CV F 05-0208 AWI DLB, 2006 WL 3826736, at *4 (E.D. Cal. Dec. 28, 2006) (listing cases
 that stand for this same principle).

1 C. **None Of Wynn Resorts' Claims Require A Resolution Of A Federal Law**
 2 **Issue.**

3 To overcome the rather obvious lack of federal questions on the face of Wynn Resorts'
 4 claims, Defendants contend that Wynn Resorts' state law claims somehow depend upon a judicial
 5 finding that Okada violated a federal criminal statute. Specifically, Defendants argue that
 6 Wynn Resorts' "*right to relief depends on* the resolution of a *substantial, disputed federal*
 7 *question*' regarding the scope and interpretation of the Foreign Corrupt Practices Act of 1977
 8 ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq.*" (Notice of Removal, ¶ 3, ECF No. 1 (emphasis added).)
 9 But, while Defendants recite the correct standard for federal question jurisdiction, *see, e.g., ARCO*
 10 *Envtl. Remediation, LLC v. Dep't of Health & Env'tl. Quality of the State of Montana*,
 11 213 F.3d 1108, 1114 (9th Cir. 2000); *K2 Am. Corp.*, 653 F.3d at 1029, their application of that
 12 legal standard to Wynn Resorts' Complaint is patently wrong. In fact, Defendants' position rests
 13 upon a complete distortion of Wynn Resorts' claims as well as the legal basis for the Board of
 14 Directors' resolutions and decisions.

15 There is a "long-settled understanding that the mere presence of a federal issue in a state
 16 cause of action does not automatically confer federal-question jurisdiction." *Lippitt v. Raymond*
 17 *James Fin. Servs., Inc.*, 340 F.3d 1033, 1040 (9th Cir. 2003); *Grable & Sons*, 545 U.S. at 314
 18 (stating that the presence of a "federal issue" is not "a password opening federal courts to any state
 19 action embracing a point of federal law"). Therefore, it is more than clear that references to
 20 federal law in a complaint – whether direct or indirect – are insufficient to establish federal
 21 jurisdiction. *Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 344 (9th Cir. 1996); *Placer Dome*,
 22 582 F.3d at 1091 (stating that even if a complaint is "sprinkled with references" to a federal law,
 23 "the exercise of federal-question removal jurisdiction requires more.").

24 Federal question jurisdiction over state law claims is confined to instances where "the
 25 vindication of a right under state law necessarily turn[s] on some construction of federal law,"
 26 *Merrell Dow*, 478 U.S. at 808-09 (quoting *Franchise Tax Bd.*, 463 U.S. at 9). In other words,
 27 unless a "substantial, disputed question of federal law is a *necessary* element of one of the
 28 well-pleaded state law claims," there is no federal question jurisdiction. *Rains*, 80 F.3d at 345

(emphasis in original) (quoting *Franchise Tax Bd.*, 463 U.S. at 13); accord *Nevada v. Bank of Am.*, No. 12-15005, 2012 WL 688552, at *10-11, --- F.3d --- (9th Cir. March 2, 2012). Cf. *Freeto v. Litton Loan Servicing LP*, No. 3:09-cv-00754-LRH-VPC, 2010 WL 398969, at *2 (D. Nev. Jan. 26, 2010) (remanding where plaintiff's state law conspiracy claim "necessarily depend[ed] on the resolution of federal law").⁶

The strength of this principle can be seen clearly from the Ninth Circuit's decision in *Rains*. 80 F.3d at 339. The plaintiff in *Rains* pleaded a claim under California law for wrongful termination in violation of public policy, an element of which required a showing that "a fundamental public policy existed that is 'delineated in constitutional or statutory provisions.'" *Id.* at 343. *Rains* alleged that the requisite public policy was embodied in the California constitution, a California statute, and Title VII of the Civil Rights Act. *Id.* In holding that there was no federal question jurisdiction over the action and instructing that it be remanded, the Ninth Circuit reasoned that where a plaintiff can prevail on a state law claim through "alternative and independent theories – one of which is a state law theory and one of which is a federal law theory – federal question jurisdiction does not attach because federal law is not a necessary element of the claim." *Id.* at 346.

This Court applied the same reasoning in *Regas v. Freemont Investments & Loan*, a case that involved a claim under the Nevada Unfair and Deceptive Trade Practices Act. No. 3:10-cv-0366-LRH-VPC, 2010 WL 4007304 (D. Nev. Oct. 8, 2010). As described by the Court, an entity could violate that statute by "conduct[ing] business without the appropriate state licenses" or by "violat[ing] a state or federal regulation relating to the sale or lease of goods and services." *Id.* at *2 n.2. Thus, a violation of a federal regulation was one of several potential predicates for establishing a claim under the Nevada statute. But as this Court explained in

⁶ The references in Wynn Resorts' Complaint to the FCPA arise out of that pleading's description of the report prepared for Wynn Resorts by Director Freeh. To be sure, Freeh's report pointed out the gravity of Defendants' conduct by reference to the FCPA. But a finding of an FCPA violation was not remotely necessary to the decision-making of the Wynn Resorts Board. Nor is such a finding necessary to a determination of the claims brought by Wynn Resorts against Defendants. "Unsuitability" – essentially a finding that an individual poses a risk to a corporation's status as a gaming licensee – is a far different standard from liability under a specific statute.

PISANELLO BICE PLLC
 3883 HOWARD HUGHES PARKWAY, SUITE 800
 LAS VEGAS, NEVADA 89169

1 remanding the action, "[t]he fact that a violation of federal law may be a predicate for the violation
 2 of state law does not automatically elevate the state claim to a claim requiring 'resolution of a
 3 substantial question of federal law' sufficient to establish jurisdiction." *Id.* at 2 (quoting
 4 *Franchise Tax Bd.*, 463 U.S. at 13); *accord Bank of Am.*, 2012 WL 688552, at *11 (explaining that
 5 a "glancing reference to federal law is insufficient to confer jurisdiction over [] state law claims";
 6 the federal law issues must be "pivotal" to the plaintiffs case).

7 Here, despite Defendants' attempt to recast the allegations of Wynn Resorts' Complaint
 8 into a federal criminal indictment of Okada, neither the interpretation of the FCPA nor a
 9 determination that Defendants violated the FCPA is necessary for Wynn Resorts to prevail on its
 10 state law claims. On its face, the Complaint rests upon Nevada laws by which gaming licensees
 11 and their affiliates are bound to follow. These laws are at the heart of all three of Wynn Resorts'
 12 causes of action. (*E.g.*, Compl. ¶ 13, ECF No. 1-1 ("A Nevada gaming license is a privilege.
 13 Nevada law imposes comprehensive regulatory requirements upon gaming licensees, including
 14 obligations that those associated with the licensee possess the necessary character, qualifications,
 15 and integrity to be suitable to hold that privilege so as to not pose a threat to the public interest or
 16 integrity of the regulation and control of gaming. As a Director of Wynn Resorts, Okada is
 17 subject to these demanding standards.")) Further, because Nevada's gaming industry is highly
 18 regulated, Wynn Resorts' Articles of Incorporation and internal policies and codes are written to
 19 ensure that its licenses would never be in jeopardy. (*Id.* ¶ 14.) It is the provisions in the Articles
 20 of Incorporation and internal policies, as well as fiduciary duties imposed by Nevada law, upon
 21 which Wynn Resorts' claims rely – not the FCPA.

22 While Defendants' payments to foreign officials who could advance Okada's personal
 23 interests likely are a violation of the FCPA, Wynn Resorts alleged that Okada's payments to
 24 foreign officials violate Wynn Resorts' Code of Conduct and Wynn Resorts' Policy Regarding
 25 Payments to Government Officials. (*E.g.*, Compl. ¶¶ 30, 31(b), 44(f-g), 48-55, ECF No. 1-1.)
 26 Evidence of these payments, as well as Okada's self-dealing, misappropriation of Wynn Resorts'
 27 assets and trade secrets, purposeful decision to compete with Wynn Resorts, and false claims of
 28 affiliation and endorsement for his personal business interests, altogether comprise the basis for

1 Wynn Resorts' first cause of action that Okada breached the fiduciary duties he owed to
2 Wynn Resorts under Nevada law. (*E.g., id.*, ¶¶ 26, 29, 47-69.) *See, e.g., Shoen.*, 122 Nev.
3 at 632, 137 P.3d at 1178. These same facts form the basis for Wynn Resorts' second cause of
4 action that Aruze USA and Universal aided and abetted Okada's breaches of duty.
5 (Compl. ¶¶ 64-69, ECF No. 1-1.) *See In re Amerco Derivative Litig.*, 252 P.3d at 701-02
6 (recognizing a Nevada cause of action for aiding and abetting a breach of fiduciary duty). Neither
7 claim requires a determination under federal law; neither claim requires a court to determine
8 whether any defendant violated the FCPA (though this would certainly foreclose any debate as to
9 liability); and neither claim even involves the resolution of any interpretive issues under the
10 FCPA. The Complaint rests upon allegations of breach of duty arising out of factual matters
11 brought to the Board of Director's attention by, among other things, the investigation conducted
12 by Director Freeh. And, Wynn Resorts' claims are authorized and supported by state law. *See*
13 *Rains*, 80 F.3d at 344, 347.

14 The same analysis is true for Wynn Resorts' third and final cause of action for declaratory
15 relief under NRS Chapter 30, by which Wynn Resorts seeks a declaration that it acted lawfully
16 and in accordance with its governing documents. (Compl. ¶¶ 70-79, ECF No. 1-1.) To be clear,
17 these governing documents do not list as a prerequisite to an unsuitability determination by the
18 Board of Directors a judicial finding that a Wynn Resorts affiliate violated a federal, criminal
19 statute. This absurd proposition would prevent Wynn Resorts from taking any action to protect
20 its gaming license until long after that license is in serious jeopardy. Rather, pursuant to its
21 Articles of Incorporation as granted by the State of Nevada, Wynn Resorts need only demonstrate
22 that its Board of Directors considered the facts and information presented to it and, in its "sole
23 discretion," determined: (1) that conduct by Okada, Aruze USA, and Universal was likely to
24 jeopardize Wynn Resorts' and its affiliated companies' gaming licenses; (2) Aruze USA was thus
25 "unsuitable" pursuant to Wynn Resorts' (a Nevada corporation) Articles of Incorporation; and
26 (3) Aruze USA's stock would be redeemed under those same Articles. (*Id.* ¶ 76.) In sum, for

1 Wynn Resorts to prevail on its claims, there need be no finding that any defendant violated the
2 FCPA; indeed, in reality, there need be no discussion of the FCPA at all.⁷

3 **D. Wynn Resorts Should Be Awarded Its Fees And Costs.**

4 Where, like here, "the removing party lacked an objectively reasonable basis for seeking
5 removal," this Court should require Defendants to pay Wynn Resorts' "just costs and any actual
6 expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447; *Martin*

7
8 ⁷ As a final note on this issue of remand, even if this Court had federal question jurisdiction
9 (and it does not), this Court can and should exercise its discretion not to entertain jurisdiction.
10 Defendants contend that this dispute stems from, relates to, and/or is intertwined with a contract
11 that contains a mandatory forum selection clause providing for exclusive jurisdiction in the state
12 courts of Nevada. *E.g.*, *Kamm v. ITEX Corp.*, 568 F.3d 752, 756 (9th Cir. 2009) ("A forum
13 selection clause is similar to other grounds for not exercising jurisdiction over a case" even though
14 the basis for remand "operates outside of the various requirements for removal specified
15 in §§ 1441–1453 . . ."); *Murakami v. E.L. DuPont De Nemours & Co.*, 191 F.3d 460 (9th Cir.
16 1999) ("Although defendants may have a statutory right to remove a case under
17 28 U.S.C. § 1441(a), that right may be waived by a valid, mandatory forum selection clause.").
18 Specifically, Defendants' responses to the Complaint refer repeatedly to a Stockholders
19 Agreement (executed by and between Okada on behalf of Aruze USA, Stephen A. Wynn,
20 individually, and Elaine P. Wynn, individually). The parties to the Stockholders Agreement,
21 including Aruze USA, expressly waived their right to remove to federal court any claims that
22 relate to the Stockholders Agreement:

23 Jurisdiction. *Each party hereby irrevocably submits to the*
24 *exclusive jurisdiction of the state courts in the State of Nevada in*
25 *any action, suit or proceeding arising in connection with this*
26 *Agreement, and agrees that any such action, suit or proceeding*
27 *shall be brought only in such state court (and waives any objection*
28 *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.

(Ex. 2, Amended & Restated Stockholders Agreement, ¶ 14(n) (emphasis added).) If Defendants' position is accepted, then this language compels enforcement of the clause because Aruze USA not only consented to the "*exclusive* jurisdiction of the state courts in the State of Nevada" but also agreed that "any such action . . . *shall* be brought *only* in such state court" (*Id.*) (emphasis added).) *Dockside, Ltd. v. Sea Tech., Ltd.*, 875 F.2d 762, 763-64 (9th Cir. 1989) (stating that mandatory forum-selection clauses "are *prima facie* valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances." (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972)); *Hamakua Sugar Co., Inc. v. Fiji Sugar Corp., Ltd.*, 778 F. Supp. 503, 505 (D. Haw. 1991). While Wynn Resorts does not concede that the Stockholders' Agreement bears any relevance to the claims in Wynn Resorts' Complaint, Aruze USA contends the opposite, which, if nothing else, illustrates the hypocrisy of Defendants' removal.

1 v. *Franklin Capital Corp.*, 546 U.S. 132, 140-41 (2005). This not a case with a jurisdictional
 2 "close call." Knowing that (i) Wynn Resorts asserted no federal cause of action, (ii) there is no
 3 need to interpret the FCPA nor deem it to have been violated for Wynn Resorts to prevail on its
 4 state law claims, and (iii) Aruze USA waived its right to seek federal court jurisdiction by
 5 executing a forum selection clause in the Stockholders Agreement, Defendants nonetheless used
 6 the removal process to "delay[] resolution of the case, impose[] additional costs . . . , and
 7 waste[] judicial resources." *Id.* Most importantly, Defendants purposefully used the removal
 8 process as an improper vehicle to forum shop. *See Nakash*, 882 F.2d at 1416-17) (stating federal
 9 courts have "no interest in encouraging this practice"). Wynn Resorts is deserving of payment by
 10 Defendants of its "just costs" in connection with this motion to remand, and requests that its fees
 11 and costs be awarded.

12 **III. CONCLUSION**

13 In light of the foregoing, Wynn Resorts respectfully requests that this Court remand this
 14 matter back to state court, and award it all fees and costs associated with seeking the required
 15 remand.

16 DATED this 29th day of March, 2012.

17 PISANELLI BICE PLLC

18
 19 By: /s/ James J. Pisanelli

James J. Pisanelli, Esq., Bar No. 4027
 Todd L. Bice, Esq., Bar No. 4534
 Debra L. Spinelli, Esq., Bar No. 9695
 Jarrod L. Rickard, Esq., Bar No. 10203
 3883 Howard Hughes Parkway, Suite 800
 Las Vegas, Nevada 89169

23 and

24 Paul K. Rowe, Esq. (*pro hac vice forthcoming*)
 Stephen R. DiPrima, Esq. (*pro hac vice forthcoming*)
 Bradley R. Wilson, Esq. (*pro hac vice forthcoming*)
 WACHTELL, LIPTON, ROSEN & KATZ
 51 West 52nd Street
 New York, NY 10019

27 and
 28

PISANELLI BICE PLLC
 3883 HOWARD HUGHES PARKWAY, SUITE 800
 LAS VEGAS, NEVADA 89169

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

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Robert L. Shapiro, Esq. (*pro hac vice* forthcoming)
GLASER WEIL FINK JACOBS HOWARD
AVCHEN & SHAPIRO, LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, CA 90067

Attorneys for Wynn Resorts, Limited

EXHIBIT 1



DEAN HELLER
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684 5708

**Certificate to Accompany
Restated Articles**
(PURSUANT TO NRS
78.403 and 82.371)

FILED

C14059-02

SEP 16 2002

IN THE OFFICE OF
DEAN HELLER SECRETARY OF STATE

Important: Read attached instructions before completing

This Form is to Accompany Restated Articles of Incorporation
(Pursuant to NRS 78.403 or 82.371)
(This form may also be used to accompany Restated Articles for
Limited-Liability Companies and Certificates of Limited Partnership
and Business Trusts)
- Remit in Duplicate -

1. Name of Nevada entity as last recorded in this office:

Wynn Resorts, Limited

2. Indicate what changes have been made by checking the appropriate spaces.*

- ☐ The entity name has been amended.
- ☐ The resident agent has been changed.
(attach Certificate of Acceptance from new resident agent)
- ☐ The purpose of the entity has been amended.
- ☐ The authorized shares have been amended.
- ☐ The directors, managers or general partners have been amended.
- ☐ The duration of the entity has been amended.
- ☐ IRS tax language has been added.
- ☐ Articles have been added to the articles or certificate.
- ☐ Articles have been deleted from the articles or certificate.
- ☒ None of the above apply. The articles or certificate have been amended as follows:
(provide article numbers, if available)

Article IV, Section 2: The board will become classified upon the effectiveness of the IPO.

Article V, Section 1: The provisions regarding the number of directors and providing for the classified board cannot be amended without the approval of at least 66-2/3% of the issued and outstanding stock.

* This form is to accompany Restated Articles which contain newly altered or amended articles.
The Restated Articles must contain all of the requirements as set forth in the statutes for amending
or altering Articles of Incorporation, Articles of Organization or Certificates of Limited Partnership.

IMPORTANT: Failure to include any of the above information and remit the proper fees may cause
this filing to be rejected.

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF

WYNN RESORTS, LIMITED

FILED # C14059-02
SEP 16 2002

IN THE OFFICE OF
J. H. HILL
DEPUTY CLERK OF COURT

WYNN RESORTS, LIMITED (the "Corporation"), a corporation organized under the laws of the State of Nevada, by its Chief Executive Officer does hereby certify that:

1. Pursuant to the provisions of Sections 78.390 and 78.403 of Nevada Revised Statutes ("NRS") the Corporation hereby amends and restates its articles of incorporation as follows:
2. The amendment and restatement of the Articles of Incorporation as set forth below was adopted by the Corporation's board of directors by the unanimous written consent as of September 16, 2002 in accordance with the provisions of NRS 78.315 and NRS 78.390.
3. The amendment and restatement of the Articles of Incorporation as set forth below was approved by the written consent of the sole stockholder as of September 16, 2002.
4. That the undersigned officer has been authorized and directed by the board of directors to execute and file this certificate setting forth the text of the Articles of Incorporation of the Corporation as amended and restated in its entirety to this date as follows:

ARTICLE I
NAME

The name of the corporation is Wynn Resorts, Limited (the "Corporation").

ARTICLE II
CAPITAL STOCK

Section 1. Authorized Shares. The aggregate number of shares which the Corporation shall have authority to issue is four hundred and forty million (440,000,000) shares, consisting of two classes to be designated, respectively, "Common Stock" and "Preferred Stock," with all of such shares having a par value of \$.01 per share. The total number of shares of Common Stock that the Corporation shall have authority to issue is four hundred million (400,000,000) shares. The total number of shares of Preferred Stock that the Corporation shall have authority to issue is forty million (40,000,000) shares. The Preferred Stock may be issued in one or more series, each series to be appropriately designated by a distinguishing letter or title, prior to the issuance of any shares thereof. The voting powers, designations, preferences, limitations, restrictions, and relative, participating, optional and other rights, and the qualifications, limitations, or restrictions thereof, of the Preferred Stock shall hereinafter be prescribed by resolution of the board of directors pursuant to Section 3 of this Article II.

Section 2. Common Stock.

(a) Dividend Rate. Subject to the rights of holders of any Preferred Stock having preference as to dividends and except as otherwise provided by these Articles of Incorporation, as amended from time to time (hereinafter, the "Articles") or the NRS, the holders of Common Stock shall be entitled to receive dividends when, as and if declared by the board of directors out of assets legally available therefor.

(b) Voting Rights. Except as otherwise provided by the Articles, the holders of the issued and outstanding shares of Common Stock shall be entitled to one vote for each share of Common Stock. No holder of shares of Common Stock shall have the right to cumulate votes.

(c) Liquidation Rights. In the event of liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, subject to the prior rights of holders of Preferred Stock to share ratably in the Corporation's assets, the Common Stock and any shares of Preferred Stock which are not entitled to any preference in liquidation shall share equally and ratably in the Corporation's assets available for distribution after giving effect to any liquidation preference of any shares of Preferred Stock. A merger, conversion, exchange or consolidation of the Corporation with or into any other person or sale or transfer of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to stockholders) shall not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(d) No Conversion, Redemption, or Preemptive Rights. The holders of Common Stock shall not have any conversion, redemption, or preemptive rights.

(e) Consideration for Shares. The Common Stock authorized by this Article shall be issued for such consideration as shall be fixed, from time to time, by the board of directors.

Section 3. Preferred Stock.

(a) Designation. The board of directors is hereby vested with the authority from time to time to provide by resolution for the issuance of shares of Preferred Stock in one or more series not exceeding the aggregate number of shares of Preferred Stock authorized by these Articles, and to prescribe with respect to each such series the voting powers, if any, designations, preferences, and relative, participating, optional, or other special rights, and the qualifications, limitations, or restrictions relating thereto, including, without limiting the generality of the foregoing: the voting rights relating to the shares of Preferred Stock of any series (which voting rights, if any, may be full or limited, may vary over time, and may be applicable generally or only upon any stated fact or event); the rate of dividends (which may be cumulative or noncumulative), the condition or time for payment of dividends and the preference or relation of such dividends to dividends payable on any other class or series of capital stock; the rights of holders of Preferred Stock of any series in the event of liquidation, dissolution, or winding up of the affairs of the Corporation; the rights, if any, of holders of Preferred Stock of any series to convert or exchange such shares

of Preferred Stock of such series for shares of any other class or series of capital stock or for any other securities, property, or assets of the Corporation or any subsidiary (including the determination of the price or prices or the rate or rates applicable to such rights to convert or exchange and the adjustment thereof, the time or times during which the right to convert or exchange shall be applicable, and the time or times during which a particular price or rate shall be applicable); whether the shares of any series of Preferred Stock shall be subject to redemption by the Corporation (in addition to any right of redemption pursuant to Article VII of these Articles) and if subject to redemption, the times, prices, rates, adjustments and other terms and conditions of such redemption. The terms, designations, preferences, limitations, restrictions and relative rights may be made dependent upon any fact or event which may be ascertained outside the Articles or the resolution if the manner in which the fact or event may operate on such series is stated in the Articles or resolution. As used in this section "fact or event" includes, without limitation, the existence of a fact or occurrence of an event, including, without limitation, a determination or action by a person, government, governmental agency or political subdivision of a government. The board of directors is further authorized to increase or decrease (but not below the number of such shares of such series then outstanding) the number of shares of any series subsequent to the issuance of shares of that series. Unless the board of directors provides to the contrary in the resolution which fixes the characteristics of a series of Preferred Stock, neither the consent by series, or otherwise, of the holders of any outstanding Preferred Stock nor the consent of the holders of any outstanding Common Stock shall be required for the issuance of any new series of Preferred Stock regardless of whether the rights and preferences of the new series of Preferred Stock are senior or superior, in any way, to the outstanding series of Preferred Stock or the Common Stock.

(b) Certificate. Before the Corporation shall issue any shares of Preferred Stock of any series, a certificate of designation setting forth a copy of the resolution or resolutions of the board of directors, and establishing the voting powers, designations, preferences, the relative, participating, optional, or other rights, if any, and the qualifications, limitations, and restrictions, if any, relating to the shares of Preferred Stock of such series, and the number of shares of Preferred Stock of such series authorized by the board of directors to be issued shall be made and signed by an officer of the corporation and filed in the manner prescribed by the NRS.

Section 4. Non-Assessment of Stock. The capital stock of the Corporation, after the amount of the subscription price has been fully paid, shall not be assessable for any purpose, and no stock issued as fully paid shall ever be assessable or assessed, and the Articles shall not be amended in this particular. No stockholder of the Corporation is individually liable for the debts or liabilities of the Corporation.

ARTICLE III ACTION OF STOCKHOLDERS

Prior to the completion of the initial public offering of the Corporation, the stockholders may take action by written consent in lieu of a meeting. After the completion of the initial public offering of the Corporation, the stockholders may not in any circumstance take action by written consent.

ARTICLE IV
DIRECTORS AND OFFICERS

Section 1. Number of Directors. The members of the governing board of the Corporation are styled as directors. The board of directors of the Corporation shall be elected in such manner as shall be provided in the bylaws of the Corporation. The board of directors shall consist of at least one (1) individual and not more than thirteen (13) individuals. The number of directors may be changed from time to time in such manner as shall be provided in the bylaws of the Corporation.

Section 2. Classified Board. Upon the effectiveness of the Corporation's registration statement on Form S-1 with respect to its initial public offering of common stock, the directors shall be classified, with respect to the time for which they shall hold their respective offices, by dividing them into three classes, to be known as "Class I," "Class II" and "Class III." Directors of Class I shall hold office until the next annual meeting of stockholders after such effectiveness and until their successors are elected and qualified, directors of Class II shall hold office until the second annual meeting of stockholders after such effectiveness and until their successors are elected and qualified and directors of Class III shall hold office until the third annual meeting of stockholders after such effectiveness and until their successors are elected and qualified. At each annual meeting of stockholders following such effectiveness, successors to the directors of the class whose term of office expires at such annual meeting shall be elected to hold office until the third succeeding annual meeting of stockholders, so that the term of office of only one class of directors shall expire at each annual meeting. The number of directors in each class, which shall be such that as near as possible to one-third and at least one-fourth (or such other fraction as required by the NRS) in number are elected at each annual meeting, shall be established from time to time by resolution of the board of directors and shall be increased or decreased by resolution of the board of directors, as may be appropriate whenever the total number of directors is increased or decreased.

Section 3. Limitation of Liability. The liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS. If the NRS is amended to further eliminate or limit or authorize corporate action to further eliminate or limit the liability of directors or officers, the liability of directors and officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the NRS, as so amended from time to time.

Section 4. Payment of Expenses. In addition to any other rights of indemnification permitted by the laws of the State of Nevada or as may be provided for by the Corporation in its bylaws or by agreement, the expenses of officers and directors incurred in defending any threatened, pending, or completed action, suit or proceeding (including without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, involving alleged acts or omissions of such officer or director in his or her capacity as an officer or director of the Corporation or member, manager, or managing member of a predecessor limited liability company or affiliate of such limited liability company or while serving in any capacity at the request of the Corporation as a director, officer, employee, agent, member, manager, managing member, partner, or fiduciary of, or in any other capacity for, another corporation or any partnership,

joint venture, trust, or other enterprise, shall be paid by the Corporation or through insurance purchased and maintained by the Corporation or through other financial arrangements made by the Corporation, as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the officer or director to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation. To the extent that an officer or director is successful on the merits in defense of any such action, suit or proceeding, or in the defense of any claim, issue or matter therein, the Corporation shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense. Notwithstanding anything to the contrary contained herein or in the bylaws, no director or officer may be indemnified for expenses incurred in defending any threatened, pending, or completed action, suit or proceeding (including without limitation, an action, suit or proceeding by or in the right of the Corporation), whether civil, criminal, administrative or investigative, that such director or officer incurred in his or her capacity as a stockholder, including, but not limited to, in connection with such person being deemed an Unsuitable Person (as defined in Article VII hereof).

Section 5. Repeal And Conflicts. Any repeal or modification of Sections 3 or 4 above approved by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the liability of a director or officer of the Corporation existing as of the time of such repeal or modification. In the event of any conflict between Sections 3 or 4 above and any other Article of the Articles, the terms and provisions of Sections 3 or 4 above shall control.

ARTICLE V VOTING ON CERTAIN TRANSACTIONS

Section 1. Amendment of Articles. The Corporation reserves the right to amend, alter, change or repeal any provision contained in the Articles, in the manner now or hereafter prescribed by the NRS, and all rights conferred on stockholders herein are granted subject to this reservation; provided, however, that no amendment, alteration, change or repeal may be made to: (a) Article III, (b) Sections 1, 2, 3 and 4 of Article IV, or (c) this Article V without the affirmative vote of the holders of at least sixty-six and two-thirds percent (66⅔%) of the issued and outstanding shares of stock of the Corporation entitled to vote in the election of directors excluding stock entitled to vote only upon the happening of a fact or event unless such fact or event shall have occurred, considered for the purposes of this section as one class.

Section 2. Additional Vote Required. Any affirmative vote required by this Article V shall be in addition to the vote of the holders of any class or series of stock of the Corporation otherwise required by law, the Articles, the resolutions of the board of directors providing for the issuance of such class or series and any agreement between the Corporation and any securities exchange or over-the-counter market upon which the Corporation's shares are listed or designated for trading.

ARTICLE VI
COMBINATIONS WITH INTERESTED STOCKHOLDERS

At such time, if any, as the Corporation becomes a "resident domestic corporation," as that term is defined in NRS 78.427, the Corporation shall not be subject to, or governed by, any of the provisions in NRS 78.411 to 78.444, inclusive, as may be amended from time to time, or any successor statutes.

ARTICLE VII
COMPLIANCE WITH GAMING LAWS

Section 1. Definitions. For purposes of this Article VII, the following terms shall have the meanings specified below:

- (a) "Affiliate" shall mean a Person who, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, a specified Person. For the purpose of this Section 1(a) of Article VII, "control," "controlled by" and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise. "Affiliated Companies" shall mean those partnerships, corporations, limited liability companies, trusts or other entities that are Affiliates of the Corporation, including, without limitation, subsidiaries, holding companies and intermediary companies (as those and similar terms are defined in the Gaming Laws of the applicable Gaming Jurisdictions) that are registered or licensed under applicable Gaming Laws.
- (b) "Gaming" or "Gaming Activities" shall mean the conduct of gaming and gambling activities, or the use of gaming devices, equipment and supplies in the operation of a casino or other enterprise, including, without limitation, race books, sports pools, slot machines, gaming devices, gaming tables, cards, dice, gaming chips, player tracking systems, cashless wagering systems and associated equipment and supplies.
- (c) "Gaming Authorities" shall mean all international, foreign, federal, state, local and other regulatory and licensing bodies and agencies with authority over Gaming within any Gaming Jurisdiction. "Gaming Jurisdiction" shall mean all jurisdictions, domestic and foreign, and their political subdivisions, in which Gaming Activities are lawfully conducted.
- (d) "Gaming Laws" shall mean all laws, statutes, ordinances and regulations pursuant to which any Gaming Authority possesses regulatory and licensing authority over Gaming within any Gaming Jurisdiction, and all orders, decrees, rules and regulations promulgated by such Gaming Authority thereunder.
- (e) "Gaming Licenses" shall mean all licenses, permits, approvals, authorizations, registrations, findings of suitability, franchises, concessions and entitlements issued by a Gaming Authority necessary for or relating to the conduct of Gaming Activities.
- (f) "Own," "Ownership," or "Control," (and derivatives thereof) shall mean (i) ownership of record, (ii) "beneficial ownership" as defined in Rule 13d-3

promulgated by the United States Securities and Exchange Commission (as now or hereafter amended), or (iii) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or the disposition of Securities, by agreement, contract, agency or other manner.

(g) "Person" shall mean an individual, partnership, corporation, limited liability company, trust or any other entity.

(h) "Redemption Date" shall mean the date specified in the Redemption Notice as the date on which the shares of the Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person are to be redeemed by the Corporation.

(i) "Redemption Notice" shall mean that notice of redemption given by the Corporation to an Unsuitable Person or an Affiliate of an Unsuitable Person pursuant to this Article VII. Each Redemption Notice shall set forth (i) the Redemption Date, (ii) the number and type of shares of the Securities to be redeemed, (iii) the Redemption Price and the manner of payment therefor, (iv) the place where any certificates for such shares shall be surrendered for payment, and (v) any other requirements of surrender of the certificates, including how they are to be endorsed, if at all.

(j) "Redemption Price" shall mean the price to be paid by the Corporation for the Securities to be redeemed pursuant to this Article VII, which shall be that price (if any) required to be paid by the Gaming Authority making the finding of unsuitability, or if such Gaming Authority does not require a certain price to be paid, that amount determined by the board of directors to be the fair value of the Securities to be redeemed; provided, however, that the price per share represented by the Redemption Price shall in no event be in excess of the closing sales price per share of shares on the principal national securities exchange on which such shares are then listed on the trading date on the day before the Redemption Notice is deemed given by the Corporation to the Unsuitable Person or an Affiliate of an Unsuitable Person or, if such shares are not then listed for trading on any national securities exchange, then the closing sales price of such shares as quoted in the Nasdaq National Market or SmallCap Market or, if the shares are not then so quoted, then the mean between the representative bid and the ask price as quoted by any other generally recognized reporting system. The Redemption Price may be paid in cash, by promissory note, or both, as required by the applicable Gaming Authority and, if not so required, as the board of directors determines. Any promissory note shall contain such terms and conditions as the board of directors determines necessary or advisable, including without limitation, subordination provisions, to comply with any law or regulation then applicable to the Corporation or any Affiliate of the Corporation or to prevent a default under, breach of, event of default under or acceleration of any loan, promissory note, mortgage, indenture, line of credit, or other debt or financing agreement of the Corporation or any Affiliate of the Corporation. Subject to the foregoing, the principal amount of the promissory note together with any unpaid interest shall be due and payable no later than the tenth anniversary of delivery of the note and interest on the unpaid principal thereof shall be payable annually in arrears at the rate of 2% per annum.

(k) "Securities" shall mean the capital stock of the Corporation.

(l) "Unsuitable Person" shall mean a Person who (i) is determined by a Gaming Authority to be unsuitable to Own or Control any Securities or unsuitable to be connected or affiliated with a Person engaged in Gaming Activities in a Gaming Jurisdiction, or (ii) causes the Corporation or any Affiliated Company to lose or to be threatened with the loss of any Gaming License, or (iii) in the sole discretion of the board of directors of the Corporation, is deemed likely to jeopardize the Corporation's or any Affiliated Company's application for, receipt of approval for, right to the use of, or entitlement to, any Gaming License.

Section 2. Finding of Unsuitability.

(a) The Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person shall be subject to redemption by the Corporation, out of funds legally available therefor, by action of the board of directors, to the extent required by the Gaming Authority making the determination of unsuitability or to the extent deemed necessary or advisable by the board of directors. If a Gaming Authority requires the Corporation, or the board of directors deems it necessary or advisable, to redeem any such Securities, the Corporation shall give a Redemption Notice to the Unsuitable Person or its Affiliate and shall purchase on the Redemption Date the number of shares of the Securities specified in the Redemption Notice for the Redemption Price set forth in the Redemption Notice. From and after the Redemption Date, such Securities shall no longer be deemed to be outstanding, such Unsuitable Person or any Affiliate of such Unsuitable Person shall cease to be a stockholder with respect to such shares and all rights of such Unsuitable Person or any Affiliate of such Unsuitable Person therein, other than the right to receive the Redemption Price, shall cease. Such Unsuitable Person or its Affiliate shall surrender the certificates representing any shares to be redeemed in accordance with the requirements of the Redemption Notice.

(b) Commencing on the date that a Gaming Authority serves notice of a determination of unsuitability or the board of directors determines that a Person is an Unsuitable Person, and until the Securities Owned or Controlled by such Person are Owned or Controlled by a Person who is not an Unsuitable Person, the Unsuitable Person or any Affiliate of an Unsuitable Person shall not be entitled: (i) to receive any dividend or interest with regard to the Securities, (ii) to exercise, directly or indirectly or through any proxy, trustee, or nominee, any voting or other right conferred by such Securities, and such Securities shall not for any purposes be included in the shares of capital stock of the Corporation entitled to vote, or (iii) to receive any remuneration in any form from the Corporation or any Affiliated Company for services rendered or otherwise.

Section 3. Notices. All notices given by the Corporation pursuant to this Article, including Redemption Notices, shall be in writing and may be given by mail, addressed to the Person at such Person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed given at the time deposited in the United States mail. Written notice may also be given personally or by telegram, facsimile, telex or cable and such notice shall be deemed to be given at the time of receipt thereof, if given personally, or at the time of transmission thereof, if given by telegram, facsimile, telex or cable.

Section 4. Indemnification. Any Unsuitable Person and any Affiliate of an Unsuitable Person shall indemnify and hold harmless the Corporation and its Affiliated Companies for any and all losses, costs, and expenses, including attorneys' fees, incurred by the Corporation and its Affiliated Companies as a result of, or arising out of, such Unsuitable Person's or Affiliate's continuing Ownership or Control of Securities, the neglect, refusal or other failure to comply with the provisions of this Article VII, or failure to promptly divest itself of any Securities when required by the Gaming Laws or this Article VII.

Section 5. Injunctive Relief. The Corporation is entitled to injunctive or other equitable relief in any court of competent jurisdiction to enforce the provisions of this Article VII and each holder of the Securities of the Corporation shall be deemed to have acknowledged, by acquiring the Securities of the Corporation, that the failure to comply with this Article VII will expose the Corporation to irreparable injury for which there is no adequate remedy at law and that the Corporation is entitled to injunctive or other equitable relief to enforce the provisions of this Article.

Section 6. Non-exclusivity of Rights. The Corporation's rights of redemption provided in this Article VII shall not be exclusive of any other rights the Corporation may have or hereafter acquire under any agreement, provision of the bylaws or otherwise.

Section 7. Further Actions. Nothing contained in this Article VII shall limit the authority of the board of directors to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation or its Affiliated Companies from the denial or threatened denial or loss or threatened loss of any Gaming License of the Corporation or any of its Affiliated Companies. Without limiting the generality of the foregoing, the board of directors may conform any provisions of this Article VII to the extent necessary to make such provisions consistent with Gaming Laws. In addition, the board of directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind bylaws, regulations, and procedures of the Corporation not inconsistent with the express provisions of this Article VII for the purpose of determining whether any Person is an Unsuitable Person and for the orderly application, administration and implementation of the provisions of this Article VII. Such procedures and regulations shall be kept on file with the Secretary of the Corporation, the secretary of its Affiliated Companies and with the transfer agent, if any, of the Corporation and any Affiliated Companies, and shall be made available for inspection by the public and, upon request, mailed to any holder of Securities. The board of directors shall have exclusive authority and power to administer this Article VII and to exercise all rights and powers specifically granted to the board of directors or the Corporation, or as may be necessary or advisable in the administration of this Article VII. All such actions which are done or made by the board of directors in good faith shall be final, conclusive and binding on the Corporation and all other Persons; provided, however, that the board of directors may delegate all or any portion of its duties and powers under this Article VII to a committee of the board of directors as it deems necessary or advisable.

Section 8. Severability. If any provision of this Article VII or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal, or

unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article VII.

Section 9. Termination and Waivers. Except as may be required by any applicable Gaming Law or Gaming Authority, the board of directors may waive any of the rights of the Corporation or any restrictions contained in this Article VII in any instance in which the board of directors determines that a waiver would be in the best interests of the Corporation. The board of directors may terminate any rights of the Corporation or restrictions set forth in this Article VII to the extent that the board of directors determines that any such termination is in the best interests of the Corporation. Except as may be required by a Gaming Authority, nothing in this Article VII shall be deemed or construed to require the Corporation to repurchase any Securities Owned or Controlled by an Unsuitable Person or an Affiliate of an Unsuitable Person.

IN WITNESS WHEREOF, Wynn Resorts, Limited has caused these second amended and restated articles of incorporation to be executed in its name by its Chief Executive Officer this 16th day of September, 2002.

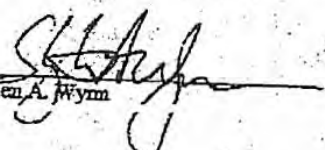

Stephen A. Wynn

EXHIBIT 2

**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

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

- (b) "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 pachi-slot 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@sdflaw.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
Facsimile: _____**

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.


Stephen A. Wynn

Elaine P. Wynn


ARUZE USA, INC.

By: _____

Name: Kazuo Okada
Title: President

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.

Stephen A. Wynn



Elaine P. Wynn

ARUZE USA, INC.

By: _____

Name: Kazuo Okada
Title: President

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.

Stephen A. Wynn

Elaine P. Wynn

ARUZE USA, INC.

By: _____

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.

6th IN WITNESS WHEREOF, the undersigned has executed this Irrevocable Proxy this day of January 2010.

ARUZE USA, INC.

By:

Name:

Title:

Elaine P. Wynn
ELAINE P. WYNN

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 6th day of January 2010.

ARUZE USA, INC.

By: 

Name: _____

Title: _____

Kazuo Okada

ELAINE P. WYNN

OPPM

KIRK B. LENHARD, Bar No. 1437
klenhard@bhfs.com
TAMARA BEATTY PETERSON, Bar No. 5218
tpeterson@bhfs.com
NIKKI L. BAKER, Bar No. 6562
nbaker@bhfs.com
BROWNSTEIN HYATT FARBER
SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106-4614
Telephone: (702) 464-7036
Facsimile: (702) 382-8135

ROBERT SHAPIRO
Admitted Pro Hac Vice
rs@glaserweil.com
GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
Telephone: (310) 553-3000
Facsimile: (310) 556-2920

Attorneys for Respondent Wynn Resorts, Limited

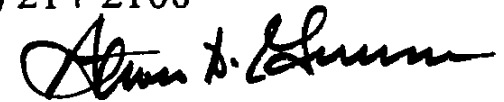
DISTRICT COURT
CLARK COUNTY, NEVADA

KAZUO OKADA, an individual,
Petitioner,

v.

WYNN RESORTS, LIMITED, a Nevada
corporation,
Respondent.

JAMES J. PISANELLI, Esq., Bar No. 4027
JJP@pisanellibice.com
TODD L. BICE, Esq., Bar No. 4534
TLB@pisanellibice.com
DEBRA L. SPINELLI, Esq., Bar No. 9695
DLS@pisanellibice.com
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
Telephone: (702) 214-2100
Facsimile: (702) 214-2100



CLERK OF THE COURT

Case No.: A-12-654522-B
Dept. No.: XI

**WYNN RESORTS, LIMITED'S
OPPOSITION TO KAZUO OKADA'S
MOTION ON ORDER SHORTENING
TIME TO AMEND PETITION FOR
WRIT OF MANDAMUS**

Date of Hearing: May 17, 2012

Time of Hearing: 9:00 a.m.

1 I. INTRODUCTION

2 Kazuo Okada's ("Okada") desire to resuscitate this writ proceeding with an ill-timed and
3 improper request to amend must fail. Over two months ago, this Court told Okada that he would
4 have to "narrowly identify the specific documents" should he contend a further entitlement to
5 inspection. Knowing he had none, Okada made no such request and thereafter this Court closed
6 this proceeding. Yet now Okada chooses to return with a proposed amendment to his petition,
7 seeking to re-open this proceeding on shortened time and for improper purposes (which he
8 confirms on the very face of his Motion).

9 The real motivation for a renewed petition is clear: On February 18, 2012, in reliance on a
10 report prepared by Louis Freeh, former head of the FBI and federal judge, the Wynn Resorts
11 Board found Okada and the two companies he controls and operates (Aruze, Inc. USA and
12 Universal Entertainment Corporation) "unsuitable." In so doing, the Board recognized that Okada
13 long ago abandoned his duties as a Wynn Resorts fiduciary by, among other things, improperly
14 providing financial and other benefits to foreign government officials with influence over his
15 Philippine gaming interests. On February 19, 2012, the day after the Board's finding of
16 unsuitability, Wynn Resorts commenced a breach of fiduciary duty action against Okada in this
17 very Court (the "Main Action"). Today, Okada is an open combatant with the Company, recently
18 announcing his vow to be "the best in the world and *to beat Wynn Resorts.*" (Ex. A, Daxim L.
19 Lucas, Okada vows to beat Wynn via \$2B PH project, Philippine Daily Inquirer, May 9, 2012
20 (quoting Okada) (emphasis added)).

21 Too obvious for even Okada to deny, he openly acknowledges that he seeks to revive this
22 proceeding to conduct discovery for use in the Main Action. Gone is any pretense that he seeks
23 records in pursuit of Wynn Resorts' interests or to fulfill his duties as a Company director. Okada
24 also freely admits that he seeks to use this Court as a conduit to obtain discovery for use in certain
25 shareholder derivative actions. Notably, discovery is stayed in all other litigation, including the
26 Main Action, by stipulation or court rule. More importantly, Okada continues to evade service in
27 both the Main Action and the derivative cases. Indeed, his counsel has confirmed that they are
28 not authorized to accept service on his behalf. Thus, Okada has launched a strategy of using this

1 Court to gain an upper hand in other cases through backdoor discovery while protecting himself
2 from reciprocal discovery by evading service. Okada's tactics run afoul of the prohibition of
3 seeking records for an improper purpose.¹

4 Even overlooking those failings, Okada's renewed requests are just as overbroad and
5 unreasonable as those in his original petition. Okada's refusal to present narrowed requests for
6 specific documents is entirely in harmony with his improper motive. Moreover, the manner in
7 which Okada has recast the rejected requests demonstrates that he is using these proceedings,
8 once again, to make serious and false allegations about Wynn Resorts to fuel his personal
9 campaign against it. Okada's tactics are antithetical to the duties of a director but perfectly in tune
10 with the interests of one who has publically vowed to "beat" Wynn Resorts. His Motion fails and
11 should be denied.

12 **II. BACKGROUND**

13 **A. Okada's Petition and this Court's Disposition.**

14 The background of this dispute need not be recited in detail. In a nutshell, the genesis of
15 this soured relationship is Wynn Resorts' investigation into Okada's improprieties in the
16 Philippines and elsewhere. Cognizant of that investigation and what it would reveal, Okada
17 hoped to get out in front of his mounting problems. Under the guise of fulfilling his duties as a
18 director of Wynn Resorts, Okada filed his Petition for Writ of Mandamus ("Petition") claiming
19 that he needed access to a wide range of Company books and records dating as far back as 2000.

20 At the initial hearing on Okada's Petition, this Court ruled that any right of a director to
21 inspect certain books and records "is limited by reasonableness under the common law." (Ex. B,
22 Hr'g. Tr. 19:3-6, Feb. 9, 2012.) The Wynn Resorts Board held a special meeting on February 18,
23 2012, to discuss and consider, among other business items, Okada's requests. Following the
24 Court's direction, the Board ultimately approved the limited release of certain documents for
25 Okada's inspection. Specifically, in response to three of Okada's five requests (the three are now
26

27 ¹ Okada's deliberate individual absence from the Main Action is telling. In addition to
28 refusing to accept service, Okada's baseless removal of the Main Action to federal court has
resulted in further delay in service of process through the Hague Convention.

1 at issue in Okada's Motion), the Board authorized the production of 898 pages of documents to
2 Okada. (See Sec. Suppl. to Opp'n to Pet. for Writ, 3:6-4:16, on file with the Court.) The Board
3 also authorized the production of certain non-privileged documents related to Wynn Macau,
4 Limited's charitable donation to the University of Macau Development Foundation. (*Id.*
5 at 4:17-5:12.)² With respect to Okada's fifth request for documents concerning the 2010
6 Stockholder's Agreement, the Board determined that Okada's request was not reasonably related
7 to his responsibilities as a Director.

8 On February 21, 2012, Wynn Resorts advised Okada of the Board's decision on each of
9 his inspection requests. (Ex. C, Ltr. from T. Peterson dated Feb. 21, 2012.) Wynn Resorts also
10 noted the broad nature of Okada's requests for pre-IPO documents and invited clarification:

11 Due to the broad nature of Mr. Okada's requests, it is unclear what
12 additional documents, if any, Mr. Okada seeks. *If Mr. Okada would*
13 *like to narrow his requests and provide more specificity as to the*
14 *documents he seeks, [Wynn Resorts] will strive to locate and*
disclose any additional, non-privileged documents that may be
responsive to his requests.

15 (*Id.* (emphasis added).) Wynn Resorts' request fell on deaf ears. Okada refused to narrow his
16 requests or give guidance as to the specific documents he claimed to need.

17 Because of the impasse, the Court reconvened the hearing on Okada's Petition on March 8,
18 2012, and effectively upheld the Board's judgment as to the reasonableness of Okada's requests
19 for pre-IPO documents. (Ex. D, Hr'g Tr. 24:18-25:20, March 8, 2012.) The Court agreed with
20 Wynn Resorts that Okada's three requests related to pre-IPO documents were "overbroad as
21 presented." The Court ruled that if Okada believed he had a right to further documents, then he
22 would have to "narrowly identify the specific documents that [he is] seeking." (Ex. D,
23 Hr'g Tr. 25:16-17, March 8, 2012.). The Court also ruled that Wynn Resorts need not produce
24 documents related to the 2010 Stockholders Agreement. (*Id.* at 25:4-12.) Based upon Okada's
25 Petition, the Court concluded that Wynn Resorts only needed to produce (and it did) two
26

27 ² Okada's proposed amended petition does *not* include a revised request for documents
28 related to the University of Macau charitable donation (despite that his arguments in support of
leave suggest otherwise).

1 additional pages of non-privileged documents related to the charitable donation to the University
2 of Macau. (*Id.* at 24:23-25:2.) With the final two pages, Wynn Resorts produced everything (not
3 privileged) in its possession related to the charitable donation. When Okada failed to narrow his
4 remaining requests as invited by this Court, the Court closed the case on April 3, 2012. (Ex. E,
5 Civil Order to Statistically Close Case (checking off "Summary Judgment" as the basis).)

6 **B. The Real Actions and Events at Issue.**

7 Okada's attempt to preempt and distract Wynn Resorts from its investigation was
8 short-lived. Also during the February 18, 2012 special meeting, and *after* the Board considered
9 the reasonableness of Okada's requests, the Board received and analyzed information about
10 Okada's many improprieties, including an investigation by former FBI Director Louis Freeh.
11 Based upon the information gathered about Okada, the Board unanimously determined that Okada
12 and his entities, Aruze USA and Universal, were "Unsuitable Persons" as defined in the
13 Wynn Resorts Articles of Incorporation. On that basis, the Board exercised the Company's right
14 to redeem all shares that Aruze USA held in Wynn Resorts. The Board also resolved to
15 immediately commence litigation against Okada, Aruze USA, and Universal for their misconduct
16 and breaches of fiduciary duty. Coincidentally, that action, *Wynn Resorts, Limited v. Kazuo*
17 *Okada, et al.*, Case No. A-12-656710, was assigned to this Court.³

18 Aware that his preemptive petition to this Court was exposed by the Company's
19 commencement of the Main Action, Okada, Aruze USA, and Universal promptly and improperly
20 removed that case from this Court to federal court. (Ex. F, Notice of Removal (without exhibits),
21 ECF No. 1.) Simultaneously, Aruze USA and Universal filed an inflammatory counterclaim
22 against Wynn Resorts, other Board members, and certain officers. Despite the absence of any
23 basis for federal jurisdiction and because Okada removed solely in an attempt to avoid having this

24
25 ³ At the heart of the Main Action is the exposure of Okada's improper business dealings
26 with foreign government officials. Demonstrating the wide chasm between legitimate business
27 practices and what Okada thinks is appropriate, Okada has not denied that he facilitated payment
28 to government officials in the Philippines who had control over his licensing. Okada surrendered
any rights to engage in such business practices when he became a Nevada Gaming licensee and a
member of the Wynn Resorts Board of Directors, both of which flatly preclude such conduct.
This inescapable conclusion is at the center of the Main Action.

1 Court address Okada's conduct, Wynn Resorts moved to remand the Main Action. The remand
2 motion is fully briefed and awaiting a decision. One of many notable omissions from Okada's
3 disclosure to this Court is the fact that discovery in the Main Action is stayed, by stipulation until
4 sometime after July 2, 2012, pending resolution of the remand motion. (Ex. G, Stip. & Order,
5 ECF No. 76.)

6 In the interim, and as a result of the Board's unsuitability determination, Wynn Resorts
7 filed a preliminary proxy statement with the Securities and Exchange Commission ("SEC") on
8 March 7, 2012 for a possible special meeting of stockholders to vote upon whether Okada should
9 remain as a Wynn Resorts Director.⁴ The Board has not yet determined when such a vote will
10 occur. Importantly, neither Wynn Resorts nor anyone else is soliciting proxies. Thus, and
11 contrary to Okada's assertions, no "proxy contest" exists.

12 Consistent with his current role as Company combatant and antagonist, and contrary to
13 any fiduciary duty owed by a Director, Okada also has waged a public relations campaign built
14 around his false counterclaim in the Main Action. Predictably, as often occurs whenever a
15 dissident director attacks a company, Okada's campaign has spawned its own series of collateral
16 litigation. At this point, six derivative actions have been commenced based upon Okada's
17 campaign to malign Wynn Resorts and its Board in the misguided belief that it will somehow
18 distract from Okada's admitted improprieties. Four of those actions are in federal court, two are
19 pending in the Eighth Judicial District Court, and all quote and refer to the allegations in Okada's
20 Counterclaim.⁵ Okada has been named as a defendant in three of those actions:
21 (1) *Louisiana Municipal Police Employees' Retirement System v. Stephen A. Wynn, et al.*,
22 Case No. 2:12-cv-509-JCM-GWF; (2) *Excavators Union Local 731 Welfare Fund v. Stephen A.*
23 *Wynn, et al.*, Case No. 2:12-cv-642-PMP-CWH; and (3) *IBEW Local 98 Pension Fund v. Linda*
24 *Chen, et al.*, Case No. A-12-661217-C (Dept. XXII) (J. Bare), each of which concern only the

25
26 ⁴ The Wynn Macau, Limited Board of Directors previously removed Okada from that Board
based upon Okada's misconduct.

27 ⁵ One of the five derivative actions filed in federal court was recently voluntarily dismissed
28 by the plaintiff, Danny Hinson, and re-filed in the Eighth Judicial District Court.

1 April 2011 vote to approve the charitable donation to the University of Macau Development
2 Foundation.⁶

3 Okada claims that it is against "the backdrop" of the derivative litigation that he is
4 "forced" to seek to amend his Petition. (Mot. 3:25, 10:11-15.) But Okada, again, is not being
5 upfront with this Court. First, any reference to the derivative actions and the need to mount a
6 defense to them is a complete red herring. Okada was the sole director who voted against the
7 University of Macau donation (albeit due only to its duration). This vote, regardless of its true
8 basis, absolves Okada of liability for the vote. *See, e.g., Francis v. United Jersey Bank*, 432 A.2d
9 814, 826 (N.J. 1981); *Dalton v. Am. Inv. Co.*, 6 Del. J. Corp. L. 402, 404-405 (Del Ch. 1981);
10 *Valeant Pharms. Int'l v. Jerney*, No. 19947, 2007 WL 2813789, at *16 (Del Ch. March 1, 2007);
11 *FDIC v. E.J. Robertson*, CIV. A. No. 87-2623-S, 1989 WL 94833, at *8 (D. Kan. July 24, 1989).
12 Second, the derivative actions have to survive a motion to dismiss for failure to make a demand
13 before they can proceed past the pleading stage. And, if these actions get that far, Okada, like any
14 other party, can use the discovery process to seek any records related to his "defense." Finally,
15 and importantly, not one of Okada's three "revised" requests at issue in his Motion concerns or
16 even relates to the donation (*i.e.*, the only subject matter of three derivative actions in which
17 Okada is named). Okada's donation-related request was already considered and ruled upon by
18 this Court, and Okada has received all non-privileged, responsive documents in the Company's
19 possession. There is nothing else on this issue to provide. The mention of the derivative actions
20 as a basis for leave to amend the Petition is a charade.

21 C. **Okada Wants to Reinstate this Mandamus Case with the Same Overbroad**
22 **Requests.**

23 Even if this Court disregards the obvious impropriety of Okada's purposes, his renewed
24 requests are still overly broad, contravene this Court's prior ruling, and disregard the plain and
25

26 ⁶ Okada has not been served in any of the derivative actions because he is avoiding service
27 there as well. Notably, all of the other defendants in the derivative actions (and the
28 counter-defendants to the counterclaim in the Main Action) have agreed to accept service. There
is only one party in any of these actions who has failed to appear and cooperate with service, and
that is Kazuo Okada.

1 simple fact that Wynn Resorts already provided documents to Okada.⁷ Each of the three "new"
2 requests is taken in turn.

3 (1) Okada's original request (d) – which asked for "[b]ooks and records of
4 Wynn Resorts and its predecessor entities [i.e., Valvino] for the years 2000 through 2002" – has
5 now become Request (a) through which Okada has requested "[all d]ocuments reflecting or
6 concerning Valvino Lamore's entertainment of Macau government officials during the period
7 January 1, 2000 to December 31, 2002." While it may appear that Okada has narrowed his
8 request, he has not. He has merely listed categories of books and records that go to the heart of a
9 potential defense in the Main Action, and then listed more typically overbroad, catch-all requests
10 for "[o]ther accounting records,"[all c]ommunications by, between or with Stephen A. Wynn or
11 other management," and "[all] Board or shareholder documents" In this same overbroad and
12 unreasonable request, Okada also seeks "[all d]ocuments reflecting or memorializing all
13 expenditures in excess of \$10,000" and "[all d]ocuments reflecting or referring to discussions by,
14 between or with Mr. Wynn or other management . . . regarding [the Macau gaming] license"
15 Nothing about these new or revised requests is narrowly tailored or reasonable. Wynn Resorts
16 already provided Okada with all non-privileged documents responsive to Okada's request, and the
17 revised request provides no basis to revisit the reasonableness determination.

18 (2) Okada's original request (c) – which asked for "[a]ll books and records regarding
19 the Macau Reimbursement Amount, as that term is used in the Third Amended and Restated
20 Operating Agreement of Valvino Lamore" – is now request (b) modified only to add the prefatory
21 language "[all d]ocuments referring to or reflecting the expenses included within the Macau
22 reimbursement Amount" Okada feigns adherence to the Court's expectation of an amended
23 request by appearing to include examples of specific documents. But, these "specific" documents
24

25 ⁷ In response to Okada's original requests a, c, and d, Wynn Resorts already made available
26 to Okada over 898 pages of documents, including, but not limited to, various licensing,
27 development and employment agreements, the Operating Agreement of Valvino Lamore,
28 amendments thereto, and financing agreements. (See Ex. D to Sec. Suppl. to Opp'n to Pet. for Writ.)

1 include "[all] accounting records reflecting or referring to projection, expenditure or
2 reimbursement." This is nothing more than a second broad set of requests for "old and cold"
3 documents unrelated to a valid exercise of one's fiduciary duty, but entirely related to Okada's
4 litigation strategy in the Main Action.

5 (3) Okada's original request (a) – which asked for "[a]ll books and records related to
6 how the manner in which the \$120 million invested by Aruze USA in April 2002 was spent" – is
7 now request (c), which seeks all documents regarding "[t]he Company's Use Of The Proceeds
8 From Aruze USA's \$120 Million Investment." Putting aside the fact that this request is most
9 obviously a shareholder request rather than that of a director, the request has not narrowed at all.⁸
10 Okada has instead provided three additional broad subcategories of requests. The first new broad
11 subcategory asks for (1) "[all d]ocuments reflecting or concerning expenditures of \$10,000 or
12 more from the proceeds," and the second for (2) "[all d]ocuments reflecting or concerning
13 expenditures of any amount, for or on behalf of government or gaming officials in any
14 jurisdiction." Both of these subcategories "include[] but [are] not limited to" "[a]ccounting
15 records," communications by, between or with Mr. Wynn or other management," and "Board or
16 shareholder documents." Hardly narrowed responses. The third "subcategory" does not even fall
17 into the broad category of how an April 2002 investment was spent since it broadly asks for
18 "[d]ocuments reflecting the capital accounts of Steve A. Wynn, Baron Asset Management, and
19 Aruze USA, from 2000 to 2002, inclusive." This appears to be another fishing expedition for
20 defenses to the other litigation, including the Main Action.

21 At the risk of stating the obvious, all three of Okada's restated requests reveal that they are
22 nothing more than discovery requests to gather documents to defend him and prosecute his
23 counterclaim in the Main Action. These requests – for essentially all financial and accounting
24 documents of any kind, and any communications that discuss or refer to Wynn Resorts' Macau

25
26 ⁸ Wynn Resorts incorporates by this reference all facts and arguments it made in its
27 previous papers filed with the Court about the impropriety of Okada's original Petition. This
28 includes Wynn Resorts' Opposition to Petition for a Writ of Mandamus (filed on Jan. 27, 2012),
its Supplement to Respondent's Opposition to Petition for a Writ of Mandamus (filed on
February 9, 2012), and its Second Supplement to Respondent's Opposition to Petition for a Writ
of Mandamus (filed on March 7, 2012).

1 gaming license – are not so Okada can exercise his fiduciary duties as a director of Wynn Resorts,
2 as he tries in only two sentences to argue. (Mot. 11:12-15.) The requests are a fishing expedition
3 to locate any document that would allow Okada to say that Steve Wynn and/or Wynn Resorts
4 engaged in some improper act (*e.g.*, paid money to Macau gaming or government officials) to
5 procure a license in Macau. There are no such documents because Wynn Resorts does not
6 "entertain" or bribe government officials. Okada is fishing, or better grasping, for a defense in
7 the Main Action and using this Court to do so. His requests not only constitute improper
8 discovery for a separate action, they also are a blatant misuse of a director's power contrary to the
9 Company's interests and are an abuse of the legal process.

10 III. ANALYSIS

11 A. Okada's Ill-Timed Motion Cannot be Excused Even Under the Most Liberal 12 Of Standards.

13 While he may cite NRCP 15, Okada's Motion is anything but compliant with the Rule's
14 terms and purpose. Under NRCP 15(a), "a party may amend the party's pleading only by leave of
15 court or by written consent of the adverse party; and leave shall be freely given when justice so
16 requires." This does not mean, however, that a court should not deny a motion when justice
17 warrants it. Indeed, "the liberal policy provided in Rule 15(a) does not mean the absence of all
18 restraint. Were that the intention, leave of court would not be required." *Ennes v. Mori*, 80 Nev.
19 237, 242, 391 P.2d 737, 740 (1964).

20 Courts properly deny leave to amend when sought for "*undue delay, bad faith or dilatory*
21 *motive on the part of the movant*, repeated failure to cure deficiencies by amendments previously
22 allowed, undue prejudice to the opposing party by the virtue of allowance of the amendment, [or]
23 *futility of amendment*." *Adamson v. Bowker*, 85 Nev. 115, 121, 450 P.2d 796, 800 (1969)
24 (emphasis added); *Kantor v. Kantor*, 116 Nev. 886, 8 P.3d 825 (2000) (affirming denial of motion
25 to amend due to delay and dilatory motive). Ultimately, the motion "is addressed to the sound
26 discretion of the trial court" *Stephens v. So. Nev. Music Co., Inc.*, 89 Nev. 104, 105, 507
27 P.2d 138, 139 (1973). And this is precisely the type of matter where prudent discretion counsels
28 for denial of Okada's ill-timed and ill-conceived motion.

1 First, Okada's undue delay and tardy attempt to reopen a resolved issue warrants denial of
2 his Motion and any writ relief. *See, e.g., Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev.
3 Adv. Op. 23, 255 P.3d 238, 244 (Nev. 2011) (affirming denial of motion to amend due to
4 inexplicable delay and lack of reasonable diligence); *Smith v. Adult Parole Auth.*, 575 N.E.2d 840,
5 842 (Ohio 1991) (affirming denial of motion to amend complaint for mandamus because "[w]here
6 a motion for leave to amend is not timely tendered and no reason is apparent to justify the delay, a
7 trial court does not abuse its discretion in refusing to allow the amendment.") (citation omitted);
8 *compare Taylor v. Dothan City Bd. of Educ.*, 513 So.2d 623, 624 (Ala. Civ. App. 1987) (holding
9 that trial court did not abuse its discretion in not allowing amendment to writ of mandamus where
10 petition was filed 68 days after ruling at issue in writ and motion to amend was not filed until
11 118 days after ruling), *with State v. St. Joseph Hosp.*, 70 S.W.2d 828, 833 (Mo. Ct. App. 1986)
12 (holding that motion for leave to amend petition in mandamus should have been granted when
13 filed only four (4) days after trial court granted motion to dismiss). A party seeking writ relief
14 must demonstrate the "circumstances reveal urgency or strong necessity." *Jeep Corp. v. Second*
15 *Jud. Dist. Ct.*, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982). Okada failed to take any action
16 despite his full knowledge and awareness of the Company's forward movement toward his
17 removal. There is no "urgency or strong necessity" to grant him leave to amend when he failed to
18 act with any haste whatsoever.

19 The parties appeared before this Court two months ago – on March 8, 2012 – and, since
20 then, this Court administratively closed the case due to Okada's failure to take any action at all.
21 Now Okada suddenly reappears suggesting that the "purpose of the proposed First Amended
22 Petition for Writ of Mandamus is to comply with the Court's directives [given at the March 8
23 hearing]," (McCrea Aff. ¶ 17), and protesting that "Wynn Resorts' attempt to remove Mr. Okada
24 as a director necessitates an immediate grant by this Court of the motion to amend."
25 (Mot. 12:1 18.) Okada, of course, ignores (and chooses not to remind the Court) that he has
26 known for some time of the Company's intent to seek his removal from the Board. In fact, Okada
27 has known since March 7, 2012 – the day before the last hearing – when Wynn Resorts filed a
28 preliminary proxy statement with the SEC (as Wynn Resorts advised the Court and Okada in its

1 Second Supplemental Brief filed that same day). Armed with this knowledge for the entire two
2 months of his inaction, Okada claims it as the sole basis for emergency relief and offers no
3 explanation for his delay. For this reason alone, the Court is empowered to deny Okada's Motion.

4 The problem with Okada's Motion is not just the inexplicable delay. Any renewed request
5 for mandamus is futile because Okada cannot satisfy one of the principal elements for such
6 relief – the absence of proper remedy. "Mandamus is an *extraordinary* remedy" and should only
7 be employed in limited circumstances. *Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652
8 P.2d 1177, 1178 (1982) (emphasis added); *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34
9 (1980) (stating that "the remedy of mandamus is a drastic one, to be invoked only in extraordinary
10 situations"). To satisfy this "heavy burden," Okada must establish that: (1) he has a clear right to
11 the relief requested, meaning a "direct and substantial interest that falls within the zone of
12 interests to be protected by the legal duty asserted;" and (2) the ordinary remedies are not plain,
13 speedy, and adequate. *Mesagate Homeowners' Ass'n v. City of Fernley*, 124 Nev. 1092, 1097,
14 194 P.3d 1248, 1251-52 (2008); *see also Sims v. Eighth Jud. Dist. Ct.*, 125 Nev. 126, 206 P.3d
15 980, 982 (2009). As such, "neither mandamus nor prohibition is appropriate in the face of
16 effective alternative relief." *Jeep Corp.*, 98 Nev. at 443, 652 P.2d at 1185; *see also Allied Chem.*
17 *Corp.*, 449 U.S. at 34 (stating that a party seeking mandamus must "have no other adequate means
18 to attain the relief he desires . . .").

19 Here, Okada cannot credibly establish the absence of proper means to obtain documents
20 and information to which he claims an entitlement. The means exist; Okada simply does not want
21 to comply with them. As previously referenced, Okada is Wynn Resorts' and the Board's
22 adversary in the breach of fiduciary case (*i.e.*, the Main Action). Of course, he is avoiding service
23 in that case just as he is in the three derivative cases. While he simultaneously avoids formally
24 participating in those cases, he asks this Court to circumvent the discovery rules in those
25 proceedings – and the existing stays (whether through stipulation or status of the pleadings) – and
26 afford him unilateral discovery via amended writ petition. The extraordinary remedy of
27 mandamus does not exist for such purposes. Okada has not remotely shown the absence of proper
28 legal remedy.

1 **B. Okada's Improper Purpose in Seeking Additional Records is Established By**
2 **His Own Motion.**

3 The most telling aspect of Okada's Motion is his abandonment of even the pretense (as
4 weak as it may be) that he seeks records for the purpose of fulfilling his fiduciary duty to
5 Wynn Resorts. Recall, the very predicate for this proceeding – where a single director, over the
6 judgment of a duly-appointed board, obtains judicial intervention to access company books and
7 records – rests upon the claim that said director needed that access to fulfill his fiduciary duty.
8 But now, even Okada cannot keep up that facade. (*E.g.*, Mot. 3:13-16, 10:11-14, 12:15-17; *see*
9 *also id.*, 3:23-25, 8:7-20.)

10 Okada's admissions run head long into the prohibition on use of mandamus proceedings to
11 effectuate "an end run around discovery restrictions" in a contemporaneous action. *Quinn v.*
12 *Aechelon Tech., Inc.*, No. A127799, 2011 WL 1535402, at *4 (Cal. Ct. App. April 25, 2011)
13 (citing *Tritek Telecom, Inc. v. Super. Ct.*, 87 Cal. Rptr. 3d 455, 457 (Cal. Ct. App. 2009)); *see also*
14 *Highland Select Equity Fund, L.P. v. Motient Corp.*, 906 A.2d 156, 165 (Del. Ch. 2006)
15 ("Section 220 is also not a way to circumvent discovery proceedings, and is certainly not meant to
16 be a forum for the kinds of wide-ranging document requests permissible under Rule 34.");
17 *S.W. Commc'ns, Inc. v. Bd. of Cnty. Comm'rs*, No. 95-P-0137, 1996 WL 586770, at *4 (Ohio Ct.
18 App. Sept. 20, 1996) (reversing trial court's writ of mandamus pursuant to the Public Records Act,
19 which would have "permitted appellee to use the Public Records Act as a preliminary discovery
20 device without any corresponding privilege available to the county").

21 More specifically, courts have rejected attempts to use a writ of mandate or invocation of
22 inspection rights where it would essentially result in one-sided discovery against a corporation.
23 *See Highland Select*, 906 A.2d at 165-66 (finding shareholder attempt to invoke inspection rights
24 after obtaining a stay of discovery in pending civil action sought "what amounts to one-way
25 discovery in the same matters"); *Costanza v. Simon Equip. Co.*, No. B177455, 2006 WL 2349594,
26 at *34 (Cal. Ct. App. Aug. 29, 2006) (upholding trial court order denying motion to compel
27 access to corporate records where plaintiff "requested access to Company documents in order to
28 advance her position in the litigation, not to carry out her fiduciary duties to act in the best

1 interests of the corporation . . . [and] to use her inspection rights to circumvent a discovery
2 dispute").

3 Similarly, courts eschew the issuance of a writ of mandamus if it would circumvent the
4 authority of another tribunal to control a pending proceeding. *See S.W. Commc'ns, Inc.*, 1996
5 WL 586770, at *4 (stating that "[b]y granting the writ of mandamus after declaring the claims
6 subject to arbitration, the court essentially circumvented the arbitrator's role and, in the absence of
7 this appeal, would have permitted appellee to use the Public Records Act as a preliminary
8 discovery device without any corresponding privilege available to the county until discovery took
9 place in arbitration."). As one court succinctly stated, "if the allowance of the statutory right [to
10 inspect books and records] constituted in any manner an interference with the course of
11 litigation . . . the writ would be refused." *DPF, Inc. v. Interstate Brands, Corp.*, 4 Del. J. Corp. L.
12 228, 233 (Del. Ch. 1975) (quoting *Foster v. Standard Oil*, 18 A.2d 235, 239 (Del. Super. Ct.
13 1941)).

14 Again, there is and can be no honest debate as to the purpose behind Okada's restated
15 requests. Okada boldly acknowledges his desire to conduct discovery for use in actions where
16 discovery has been stayed and where he is simultaneously avoiding service. Indeed, even if
17 Okada's purposes were less apparent, this Court is not required to blind itself to the purpose for
18 which a party seeks information. Thus, when the purpose of a discovery request is to gather
19 information *for use in proceedings other than the pending suit*, discovery properly is denied.
20 *Oppenheimer Funds, Inc. v. Sanders*, 437 U.S. 340, 352 n.17 (1978).⁹

21 C. **Okada's Motion Is Also Deficient For Again Ignoring The Board As Well As**
22 **This Court's Prior Rulings.**

23 Even if this Court looks to the substance of Okada's Motion, ignoring its improper timing
24 and purpose, it still fails because Okada has consciously chosen to ignore this Court's rulings.
25 Plainly, any amendment that fails to address deficiencies found by this Court with the first
26

27 ⁹ If the Court somehow finds ambiguity in the real purpose behind Okada's requests, before
28 granting any relief, the Court should first order Okada to appear so that this Court and
Wynn Resorts can challenge and test the positions he presents in his Motion.

1 petition must fail. *See State v. Vill. of Ottawa Hills*, No. L-03-1159, 2004 WL 835860, at *4
2 (Ohio Ct. App. April 16, 2004) (affirming trial court's denial of motion to amend mandamus
3 complaint since proposed amendment would "not change the fact that [plaintiff] is not entitled to
4 a writ of mandamus").

5 Specifically, Okada ignores the Court's mandate to narrow his requests to seek specific
6 documents. The changes he offers are cosmetic and do not remotely satisfy this Court's directive
7 that any request must "*narrowly indentify the specific documents that [he is] seeking.*" (Ex. D,
8 Hr'g Tr. 25:16-17, March 8, 2012 (emphasis added).) This Court rejected Okada's initial requests
9 because they were unreasonably "overbroad as presented." (*Id.* at 24:20; Ex. B, Hr'g Tr. 19:3-6,
10 Feb. 9, 2012 (holding that a director's right of inspection "is limited by reasonableness under the
11 common law").) Moreover, Okada's so-called revisions revise nothing. Instead, Okada simply,
12 and defiantly, lists broad "categories" or "groups" of documents that he seeks from Wynn Resorts.
13 (Mot. 4:27-7:5.) The "categories of documents" [Mot. 4:27] or "groups of documents"
14 [*id.* at 11:10] contained in Okada's proposed amended Petition are *not* the "specific documents"
15 called for by the Court. While Okada pretends that his restated requests are narrower than those
16 branded as broad and unreasonable by this Court, an actual examination shows that they are
17 substantively the same.

18 Okada claims to carve out details as to the "categories" or "groups" of documents he
19 seeks. Any semblance of limitation is erased by his inclusion of the catch-all "*[s]uch documents*
20 *would include, but not be limited to . . .*" (Mot. 5-6 (emphasis added).) In other words, Okada
21 seeks all documents encompassed in his broad requests, including, but not limited to, those
22 "categories" or "groups" of documents he vaguely identifies. As just two examples, Okada seeks
23 "[all d]ocuments reflecting or memorializing all expenditures in excess of \$10,000" and "[all
24 d]ocuments reflecting or referring to discussions by, between or with Mr. Wynn or other
25 management . . . regarding [the Macau gaming] license" These are hardly narrow and finely
26 turned requests. Of course, "revised" requests do not come close to what this Court ruled was a
27 necessary prerequisite to the writ relief Okada sought: to narrowly identify "specific documents"
28 that he was seeking rather than generic groups or categories. Stripped of his rhetoric, Okada has

1 simply recast the same broad generic requests that this Court previously rejected, and this Court
2 should reject them again.

3 **IV. CONCLUSION**

4 Okada's Motion should be denied both for what it says, and for what it does not say.
5 Okada's revised requests for inspection are patently unreasonable, that much is apparent.
6 However, when the Court looks beyond Okada's unreasonable requests to see his true purpose
7 for leave to file an amended writ petition, it becomes abundantly clear that Okada is using (more
8 accurately, abusing) this Court's patience to further his own improper ends. For any or all of the
9 reasons set forth above, Wynn Resorts respectfully requests that the Court deny Okada's Motion.

10 DATED this 16th day of May, 2012.

11 PISANELLI BICE PLLC

12
13 By: 

James J. Pisanelli, Esq., Bar No. 4027

Todd L. Bice, Esq., Bar No. 4534

Debra L. Spinelli, Esq., Bar No. 9695

Jarrod L. Rickard, Esq., Bar No. 10203

3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

17 and

18 Kirk B. Lenhard, Esq., Bar No. 1437

19 Tamara Beatty Peterson, Esq., Bar No. 5218

Nikki L. Baker, Esq., Bar No. 6562

20 BROWNSTEIN HYATT FARBER

SCHRECK, LLP

21 100 North City Parkway, Suite 1600

Las Vegas, Nevada 89106-4614

22 and

23 Robert L. Shapiro, Esq. (*pro hac vice admitted*)

24 GLASER WEIL FINK JACOBS HOWARD

AVCHEN & SHAPIRO, LLP

25 10259 Constellation Boulevard, 19th Floor

26 Los Angeles, CA 90067

27 Attorneys for Respondent Wynn Resorts, Limited
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 16th day of May, 2012, I caused to be served a true and correct copy of the foregoing **WYNN RESORTS, LIMITED'S OPPOSITION TO KAZUO OKADA'S MOTION TO AMEND PETITION FOR A WRIT OF MANDAMUS** via the Court's electronic filing system and electronic mail, addressed to the following individuals:

Paul R. Hejmanowski, Esq.
Charles H. McCrea, Esq.
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
Email: cmccrea@lionelsawyer.com
Email: prh@lionelsawyer.com

Attorneys for Petitioner Kazuo Okada

Gidon M. Caine, Esq.
Steven Morse Collins, Esq.
ALSTON & BIRD, LLP
275 Middlefield Rd., Suite 150
Menlo Park, CA 94025
Email: gidon.caine@alston.com
Email: steve.collins@alston.com

Attorneys for Petitioner Kazuo Okada


An Employee of PISANELLI BICE PLLC

EXHIBIT A

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Okada vows to beat Wynn via \$2B PH project

Tycoon dreams of making Pagcor City casino world's best

By: [Daxin L. Lucas](#)

[Philippine Daily Inquirer](#)

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Kazuo Okada and Steve Wynn. AP FILE PHOTO

Japanese pachinko tycoon Kazuo Okada—who is embroiled in a bruising intra-corporate dispute with his former partner, US gaming magnate Steve Wynn—has vowed to beat the latter's casino operations by putting up a world-class entertainment complex in Manila.

Speaking to a small group of reporters on Thursday, the chairman of Japan-based Universal Entertainment—and one of four investors in the Entertainment City of the Philippine Amusement and Gaming Corp.—reaffirmed his commitment to invest \$2 billion in the gaming development and, in the process, create up to 16,000 direct and indirect jobs for Filipinos in the service and manufacturing sectors.

Of the committed amount, about \$100 million has already been spent by his firm locally, primarily for the acquisition of the reclaimed land on the shores of Manila Bay through a long-term lease.

Okada, speaking through an interpreter, predicted that the center of gravity of the global gaming industry would eventually shift from Las Vegas to Asia in the coming years, with the Philippines playing a significant part in attracting patrons from around the world.

"My dream is to create the best casino in the world here in the Philippines," he said. "This is why I'm focusing on the Philippine gaming—to make it the best in the world and to beat Wynn Resorts."

Wynn Resorts is the flagship corporation of Okada's rival, in which he owned the largest block of shares until he was ejected in a boardroom coup three months ago.

Okada claimed that Wynn's accusations against his alleged corrupt practices—as detailed in a report prepared by former Federal Bureau of Investigation director Louis Freeh—were unfounded and fabricated merely out of fear that he would end up controlling the Las Vegas-based gaming giant.

On Wednesday, Okada also revealed that his company had been manufacturing gaming equipment in the country for several years now, which were being exported to casino operators in the US, Australia, South Africa, Macau and Singapore.

The manufacturing facility, which is located at Laguna, is involved mainly in metal pressing and plastic molding for machines used in the casino business.

Universal Entertainment—through subsidiary Aruze Gaming America—has also secured a real estate property in Batangas where it will put up another factory once the existing plant in Laguna reaches full capacity.

Okada added his firm also owned a software development company in Makati City, which makes programs for the gaming industry.

He said Universal Entertainment had some \$470 million in funds ready to be used for the Pagcor Entertainment City project as construction progresses.

He said his gaming complex will be completed by 2014.

Regarding his dispute with Wynn, the Japanese businessman revealed that his former American partner had visited the Philippines in 2007 when he first broached the idea of investing in Pagcor's project.

Wynn, he said, was initially interested, but changed his mind a few years later, reasoning that the Philippines was a "corrupt country."

Okada opined that Wynn's views reflected the latter's low regard for Asians in general, and Filipinos in particular.

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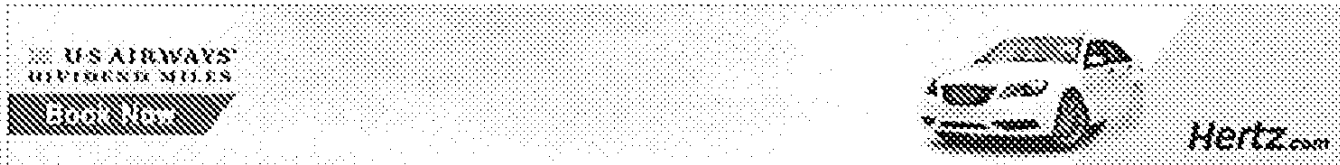
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EXHIBIT B

ORIGINAL

Alvin D. Shuman

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

KAZUO OKADA

Plaintiff

vs.

WYNN RESORTS LIMITED

Defendant
.....

CASE NO. A-654522

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PETITION FOR WRIT OF MANDAMUS

THURSDAY, FEBRUARY 9, 2012

APPEARANCES:

FOR THE PLAINTIFF:

PAUL R. HEJMANOWSKI, ESQ.
CHARLES McCREA, ESQ.
GIDON CAINE, ESQ.

FOR THE DEFENDANT:

KIRK LENHARD, ESQ.
TAMARA PETERSON, ESQ.
ROBERT SHAPIRO, ESQ.
KIM SINATRA, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

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Las Vegas, Nevada 89146

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1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 9, 2012, 9:51 A.M.

2 (Court was called to order)

3 THE COURT: Okay. Is there anybody here who is not
4 on the Okada case? If I could start that case, please.

5 And for the benefit of my staff would everyone
6 please identify yourselves when you get to counsel table so
7 they can keep track of who is participating in our hearing
8 today. And, as I told counsel in chambers when I met with
9 them earlier this morning, my intention today is to try and
10 rule on the legal issue of the entitlement of the director to
11 information, which is at the heart of this petition.

12 Mr. Hejmanowski.

13 MR. HEJMANOWSKI: Good morning, Your Honor. Paul
14 Hejmanowski, Lionel, Sawyer & Collins, for the petitioner.
15 With me is Mr. Gidon Caine, who is something of an expert in
16 corporate governance matters, from the firm of Alston & Byrd.
17 Mr. Caine will be presenting the argument for our side today.

18 MR. CAINE: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. LENHARD: Good morning, Your Honor. Kirk
21 Lenhard, Tammi Peterson from Brownstein on behalf of the
22 respondent, Wynn Resorts. With me also is Robert Shapiro, who
23 will be appearing as co-counsel in this matter. Also at
24 counsel table is Kim Sinatra, general counsel and vice
25 president of Wynn Resorts. In the audience is Kevin Turik,

1 who is a vice president and general counsel of Wynn Las Vegas.

2 THE COURT: Thank you.

3 It's your petition, sir.

4 MR. CAINE: Good morning, Your Honor. We're here
5 today on Mr. Okada's petition to inspect the books and records
6 of Wynn Resorts. This matter is adequately briefed, and I
7 just want to stress a few points and, of course, answer any of
8 the Court's questions.

9 The writ of inspection is essential to good
10 corporate governance. This right exists in every state that's
11 considered the issue. It's the way that a director can check
12 up on management and make sure that it's acting appropriately.

13 It's particularly important here, Your Honor, where
14 Nevada places even more responsibilities on directors of
15 licensed gaming enterprises than it does on other companies.
16 Wynn Resorts' argument is that management can control the
17 information a director receives. That is exactly backwards.
18 Under Nevada law the board of directors runs Wynn Resorts, not
19 management. And I would refer the Court to NRS 78.115 and
20 78.138 in that regard. This doesn't change simply because
21 Aruze USA is the largest stockholder of Wynn, and it doesn't
22 change simply because some of the information is not from last
23 year or two years ago. For example, if Mr. Okada wanted to
24 see the aboriginal title to the Desert Inn, I don't think that
25 there'd be a defense that that document is old.

1 Now, under the law of many states the director's
2 right of inspection is absolute, because he's a fiduciary. As
3 a result, this Court should order immediate inspection. Mr.
4 Okada should have the same rights to examine the corporate
5 books and records that Steve Wynn has.

6 Now, we're ready to start inspection this afternoon,
7 Your Honor. There's a board meeting that starts on the 23rd,
8 and the fact is that as of today we still don't actually know
9 the schedule on which the payments to the University of Macau
10 are actually going to be made. We know they're annual, but we
11 don't know actually when they are. As a consequence of that,
12 we'd like to start the inspection immediately.

13 And with that, Your Honor, I'll take any questions.

14 THE COURT: Thank you.

15 MR. CAINE: Thank you, Your Honor.

16 THE COURT: Mr. Lenhard.

17 MR. LENHARD: Thank you, Your Honor. May it please
18 the Court. Out of necessity, speaking as a respondent here
19 today, I will have to be a little more detailed and a little
20 more lengthy in my response and in my comments.

21 But one of the things I think I need to agree with
22 Mr. Caine this morning -- we don't agree on much, but I
23 certainly agree that the board of directors control the
24 corporation, the board of directors govern a corporation.
25 What I'm asking the Court to do here today is look closely at

1 this petition for a writ of mandate, because that is the
2 vehicle we are here to review. Review that petition for writ
3 of mandate and ask yourself is the board of directors being
4 taken out of the process, is the governing entity of Wynn
5 Resorts being in essence emasculated for the desires of one
6 director. And I'm suggesting that the actions that this
7 director want to take -- this director wants to take is
8 contrary to the clear dictates and clear requirements of
9 Chapter 78.

10 This director would have you believe that this five-
11 part document request is absolutely necessary in order to
12 assist him in the exercise of his fiduciary duties as
13 director, assist -- if I read his moving papers correctly,
14 assist in the active investigation of Wynn Resorts. The
15 argument today is really not about the records that are being
16 sought by Mr. Okada, because most of these records, frankly,
17 are ancient history, the aboriginal comment notwithstanding.
18 And these are certainly not the type of records that Wynn is
19 trying to hide. Wynn Resorts has nothing to hide. Let me
20 make that perfectly clear. But what we are here today to
21 defend is the integrity of the board of directors of Wynn
22 Resorts.

23 And let me explain why I am so concerned about
24 protecting the integrity and the decisional process of that
25 board here today as it relates to Chapter 78. We're not

1 talking about a board that is a non-active board. We're
2 talking about a board that has among its members a former
3 chair of Citicorp. We have the former governor of the state,
4 Robert Miller, for two and a half terms, the longest-sitting
5 governor of the state. We have community leaders. We have
6 national business leaders, and we have gaming leaders. This
7 is an active, energized, and a very impressive board. The CEO
8 of this company, Mr. Wynn, has been recently named one of the
9 top 30 CEOs in the world by Barron's Magazine. This is a
10 sophisticated, wealthy, successful, well-run corporation who
11 wants the integrity of its board to be protected.

12 I think it's well documented -- everybody in this
13 courtroom I'm sure has followed all the press accounts that
14 have occurred and followed this case -- that Mr. Okada has
15 other interests, and these other interests are things that
16 have to be reviewed by that board when they consider Mr.
17 Okada's document requests.

18 It's amidst this background that I'm suggesting this
19 Court has to decide first is a writ of mandate appropriate.
20 And let me -- I'm not being hypertechnical here, but we are
21 here today on a writ of mandamus, a Chapter 34.160
22 proceedings. I'm not going to preach to the Court, because
23 the Court knows the law, but a writ is an extraordinary
24 remedy. It's to be used only in circumstances -- in very,
25 very limited circumstances. And, you know, as the Supreme

1 Court has stated, there's two questions that have to be
2 answered in the affirmative before a writ can be granted, any
3 writ of mandate.

4 The first answer -- or the first question that has
5 to be answered in the affirmative -- and remember, the
6 plaintiff or the petitioner bears the burden of proof. But
7 keep in mind the first question always must be answered, there
8 has to be a clear right for the relief requested. Keep in
9 mind under our corporate code, under Chapter 78, there is not
10 a defined right to a director right of inspection of records,
11 there is not an independent right for a director right of
12 inspection of records. So there is not a clear right to the
13 relief requested under Nevada law.

14 Secondly, Mr. Okada, as the petitioner, is required
15 to demonstrate that he does not have an ordinary remedy and
16 that ordinary remedy has failed to provide a plain and
17 adequate remedy. What is the ordinary remedy here? It's to
18 go to your board of directors. It's to go to the board of
19 directors and state, I want an investigation of management, I
20 want certain documents, I want to review the actions of this
21 company.

22 THE COURT: Is your position, Mr. Lenhard, that a
23 director has to go to the other directors to request
24 information?

25 MR. LENHARD: As a minimum -- and I'll go through

1 the statutory scheme in just a second to explain why I'm
2 taking that position. As a minimum, a board member has an
3 obligation to go to the governing body which he is a member of
4 and state to that governing body, whether it be the audit
5 committee, the gaming compliance committee, or the board as a
6 whole, and state, as a director I want the following
7 information, and it should be vetted first by the board. And
8 he has chosen not to do that.

9 Nevada -- let's go there a second. Chapter 78, if
10 you accept Mr. Caine's analysis -- and certainly he's a bright
11 lawyer, creative lawyer, a fine lawyer, a gentleman. If you
12 accept his analysis, there is a void or a gap in Chapter 78,
13 our legislature blew it because they didn't put in a right of
14 specific director inspection in our statutes. I respectfully
15 disagree with Mr. Caine. As this Court knows, because I've
16 been in this court more than a few times on Chapter 78 issues,
17 our legislature has been very active in how it has handled and
18 defined the corporate code and the various rights of
19 directors, stockholders, and so forth pursuant to Chapter 78.

20 As the Court's well aware, in the early 1980s
21 Delaware and a number of states chose to by code grant a
22 director right of inspection. The Nevada Legislature has met
23 15 times since those amendments were done to the Delaware code
24 in 1982. Each time the Nevada Legislature has chosen not --
25 let me stress again, not to grant the type of director

1 inspection that Mr. Okada seeks today without first going to
2 the board. It's not that the Nevada Legislature omitted to
3 do, because in other contexts they have granted a right of
4 inspection. I remind the Court that in the case of nonprofit
5 corporations members have a right of inspection per
6 legislative direction. In the case of LLCs members have a
7 right of direct inspection pursuant to legislative direction.
8 But the legislature, not by omission, but by commission has
9 determined that the director right of inspection in this state
10 should be handled by the board of directors.

11 The legislature in this state has made it clear --
12 and, again, all you have to do is read Chapter 78 in its
13 entirety -- that it's clear the policy of this state is always
14 going to be to entrust the board of directors in a Chapter 78
15 corporation with the authority to run their organization
16 without undue judicial intervention. In other words, judicial
17 intervention should not occur until the board of directors has
18 an opportunity to review the document requests of Mr. Okada.
19 Chapter 78 is generally as a rule deferential -- as evidenced
20 by the Nevada business judgment rule, is generally deferential
21 to the decisional process of a board of directors.

22 Petitioner -- and, again, creatively, I'll give him
23 that credit -- would have this Court find a gap in our law
24 where one does not exist, because he's asking this Court to
25 judicially legislate a director right of inspection where our

1 legislature has failed, and I say intentionally so, failed to
2 dictate that type of director inspection.

3 All you have to do is look at the language of
4 Chapter 78 and I'm saying .37. And let me find it. Sometimes
5 you have a little bit too much paper with you. Our
6 legislature in .037 leaves it to the corporation -- and I'm
7 talking about Point 2 -- leaves it to the corporation itself
8 to create, define, limit, or regulate the powers of the
9 corporation or the rights, powers, or duties of the directors,
10 the officers, or the stockholders of the corporation.

11 In the case of Wynn it's not done by bylaws.
12 Instead, it's done by its corporate governance procedures.
13 And in those procedures there is a methodology set out to
14 where a board member can bring an issue to the board or a
15 concern to the board to be reviewed by the board. That is how
16 the governance of Wynn works with this active board. And what
17 Wynn is asking you to do here today is not take this board out
18 of the equation. What we are suggesting to the Court is that
19 this request, this petition is actually premature. It should
20 be remanded, delayed, deferred, or dismissed, whatever the
21 Court deems appropriate, but it should be sent to the board
22 for their initial consideration and their review of the
23 request of Mr. Okada. It should especially be so when we
24 consider that Mr. Okada may in fact -- in fact, does in fact
25 have interests that may be adverse to Wynn.

1 One of the -- and I'm going to go back again to the
2 writ itself, because we are here on a writ. This isn't a
3 discovery motion, this is a writ of mandate. The documents
4 requested themselves frankly do not require extraordinary
5 relief. What are we talking about? I mean, the caselaw in
6 this state is clear that you have to have a need, an urgency,
7 or a strong necessity for the documents for the Court to -- or
8 for the act being required, for the Court to grant a writ of
9 mandate. What is the urgency or strong necessity for
10 documents concerning an April 2002 \$120 million investment
11 that can't wait a month for the Wynn board to review the
12 request? What is the urgency or strong necessity of a review
13 of the Macau reimbursement account as stated in a third
14 amended and restated operating agreement of Valvino, the
15 original company, dated in 2002 that can't wait a month for
16 the board to review the request and ferret through this
17 request? What is the urgency of a request for books and
18 records of Wynn from 2000 to 2002 that can't wait one month
19 for this board to consider, consider as a board, a
20 deliberative body the appropriateness of the request? What is
21 the urgency of a request to review the restated stockholder
22 agreement between Mr. and Mrs. Wynn and Aruze, which, of
23 course, is the company controlled a hundred percent by Mr.
24 Okada himself and we can assume he's got the document dated
25 January 6, 2010, that can't wait a month for the board to

1 consider that action?

2 And the same goes with the Macau donation, which, by
3 the way, has been somewhat misconceived here today -- or I
4 should say in the moving papers. We're talking about a gift
5 that's extended over a 10-year period of time that in American
6 dollars is about I think a hundred, \$110 million, and that the
7 objection that this gentleman had that has I believe led to a
8 portion of this dispute was the extent -- the amount of time
9 of the payout and the binding nature of the payout or
10 whatever.

11 The point I'm getting to, though, again is this vote
12 occurred, by the way, 11 to 1 from the board in favor of the
13 Macau gift after the board deliberated, reviewed all aspects
14 of the gift, and decided it was in the best interests of the
15 corporation to make the gift. After that occurred -- excuse
16 me. That occurs in May. What is the urgency now to engage in
17 this review of documents today, as Mr. Caine says, that can't
18 wait a couple weeks and allow this board to engage in what a
19 board should do, which is deliberate and determine whether
20 these document requests are appropriate? The Nevada
21 Legislature has in fact decreed that is what should be done.

22 I don't hold myself out, nor will I, as an expert in
23 corporate governance. As the Court knows, I do a lot of
24 different things, I wear a lot of different hats. But I can
25 certainly read our corporate code, and I can read Chapter 78,

1 and I can see what this legislature's done the last 30 years,
2 and I can easily determine that this legislature has not
3 granted the type of relief that Mr. Okada is seeking, and that
4 is intentional, it is not a gap. And I'd suggest to the Court
5 with all deference to the Court and all respect to the Court
6 that the Court should not interject herself into this issue
7 until the board has had a chance to act.

8 Finally, I'm going to ask the Court to look again
9 closely at the actual document requests themselves. In our
10 opposition we pointed out to the Court that Mr. Okada made a
11 13-d filing, and the 13-d filing is somewhat instructive as
12 what really is going on with these document requests. And I'm
13 going to try to quote it so I don't misstate myself. Mr.
14 Okada, through his counsel, whatever, said the following, and
15 he's referring to the petition he had filed with this Court,
16 the petition for writ of mandate. "Okada himself will take
17 whatever action that they deem necessary and appropriate to
18 protect the value of their investment in Wynn common stock."

19 Now, what does that tell you? It tells you that
20 this is a -- truly a stockholder request disguised as a
21 director demand. You don't have to go any further than to
22 also look at the clarification the petitioner put into his
23 responding papers where he reminded Wynn and the Court that
24 Aruze is the largest stockholder in Wynn Resorts. This
25 correction -- whether it's correct or not I don't know -- only

1 highlights the true nature of this so-called director request.
2 It is really a stockholder request pursuant to 78.257. And
3 why doesn't he characterize it as such? I think we all know
4 the answer, subsection (6). Subsection (6) has an absolute
5 exclusion and exception. Again let me find it. I've walked
6 up here with just a batch of paper.

7 Subsection (6) says as follows, Your Honor. "Except
8 as otherwise provided in this subsection, the provisions of
9 this section do not apply to any corporation that furnishes to
10 its stockholders a detailed annual financial statement or any
11 corporation that has filed during the preceding 12 months all
12 reports that are required to be filed pursuant to Section 13
13 or Section 15(d) of the Securities Exchange Act," which is
14 exactly what Wynn has done.

15 Ms. Sinatra, as I was preparing for this argument,
16 reminded me of some very basic facts. One is how transparent
17 this business is and this corporation is with its directors.
18 She reminded me that all directors, including Mr. Okada, get
19 advance copies of all 10-Qs and 10-Ks. They get extensive
20 monthly operating reports for both properties, Wynn Resorts
21 and Wynn Macau. And Mr. Okada has asked for and been granted
22 special access because apparently pursuant to Japanese law Mr.
23 Okada has to have his auditors come in and do a financial
24 review of the books and records of Wynn. That has been --
25 that accommodation, of course, has been provided to Mr. Okada.

1 So for us to come in here and have to defend ourselves -- I
2 should say for me to have to come in and defend my client on
3 the basis that my client has somehow not been transparent is
4 just simply false. This company has been transparent, it will
5 remain transparent, and it absolutely has nothing to hide.

6 But what I'm asking this Court to do is follow
7 Nevada law. Don't create a situation where we're going to
8 open up a can of worms that'll be corporate chaos. Think
9 what's going to happen, is if every time a director gets
10 outvoted 11-1, 10-1, 9-1, or whatever, doesn't like the
11 results, he can run off to court and make a document demand
12 rather than going to his fellow directors first. You will
13 turn Chapter 78 upside down. All I'm asking is to let this go
14 to the board of directors. I have no idea what that board
15 will do. I've never even been to a Wynn board meeting. But
16 make Mr. Okada go to that board, raise this issue with the
17 board, and then come back here.

18 THE COURT: So, Mr. Lenhard, you're not saying that
19 the directors have to rely only upon the information that
20 management provides them?

21 MR. LENHARD: No. A director can seek more
22 information, but it shouldn't be done in a haphazard fashion
23 or in a fashion like Mr. Okada's trying to do. If he feels
24 he's not getting sufficient information, go to the board
25 first. That's what I'm saying.

1 THE COURT: So how is the procedure that you're
2 suggesting going to result in compliance with the duties of
3 the directors under 78.138, which is the business judgment
4 rule, essentially, for our directors in Nevada?

5 MR. LENHARD: I'm assuming -- because you know what
6 Mr. Okada's doing here, he's taking away the opportunity for
7 the other directors to engage in their fiduciary duties.

8 THE COURT: Yeah, but --

9 MR. LENHARD: He's taking that opportunity away. He
10 -- I am assuming that every director of that company will
11 follow the dictates of the chapter you have just referred to
12 and will in their collective judgment decide if these records
13 are necessary in order to fulfill those obligations. But
14 again, what I'm saying, and maybe not as articulately as I'd
15 like to, is that the first step in this process, especially in
16 the citation you just referred to, is the board.

17 THE COURT: Okay. Thank you, Mr. Lenhard.

18 MR. LENHARD: Thank you.

19 THE COURT: Mr. Caine.

20 MR. CAINE: Your Honor, I have a couple of very
21 brief points to make. I'd like to actually start with the
22 last point that Mr. Lenhard made, which is that if they want
23 to join in in the petition for inspection, they're welcome to.
24 None of them have. In fact, if they want to fulfill their
25 fiduciary obligations in that way, they can do so. They have

1 not.

2 The fact is that these requests have been
3 outstanding, some of them since November. The notion that the
4 board needs another month to consider them when they've been
5 around since November is just not justified.

6 In addition to that, Your Honor, there is no
7 caselaw, no statute which would provide for a single director
8 to have to go to the other directors in order to seek
9 inspection in order to fulfill his fiduciary obligations. Not
10 a single state would do this. And in fact, if this were -- if
11 we were to follow the policy that's articulated by Wynn
12 Resorts in this matter, what would happen is that 51 percent
13 of the directors would be able to stop the legitimate
14 interests of 49 percent of the directors in an instance where
15 they need to get documents in order to fulfill their fiduciary
16 duties. There is nothing in Nevada law that requires that
17 absurd result.

18 In addition to that, Your Honor, Mr. Lenhard talks
19 about the fact that this Court does not have the power,
20 essentially, to go forward and issue that writ. The fact is
21 this Court does have the power, and the power is reserved to
22 this Court for precisely these situations where a corporation
23 simply refuses to follow its own guidelines and the guidelines
24 of this -- of Nevada law.

25 He also points out that the Nevada Legislature has

1 met a number of times and has never actually provided for a
2 statutory right of inspection. That's obviously true. The
3 New York State Legislature hasn't, either, nor has the one in
4 Tennessee, nor has the one in a number of other states.
5 That's why the common law is there. And in fact, Your Honor,
6 one of the things is that Nevada has enshrined that power to
7 this Court to look to the common law both in Supreme Court
8 opinions and by statute. As a consequence, this Court does
9 have the power to look at that common law.

10 I also want to address one other thing, which is
11 this notion that as a stockholder somehow Mr. Okada has fewer
12 rights. If that were true, then many of the Wynn Resorts'
13 directors would also have fewer rights, because many of them
14 are stockholders. That's just not the case. The fact is that
15 those fiduciary duties that are provided for in Nevada law are
16 not conditioned on whether or not you are a stockholder. They
17 are in fact the law. There's nothing in there about an
18 exception for stockholders.

19 As a consequence of that, Your Honor, what we're
20 saying is it's a very simple matter. This is a document
21 request to the corporation. He is a director. He is entitled
22 to these documents. And if Wynn Resorts really does have
23 nothing to hide, it should be able to provide them, because
24 these requests have been outstanding now for close to three
25 months. Thank you, Your Honor.

1 THE COURT: Thank you.

2 Anything else?

3 Each director as a fiduciary, regardless of whether
4 they are a shareholder, has a clear right of inspection under
5 the common law. However, that right is limited by
6 reasonableness under the common law.

7 I am going to continue this matter for two weeks for
8 a determination as to whether the document request that has
9 been made is in fact reasonable, because some of the items I
10 have serious questions about, Mr. Caine. Other items I agree
11 with you are -- clearly fall within that scope. But I think
12 the company has the right to address each item individually as
13 to whether the production of those particular items are in
14 fact reasonable.

15 MR. LENHARD: How do you -- how would you like -- I
16 guess the question I have --

17 THE COURT: I'm not issuing the writ today. But if
18 I make a determination in two weeks that the company has
19 refused to produce documents that I think are reasonable, then
20 at that time I will issue the writ, because that will be my
21 only remedy.

22 MR. LENHARD: So what you're looking for the company
23 to do is begin a process where the company feels the
24 production is appropriate, and then you're going to review
25 that production in two weeks? I just want to be sure --

1 THE COURT: I want to see you guys in two weeks.
2 Which means the company will have to do it sooner.

3 MR. LENHARD: All right. Can I just have one
4 second?

5 THE COURT: You can.

6 MR. LENHARD: Thank you.

7 (Pause in the proceedings)

8 MR. LENHARD: Thank you, Judge. I don't need any
9 more clarification.

10 THE COURT: Okay. See you at 9:00 o'clock in two
11 weeks, which will be the 20th? 23rd.

12 MR. CAINE: May we approach about the other matter
13 that we discussed in chambers today?

14 THE COURT: Yes.

15 Please turn on my white noise.

16 (Off-record bench conference)

17 THE COURT: All right. Counsel, if any of you need
18 my assistance prior to the next hearing on February 23rd at
19 9:00 a.m., I assume that you will schedule a conference call
20 or file a motion on an OST. In the meantime, I will be
21 hopeful to get a supplement from the company on your position
22 related to each of the individual document request's
23 reasonableness.

24 MR. LENHARD: Thank you very much, Your Honor.

25 THE PROCEEDINGS CONCLUDED AT 10:23 A.M.

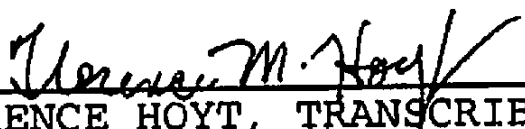
CERTIFICATION

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**



FLORENCE HOYT, TRANSCRIBER

2/10/12

DATE

EXHIBIT C

Brownstein Hyatt
Farber Schreck

February 21, 2012

Tamara Beatty Peterson
Attorney at Law
702.464.7046 tel
702.382.8135 fax
tpeterson@bhfs.com

VIA EMAIL AND REGULAR U.S. MAIL

Gidon M. Caine, Esq.
ALSTON & BIRD LLP
275 Middlefield Road
Suite 150
Menlo Park, California 94025

RE: Kazuo Okada vs. Wynn Resorts, Limited
Case No.: A-12-654522-B
Client-Matter No. 21658,172

Dear Mr. Caine:

Please allow this letter to follow-up your conversation with Mr. Shapiro yesterday. On February 15, 2012, a special meeting of Wynn Resorts, Limited's ("WRL") Board of Directors was noticed to take place on February 18, 2012. At the meeting held on February 18, 2012, WRL's Board of Directors discussed, among other items of business, Mr. Okada's requests to inspect certain books and records of WRL, as more fully set forth in Mr. Okada's Petition for a Writ of Mandamus (the "Petition"). During the meeting, WRL's Board of Directors gave approval -- consistent with WRL's policy of being transparent to its stockholders and its Directors -- for WRL to make certain documents that may be responsive to all five categories of documents identified in the Petition available to Mr. Okada for inspection.

Specifically, with respect to Mr. Okada's requests, as set forth in the Petition, to inspect the books and records of (a) "All books and records related to how [s/c] the manner in which the \$120 million invested by Aruze USA in April 2002 was spent"; (c) "All books and records regarding the Macau Reimbursement Amount, as that term is used in the Third Amended and Restated Operating Agreement [s/c] of Valvino Lamore"; and (d) "Books and records of Wynn Resorts and its predecessor entities for the years 2000 through 2002", WRL will make the following documents available for Mr. Okada's inspection:

- * Valvino Lamore, LLC ("Valvino Lamore") operating agreements, including membership documents;
- * Valvino Lamore financing documents, including contribution agreements;
- * Valvino Lamore financial statements;
- * Financial back up detail for the Macau Reimbursement Amount;

100 North City Parkway, Suite 1601 | Las Vegas, NV 89106-4614
Brownstein Hyatt Farber Schreck, LLP | bhfs.com

702.382.2101 tel
702.382.8135 fax

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- * Back-up support for the Valvino Lamore financial statements, including documents showing the use of funds;
- * Documents memorializing actions taken by Valvino Lamore's Board of Representatives or Managing Member;
- * Reports of operations;
- * Filings with the United States Securities and Exchange Commission; and
- * Spreadsheet reconciling the capital contributions of Stephen Wynn, Baron Asset Fund and Aruze USA, Inc.

Due to the broad nature of Mr. Okada's requests, it is unclear what additional documents, if any, Mr. Okada seeks. If Mr. Okada would like to narrow his requests and provide more specificity as to the documents he seeks, WRL will strive to locate and disclose any additional, non-privileged documents that may be responsive to his requests.

Additionally, with respect to Mr. Okada's second request to inspect WRL's books and records regarding "[a]ll books and records related to a HK \$1 billion pledge (and partial donation) by the Company or its affiliates to the University of Macau", WRL will make the following documents available for Mr. Okada's inspection:

- * Information distributed to WRL's Board of Directors and the Wynn Macau, Limited Board of Directors;
- * Background information on the University of Macau and the University Rector;
- * Board of Directors minutes; and
- * Correspondence and other documents discussing the donation to the extent that they are not privileged.

Next, with respect to Mr. Okada's fifth request to inspect WRL's books and records regarding "[a]ll evidence regarding negotiation, drafting, and execution of the Amended and Restated Stockholders Agreement dated January 6, 2010 between Mr. Wynn, Ms. Wynn and Aruze USA, Inc.", WRL responds as follows: WRL has filed the Stockholder Agreement and all amendments with the Securities and Exchange Commission and, thus, all non-privileged documents that are responsive to this request are publicly available to Mr. Okada. If, however, Mr. Okada would like WRL to print these documents for him off of WRL's website, please so advise.

We are in the process of gathering and indexing all of the above-mentioned documents and should have them available for inspection within the next week or so. Once all of the documents are compiled and indexed, I will contact you to schedule a date and time that is convenient to you and/or Mr. Okada to conduct this inspection.

Gidon M. Caine, Esq.
February 21, 2012
Page 3

Of course, if you have any questions, please feel free to contact me.

Sincerely,

Brownstein Hyatt Farber Schreck, LLP



Tamara Beatty Peterson

TBP:ep

cc: Paul R. Hejmanowski, Esq.
Charles H. McCrea, Esq.

EXHIBIT D

3/13/12

Alvin D. Quinn

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

KAZUO OKADA

Plaintiff

vs.

WYNN RESORTS LIMITED

Defendant

CASE NO. A-654522

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING AT REQUEST OF THE COURT: ARGUMENT ON WRIT OF MANDAMUS

THURSDAY, MARCH 8, 2012

APPEARANCES:

FOR THE PLAINTIFF:

CHARLES MCCREA, ESQ.
GIDON CAINE, ESQ.

FOR THE DEFENDANT:

KIRK LENHARD, ESQ.
TAMARA PETERSON, ESQ.
KIM SINATRA, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

RECEIVED
MAR 13 2012
CLERK OF THE COURT

33

1 LAS VEGAS, NEVADA, THURSDAY, MARCH 8, 2012, 9:23 A.M.
2 (Court was called to order)
3 THE COURT: I'm missing Team Wynn.
4 MR. McCREA: They're on their way, Your Honor.
5 Charles McCrea and Gidon Caine for the petitioner.
6 THE COURT: Good morning. How are you today?
7 MS. PETERSON: Good, thank you.
8 MR. LENHARD: Good morning, Your Honor. Sorry.
9 THE COURT: You know, it's going to be a long day.
10 I can tell.
11 Okay. I got everybody's supplement. Is there
12 anything anyone wants to say?
13 MR. LENHARD: Which one do you want to hear from us
14 first? Let's do it that way. You asked for our supplement.
15 Do you want me to lead off?
16 THE COURT: I would love you to lead off.
17 MR. LENHARD: All right. I'll be happy to do that.
18 THE COURT: First I want to thank your office for
19 getting us the replacement of the exhibit that did not have
20 all of the documents attached in the copy that was filed.
21 MR. LENHARD: I want to be sure we're correct on
22 that. And Ms. Peterson can answer the question. What we
23 submitted to you, part of that document is not to be filed.
24 THE COURT: Oh, I understand.
25 MR. LENHARD: Okay.

1 THE COURT: But it was filed as Exhibit E to your
2 Wynn Resorts Limited Second Supplement to Respondent's
3 Opposition to Petition for Writ of Mandamus. When I was
4 reading it I noticed that it referred to other documents.
5 Those other documents were not attached. I asked Max to send
6 an email to you all this morning asking for a copy so I could
7 look at it. I now have it. So thank you.

8 MR. LENHARD: Do you have it, Mr. Caine?

9 MR. MCCREA: No, we don't have it.

10 (Pause in the proceedings)

11 MR. LENHARD: I'll make sure Mr. Caine gets it in
12 all fairness.

13 Judge, I do have some comments on the supplement.
14 And part of the comments are necessitated by the fact that in
15 an exercise of mild understatement a lot has happened between
16 these parties since the last time I stood before you on
17 February 9th. And what has happened between these parties
18 really has a direct effect on what is, quote, "reasonable" for
19 the submission and "reasonable" for the production pursuant to
20 the petition for writ of mandate.

21 This writ, for lack of a better term, is really a
22 discovery motion. And I've stood before this Court on a
23 number of occasions through the years, and you know my general
24 practice is to give everything. I don't engage in discovery
25 disputes. But, to be candid, this is a horse of a different

1 color. We're talking about a petition that is really a
2 precursor for discovery purposes to a lawsuit that was filed
3 by Mr. Pisanelli on behalf of Wynn Resorts against Mr. Okada
4 and others. And that lawsuit is based on a breach of
5 fiduciary duty, and I'm sure the Court's aware that lawsuit
6 will have extensive discovery disputes and extensive discovery
7 issues. And it's important for us to keep in mind that this
8 petition should not be utilized as a discovery device to get
9 preliminary discovery for that lawsuit. And that is exactly
10 what has happened here, what is happening here. So I'm asking
11 you to take those issues into context as I discuss what is
12 reasonable here this morning.

13 And it's important to understand when I stood before
14 you on February 9th I asked you to allow my board -- or,
15 excuse me, the board of Wynn Resorts to have the opportunity
16 to review the five-part document request contained in the
17 petition for writ of mandate. You agreed, with one caveat.
18 And you made it clear to me, "The Wynn board possesses the
19 right to address each item individually," I'm quoting you,
20 Your Honor, "as to whether the production of those particular
21 items are in fact reasonable."

22 The board undertook this task on February 18th, the
23 meeting where Mr. Okada was determined to be unsuitable as a
24 shareholder. At that meeting, prior to the determination of
25 unsuitability, the board reviewed the five document requests

1 for reasonableness. And I'm going to address how the board
2 addressed each one of these requests now, then I'll put it
3 back in context, if I can.

4 The most important request from the board's
5 standpoint -- and, frankly, I believe from the Court's
6 standpoint; I'm sure the Court will correct me if I'm wrong --
7 was the donation to the University of Macau. That was the
8 most recent request. And clearly that was the request that
9 could be most seriously construed as something affecting Mr.
10 Okada's duties as a director. The board took that request
11 seriously and authorized the following documents to be
12 produced. And they were produced:

13 Information distributed to the Wynn board and to the
14 Wynn Macau board of directors that led to the donation. It's
15 the board packet. Mr. Okada had obviously seen that packet in
16 the past. We re-produced it.

17 Background information on the University and its
18 rector. Again, Mr. Okada had previously seen that
19 documentation, we re-produced it.

20 Board of directors minutes. Obviously as a director
21 he gets those minutes. We produced them again.

22 And finally, correspondence and other documents that
23 were not privileged were produced to Mr. Okada.

24 Now, as the Court's aware from our pleading and as
25 counsel is aware, there is a privilege log, and it is

1 significant. I had hoped to produce it this morning, but we
2 made a mistake in the log because we did not identify all of
3 the emails in each individual email chain. So we're redoing
4 the log. We should have it available by midday today.

5 THE COURT: So do you guys want to come back at 1:30
6 when you have that? Because that is the first question that I
7 wrote down yesterday, which is --

8 MR. LENHARD: I'm going to --

9 THE COURT: -- where is the privilege log.

10 MR. LENHARD: I'm going to leave that to your
11 discretion. But the privilege log is an important document
12 here for a number of reasons. First and foremost, virtually
13 every document in that log are internal communications between
14 counsel, between counsel for Wynn. It is our position on the
15 Montgomery case that --

16 THE COURT: No, I don't disagree with you, Mr.
17 Lenhard. But it's very difficult for me to rule on the issue
18 without the privilege log.

19 MR. LENHARD: No, I understand.

20 THE COURT: Which was why I was disappointed when it
21 wasn't attached to Exhibit D and when I read Mr. McCrea's and
22 Mr. Hejmanowski's brief last night that they hadn't seen it
23 yet. So do you want to come back at 1:30, when you have
24 distributed the privilege log and I can have a chance to
25 review it with you all?

1 MR. LENHARD: I'm fine with that.

2 THE COURT: All right. I will see you at 1:30.

3 MR. LENHARD: All right.

4 (Court recessed at 9:31 a.m., until 1:32 p.m.)

5 THE COURT: Good afternoon. Thank you for the
6 privilege log and the in-camera documents for review. It was
7 a very exciting lunch hour.

8 Would you like to resume your discussion, Mr.
9 Lenhard?

10 MR. LENHARD: Thank you, Your Honor. I hope you
11 enjoyed the light reading.

12 I left off, I was discussing -- if I could just
13 retrench a second, I was discussing the board's direction as
14 it concerned the donation to the University of Macau, which
15 led, of course, to the discussion of the privilege log and, of
16 course, the in-camera document review. The board was clear
17 that they wanted everything that was nonprivileged produced,
18 and I already read to you the list of things we did produce.
19 As the Court's now well aware and, of course, counsel is now
20 well aware, there are a significant volume of documents that
21 we have treated as privileged. And the assertion of that
22 privilege is extremely important to my client. As you know,
23 there's an SEC investigation ongoing, there are gaming
24 investigations ongoing, and also there's a separate lawsuit
25 for breach of fiduciary duty that's been filed that is before

1 Your Honor. For me to --

2 THE COURT: Because I'm just lucky.

3 MR. LENHARD: Your stars were crossed.

4 THE COURT: Yet again.

5 MR. LENHARD: In any event, though, for me to
6 haphazardly come into this courtroom under the petition of
7 writ of mandate and to waive the privilege both for these
8 investigations and the subsequent lawsuit filed by Mr.
9 Pisanelli would have been reckless beyond belief. Therefore,
10 in an abundance of caution we prepared this detailed privilege
11 log and the detailed list of documents. The privilege log is
12 not yet perfect, because we had some difficulty in compiling
13 the log.

14 But, in any event, I'm asking the Court to seriously
15 consider the existence of this privilege in the context of
16 this case. Mr. Okada is clearly adverse to the other members
17 of the board, and he's clearly adverse to Wynn Resorts
18 Limited. Under these circumstances under the Montgomery case
19 any documents generated by in-house counsel, documents going
20 back and forth between in-house counsel should be deemed
21 privileged and not released.

22 THE COURT: So can I ask a couple questions.

23 MR. LENHARD: Of course.

24 THE COURT: Looks like Gibson Dunn was Wynn's
25 outside counsel during -- for the transaction.

1 MR. LENHARD: I believe so.

2 MS. SINATRA: Yes, that's correct.

3 THE COURT: And was Skadden Arps the outside counsel
4 for the Macau University System, or how were they --

5 MR. LENHARD: Skadden Arps is also --

6 MS. SINATRA: Skadden Arps is also a Wynn outside --

7 THE COURT: Thank you, Ms. Sinatra. Okay.

8 MR. LENHARD: Both those firms obviously would be
9 included in the attorney-client umbrella. The important thing
10 to remember, too, because virtually -- as I'm sure you've now
11 noticed, virtually all of these documents are internal. The
12 way it's been explained to me is that the Chinese do not
13 engage in extensive drafting, there are not emails back and
14 forth from the Chinese end of this transaction. It's all
15 internal to Wynn and its counsel. As a result -- again, as a
16 result of Mr. Okada being adverse to the interests of the
17 board, adverse to the board as a whole, we would suggest these
18 documents must remain privileged and must remain protected
19 until such time as that issue can be fleshed out in either Mr.
20 Pisanelli's lawsuit or the investigations being conducted by
21 the SEC and various gaming regulatory authorities.

22 That leaves us by the Macau donation issue, which,
23 again, as I said in my opening remarks this morning, is really
24 the key issue and the core issue before the Court, because
25 that is the one issue that really would appear to affect Mr.

1 Okada's duties as a director.

2 I would like to step forward, if I can -- I think
3 it's the fifth request. And this is the request for the 2010
4 stockholders agreement. The board also gave specific
5 directions to counsel on that agreement and what the board
6 thought was reasonable. The board agreed to produce another
7 copy of the agreement and any amendments for Mr. Okada,
8 assuming apparently he didn't have it. But the board did not
9 agree, because the board felt it was well outside Mr. Okada's
10 duties as a director, to submit any drafts, emails,
11 correspondence, or any records concerning the negotiation of
12 that agreement. The board's position was clear. The board
13 felt that that was well outside Mr. Okada's duties as a
14 director and therefore would be unreasonable for the board to
15 have to produce those documents. And that is the directions
16 I've received from the board.

17 Now, I notice in looking at Mr. Caine's and Mr.
18 McCrea's pleading they have referred to the fact that Ms.
19 Sinatra is in-house counsel for Wynn Resorts and is the
20 secretary for Wynn Resorts, has in fact acted as a transmitter
21 of documents back and forth, and I've been show some emails
22 from Ms. Sinatra. The fact that in-house counsel or general
23 counsel might transmit documents back and forth or act as a
24 facilitator in a transaction does not convert that person or
25 somehow change her role. If every time general counsel for a

1 corporation facilitating a transaction becomes subject to some
2 type of investigation and review by a director, it would be
3 impossible for in-house counsel to properly function. I would
4 suggest that does not change the status of the board's
5 position. Ms. Sinatra's role does not change the status of
6 the board's position. These -- simply everything surrounding
7 the 2010 stockholders agreement should not be before the Court
8 and should not be the subject of any writ.

9 They've also raised the issue that the redemption of
10 Mr. Okada's stock is somehow affected by the stockholders
11 agreement or the -- excuse me, not the procedure, the
12 percentages are affected by the stockholders agreement. Let
13 me remind the Court this petition was filed before the
14 redemption was filed. The redemption and the validity of the
15 redemption is certainly part of the lawsuit filed by Mr.
16 Pisanelli, and this is an issue that can be fleshed out before
17 Your Honor in discovery in that lawsuit.

18 This then leaves us the final three issues, I'm
19 going to call them Requests A, C, and D, of the petition for
20 writ of mandate. I'm going to call these under a heading the
21 pre IPO documents, the pre IPO agreements. There's a request
22 basically for all of the books and records of any Wynn entity
23 or entity preceding WRL for the years 2000 through 2002, any
24 book and record. That is certainly a detailed request. By
25 correspondence February 21 we did correspond with Mr. Caine,

1 suggesting that we would produce certain records. When we got
2 into a more detailed review of the records they were seeking
3 it became apparent that we were going far afield of any issue
4 or any duty of Mr. Okada as a director. And when the board
5 considered this issue on February 18th the board left it to me
6 as counsel to determine what on Requests A, C, and D could be
7 considered reasonable and what would not be considered
8 reasonable. So it's my responsibility as I stand here today.

9 But in reviewing those requests we thought it was
10 reasonable to produce those items that were public record, and
11 we did, because they were easily accessible. But to ask the
12 Wynn people to go through their warehouses and find every book
13 and record tangentially pertaining to their business practices
14 or their business activities for the years 2000 through 2002
15 was inherent unreasonable, and that's the position we took. I
16 should say that's the position I took. That's my
17 responsibility.

18 We asked in the letter of February 21 for Mr. Okada
19 to limit his requests or somehow redefine his requests to make
20 them easier to respond to. That request was not responded to,
21 which is, of course, the exercise of discretion by Mr. Caine
22 and Mr. McCrea. But that didn't help us. Therefore, we've
23 taken the position that based on these stale records, records
24 that predate the formation of Wynn Resorts Limited, that we
25 have complied in a reasonable fashion and nothing else should

1 be required.

2 When I first stood up here this morning I also
3 reminded the Court that we really do need to take this
4 petition in context with what has happened over the past one
5 month. As if the Court's not aware, I will remind the Court
6 that on February 18th Mr. Okada was determined to be
7 unsuitable by the board of Wynn Resorts. He's been removed as
8 a director of Wynn Macau by that board. He's refused to
9 resign as a director of Wynn Resorts, resulting in the filing
10 of a proxy statement with the SEC calling for a shareholders
11 meeting that will occur once the SEC approves the proxy
12 filing.

13 The events, as the Court's well aware, were
14 precipitated by the Free Report, an investigation that found
15 significant evidence that Mr. Okada had engaged in misdeeds in
16 the Philippines and other areas. At the time of the filing of
17 this petition, the petition before the Court, Mr. Okada was
18 well aware of the ongoing investigation by Mr. Free, and I
19 would refer the Court to Exhibit J of our second supplement.
20 It's a letter dated January 9, 2012, addressed to Mr. Caine on
21 behalf of Mr. Okada from Joel Friedman, a partner of Mr. Free.
22 In that letter Mr. Caine on behalf of Mr. Okada is advised
23 that Mr. Free has been engaged to conduct an independent
24 investigation under the direction of the Compliance Committee
25 of Wynn Resorts, that Mr. Okada had been informed of the

1 investigation. In that regard towards the end of the letter
2 Mr. Friedman says the following. "We would very much like to
3 interview Mr. Okada. Accordingly, we would greatly appreciate
4 it if he would make himself available for interview on a
5 mutually agreeable date during the week of January 30, 2012."
6 This letter is dated January 9, 2012. Two days later, after
7 requesting the interview, this petition was filed. Is there
8 any question what is behind the petition? It's a diversion.

9 Since we last met Wynn Resorts has also filed a
10 complaint in this court alleging a breach of fiduciary duty.
11 When all of these factors are considered by the Court I'm
12 suggesting that any additional production over and above what
13 Wynn has already done is not appropriate. I would suggest in
14 the context of what has happened, with a lawsuit pending, with
15 a lawsuit pending where discovery can be had in the ordinary
16 course, with investigations pending with the SEC and the
17 Gaming Control Board and the gaming authorities in Macau that
18 any additional production would be inappropriate. At a
19 minimum, if the Court feels any production is appropriate,
20 that we have somehow behaved not as reasonably as the Court
21 would prefer, I would ask that the Court stay that production
22 until such time as it is determined by the shareholders of
23 Wynn Resorts Limited whether Mr. Okada will remain as a
24 director. Because obviously if he does not remain as a
25 director, this issue will be moot.

1 I've probably gone a little bit longer than I
2 intended. I thank the Court's time -- I thank the Court for
3 its time and attention. If the Court has any questions, I'm
4 certainly willing to answer them.

5 THE COURT: I don't have any more. Thank you very
6 much, Mr. Lenhard.

7 MR. LENHARD: Thank you, Your Honor.

8 THE COURT: Mr. Caine.

9 MR. CAINE: Thank you, Your Honor, and good
10 afternoon.

11 We're here today on Kazuo Okada's petition for writ
12 of mandate regarding inspection. I think the matter is well
13 briefed, and I just want to highlight a few issues of
14 importance and respond to some of the filings and the
15 arguments that have been made today and over the course of the
16 past couple of days.

17 As an initial matter, this Court has held that Mr.
18 Okada has a right to inspect the books and records of Wynn
19 Resorts and that those requests for inspection must be
20 reasonable. It then sent the five requests for inspection to
21 the Wynn Resorts board of directors for their view on the
22 reasonableness of those requests. The Court further directed
23 the documents be produced.

24 Now, on February 21 we received a letter from Wynn
25 Resorts' counsel explaining that in essence four of the five

1 categories were reasonable and the documents would be produced
2 with regard to those categories. And just to review, those
3 categories were expenditures from 2000 to 2002, not every
4 document, but expenditures; how the \$120 million invested by
5 Aruze USA in April 2002 was spent; the Macau reimbursement
6 amount as that term is used in the third amended and restated
7 Valveena Lamour [phonetic] agreement, and the donation to the
8 University of Macau.

9 Now, at this point, Your Honor, there can be no
10 dispute that these categories of documents are reasonable.
11 The only issue is whether Wynn Resorts has in fact produced
12 the documents. And it clearly has not. For example, Your
13 Honor, the following documents are missing: Documents showing
14 entertainment of Macau government officials from 2000 to 2002
15 while Wynn Resorts was seeking a license; documents showing
16 management's discussions regarding contacts with government
17 officials in Macau regard that license; ledgers showing how
18 money was spent; a breakdown of expenses included in the Macau
19 reimbursement amount and documents relating to those expenses;
20 documents showing meals, entertainment, gifts, lodging
21 provided to directors, employees, or agents of the University
22 of Macau or its foundation; documents regarding contacts with
23 the University of Macau Foundation; documents provided to the
24 outside law firm before it opined that the donation did not
25 violate the Foreign Corrupt Practices Act. The list could go

1 on. This is just illustrative.

2 The one issue that remains outstanding, as Mr.
3 Lenhard pointed out, was the 2010 amendment to the
4 stockholders agreement. Now, here Wynn Resorts has said
5 initially that since it's not a party to that agreement it's
6 not reasonable. What we then did was we pointed out that we
7 have emails from Ms. Sinatra, general counsel of Wynn Resorts,
8 showing that she was deeply involved in the negotiation of the
9 amendment. Now, this raises significant corporate governance
10 issues, since the general counsel should not be involved in
11 these negotiations. It raises issues of entrenchment, it
12 raises issues of favoring certain management over the board of
13 directors. It's simply something that the board of directors
14 is entitled to see.

15 Now, when we initially told Wynn Resorts that we had
16 these emails we gave them a sample of them. They said that
17 they could not find some of them initially. Now, obviously
18 this raises other issues, and it makes inspection all the more
19 necessary.

20 Now, another thing I think that's important here to
21 talk about is there's no evidence here of burden. They've not
22 made that argument. There's no proof about this. It simply
23 doesn't exist. And there's no evidence of harm. The fact is
24 that there's a confidentiality agreement in place that Your
25 Honor has supervised. Paragraph 3 provides for protection of

1 the documents are used to fulfill Mr. Okada's fiduciary duties
2 or for this case only. And it's right there in plain black
3 and white right there.

4 Now, the other thing is that Wynn Resorts has said
5 that this is all part of an elaborate PR campaign. There's no
6 evidence of this. We've asked for the documents well before
7 redemption. We've been looking for these documents since
8 November. The fact is that we still haven't seen them.

9 The other thing that they say is they talk about a
10 stay request, and what they don't really talk about is the
11 harm, the balance of the harms that would be required under a
12 stay. And there's a reason for that. Because there's no harm
13 to them in continuing to produce. There's a confidentiality
14 order in place, in addition that he remains a fiduciary of the
15 corporation.

16 There is, however, a harm to us, because we have a
17 right, as this Court has explained, to have inspection. In
18 addition to that, the harm that they talk about to the extent
19 to which they do is really pure speculation. They need to get
20 a proxy through the Securities and Exchange Commission, they
21 need to set a -- they need to set a date for the meeting, and
22 then they need to get 66-2/3 percent of the voters to -- of
23 the shares to actually vote for removal. Those are three
24 significant hurdles, Your Honor, making whatever argument they
25 have about a stay purely speculative.

1 In essence, Your Honor, what we're saying is that
2 very little has changed since February 21st when we got the
3 letter from Wynn Resorts. The only thing that's changed is
4 that their strategy has changed, but nothing else. And as a
5 consequence of that what we're asking for, Your Honor, is that
6 the Court issue the writ with a return date of March 14
7 ordering the production of all documents, with a status
8 hearing on the 15th.

9 Now, I also want to turn, Your Honor, if I can, to
10 this supplemental disclosure that we received today, because I
11 think that it actually points out some of the problems with
12 the attorney-client privilege argument that they make. As an
13 initial matter, Your Honor, I think one of the things that's
14 important to note here is the first eight or nine documents on
15 this list don't even tell us who the addressees are, who the
16 originators are. So to the extent to which we've --

17 THE COURT: I looked at them.

18 MR. CAINE: Huh?

19 THE COURT: I looked at them. I did an in-camera
20 review of them for a reason.

21 MR. CAINE: Thank you, Your Honor. But my
22 perspective on that is there's no way to contest those
23 reasonably, and in fact simply it's meaningless.

24 THE COURT: Which is why we skipped a step and I did
25 an in-camera review.

1 MR. CAINE: Okay. I think the next point is, Your
2 Honor, that many of these documents clearly predate whatever
3 adversity Wynn Resorts exists between Mr. Okada and the board
4 or Mr. Okada and the corporation. As a consequence of that,
5 there can be no argument that those documents are in any way
6 part of the litigation strategy they have vis-a-vis Mr. Okada,
7 which is about the only part of the privilege which I could
8 see a possible argument for. But other than that, Mr. Okada
9 was a member of the board of directors, and still is a member
10 of the board of directors, at the time that all of these
11 documents were created. There's no argument that those
12 documents relate to the adversity that's between this -- or
13 between Mr. Okada and the board of Mr. Okada Wynn Resorts.
14 There's not, because, again, they just haven't made that
15 argument here.

16 In addition to that I think the other thing that's
17 important about this is this list is 105 documents long, Your
18 Honor, and that binder in front of you is almost as large as
19 the entire production to us of documents from Wynn Resorts,
20 including, for example, Your Honor, the documents that we
21 produced, that we sent to them. They've actually produced to
22 us our letters in an effort to sort of bulk up their
23 production. The fact is that that should signal to this Court
24 that this is really a way too extravagant view of the
25 attorney-client privilege. And again, as you look at these

1 documents, during the time none of these are, it appears, from
2 the time that Mr. Okada was in fact adverse. If they are,
3 then there needs to be a further explanation as to why those
4 documents can be withheld.

5 But again, Your Honor, what I think is happening
6 here is something that Mr. Lenhard pointed out at the very end
7 of his discussion which I think is very important, which is
8 the filing of the proxy statement and the attempt to remove
9 Mr. Okada as a director is clearly what's driving the about
10 face that's happening in front of this Court. That's why we
11 would ask, Your Honor, again that what we have is we have a
12 writ of mandate issue and then we have a status conference in
13 a week, but that they be ordered to produce these documents by
14 the -- by next Wednesday.

15 THE COURT: Thank you.

16 MR. CAINE: Thank you, Your Honor.

17 THE COURT: Mr. Lenhard, anything else you want to
18 add?

19 MR. LENHARD: Very briefly, Your Honor, first
20 starting out with the comments about Ms. Sinatra. Again, I
21 looked at the sampling of emails given to us by counsel, and
22 there was a reason why we couldn't find those emails. There's
23 no mystery here. Emails are dated differently because they
24 come from China, and the dates they gave us didn't match up
25 with the dates we had in our emails, and it took us a while to

1 figure it out. Leaving that to the side, those emails
2 indicate nothing more than somebody facilitating a
3 transaction, not somebody actively negotiating or in any way
4 controlling the transaction.

5 There's a reference in this argument to the burden
6 on Wynn. We're talking about an issue of Items A, C, and D of
7 the writ, documents that are 10 and 12 years old that are
8 archived and warehoused. Books and records. You know what
9 the requests say. You've seen them a number of times. To ask
10 Wynn to go into those warehouses and dig those documents out
11 when we have no more definition, and Ms. Peterson asked for
12 more definition, we didn't get it, is inherently burdensome
13 and inherently unreasonable. Let me ask the Court if this was
14 a -- just a discovery argument in one of your Business Court
15 cases outstanding here today, the Court would clearly make me
16 -- if I was making a demand for books and records, make me be
17 more definitive before you would ask a litigant to go back 10
18 or 12 years and find stale records.

19 As to the privilege issue -- and I've been in this
20 court many times, I'm happy to defer to this Court's judgment,
21 this Court's analysis of our privilege log. I would ask the
22 Court, though, in conducting that analysis to remember that
23 Mr. Okada is now adverse to the board, he is now adverse to
24 the interests of Wynn Resorts. They are involved in very
25 detailed and difficult litigation. Under those circumstances,

1 as Judge Cook determined in the F.Supp. decision we've cited,
2 under those circumstances a dissident director should not have
3 access to attorney-client communications. And that is not
4 only attorney-client communications that occur when the
5 director's actually dissident, but all attorney-client
6 communications. Any doubt, I'd ask the Court to review the
7 decision. Thank you for your time.

8 THE COURT: I need to ask Ms. Sinatra a question.

9 Ms. Sinatra, with respect to the amended and
10 restated stockholders agreement was that done as a result of
11 the dissolution of the marriage between Mr. and Mrs. Wynn?

12 MS. SINATRA: Yes, it was. And at the time they
13 were each represented by counsel.

14 THE COURT: Okay. And that was with -- Judge Richie
15 was assisting with that process?

16 MS. SINATRA: Well, they were each represented by
17 counsel.

18 THE COURT: But Judge Richie was doing their
19 settlement conference --

20 MS. SINATRA: Yes.

21 THE COURT: -- in the divorce proceeding? Okay.
22 Thank you. I just needed clarification on that timing.

23 Mr. Caine, something else?

24 MR. CAINE: Very briefly, Your Honor. Two points.
25 The first is on Montgomery against Etrepid Technologies. I

1 think it's important to note that that case involves a former
2 manager of an LLC, not a sitting director of a publicly held
3 corporation, that as a result of that the case is readily
4 distinguishable. It's a Federal District Court case deciding
5 the issue under the federal common law, and as a result of
6 that I think that it's also distinguishable for that reason.

7 I think that the other thing that's important here
8 is that as you go through the documents, particularly, for
9 example, the documents with regard to the 2010 agreement, I
10 understand their argument that they think that she was merely
11 a facilitator. But the problem with that is that, again, Mr.
12 Okada is a director, they're management. He should be
13 entitled to see those documents to judge for himself and
14 present them to the board. That's his obligation, that's his
15 duty, that's his right under this Court's ruling. Thank you,
16 Your Honor.

17 THE COURT: Thank you.

18 With respect to the documents that are requested in
19 paragraph 36 of the petition for writ it appears that the
20 documents related to A, C, and D are overbroad as presented.
21 For that reason the Court will not issue any relief as they
22 are currently framed.

23 With respect to Item B I conducted an in-camera
24 review of the entirety of the documents on the privilege log
25 over the lunch hour, because I have no life. I am ordering

1 that WRLPRIV0356 through 0357 be produced immediately. It's
2 only two pages.

3 MR. LENHARD: Okay.

4 THE COURT: With respect to Item E, as the issues
5 that underlay the nature of the agreement that was reached
6 between the parties relate from a domestic proceeding in a
7 settlement conference that was conducted by one of our judges
8 sitting in the Family Court, I do not think it is appropriate
9 for the Wynn Resorts Company to be the entity that is
10 producing that information. That is certainly something that
11 you may request from other individuals, as opposed to from the
12 corporation.

13 So your writ is granted, but only with respect to
14 the two pages that have not currently been produced to you.

15 If you wish to reframe Items A, C, and D to more
16 narrowly identify the specific documents that you are seeking,
17 I will certainly be happy to entertain those.

18 With respect to the two pages, since they're already
19 Bates numbered and readily available, can you produce those by
20 the close of business today?

21 MR. LENHARD: Certainly.

22 MS. PETERSON: Yes, Your Honor.

23 THE COURT: Anything else?

24 MR. LENHARD: Not from Wynn.

25 THE COURT: Have a lovely day.

1

THE PROCEEDINGS CONCLUDED AT 1:59 P.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

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

3/11/12

DATE

EXHIBIT E

Allen D. Quinn

CLERK OF THE COURT

OSCC

DISTRICT COURT
CLARK COUNTY, NEVADA

KAZUO OKADA, PLAINTIFF(S)

CASE NO.: A-12-654522-B

VS.

WYNN RESORTS LIMITED,

DEPARTMENT 11

DEFENDANT(S)

CIVIL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Voluntary Dismissal
- ☐ Transferred (before/during trial)
- ☐ Involuntary (statutory) Dismissal
- ☐ Judgment on Arbitration Award
- ☐ Stipulated Dismissal
- ☐ Stipulated Judgment
- ☐ Default Judgment
- ☐ Motion to Dismiss (by Defendant)
- ☒ Summary Judgment
- ☐ Non-Jury (bench) Trial
- ☐ Jury Trial

DATED this 2nd day of April, 2012.

Elizabeth Gonzalez
ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

RECEIVED

APR 03 2012

CLERK OF THE COURT

28

EXHIBIT F

LIONEL SAWYER & COLLINS
Samuel S. Lionel (SBN 1766)
Paul R. Hejmanowski (SBN 94)
Charles H. McCrea, Jr. (SBN 104)
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 383-8888
Facsimile: (702) 383-8845

PAUL HASTINGS LLP
William F. Sullivan*
Thomas A. Zaccaro*
Howard M. Privette*
Thomas P. O'Brien*
John S. Durrant*
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Telephone: (213) 683-6000
Facsimile: (213) 683-0705

Attorneys for Defendants ARUZE USA, INC. and
UNIVERSAL ENTERTAINMENT CORPORATION
**Pro hac vice application forthcoming*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

KAZUO OKADA, an individual; ARUZE
USA, INC., a Nevada corporation;
UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

Defendants.

CASE NO:

NOTICE OF REMOVAL

NOTICE OF REMOVAL, Page 1 of 7

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2
3 PLEASE TAKE NOTICE that Defendants ARUZE USA, Inc. ("Aruze
4 USA") and UNIVERSAL ENTERTAINMENT CORP. ("Universal") (collectively
5 "Removing Defendants"), pursuant to 28 U.S.C. § 1446(a), hereby remove this action
6 from Department XI of the Eighth Judicial District Court of the State of Nevada in and
7 for the County of Clark to the United States District Court for the District of Nevada.
8 The removal of this case is based upon the following grounds:

9
10 **SUMMARY**

11 1. "A state-created cause of action can be deemed to arise under federal
12 law (1) where federal law completely preempts state law; (2) where the claim is
13 necessarily federal in character; or (3) where the right to relief depends on the resolution
14 of a substantial, disputed federal question." *See ARCO Environmental Remediation, LLC*
15 *v. Dep't of Health and Environmental Quality of the State of Montana*, 213 F.3d 1108,
16 1114 (9th Cir. 2000) (internal citations omitted).

17 2. All claims and causes in this matter should be removed to this Court
18 under 28 U.S.C. § 1441(b) because the issues raised on the face of the Complaint involve
19 a resolution of a substantial federal question that plays a significant role in the
20 proceedings. *See id.*

21 3. In particular, the Complaint filed by Wynn Resorts, Ltd ("Plaintiff")
22 "makes clear, at a minimum, the right to relief depends on the resolution of a substantial,
23 disputed federal question[s]" regarding the scope and interpretation of the Foreign
24 Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq.* *Herman v.*
25 *Salomon Smith Barney, Inc.*, 266 F. Supp. 2d 1208, 1211 (S.D. Cal. 2003).

PROCEDURAL HISTORY AND BACKGROUND

4. On or about February 19, 2012, Plaintiff filed an action in the Eighth Judicial District, Clark County District Court for the State of Nevada entitled *Wynn Resorts, Limited v. Kazuo Okada, Aruze USA, Inc., and Universal Entertainment Corporation*, Case Number A-12-656710-B.

5. Defendants Aruze USA and Universal were served with a summons and complaint on or about February 21, 2012. To date, Defendant Kazuo Okada ("Mr. Okada") has not been served with the summons or complaint and no Defendant has yet made an appearance in the state court action. A copy of all process and pleadings in the state court action are attached hereto as Exhibit A.

6. Plaintiff purports to bring claims against Mr. Okada for breach of fiduciary duty, and against Aruze USA and Universal for aiding and abetting breach of fiduciary duty. Plaintiff alleges that Mr. Okada breached his fiduciary duty by engaging in unlawful activities with foreign government officials at Plaintiff's properties in violation of the FCPA. Further, Plaintiff seeks declaratory relief against Mr. Okada, Aruze USA, and Universal for an order that it acted lawfully in finding that Aruze USA was not "suitable" as a Wynn Resorts stockholder. In essence, Plaintiff purports to (improperly) seek a judicial declaration confirming its conclusion that Defendants are "unsuitable" because they violated the FCPA.

7. To allege its breach of fiduciary duty claims, Plaintiff purports to rely on a report produced by Freeh Sporkin & Sullivan LLP ("Freeh Sporkin"). The Freeh Sporkin report, Plaintiff contends, provides *prima facie* evidence that Aruze USA and Mr. Okada violated the FCPA, 15 U.S.C. § 78dd – 2. Plaintiff attached the Freeh Sporkin report to its Complaint and incorporates it by reference.

GROUND FOR REMOVAL

8. "Any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the . . . defendants . . . to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the Plaintiff's allegations will require the Court to determine important substantive questions arising under federal law. *See* 28 U.S.C. § 1331.

10. All three claims asserted by Plaintiff rely on the assertion that Plaintiff's Board of Directors was presented with "evidence that Mr. Okada had made unlawful payments to foreign gaming regulators who could advance Mr. Okada's business interest." (Complaint ("Compl." ¶ 1).)

11. The Complaint is replete with allegations concluding that purported federal FCPA violations placed him in violation of state law and/or justify the declaratory relief Plaintiff seeks under state law. (*See, e.g. id.* ¶ 58 ("Mr. Okada breaches his fiduciary duties by engaging in unlawful activities. . . ."); *id.* ¶ 66 ("Aruze USA and Universal "knowingly participated in Mr. Okada's breaches by facilitating the . . . committing unlawful acts that undermine Wynn Resorts' good reputation as well as its business and gaming licenses"))).

12. Removal is proper where the interpretation of the FCPA (*i.e.*, a federal question) plays "a significant role in the proceedings." *Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1212 (9th Cir. 1998) (removal of state-law claims, including breach of express and implied contract, breach of the covenant of good faith and fair dealing, gross negligence, intentional misrepresentation, negligent misrepresentation, and interference with economic relations, proper where viability of the state law claim hinged on determination of violation of federal question); *Herman*, 266 F. Supp. 2d at 1211 (removal of state law claim proper where duties allegedly breached was established by federal securities laws); *T&E Pastornio Nursery v. Duke Energy*

1 *Trading and Market, LLC*, 268 F. Supp. 2d 1240, 1247 (S.D. Cal. 2003) (removal of state
2 law claim proper where claims were premised in part on a violation of federal law).

3 13. Plaintiff's breach of fiduciary duty claim and aiding and abetting
4 breach of fiduciary duty claim rely on alleged FCPA violations as an *ipso facto* basis for
5 the conclusion that Mr. Okada breached his fiduciary duties owed to Plaintiff.

6 14. Plaintiff's declaratory relief claim seeking an order that Plaintiff
7 acted lawfully and in full compliance with its Articles of Incorporation to redeem Aruze
8 USA's shares is wholly predicated upon the findings in the Freeh Sporkin report.
9 (Compl. ¶ 76 ("following Freeh's presentation, the Board of Directors deliberated" and
10 voted to redeem Aruze USA's Wynn Resorts stock).

11 15. Because Plaintiff's claims are predicated upon findings of violations
12 of federal law, and thus arise under federal law, this action is properly removed pursuant
13 to 28 U.S.C. § 1331.

14
15 **UNIFORM INTERPRETATION OF THE FCPA**

16 16. There is an important federal interest in the uniform interpretation of
17 the FCPA. The U.S. Department of Justice ("DOJ") has exclusive jurisdiction to
18 prosecute criminal violations of the FCPA. *See* 15 U.S.C. §§ 78dd-2(d)(1). Both the DOJ
19 and the U.S. Securities and Exchange Commission have authority to seek injunctive relief
20 to prevent bribery and recordkeeping violations of the FCPA. *Id.* at 78u(d)(1).

21 17. Courts recognize that the statutory language of the FCPA is
22 imprecise. *See United States v. Kay*, 359 F.3d 738, 743-44 (5th Cir. 2004) ("We agree
23 with the courts findings of ambiguity for several reasons. Perhaps our most significant
24 statutory construction problem results from the failure of the language of the FCPA to
25 give a clear indication of the exact scope of the business nexus element; that is, the
26 proximity of the required nexus between, on the one hand, the anticipated results of the
27 foreign official's bargained-for action or inaction, and, on the other hand, the assistance
28 provided by or expected from those results in helping the briber to obtain or retain

business.”); Mike Koehler, *The Façade of FCPA Enforcement*, 41 Geo. J. Int’l L. 907, 998 (2010) (recognizing that a significant difficulty in complying with the FCPA is that “several of [its] key elements are vague and ambiguous.”); James Doty, *Toward a Reg. FCPA: A Modest Proposal for Change in Administering the Foreign Corrupt Practices Act*, 62 Bus. Law 1233, 1239 (2007) (“Vagueness and ambiguity are the DNA of the FCPA . . .”).

18. Given the exclusive federal jurisdiction over criminal and injunctive relief for FCPA violations, and the potential for conflicting interpretations of the ambiguous statutory language, this Court should retain subject matter jurisdiction to ensure that the federal law relating to the FCPA is interpreted in a uniform manner.

JURISDICTION

19. This Court has removal jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1441.

OTHER PROCEDURAL REQUIREMENTS

20. Fewer than thirty (30) days have elapsed since service was effectuated upon Aruze USA and Univeral, and this Notice of Removal is timely. *See* 28 U.S.C. § 1446(b).

21. Pursuant to 28 U.S.C. § 1446(a), attached as Exhibit A is a copy of all process, pleadings, and orders served upon Removing Defendants in the state court action.

22. Removing Defendants and Mr. Okada all consent to the filing of this Notice of Removal.

23. Pursuant to 28 U.S.C. § 1446(d), Removing Defendants will serve a copy of this Notice of Removal on counsel for Plaintiff and will file a Notice of Filing of Removal with the Eighth Judicial District, District Court, Clark County, Nevada.

1 24. By filing this Notice of Removal, Removing Defendants do not
2 waive any defenses, including without limitation, lack of personal jurisdiction, improper
3 venue or forum, all defenses specified in Federal Rule of Civil Procedure 12, or any other
4 defense.

5 WHEREFORE, Removing Defendants remove the above-entitled action
6 from Department XI of the Eighth Judicial District Court of the State of Nevada in and
7 for
8 the County of Clark to the United States District Court for District of Nevada for the
9 reasons stated above, and/or for any other reasons the Court deems necessary and proper.
10

11 DATED: March 12, 2012.

12 Respectfully submitted,

13 LIONEL SAWYER & COLLINS
14

15 By: /s/Samuel S. Lionel
16 Samuel S. Lionel (SBN 1766)
17 Paul R. Hejmanowski (SBN 94)
18 Charles H. McCrea, Jr. (SBN 104)
19 1700 Bank of America Plaza
20 300 South Fourth Street
21 Las Vegas, Nevada 89101

22 PAUL HASTINGS LLP
23 William F. Sullivan*
24 Thomas A. Zaccaro*
25 Howard M. Privette*
26 Thomas P. O'Brien*
27 John S. Durrant*
28 515 South Flower Street, 25th Floor
Los Angeles, CA 90071

*Attorneys for Defendants ARUZE USA, INC.
and UNIVERSAL ENTERTAINMENT
CORPORATION*

** Pro hac vice application forthcoming*

EXHIBIT G

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

1 James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
2 Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
3 Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
4 Jarrod L. Rickard, Esq., Bar No. 10203
JLR@pisanellibice.com
5 PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
6 Las Vegas, NV 89169
Telephone: 702.214.2100
7 Facsimile: 702.214.2100

8 Robert L. Shapiro, Esq. (*pro hac vice forthcoming*)
RS@glaserweil.com
9 GLASER WEIL FINK JACOBS HOWARD
AVCHEN & SHAPIRO, LLP
10 10250 Constellation Boulevard, 19th Floor
Los Angeles, CA 90067
11 Telephone: 310.553.3000
Facsimile: 310.556.2920
12

13 Attorneys for Wynn Resorts, Limited, Kimmarie Sinatra,
Linda Chen, Ray R. Irani, Russell Goldsmith, Robert J. Miller,
14 John A. Moran, Marc D. Schorr, Alvin V. Shoemaker,
D. Boone Wayson, and Allan Zeman
15

16 UNITED STATES DISTRICT COURT

17 DISTRICT OF NEVADA

18 WYNN RESORTS, LIMITED, a Nevada
19 Limited Liability Company,

20 Plaintiff,

21 vs.

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

24 Defendants.
25
26
27
28

Paul K. Rowe, Esq. (*pro hac vice forthcoming*)
pkrowe@wlrk.com
Stephen R. DiPrima, Esq. (*pro hac vice forthcoming*)
srdiprima@wlrk.com
Bradley R. Wilson, Esq. (*pro hac vice forthcoming*)
brwilson@wlrk.com
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019
Telephone: 212.403.1000
Facsimile: 212.403.2000

CASE NO.: 2:12-cv-00400-LRH-PAL

**STIPULATION AND ORDER TO
EXTEND TIME TO RESPOND TO
COUNTERCLAIM AND TO HOLD
THE FED. R. CIV. P. 26(f)
CONFERENCE**

(First Request)

1 ARUZE USA, INC., a Nevada Corporation,
2 UNIVERSAL ENTERTAINMENT
CORPORATION, a Japanese corporation,

3 Counterclaimants,

4 vs.

5 WYNN RESORTS, LIMITED, a Nevada
6 Corporation, STEPHEN A. WYNN, an
individual; KIMMARIE SINATRA, an
7 individual; LINDA CHEN, an individual;
RAY R. IRANI, an individual; RUSSELL
8 GOLDSMITH, an individual; ROBERT J.
MILLER, an individual; JOHN A.
9 MORAN, an individual; MARC D.
SCHORR, an individual; ALVIN V.
10 SHOEMAKER, an individual; D. BOONE
WAYSON, an individual; ELAINE P.
WYNN, an individual; ALLAN ZEMAN,
an individual,

11 Counterdefendants.
12

13 Counterdefendants Kimmarie Sinatra, Linda Chen, Ray R. Irani, Russell Goldsmith,
14 Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, D. Boone Wayson, and
15 Allan Zeman (collectively, "Individual Counterdefendants"), by and through their undersigned
16 attorneys of record, Counterdefendant Stephen A. Wynn ("Mr. Wynn"), by and through his
17 undersigned counsel of record, Counterdefendant Elaine P. Wynn ("Ms. Wynn"), by and through
18 her undersigned counsel of record, and Defendants/Counterclaimants Aruze USA, Inc. ("Aruze
19 USA") and Universal Entertainment Corp. ("Universal"), by and their undersigned counsel of
20 record, hereby stipulate and agree, subject to this Court's approval, as follows:

21 1. The Individual Counterdefendants shall have up to and until May 21, 2012, to file
22 a responsive pleading to the Counterclaim filed on March 12, 2012, by Aruze USA and Universal
23 (the same date by which Wynn Resorts, Limited and Stephen A. Wynn must file their responsive
24 pleading to the same Counterclaim); and
25
26
27
28

2. The parties' proposed discovery plan/scheduling order, currently to be filed with the Court by April 26, 2012, shall instead be due on or before July 2, 2012, with the timing of the Fed. R. Civ. P. 26(f) conference and associated deadlines continued accordingly.

This stipulation is made in good faith, is not interposed for delay, and is not filed for an improper purpose.

DATED this 10th day of April, 2012.

DATED this 10th day of April, 2012.

PISANELLI BICE PLLC

LIONEL SAWYER & COLLINS

By: /s/ James J. Pisanelli

By: /s/ Charles H. McCrea, Jr.

James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
Jarrod L. Rickard, Esq., Bar No. 10203
3883 Howard Hughes Parkway, Suite 800
Las Vegas, NV 89169

Samuel S. Lionel, Esq., Bar No. 1766
Paul R. Hejmanowski, Esq., Bar No. 94
Charles H. McCrea, Jr., Esq., Bar No. 104
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101

and

and

Paul K. Rowe, Esq. (*pro hac vice forthcoming*)
Stephen R. DiPrima, Esq. (*pro hac vice forthcoming*)
Bradley R. Wilson, Esq. (*pro hac vice forthcoming*)
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019

William F. Sullivan, Esq. (*admitted pro hac vice*)
Thomas A. Zaccaro, Esq. (*admitted pro hac vice*)
Howard M. Privette, Esq. (*admitted pro hac vice*)
Thomas P. O'Brien, Esq. (*admitted pro hac vice*)
John S. Durrant, Esq. (*admitted pro hac vice*)
PAUL HASTINGS LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071

and

Robert L. Shapiro, Esq. (*pro hac vice forthcoming*)
GLASER WEIL FINK JACOBS HOWARD
AVCHEN & SHAPIRO, LLP
10250 Constellation Blvd., 19th Floor
Los Angeles, CA 90067

Attorneys for Aruze USA, Inc. and
Universal Entertainment Corp.

Attorneys for Wynn Resorts, Limited,
Kimmarie Sinatra, Linda Chen, Ray R. Irani,
Russell Goldsmith, Robert J. Miller, John A.
Moran, Marc D. Schorr, Alvin V. Shoemaker,
D. Boone Wayson, and Allan Zeman

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

1 DATED this 10th day of April, 2012.

DATED this 10th day of April, 2012.

2 CAMPBELL & WILLIAMS

MUNGER, TOLLES & OLSON LLP

3
4 By: /s/ J. Colby Williams
Donald J. Campbell, Esq., Bar No. 1216
5 J. Colby Williams, Esq., Bar No. 5549
700 South Seventh Street
6 Las Vegas, NV 89101

By: /s/ Mark B. Helm
Mark B. Helm, Esq., *(pro hac vice forthcoming)*
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

7 Attorneys for Stephen A. Wynn

Attorneys for Elaine P. Wynn.

10 **ORDER**

11 IT IS SO ORDERED.

12
13 
UNITED STATES MAGISTRATE JUDGE

14
15 DATED: May 3, 2012

16 CASE NO.: 2:12-cv-00400-LRH-PAL
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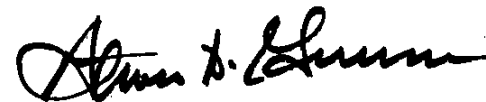
PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

1 0016

2 Paul R. Hejmanowski (SBN #94)
3 Charles H. McCrea, Jr. (SBN #104)
4 LIONEL SAWYER & COLLINS
5 1700 Bank of America Plaza
6 300 South Fourth Street
7 Las Vegas, Nevada 89101
8 Telephone: (702) 383-8888
9 Facsimile: (702) 383-8845

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7 Gidon M. Caine*
8 Steven M. Collins*
9 ALSTON & BIRD LLP
10 275 Middlefield Road, Suite 150
11 Menlo Park, California 94025
12 Telephone: 650-838-2000
13 Facsimile: 650-838-2001



CLERK OF THE COURT

11 *Attorneys for Petitioner*
12 KAZUO OKADA
13 * *Admitted Pro Hac Vice*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 KAZUO OKADA, an individual,
17 Petitioner,
18 -against-
19 WYNN RESORTS, LIMITED, a Nevada
20 corporation,
21 Respondent.

CASE NO. A-12-654522-B

DEPT. NO. XI

**FIRST AMENDED PETITION
FOR WRIT OF MANDAMUS**

22 COMES NOW Petitioner KAZUO OKADA ("Mr. Okada"), by and through his counsel
23 LIONEL SAWYER & COLLINS and ALSTON & BIRD LLP, against Respondent Wynn
24 Resorts, Limited ("Wynn Resorts" or the "Company"), and pursuant to Nev. Rev. Stat. § 34.150
25 *et seq.* respectfully submits his amended petition (the "First Amended Petition") to the Court for
26 a writ of mandamus compelling Respondent to produce certain books and records. This First
27 Amended Petition is made and based on the prior hearings in this case, the facts set forth below,
28

1 and the memorandum of law attached hereto:

2 **I. NATURE OF THE ACTION**

3 1. Mr. Okada returns to this Court because recent events make clear that the other
4 members of the Wynn Resorts Board of Directors will not allow him to exercise his rights as a
5 director.

6 2. In this regard, members of the Board of Directors have engaged in unprecedented
7 self-dealing and outright theft, using the boardroom to steal billions of dollars from Aruze USA
8 and redistribute it to themselves, among others. They caused Wynn Resorts to engage in a show-
9 trial in which Stephen A. Wynn ("Mr. Wynn") declared Mr. Okada guilty of misconduct before
10 the proceedings even began. They caused the Company to sue Mr. Okada. They have subjected
11 the Company to scrutiny by the Securities and Exchange Commission. Their conduct has caused
12 a foreign government to declare Mr. Wynn persona non grata. There are now five separate
13 derivative actions which name the directors as defendants. Two of those actions name Mr.
14 Okada as well.

15 3. Mr. Okada cannot turn to these individuals for a fair hearing regarding anything.
16 He therefore comes to this Court seeking inspection because going back to a Board that has
17 performed these acts of aggression would elevate form over substance.

18 4. Mr. Okada incorporates by reference his Petition for a Writ of Mandamus filed on
19 January 11, 2012, in this Court, and reserves his rights to relief thereunder.

20 **II. PARTIES, JURISDICTION AND VENUE**

21 5. Petitioner Kazuo Okada is a resident of Hong Kong and citizen of Japan. In 1969,
22 Mr. Okada founded Universal Lease Co. Ltd., which is now known as Universal Entertainment
23 Corporation ("Universal"), and is its majority owner and Chairman. Mr. Okada has been found
24 suitable by the Nevada Gaming Commission as a stockholder and as a controlling stockholder of
25 Universal Entertainment Corporation.

26 6. Mr. Okada has served as a member of Wynn Resorts' Board of Directors since
27 October 2002. As a director of a Nevada corporation, Mr. Okada has the individual right to
28 inspect the corporate books and records, provided those requests are reasonable.

1 7. Respondent Wynn Resorts, Limited is a publicly traded corporation organized and
2 existing under the laws of the State of Nevada with its principal place of business in Las Vegas,
3 Nevada. Wynn Resorts trades on NASDAQ under the ticker symbol "WYNN." Wynn Resorts,
4 together with its subsidiaries, develops, owns, and operates destination casinos and resorts. The
5 Company owns the Wynn Las Vegas casino resort in Las Vegas, Nevada, and the Wynn Macau
6 casino resort located in the Macau Special Administrative Region of the People's Republic of
7 China.

8 8. This Court has jurisdiction over this action pursuant to Nevada Constitution,
9 Article 6, § 6.

10 9. Venue is proper in this Court pursuant to Nev. Rev. Stat. § 13.040.

11 **III. GENERAL ALLEGATIONS**

12 **A. Relevant Events Since the Filing of the Initial Petition**

13 10. Since Mr. Okada filed his initial Petition, the members of the Board of Directors,
14 under the influence of Chairman Stephen A. Wynn, have taken a number of actions designed to
15 strip Mr. Okada of his economic interest in the Company and marginalize his influence as a
16 director. These actions make all the more clear that the remedies sought in this petition are
17 necessary to counteract the Board's carefree disregard for the law.

18 11. The Board has engaged in self-dealing on a massive scale. On February 18, 2012,
19 the Board voted to redeem Aruze USA's substantial ownership interest in the Company – by
20 declaring Mr. Okada and his companies "unsuitable" for ownership in Wynn Resorts – at a
21 fraction of the value of that interest, to be paid, with almost no interest, a full ten years later. The
22 Board did this even though they each stood to make a significant amount of money by
23 eliminating a major shareholder and making their shares more valuable. The largest beneficiary
24 of these actions is Mr. Wynn. He protected his control over the company and its Board.

25 12. The actions that the Board took to expand Mr. Wynn's (and other Board
26 members') interests in Wynn Resorts, at the Company's and Mr. Okada's expense, were largely
27 predicated on the findings in a report prepared by the private-investigation firm Freeh Sporkin &
28 Sullivan, LLP (the "Freeh Report"). See Exh. A (Freeh Report). The Freeh Report, issued on or

1 about February 18, 2012, was an exercise directed by Mr. Wynn to establish a basis for removing
2 Mr. Okada. The Freeh Report was commissioned at the Board's direction and was paid for
3 using company funds. It was, predictably, a witch hunt in which Mr. Okada was given no
4 meaningful opportunity to respond. It also, equally as predictable, directly benefitted Mr. Wynn
5 and the other Board members, who protected and expanded their own interests while
6 simultaneously marginalizing Mr. Okada, the lone Board member willing to stand up to Mr.
7 Wynn.

8 13. On February 19, 2012, Wynn Resorts filed a lawsuit against Mr. Okada and two
9 of his companies in Nevada state court. See Exh. B (Wynn Resorts Complaint). The Complaint
10 makes meritless accusations that Mr. Okada allegedly misused his position, and breached his
11 fiduciary duty, as a director of Wynn Resorts. The allegations focus on Mr. Okada's gaming
12 interests in the Philippines, including hosting Philippine gaming officials at Wynn Resorts
13 Macau. These activities were all fully disclosed to the company, and were entirely appropriate
14 and legal.

15 14. Although the Complaint seeks damages, the real purpose of the lawsuit is to
16 validate the Wynn-controlled Board's purported redemption of Aruze USA's substantial
17 ownership interest in the company. On March 12, 2012, Universal and Aruze USA filed
18 counterclaims against Wynn Resorts and its Board, alleging breach of fiduciary duty and other
19 violations. The counterclaims seek to declare the purported redemption a nullity, and seek
20 billions of dollars in damages. See Exh. C (Counterclaim).

21 15. The Board's multi-billion dollar attempt to redistribute Aruze USA's interest in
22 Wynn Resorts to themselves would be reason enough for concern, but there is more. On
23 March 7, 2012, Wynn Resorts filed a Preliminary Proxy Statement notifying shareholders of a
24 special meeting to vote on the Executive Committee of the Board's proposal to remove Mr.
25 Okada as a director of the company. See Exh. D (Proxy Statement).

26 16. The Executive Committee's recommendation to remove Mr. Okada is based on
27 the Freeh Report, and provides materially misleading information to the company's shareholders.
28 The Proxy Statement, for example, characterizes the redemption of Aruze USA's shares as if it

1 were a fact. It is not, and if overturned, will significantly change the number of shares
2 outstanding, and the number of shares the Executive Committee will need to remove Mr. Okada.
3 The Proxy Statement also describes the company's lawsuit against Mr. Okada and his
4 companies, without mentioning: (a) that one of the main purposes of the lawsuit is to validate the
5 Board's "unsuitability" determination and decision to redeem Mr. Okada's interests (the same
6 redemption they represent to shareholders as "fact"); (b) the substantial personal benefits flowing
7 to Mr. Wynn and the other Board members from their actions; or (c) that the proposal would
8 conveniently remove the only Board member who dissented from the Board's decision to make
9 the Macau donation.

10 17. On February 27, 2012, the Philippines House Committee on Gaming and
11 Amusements unanimously passed a resolution declaring Mr. Wynn "persona non grata" and
12 recommending that he be banned from doing any business in the country. The Committee
13 concluded that his accusations that the head of the Philippines Amusement and Gaming Corp.
14 ("PAGCOR") had accepted bribes from Mr. Okada were "an affront to the country."

15 18. Further, the Securities and Exchange Committee (the "SEC") has initiated an
16 inquiry into Wynn Resorts' business practices in Macau. Wynn Resorts has disclosed in its
17 public filings that the SEC is seeking information regarding the \$135 million donation to the
18 University of Macau, donations to other Macau educational charitable institutions (such as the
19 University of Macau Development Foundation), and the company's casino and concession
20 gaming license or renewal in Macau. See Exh. E (Wynn Resorts Statement). The SEC has now
21 requested that Mr. Okada appear for an interview in connection with that investigation.

22 19. Shareholders have now filed five separate shareholder derivative lawsuits against
23 the Wynn Resorts Board members, all of which focus heavily on the Macau Donation and other
24 aspects of the company's business practices in Macau. See Exhs. F-J (complaints). Mr. Okada
25 dissented from the vote approving the Macau donation, but he has nevertheless been named as a
26 defendant in two of the complaints along with the Board members who voted in favor of the
27 donation. All of the allegations against Mr. Okada relate to alleged breaches of fiduciary duty as
28 a Wynn Resorts Board member, including the Macau donation and his gaming interests in the

1 Philippines. Unlike the other Board members, however, he has no access to the company's
2 corporate records to assist in formulating his defense to these derivative actions – including, for
3 example, the “extensive analyses” that Mr. Wynn is claiming as the basis for the Board's
4 decision on the Macau donation.

5 **B. Making a Demand on the Board Is Futile**

6 20. As demonstrated by this history of implacable opposition to good corporate
7 governance, the Wynn Resorts Board is deeply antagonistic towards Mr. Okada and has
8 repeatedly taken action marginalize him as a director, while further entrenching the control of
9 Mr. Wynn over the Company.

10 21. Mr. Okada and the Board are engaged in litigation in which each side has accused
11 the other of breaches of fiduciary duty. Mr. Okada's counterclaims subject the Board members
12 to billions of dollars in potential liability. In addition, the Board's action in voting to redeem
13 Aruze USA's stock enriched each and every Board member, especially Mr. Wynn, as it
14 increased their ownership shares in the Company by eliminating Aruze USA's interest.

15 22. As a result of these actions and self-dealing, the Board has an insurmountable
16 conflict in evaluating the legitimate director inspection demands presented by Mr. Okada. Any
17 demand presented directly to the Board would be futile.

18 **C. Procedural History**

19 23. Beginning in November 2, 2011, Mr. Okada made repeated formal requests to
20 inspect Wynn Resorts' books and records, as he is entitled to do as a director of the Company.
21 The Company rebuffed those requests.

22 24. On January 12, 2012, Mr. Okada filed the initial Petition for Writ of Mandamus
23 against Wynn Resorts with this Court, seeking inspection as a director of the Company, of the
24 following categories of documents:

- 25 a. All books and records related to how the manner in which the \$120 million
26 invested by Aruze USA in April 2002 was spent;
27 b. All books and records related to a HK\$1 billion pledge (and partial donation)
28 by the Company or its affiliates to the University of Macau;

- c. All books and records regarding the Macau Reimbursement Amount, as that term is used in the Third Amended and Restated Operating Agreement of Valvino Lamore;
- d. Books and records of Wynn Resorts and its predecessor entities for the years 2000 through 2002; and
- e. All evidence regarding negotiation, drafting, and execution of the Amended and Restated Stockholders Agreement dated January 6, 2010 between Mr. Wynn, Ms. Wynn, and Aruze USA, Inc.

25. On February 9, 2012, the Court held a hearing on Mr. Okada's Petition. In evaluating the Petition, the Court held that "[e]ach director, regardless of whether they are a shareholder, has a clear right of inspection under the common law. However, that right is limited by reasonableness under the common law."

26. The Court continued the hearing to allow the Wynn Resorts Board of Directors an opportunity to address each requested item individually and evaluate whether it considered each request reasonable.

27. On February 24 and March 2, 2012, Wynn Resorts produced 953 pages of documents to Mr. Okada in response to his inspection demands. Wynn Resorts refused to produce any additional documents to Mr. Okada for inspection.

28. The parties returned before the Court on March 8, 2012 (the "March 8 Hearing") after Wynn Resorts claimed that the Company had produced all non-privileged documents that it believed Mr. Okada was reasonably entitled to as a Director. Mr. Okada objected to the limited scope of Wynn Resorts' production.

29. At the March 8 Hearing, the Court ordered production of additional pages that Wynn Resorts improperly identified as privileged, relating to Mr. Okada's request for all books and records regarding a HK\$1 billion pledge (and partial donation) by the Company or its affiliates to the University of Macau.¹ The Court denied Mr. Okada's request for a Writ for

¹ On the remaining requests, the Court ruled that the remaining documents related to the

1 inspection of documents related to the Amended and Restated Stockholders Agreement dated
2 January 6, 2010.

3 30. Importantly, this Court held that with respect to requests (a), (c) and (d) of Mr.
4 Okada's Petition it would revisit the inspection requests if Mr. Okada would "more narrowly
5 identify" the requested documents. These three requests are: "(a) All books and records related
6 to how the manner in which the \$120 million invested by Aruze USA in April 2002 was spent; []
7 (c) All books and records regarding the Macau Reimbursement Amount, as that term is used in
8 the Third Amended and Restated Operating Agreement of Valvino Lamore; and (d) books and
9 records of Wynn Resorts and its predecessor entities for the years 2000 through 2002."

10 **IV. RELIEF SOUGHT**

11 31. Mr. Okada brings this First Amended Petition for Writ of Mandamus in order to
12 provide, as invited by the Court, more specificity regarding these requests. As explained above,
13 providing these requests to the Wynn Resorts Board of Directors would be a futile and useless
14 act because the Board is conflicted and cannot independently evaluate the reasonableness of
15 these requests.

16 32. Mr. Okada requests inspection of the following specific categories of documents:

17 a. Documents from 2000-2002

18 i. Documents reflecting or concerning Valvino Lamore's entertainment
19 of Macau government officials during the period January 1, 2000 to
20 December 31, 2002. Such documents would include, but not be
limited to:

- 21 1. City Ledger Account records, related operating account
22 records, charges accounted for on the books, accounting
department journal entries, and invoices.
- 23 2. Other accounting records, including but not limited to receipts,
24 reimbursement requests, disbursement reports, expense
25 approvals, ledger or journal entries, or financial reports
26 projecting, summarizing or analyzing expenses or
reimbursements.

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pledge and donation to Macau were protected by the attorney-client privilege.

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- 3. Communications by, between or with Mr. Wynn or other management.
- 4. Board or shareholder documents, including but not limited to notices, agendas, minutes, resolutions, consents and reports.
- ii. Documents reflecting or referring to discussions by, between or with Mr. Wynn or other management regarding contacts with Macau government officials regarding a license during the period January 1, 2000 to December 31, 2002, including but not limited to emails, letters, memoranda, reports, or board or shareholder documents.
- iii. Documents reflecting or memorializing all expenditures of \$10,000 or more.
- b. The Macau Reimbursement Amount
 - i. Documents referring to or reflecting the expenses included within the Macau Reimbursement Amount (as that term is defined in the Third Amended and Restated Operating Agreement of Valvino Lamore, LLC). Such documents would include, but not be limited to:
 - 1. Accounting records reflecting or referring to the projection, expenditure or reimbursement of any such expenses, including but not limited to receipts, reimbursement requests, disbursement reports, expense approvals, ledger entries, and any financial reports projecting, summarizing or analyzing any such expenses or reimbursements.
 - 2. Communications by, between or with Mr. Wynn or other management reflecting or referring to any such expenses, including emails, letters, memoranda or reports.
 - 3. Board or shareholder documents reflecting or referring to any such expenses, not limited to notices, agendas, minutes, resolutions, consents and reports.
- c. The Company's Use Of The Proceeds From Aruze USA's \$120 Million Investment
 - i. Documents reflecting or concerning expenditures of \$10,000 or more from the proceeds of Aruze USA's April 2002 investment of \$120 million in Valvino Lamore, including but not limited to:
 - 1. Accounting records reflecting or referring to the projected or actual use of these proceeds, including but not limited to receipts, reimbursement requests, disbursement reports, expense approvals, ledger entries, and any financial reports

1 projecting, summarizing or analyzing the projected or actual
2 use of these proceeds.

3 2. Communications by, between or with Mr. Wynn or other
4 management reflecting or referring to the projected or actual
5 use of these proceeds, entertainment, including emails, letters,
6 memoranda or reports.

7 3. Board or shareholder documents reflecting or referring to the
8 projected or actual use of these proceeds, not limited to notices,
9 agendas, minutes, resolutions, consents and reports.

10 ii. Documents reflecting or concerning expenditures of any amount, for
11 or on behalf of government or gaming officials in any jurisdiction,
12 including but not limited to:

13 1. Accounting records reflecting or referring to the projected or
14 actual use of these proceeds, including but not limited to
15 receipts, reimbursement requests, disbursement reports,
16 expense approvals, ledger entries, and any financial reports
17 projecting, summarizing or analyzing the projected or actual
18 use of these proceeds.

19 2. Communications by, between or with Mr. Wynn or other
20 management reflecting or referring to the projected or actual
21 use of these proceeds, entertainment, including emails, letters,
22 memoranda or reports.

23 3. Board or shareholder documents reflecting or referring to the
24 projected or actual use of these proceeds, not limited to notices,
25 agendas, minutes, resolutions, consents and reports.

26 iii. Documents reflecting the capital accounts of Stephen A. Wynn, Baron
27 Asset Management, and Aruze USA, from 2000 to 2002, inclusive.

28 WHEREFORE, Petitioner prays for judgment as follows:

A. A writ of mandamus requiring Wynn Resorts to permit Mr. Okada and his counsel
to inspect and make copies of the books and records of the Company identified in
the First Claim for Relief, above;

B. That Petitioner be awarded his costs and expenses, including reasonable
attorneys' fees incurred herein; and

C. Any and all such other and further relief as this Court deems just and proper.

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2 Dated: May 25th 2012.
3

4 **LIONEL SAWYER & COLLINS**

5 By: 

Paul R. Hejmanowski (SBN #94)

Charles H. McCrea, Jr. (SBN #104)

1700 Bank of America Plaza

300 South Fourth Street

Las Vegas, Nevada 89101

8
9 **ALSTON & BIRD LLP**

Gidon M. Caine*

Steven M. Collins*

275 Middlefield Road, Suite 150

Menlo Park, California 94025

12 *Attorneys for Petitioner*

KAZUO OKADA

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14 * *Admitted Pro Hac Vice*
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2 VERIFICATION

3 I, Kazuo Okada, under penalty of perjury under the laws of the state of Nevada, depose
4 and say:

5 I am the Petitioner in the foregoing Petition for a Writ of Mandamus (the "Petition"). I
6 have read a certified Japanese translation of the Petition and know its contents. The Petition is
7 true to my knowledge. The basis of my knowledge is my personal involvement in the matters
8 described, review of documents, discussions with employees of Universal Entertainment Corp.
9 and Aruze USA, and the investigation of my counsel.
10

11 /s/ Kazuo Okada²
12 Kazuo Okada
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26 ² Mr. Okada is not fluent in English. Accordingly, this Petition, including the
27 Verification, was translated into Japanese. A certified copy of the translation, including the
28 signed and notarized Verification, is attached hereto.

CERTIFICATE OF SERVICE

I hereby certify that service of **FIRST AMENDED PETITION FOR WRIT OF MANDAMUS** was made this date by the following means to the persons as listed below:

X A. ECF SYSTEM: I hereby certify that I electronically filed the foregoing with the Clerk of the Court of the United States District Court, District of Nevada, by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished through the United States District Court, District of Nevada, by CM/ECF system.

X B. United States Mail: I hereby certify that the service was made this date by depositing a true and correct copy of the same for mailing, in a sealed envelope, postage fully prepaid, first class mail, at Las Vegas, Nevada, addressed to the following:

Kirk B. Lenhard, Esq.
Tamara Beatty Peterson, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 N. City Parkway, Suite 1600
Las Vegas, NV 89106
Tel: 464-7036
Fax: 382-8135

and

James J. Pisanelli
Todd L. Bice
Debra Spinelli
Jarrod L. Richard
PISANELLI BICEP LLC
3883 Howard Hughes Pkwy, Suite 800
Las Vegas, NV 89169

and

Robert L. Shapiro, Esq.
Peter C. Sheridan, Esq.
GLASER WEIL FINK JACOBS HOWARD
AVCHEN & SHAPIRO, LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169


Attorneys for Defendant Wynn Resorts, Limited

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_____C. Facsimile: I hereby certify that service was made this date by depositing a true and correct copy of the same by facsimile, addressed to the following:

_____D. By Direct E-Mail: Based upon the written agreement/Consent to Service to accept service by e-mail, I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

DATED this 25th day of May 2012.



V. Raynell Caliguire, an employee of
LIONEL SAWYER & COLLINS



TRANSPERFECT

CERTIFICATION OF TRANSLATION

I, Ryan Drost, hereby certify that the attached English to Japanese translation has been verified to be an accurate and complete rendering of the content of the original document, to the best of our ability by a qualified translator competent in both languages.

The following document is included in this certification:

"Kazuo Okada v. Wynn Resorts, Limited, First Amended Petition for a Writ of Mandamus"

Signature

Sworn to before me this
April 27, 2012

Signature, Notary Public

NOTARY PUBLIC-STATE OF NEW YORK

No. 01SH6253746

Qualified in New York County

My Commission Expires January 03, 2016

Stamp, Notary Public

0016

Paul R. Hejmanowski (SBN #94)
Charles H. McCrea, Jr. (SBN #104)
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
電話: (702) 383-8888
ファックス: (702) 383-8845

Gidon M. Caine*
Steven M. Collins*
ALSTON & BIRD LLP
275 Middlefield Road, Suite 150
Menlo Park, California 94025
電話: 650-838-2000
ファックス: 650-838-2001

下記申立人代理人
岡田和生
*本件に限定した訴訟代理権

ネバダ州クラーク郡地方裁判所

岡田和生 (個人)	事件番号 A-12-654522-B
申立人	部署番号 XI
対	
ウィンリゾート株式会社	職務執行令状の第一次修正申立て
(ネバダ州法人)	
相手方	

申立人岡田和生 (「岡田氏」) は、その弁護士である LIONEL SAWYER & COLLINS 法律事務所及び ALSTON & BIRD 法律事務所によって及びこれらを通じて、ウィンリゾート株式会社 (「ウィンリゾート」又は「当社」) を相手方と

するものであり、また、Nev. Rev. Stat. §34.150 に従い（以下参照）、特定の帳簿及び記録の提出を相手方に強制する職務執行令状に関する修正申立て（「第一次修正申立て」）を謹んで裁判所に対して提出する。第一次修正申立ては、本件における過去の審理、以下に記載する事実及び本申立書に添付する法律意見書に依拠して行うものであり、またこれらに基づくものである。

I. 本件訴訟の性質

1. 岡田氏は、ウィンリゾートの取締役会の他のメンバーが、取締役としてのその権利を岡田氏が行使することを認めないことが最近の出来事より明らかになったため、本件裁判所に改めて判断を求める。

2. この点に関して、取締役会のメンバーは、とりわけ、先例のない自己取引とあからさまな窃盗を行い、アルゼ USA から数十億ドルを奪いそれを自分たちに再分配するために取締役会を利用した。彼らは、ウィンリゾートに見せしめ裁判を行わせ、その中でステファン・A・ウィン（「ウィン氏」）は、手続が始まってさえいないのに岡田氏は不正行為を行ったと宣言した。彼らは当社に岡田氏を訴えさせた。彼らは当社を証券取引委員会の審査に服せしめた。彼らの行為は、外国政府をしてウィン氏は受け入れがたい人物であると宣言させた。現在、これらの取締役らを被告とする 5 件の個別の代表訴訟が提起されている。これらの訴訟のうち 2 件は岡田氏も被告としている。

3. 岡田氏は、いかなる事柄についても公平な審理を彼らに期待することはできない。したがって、こうした敵対的な行動をとってきた取締役会に戻ることは実質よりも形式を重視することになるため、岡田氏は本件裁判所に訴え出て閲覧を求めるものである。

4. 岡田氏は、2012 年 1 月 11 日にこの裁判所に提出された職務執行令状の申立てを参照することにより本申立てに含めるとともに、その申立てに基づく救済を求める権利を留保する。

II. 当事者、管轄及び裁判地

5. 申立人岡田和生は香港の住民であり、日本国の市民である。1969 年、岡田氏は、現在はユニバーサルエンターテインメント社（「ユニバーサル」）として知られるユニバーサル・リース株式会社を設立し、またその過半数所有者兼会長である。岡田氏は、ネバダ賭博委員会により、ユニバーサルエンター

テインメント社の株主及び支配株主として適格であると認められてきた。

6. 岡田氏は 2002 年 10 月から、ウィンリゾートの取締役会のメンバーを務めてきた。ネバダ州法人の取締役として、岡田氏は、閲覧要求が合理的である場合には同社の帳簿及び記録を閲覧する個人としての権利を有する。

7. 相手方ウィンリゾート株式会社は、ネバダ州ラスベガスに事業の本拠地を有するネバダ州法に基づいて組織され存続する株式公開会社である。ウィンリゾートはその株式が「WYNN」のティッカーシンボルによりナスダックで取引されている。ウィンリゾートは、その子会社とともに、カジノ・リゾート地の開発、所有及び運営を行っている。当社はラスベガスにウィンラスベガスカジノリゾートを、中華人民共和国マカオ行政特区にウィンマカオカジノリゾート所有している。

8. 本裁判所は、ネバダ州憲法 6 条 6 項に従って本件に対する管轄を有する。

9. Nev. Rev. Stat. § 13.040.に従い、本件裁判所は裁判地として適切である。

III. 一般的な主張

A. 最初の申立て以来の関連する出来事

10. 岡田氏が最初の申立てを提出して以来、取締役会のメンバーは、会長であるステファン・A・ウインの影響の下に、岡田氏から彼が当社について有する経済的利益を奪い、取締役としての岡田氏の影響力をなくすための数多くの措置を行ってきた。これらの措置により、本申立てにおいて求めている救済が、取締役会による全く注意を払わない法の無視に対抗するために必要であることが一層明らかになった。

11. 取締役会は大規模な自己取引を行った。2012 年 2 月 18 日、取締役会は、岡田氏及び岡田氏の会社がウィンリゾートの所有者として「不適格」と宣言することにより、アルゼ USA が当社に対して有する実質的な所有権を実際の価値のほんの一部（それもほぼ無利子で 10 年後に支払われる）と引き換えに償還することを決議した。各取締役は主要な株主を排除し自分たちの株式の価値をより高めることによって多大な金額を得る立場にあったにも関わ

らず、取締役会はこの決議を行った。これらの行為による最大の受益者はウィン氏である。彼は当社及びその取締役会に対する支配を守った。

12. 当社及び岡田氏の犠牲の下、ウィン氏の（及び他の取締役会のメンバーの）ウィンリゾートにおける利益を拡大するために取締役会が取った行為は、主に、民間の調査事務所である Freeh Sporkin & Sullivan 事務所が作成した報告書（「Freeh 報告書」）中の調査結果に基づくものであった。添付 A（Freeh 報告書）参照。2012 年 2 月 18 日かそのころに作成された Freeh 報告書は、岡田氏を解任する根拠を確立するため、ウィン氏の指示によって作成されたものであった。Freeh 報告書は取締役会の裁量に基づいて依頼されたもので、会社資金を使って支払いがなされた。予想通りそれは、岡田氏が実質的な反論の機会を与えられない魔女狩りであった。それはまた、同じくこれも予想通り、ウィン氏に抵抗しようとする唯一の取締役会メンバーである岡田氏を除け者にするのことで自身らの利益を保護しまた拡大させたウィン氏及び他の取締役会メンバーを直接に利するものであった。

13. 2012 年 2 月 19 日、ウィンリゾートは、岡田氏及び彼の 2 つの会社に対する訴訟をネバダ州の州裁判所に提起した。添付 B（「ウィンリゾート訴状」）参照。訴状では、彼ら曰く岡田氏がウィンリゾートの取締役としての地位を濫用し、善管注意義務に違反したという根拠のない非難が行われている。その主張は、ウィンリゾートマカオにおいてフィリピンの賭博関係の役人を接待したことを含む、フィリピンにおける岡田氏の賭博権益に焦点を当てている。こうした活動は当社に対して完全に開示されていたものであり、全く適切で合法的なものであった。

14. 訴状では損害賠償が請求されているが、訴訟の真の目的は、ウィン氏によって支配された取締役会が主張する、当社におけるアルゼ USA の相当な所有権の償還を正当化することにある。2012 年 3 月 12 日、ユニバーサルとアルゼ USA はウィンリゾート及びその取締役会に対して反訴請求を提出し、善管注意義務違反及びその他の違反を主張した。反訴請求は、彼らが主張する償還が無効であることの宣言を求めるとともに、数十億ドルの損害賠償を求めるものである。添付 C（反訴請求）。

15. ウィンリゾートにおけるアルゼ USA の権利を彼ら自身に再分配しようとする、数十億ドルにも及ぶ取締役会の試みは、それだけでも十分な懸念の理由であるが、それだけではない。2012 年 3 月 7 日、ウィンリゾートは、

岡田氏を当社の取締役から解任するという取締役会の執行委員会による提案について決議するための臨時総会を株主に通知する、委任状説明書案を提出した。添付 D（委任状説明書）参照。

16. 岡田氏を解任するという執行委員会の勧告は Freeh 報告書に基づいており、当社の株主に対し著しく誤解を招く情報を提供している。例えば、委任状説明書は、アルゼ USA の株式の償還をあたかも事実であるかのように述べている。それは事実ではなく、もし覆されれば、発行済株式数及び執行委員会が岡田氏を解任するために必要な議決権数に重大な変更をもたらす。委任状説明書はまた、(a) 訴訟の主たる目的の一つが取締役会の「不適格性」の判断及び岡田氏の権利に対する償還（彼らが株主に対して「事実」であると説明しているのと同じ償還）の決定を正当化するものであること、(b) 彼らの行為によってウィン氏及びその他の取締役会のメンバーにもたらされる相当な個人的利益、(c) 提案はマカオの寄付を行う取締役会決定に反対した唯一の取締役会メンバーを都合よく解任するものであること、について言及することなく、当社の岡田氏及びその会社に対する訴訟について説明している。

17. 2012 年 2 月 27 日、賭博及び娯楽に関するフィリピンの下院委員会は満場一致で、ウィン氏を「受け入れがたい人物」と宣言し、彼はこの国でいかなる事業を行うことも禁止されるべきであるとする決議を可決した。この委員会は、Philippines Amusement and Gaming Corp.（「PAGCOR」）の長が岡田氏から賄賂を受領していたという非難は「この国に対する侮辱」とであると結論づけている。

18. さらに、証券取引委員会（「SEC」）は、ウィンリゾートのマカオにおける事業活動について調査を開始した。ウィンリゾートはその公式な届出の中で、SEC が、マカオ大学に対する 1 億 3500 万ドルの寄付、その他のマカオの教育慈善機関に対する寄付（マカオ大学開発基金など）及びマカオにおける当社のカジノ施設の賭博免許又は更新に関する情報を求めていることを開示した。添付 E（ウィンリゾートの声明）参照。SEC は現在、その調査に関連して、インタビューに応じるために出頭するよう岡田氏に求めている。

19. 株主らは、現在、5 つの個別の株主代表訴訟をウィンリゾートの取締役会メンバーに対して提起しており、これらの訴訟全てが、マカオの寄付及びマカオにおける同社の事業活動のその他の側面にかなり焦点を当てている。添付 F から J（訴状）参照。岡田氏はマカオの寄付を承認する決議に反対したが、

それにもかかわらず、彼は 2 つの訴状において寄付に賛成した取締役会メンバーとともに被告にされている。岡田氏に対する主張は全て、マカオの寄付及び岡田氏のフィリピンにおける賭博権益を含む、彼らの主張するウィンリゾートの取締役会メンバーとしての善管注意義務違反に関するものである。しかしながら、他の取締役会メンバーと違って、岡田氏は、例えばマカオ寄付に関する取締役会の決定の根拠としてウィン氏が主張する「広範な分析」を含め、こうした株主代表訴訟に対する岡田氏の抗弁を構成するのに役立つ当社の会社記録を利用することができない。

B. 取締役会に対して要求を行うことは無益である

20. 良好なコーポレートガバナンスに対する執拗な反対の歴史によって示されるとおり、ウィンリゾートの取締役会は岡田氏に深く敵対しており、ウィン氏の当社に対する支配を一層固着化させる一方で、取締役としての岡田氏を除け者にするための措置を繰り返し講じてきた。

21. 岡田氏と取締役会は、双方が他方に善管注意義務違反があったと非難する訴訟を行っている。岡田氏の反訴請求は取締役会のメンバーを数十億ドルの潜在的な責任にさらすものである。さらに、アルゼ USA の株式の償還に賛成票を投じることに関する取締役会の行動は、アルゼ USA の権利を排除することによって彼らの当社における保有権の割合を増加させるため、全ての取締役会メンバーそれぞれに、特にウィン氏に金銭的利益をもたらすものであった。

22. こうした行為及び自己取引の結果、取締役会は、岡田氏によって提示された正当な取締役による閲覧要求を検討するにあたり、克服することのできない利害対立を有する。取締役に対して直接提示されたいかなる要求も無益である。

C. 手続の経過

23. 2011 年 11 月 2 日始め、岡田氏は、彼は当社の取締役としてそうする権利があるので、ウィンリゾートの帳簿及び記録を閲覧させるよう度重なる正式な要求を行った。当社はそれらの要求を拒絶した。

24. 2012年1月12日、岡田氏は、ウィンリゾートに対する職務執行令状を求める最初の申立てを裁判所に提出し、当社の取締役として以下に掲げる種類の文書の閲覧を求めた。

- a. アルゼ USA が 2002 年 4 月に投資した 1 億 2000 万ドルの使途に関する全ての帳簿及び記録。
- b. 当社及びその関連会社によるマカオ大学に対する 10 億香港ドルの寄付約束（及び部分的な寄付）に関する全ての帳簿及び記録。
- c. 第三次修正バルピノ・ラモーレ運営契約で用いられている用語である、マカオ償還額に関する全ての帳簿及び記録。
- d. ウィンリゾート及びその前身たる法人の 2000 年から 2002 年までの帳簿及び記録。
- e. 2010 年 1 月 6 日にウィン氏、ウィン夫人及びアルゼ USA との間で締結された修正株主間契約の交渉、起案及び締結に関する全ての証拠。

25. 2012年2月9日、裁判所は岡田氏の申立てに関して審理を行った。申立ての検討に際し、裁判所は、「各取締役は、彼らが株主であるか否かにかかわらず、コモンローに基づき明らかな閲覧権を有する。しかしながら、その権利はコモンローに基づき合理性によって制限される。」と判示した。

26. 裁判所は、ウィンリゾートの取締役会に対し、要求された各項目についてそれぞれ検討し、各要求を合理的であるか否かを評価する機会を与えるため、審理を一時休止した。

27. 2012年2月24日と3月2日に、ウィンリゾートは、閲覧要求に対する回答として 953 頁の文書を提出した。ウィンリゾートは、閲覧のため岡田氏に追加の文書を提出することを拒否した。

28. 当社は岡田氏が取締役として合理的に閲覧する権利を有すると考える全ての秘匿特権対象外文書を提出した、とウィンリゾートが主張した後、当事者は 2012 年 3 月 8 日に再び裁判所に出廷した（「3 月 8 日の審理」）。岡田氏はウィンリゾートの提出の限定的な範囲に対して異議を述べた。

29. 3 月 8 日の審理において、裁判所は、当社及び関連会社によるマカオ大学に対する 10 億香港ドルの寄付約束（及び部分的な寄付）に関わる岡田

氏による全ての帳簿及び文書の要求に関し、ウィンリゾートが不適切に秘匿特権対象文書であると特定した追加の数頁について、提出を命じた¹。裁判所は、2010年1月6日付の修正株主間契約に関する文書の閲覧を求める岡田氏の職務執行令状の要求を否定した。

30. 重要なことには、本裁判所は、岡田氏の申立てにおける(a)、(c)及び(d)の要求に関して、岡田氏が要求する文書を「さらに詳細に特定する」場合には、閲覧要求を改めて検討すると判示した。これら3つの要求は、「(a) アルゼ USA が2002年4月に投資した1億2000万ドルの使途に関する全ての帳簿及び記録、(c) 第三次修正バルビノ・ラモーレ運営契約で用いられている用語である、マカオ償還額に関する全ての帳簿及び記録、(d) ウィンリゾート及びその前身たる法人の2000年から2002年までの帳簿及び記録である。

IV. 求める救済

31. 岡田氏は、裁判所の勧めに従い、これらの要求に関してさらなる特定をするために、職務執行令状を求める第一次修正申立てを行う。前記で説明したとおり、ウィンリゾートの取締役会に対してこれらの要求を行うことは、取締役会に利益相反がありこれらの要求の合理性を独立して評価することができないため、無益であり無駄な行為である。

32. 岡田氏は、以下の具体的な種類の文書について閲覧を求める。

a. 2000年から2002年までの文書

- i. 2000年1月1日から2002年12月31日までの期間の、バルビノ・ラモーレによるマカオ政府役人の接待を反映する又はこれに関する文書。これらの文書には以下のものが含まれるがこれらに限定されない。
 1. 都市客勘定元帳の記録、関連する営業勘定の記録、帳簿において説明されている請求、経理部仕分記入及び請求書。
 2. 領収証、返済請求、出金報告、費用承認、帳簿若しくは

¹ その余の要求について、裁判所は、マカオに対する寄付に関連するその余の文書は弁護士依頼者秘匿特権によって保護されると判断した。

仕分記入又は費用若しくは返済を提案、要約若しくは分析した財政報告を含むがこれらに限られない、その他の会計記録。

3. ウィン氏又はその他の経営陣による、彼らの間の又は彼らとのやり取り。
 4. 通知、議題、議事録、決議、同意及び報告書を含むがこれらに限られない、取締役会又は株主に関する文書。
- ii. 電子メール、書状、メモ、報告書又は取締役会若しくは株主に関する文書を含むがこれらに限られない、2000 年 1 月から 2002 年 12 月 31 日の期間における、ウィン氏又は他の経営陣との間の又は彼らとの、免許に関するマカオ政府役人との連絡に関する議論を反映又はこれに言及した文書。
 - iii. \$10,000 又はそれ以上の額の全ての支出を反映又は記録した文書。

b. マカオ償還額

- i. マカオ償還額（この用語はバルビノ・ラモーレ有限責任会社第三次修正運営契約の中で定義されている）の範囲に含まれる支出に言及した又はこれらを反映した文書。これらの文書は以下のものを含むがこれらに限られない。
 1. 領収証、弁済請求、支出報告、費用承認、仕分記入及びこうした費用又は弁済を予測、要約又は分析した財政報告を含むがこれらに限られない、あらゆる費用の予測、支出又は弁済を反映した又はこれらに言及した会計記録。
 2. 電子メール、書状、メモ又は報告書を含む、こうした支出を反映した又はこれらに言及したウィン氏又は他の経営陣による、彼らの間の又は彼らとのやり取り。
 3. 通知、議題、議事録、決議、同意及び報告書を含むがこれらに限られない、こうした支出を反映し又はこれらについて言及した取締役会又は株主に関する文書。

c. アルゼ USA が行った 1 億 2000 万ドルの投資によって得た利益の当社による利用。

- i. アルゼ USA が 2002 年 4 月に行ったバルビノ・ラモーレに対する 1 億 2000 万ドルの投資によって得た利益から支出された、\$10,000 又はこれを超える支出を反映する又はこれに関する文書。これには以下のものを含むがこれらに限られない。
 - 1. 領収証、弁済請求、支出報告、費用承認、仕分記入及びこれらの利益の使用予測又は実際の使用について予測、要約又は分析した財政報告を含むがこれらに限られない、予測、これらの利益の予測された使用あるいは実際の使用を反映する又はこれらに言及した会計記録。
 - 2. 電子メール、書状、メモ又は報告書を含む、これらの利益の使用提案若しくは実際の使用、接待を反映する又はこれらに言及した、ウィン氏又は他の経営陣による、彼らの間の又は彼らとのやり取り。
 - 3. 通知、議題、議事録、決議、同意及び報告書を含むがこれらに限られない、これらの利益の使用予測又は実際の使用を反映した又はこれらに言及した取締役会又は株主に関する文書。
- ii. 管轄を問わず政府又は賭博関係役人のために行ったあらゆる支出を反映した又はこれに関する文書。これは以下のものを含むがこれらに限られない。
 - 4. 1. 領収証、弁済請求、支出報告、費用承認、仕分記入及びこれらの利益の使用予測又は実際の使用について予測、要約又は分析した財政報告を含むがこれらに限られない、これらの利益の使用予測又は実際の使用を反映し又はこれらに言及した会計記録。
 - 5. 2. 電子メール、書状、メモ又は報告書を含む、これらの利益の使用予測若しくは実際の使用、接待を反映する又はこれらに言及した、ウィン氏又は他の経営陣による、彼らの間の又は彼らとのやり取り。
 - 6. 3. 通知、議題、議事録、決議、同意及び報告書を含むがこれらに限られない、これらの利益の使用予測又は実際の使用を反映した又はこれらに言及した取締役会又は株主に関する文書。
- iii. 2000 年から 2002 年までの期間を含むウィン氏、Baron Asset Management 及びアルゼ USA の資本勘定を反映した文書。

したがって、申立人は以下のとおり判決を求める。

- A. 上記の第一の救済の主張で特定された当社の帳簿及び記録の閲覧及び謄写を岡田氏及びその弁護士に許すようウィンリゾートに命じる職務執行令状。
- B. 申立人は、本件申立てに要した合理的な弁護士費用を含む、費用と支出について補償されること。
- C. 本裁判所が正当かつ適切と考える、その他の追加のあらゆる全ての救済。

日付： 2012 年 4 月 日

LIONEL SAWYER & COLLINS

By: _____

Paul R. Hejmanowski (SBN #94)

Charles H. McCrea, Jr. (SBN #104)

1700 Bank of America Plaza

300 South Fourth Street

Las Vegas, Nevada 89101

ALSTON & BIRD 法律事務所

Gidon M. Caine*

Steven M. Collins*

275 Middlefield Road, Suite 150

Menlo Park, California 94025

下記申立人代理人弁護士

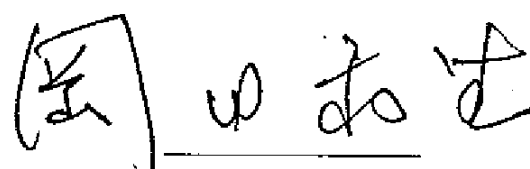
岡田和生

*本件に限定した代理権

証 明

私、岡田和生は、偽りの場合にネバダ州法における偽証罪の適用を受けることを承知の上で、次のとおり証言し、申し述べます。

私は、前記の職務執行令状を求める申立て（「本件申立て」）の申立人です。私は本件申立ての正式な日本語訳を読み、その内容を承知しています。本件申立てには、私の認識に照らして真実が記載されています。私の認識は、記載されている事柄に対する私自身の直接の関与、文書の調査、ユニバーサルエンターテインメント社及びアルゼ USA 社の従業員との協議並びに私の弁護士による調査に基づいています。


岡 田 和 生

LIONEL SAWYER & COLLINS
Samuel S. Lionel (SBN #1766)
Paul R. Hejmanowski (SBN #94)
Charles H. McCrea, Jr. (SBN #104)
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 383-8888
Facsimile: (702) 383-8845

PAUL HASTINGS LLP
William F. Sullivan*
Thomas A. Zaccaro*
Howard M. Privette*
Thomas P. O'Brien*
John S. Durrant*
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Telephone: (213) 683-6000
Facsimile: (213) 683-0705

DAVIS POLK & WARDWELL LLP
Linda Chatman Thomsen**
Paul Spagnoletti**
Greg D. Andres**
450 Lexington Avenue
New York, NY 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800

Attorneys for Defendants and Counterclaimants
ARUZE USA, INC. and UNIVERSAL
ENTERTAINMENT CORPORATION
* *admitted pro hac vice*
** *will comply with Local Rule 10-2 governing pro hac*
vice petitions within the require timeframe

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WYNN RESORTS, LIMITED, a Nevada
Corporation,

Plaintiff,

vs.

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

Defendants.

CASE NO:

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

JURY DEMAND

1 ARUZE USA, INC., a Nevada corporation
2 and UNIVERSAL ENTERTAINMENT
3 CORP., a Japanese corporation

4 Counterclaimants,
5 vs.

6 WYNN RESORTS, LIMITED, a Nevada
7 corporation, STEPHEN A. WYNN, an
8 individual, KIMMARIE SINATRA, an
9 individual, LINDA CHEN, an individual,
10 RAY R. IRANI, an individual, RUSSELL
11 GOLDSMITH, an individual, ROBERT J.
12 MILLER, an individual, JOHN A.
13 MORAN, an individual, MARC D.
14 SCHORR, an individual, ALVIN V.
15 SHOEMAKER, an individual, D. BOONE
16 WAYSON, an individual, ELAINE P.
17 WYNN, an individual, ALLAN ZEMAN,
18 an individual,

19 Counterdefendants.
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COUNTERCLAIM

JURISDICTION AND VENUE

1
2
3 1. This Court has jurisdiction over this Counterclaim pursuant to Section 27 of
4 the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78aa; 28 U.S.C. §
5 1331; and 28 U.S.C. § 1367.

6 2. The claims asserted herein arise under Section 10(b) of the Exchange Act,
7 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240 10b-5, the
8 Nevada Racketeer Influenced and Corrupt Organizations Act (“RICO”), N.R.S. § 207.400
9 *et seq.*, and Nevada statutory and common law. Additionally, the claims asserted in this
10 action raise substantial federal questions under the Foreign Corrupt Practices Act of 1977
11 (“FCPA”), 15 U.S.C. §§ 78dd-1, *et seq.*

12 3. Venue is proper in this District pursuant to: (i) 15 U.S.C. § 78aa, because
13 this is the District in which acts constituting the violation occurred and in which
14 Defendants transact business; and (ii) 28 U.S.C. § 1391(b)(2), because this is a District in
15 which a substantial part of the events or omissions giving rise to the claim occurred, or a
16 substantial part of the property that is the subject of the action is situated.

NATURE OF THE ACTION

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

5. Among other things, Wynn Resorts purported to redeem the shares at a flat 30% discount to the most recent market price. Aruze USA’s interests, valued by the market at more than \$2.7 billion and by Wynn Resorts at \$2.9 billion three weeks prior to the redemption, would be forcibly purchased in exchange for a non-transferable promissory note to pay approximately \$1.9 billion in a single “balloon payment” 10 years from now. So Wynn Resorts raced to court, electronically filing a complaint at 2:14 a.m. on a Sunday morning – even before giving notice to Aruze USA of the purported redemption. Wynn Resorts apparently thought that its position as the named “plaintiff” would help obfuscate the issues and distract the court from the claims of wrongdoing sure to be filed against it by Aruze USA and Counterclaimant Universal Entertainment Corporation (“Universal” and collectively with Aruze USA, “Counterclaimants”). Wynn Resorts’ cynical tactics are unavailing. Based on the facts and the law, it is clear that it is Counterclaimants who have been grievously damaged in this case, and any suggestion to the contrary is entirely without credibility.

6. This Counterclaim arises because this purported redemption would:
(a) violate the express terms of agreements between Wynn Resorts and Aruze USA;

¹ The Wynn Resorts’ Board of Directors (the “Board”), other than Kazuo Okada (“Kazuo Okada” and “Mr. Okada”), are Stephen A. Wynn (“Mr. Wynn” or “Steve Wynn”), Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Boone Wayson, Elaine P. Wynn, and Allan Zeman (the “Wynn Directors”).

1 (b) allow Mr. Wynn and others to profit unjustly from their illegal acts and a process that
2 was corrupt and unfair; and (c) subject Aruze USA to an unconscionably punitive remedy
3 based on an unproven pretext.

4 7. To be clear at the outset, Aruze USA disputes that any redemption has
5 occurred. Among other things, even if the redemption provision in the Company's
6 Second Amended Articles of Incorporation ("Articles of Incorporation") was legally
7 enforceable (which it is not), the Board's vote of redemption is void *ab initio*, because
8 Wynn Resorts is barred by contract from redeeming Aruze USA's securities.
9 Aruze USA's stock has never been subject to the redemption provision in the Company's
10 Articles of Incorporation, because Aruze USA agreed to purchase Wynn Resorts' stock
11 *before* the redemption provision became effective. As a threshold matter, then, the
12 applicable contracts relied upon by Wynn Resorts to justify its conduct actually bar Wynn
13 Resorts' purported redemption of Aruze USA's stock. In addition, according to Wynn
14 Resorts, the stock held by Aruze USA is subject to transfer restrictions in a stockholders
15 agreement (the "Stockholders Agreement"). The transfer restrictions in the Stockholders
16 Agreement (to which Wynn Resorts agreed to be bound), if valid, preclude any
17 redemption of Aruze USA's stock.

18 8. Even if the Articles of Incorporation allowed the redemption of
19 Aruze USA's interests in Wynn Resorts (which they do not), there was no legitimate
20 factual or legal basis to invoke the redemption provision in this case. Wynn Resorts
21 undertook a secret investigation, hiding the subjects of the investigation from Aruze USA
22 by erroneously invoking attorney-client privilege and confidentiality, even after Wynn
23 Resorts had leaked a "report" of the investigation to the *Wall Street Journal*. Wynn
24 Resorts refused Aruze USA any reasonable opportunity to respond prior to redeeming
25 Aruze USA's interests, despite prior written promises to do so. If Wynn Resorts had
26 provided the opportunity, it would be clear why redemption is unwarranted.

27 9. The Wynn Directors breached their fiduciary duties to Wynn Resorts and to
28 Aruze USA in not undertaking a thorough, independent, and objective examination of the

1 law, facts, and evidence before purporting to usurp the role of the gaming authorities in
2 finding Aruze USA “unsuitable.” Similarly, they breached their duties by then voting for
3 a wholly unnecessary and improper “redemption” on unconscionable terms. As a result,
4 the Wynn Directors cannot rely on the “business judgment rule,” as they did not act in a
5 fully informed, good faith, and independent manner, and their actions are both contrary to
6 the law and not objectively reasonable.

7 10. Apart from the lack of any legal basis for Wynn Resorts’ actions,
8 Aruze USA sues because Wynn Resorts, for all its accomplishments, is not a corporation
9 in any ordinary sense. Rather, Wynn Resorts’ flamboyant Chairman, Mr. Wynn, has run
10 Wynn Resorts as a personal fiefdom, packing the Board with friends who do his personal
11 bidding, and paying key executives exorbitant amounts for their unwavering fealty.

12 11. In the course of trying to illegally force out Aruze USA as Wynn Resorts’
13 largest stockholder, Mr. Wynn and Wynn Resorts’ General Counsel Kimmarie Sinatra
14 (“Kim Sinatra” or “Ms. Sinatra”) committed a series of predicate acts of racketeering,
15 which include fraud, acquiring property under false pretenses, acquiring signatures under
16 false pretenses, and other similar wrongful activities. Mr. Wynn and Ms. Sinatra executed
17 on a scheme and pattern of racketeering activity, the aim of which was to defraud, defame,
18 and steal from Aruze USA and its President, Mr. Okada, by taking Aruze USA’s interest
19 in Wynn Resorts for the purpose of illegally placing and maintaining the control of Wynn
20 Resorts in a single man – Mr. Wynn. The wrongful acts complained of here cannot be
21 countenanced, and the purported taking of Aruze USA’s property cannot stand.

22 **PARTIES**

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

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

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

10 15. Counterdefendant Stephen A. Wynn is the Chairman of the Board and Chief
11 Executive Officer of Wynn Resorts and is a resident of Nevada. Mr. Wynn owns
12 10,026,708 shares of the common stock of Wynn Resorts.²

13 16. Counterdefendant Kimmarie Sinatra is the General Counsel, Secretary, and a
14 Senior Vice President of Wynn Resorts and, on information and belief, is a resident of
15 Nevada. Ms. Sinatra owns 40,887 shares of the common stock of Wynn Resorts.

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

19 18. Counterdefendant Linda Chen is a director of Wynn Resorts and, on
20 information and belief, is a resident of Macau. Ms. Chen owns 265,000 shares of the
21 common stock of Wynn Resorts.

22 19. Counterdefendant Ray R. Irani is a director of Wynn Resorts and, on
23 information and belief, is a resident of California. Mr. Irani owns 18,000 shares of the
24 common stock of Wynn Resorts.

25
26
27 ² All references to the number of shares owned by Counterdefendants are as of March 1, 2012, as
28 disclosed in Wynn Resorts' Schedule 14A Proxy Statement, filed with the SEC on March 7,
2012.

1 20. Counterdefendant Russell Goldsmith is a director of Wynn Resorts and, on
2 information and belief, is a resident of California. Mr. Goldsmith owns 40,000 shares of
3 the common stock of Wynn Resorts.

4 21. Counterdefendant Robert J. Miller is a director of Wynn Resorts and, on
5 information and belief, is a resident of Nevada. Mr. Miller owns 20,500 shares of the
6 common stock of Wynn Resorts.

7 22. Counterdefendant John A. Moran is a director of Wynn Resorts and, on
8 information and belief, is a resident of Florida. Mr. Moran owns 190,500 shares of the
9 common stock of Wynn Resorts.

10 23. Counterdefendant Marc D. Schorr is a director and Chief Operating Officer
11 of Wynn Resorts and, on information and belief, is a resident of Nevada. Mr. Schorr
12 owns 250,000 shares of the common stock of Wynn Resorts.

13 24. Counterdefendant Alvin V. Shoemaker is a director of Wynn Resorts and, on
14 information and belief, is a resident of New Jersey. Mr. Shoemaker owns 40,500 shares
15 of the common stock of Wynn Resorts.

16 25. Counterdefendant D. Boone Wayson is a director of Wynn Resorts and, on
17 information and belief, is a resident of Maryland. Mr. Wayson owns 90,500 shares of the
18 common stock of Wynn Resorts.

19 26. Counterdefendant Allan Zeman is a director of Wynn Resorts and, on
20 information and belief, is a resident of Macau. Mr. Zeman owns 30,500 shares of the
21 common stock of Wynn Resorts.

22 **GENERAL ALLEGATIONS**

23 **I. KAZUO OKADA AND STEVE WYNN LAUNCH WYNN RESORTS**

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

26 27. Mr. Wynn has a long history of involvement in Las Vegas as a casino
27 operator. As Las Vegas changed, Mr. Wynn sought to present himself as a representative
28 of the new “corporate” Las Vegas. Mr. Wynn developed Mirage Resorts, Inc., a casino

1 conglomerate that owned and operated the Mirage, Treasure Island, and Bellagio. On
2 May 31, 2000, MGM Grand Inc. completed a merger with Mirage Resorts, Inc. In June
3 2000, after a bruising boardroom battle, which centered on allegations that Mr. Wynn
4 misappropriated company funds, MGM Grand, Inc. ousted Mr. Wynn as Chief Executive
5 Officer of Mirage Resorts, Inc.

6 28. Humiliated by his public ouster, Mr. Wynn was anxious to re-enter the
7 casino business and rebuild his reputation and standing in Las Vegas. He purchased the
8 old Desert Inn casino and had plans to build a new casino on the site – it was to be a
9 monument to himself, called “Wynn.” But Mr. Wynn lacked the capital to fund the
10 development of the casino, so he undertook an extensive search for investors. Having
11 recently been forced out of Mirage Resorts, Inc., however, he was shunned by other
12 sources of capital; Mr. Wynn eventually called on Universal, Aruze USA, and Mr. Okada,
13 to become the means for Mr. Wynn to get back on his feet.

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

21 30. Beginning in October 2000, Mr. Wynn used a Nevada limited liability
22 company called Valvino Lamore, LLC (“Valvino”) as the holding entity for his new
23 Desert Inn casino project. After in-person discussions between Mr. Wynn and Mr. Okada,
24 Aruze USA made a contribution of \$260 million in cash to Valvino in exchange for 50%
25 of the membership interests in Valvino effective October 3, 2000. This contribution was
26 the seed capital that allowed for the development of what is now Wynn Resorts. Valvino
27 is referred to by Wynn Resorts as Wynn Resorts’ “predecessor.”
28

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

7 **B. The Stockholders Agreement**

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

13 33. On April 11, 2002, prior to the filing of the Articles of Incorporation for
14 Wynn Resorts, the three owners of LLC interests in Valvino – Mr. Wynn, Aruze USA,
15 and Baron Asset Fund – entered into the Stockholders Agreement, which imposed certain
16 restrictions on the sale of the stock they were to receive in “NewCo,” the entity that would
17 become Wynn Resorts. As described in Wynn Resorts’ prospectus, dated October 29,
18 2002, “the stockholders agreement establishes various rights among Mr. Wynn, Aruze
19 USA and Baron Asset Fund with respect to the ownership and management of Wynn
20 Resorts.”

21 34. Notably, the parties to the Stockholders Agreement stated that the terms of
22 that agreement were a condition of transferring their LLC interests in Valvino to Wynn
23 Resorts. Specifically, the Stockholders Agreement stated “as a condition to their
24 willingness to form [Wynn Resorts], either through the contribution of their interests in
25

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

1 the LLC or through a different technique, the Stockholders are willing to agree to the
2 matters set forth” in the Stockholders Agreement.

3 35. Wynn Resorts publicly acknowledged the impact of the Stockholders
4 Agreement on the Company and the shareholders, disclosing in Wynn Resorts’ Form S-
5 1/A filed with the SEC on October 7, 2002 that the Stockholders Agreement established
6 “restrictions on the transfer of the shares of Wynn Resorts’ common stock owned by the
7 parties to the stockholders agreement.” In this way, Wynn Resorts – and all other
8 stockholders – were aware that there were limitations written in the Stockholders
9 Agreement on the transferability of the Wynn Resorts’ stock held by Aruze USA.

10 36. The Stockholders Agreement contained certain transfer restrictions on shares
11 held by Aruze USA. The agreement defined a “[t]ransfer” as “any . . . disposition, either
12 voluntary or *involuntary*” (emphasis added). The agreement provided that such securities
13 may only be transferred to Mr. Okada, an immediate family member of Mr. Okada, a
14 family trust, or a company related to Aruze USA. No other transfers were allowed. For
15 example, there is no provision that would allow Wynn Resorts to buy or take, or redeem
16 the securities. To the contrary, the Stockholders Agreement expressly made **any** transfer
17 of shares – including any involuntary transfers – in violation of the Agreement “null and
18 void *ab initio*.” As explained in further detail below, because Wynn Resorts expressly
19 adopted this transfer restriction at the time of the contribution of Aruze USA’s LLC
20 interests in Valvino, and Wynn Resorts asserts that these transfer restrictions are legally
21 valid, Wynn Resorts had no legal right or ability to redeem Aruze USA’s interests in
22 Wynn Resorts.

23 37. Apart from removing Aruze USA from the purview of later-adopted
24 redemption provisions in Wynn Resorts’ Articles of Incorporation, the Stockholders
25 Agreement also contained provisions that allowed Mr. Wynn to nominate a bare majority
26 of directors, and Aruze USA to nominate all remaining directors. Although Aruze USA
27 repeatedly tried over the years to nominate directors, Mr. Wynn refused to allow this to
28

1 happen, instead nominating all of the directors himself to ensure and perpetuate his
2 complete control of the Board.

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

7 39. On November 8, 2006, Mr. Wynn caused Aruze USA to enter into an
8 Amendment to the Stockholders Agreement which purports to contain a mutual restriction
9 on the sale of stock without the other party's written consent. All other relevant terms of
10 the Stockholders Agreement remained unchanged.

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

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

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

21 **D. The Contribution Agreement**

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

26 43. On June 11, 2002, Wynn Resorts, Mr. Wynn, Aruze USA, Baron Asset
27 Fund, and the Kenneth R. Wynn Family Trust entered into the Contribution Agreement
28 (the "Contribution Agreement"), by which they agreed to contribute all of the Valvino

1 membership interests to Wynn Resorts in exchange for the capital stock of Wynn Resorts.
2 The Wynn Resorts' stock acquired by Aruze USA was subject to the provisions of the
3 Stockholders Agreement.

4 44. The Contribution Agreement made clear that Wynn Resorts could not later
5 enlarge its rights *vis-à-vis* the stock held by Aruze USA. An integration clause stated:

6 *This Agreement, the Stockholders Agreement, and the*
7 *Operating Agreement contain the entire understanding of the*
8 *parties with respect to the subject matter hereof or thereof.*
9 *There are no restrictions, agreements, promises,*
10 *representations, warranties, covenants, or undertakings with*
11 *respect to the subject matter hereof other than those expressly*
12 *set forth or referred to herein or therein. This Agreement, the*
13 *Stockholders Agreement, and the Operating Agreement*
14 *supersede all prior agreements and understandings between*
15 *the parties with respect to their subject matter.*

16 (emphasis added) (The Contribution Agreement defined the "Stockholders Agreement" as
17 the agreement dated April 11, 2002, and "as it may be amended and/or restated from time
18 to time.").

19 45. Wynn Resorts further agreed that the existing restrictions could be altered
20 only with Aruze USA's express written consent. The Contribution Agreement stated:

21 *This Agreement may not be modified or amended except by*
22 *an instrument in writing signed by the corporation and all of*
23 *the Holders.*

24 (emphasis added). Accordingly, Wynn Resorts cannot unilaterally impose a redemption
25 restriction on Aruze USA because such a provision is expressly precluded by the terms of
26 Wynn Resorts' agreements with Aruze USA.

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

46. After entering into the Contribution Agreement, but before transferring the
LLC interests in Valvino, Mr. Wynn unilaterally changed Wynn Resorts' Articles of
Incorporation to include a restriction that purportedly allows Wynn Resorts to "redeem"
stock held by Wynn Resorts' stockholders. At this time, Mr. Wynn was the sole
stockholder and director of Wynn Resorts. It was not until 2012, however, that Mr. Wynn

1 and Wynn Resorts attempted to apply this redemption restriction to Aruze USA's shares,
2 even though the Contribution Agreement precluded Wynn Resorts from unilaterally
3 adding restrictions to the shares.

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

18 48. On September 10, 2002, Mr. Wynn unilaterally amended Wynn Resorts'
19 Articles of Incorporation. Although this change would purport to fundamentally alter the
20 securities received by Aruze USA, Mr. Wynn made the change unilaterally, without
21 affording Aruze USA the opportunity to vote on the changes, let alone expressly consent
22 in writing to the added restrictions as required in the Contribution Agreement, in order to
23 make the provision enforceable. The language Mr. Wynn unilaterally added to the
24 Articles of Incorporation provided, in pertinent part:

25
26
27
28

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

5 49. If Mr. Wynn had done what he was bound to do pursuant to the trust and
6 duties placed in him under the Stockholders Agreement and Contribution Agreement, and
7 transferred the LLC interests in Valvino to Wynn Resorts *before* adding the redemption
8 restriction, Aruze USA would have had the right under Nevada law to vote on the changes
9 to Wynn Resorts' Articles of Incorporation. Aruze USA relied on the absence of a
10 redemption restriction in making its sizable contribution of interests to Wynn Resorts.
11 Years later, in February 2012, Mr. Wynn and Wynn Resorts nevertheless falsely asserted
12 that the redemption provision applied to Aruze USA's stock and acted to redeem Aruze
13 USA's shares. Prior to Wynn Resorts' improper attempt to apply the redemption
14 restriction to Aruze USA's stock, Aruze USA was not and could not have been aware that
15 Wynn Resorts would ever attempt to apply the redemption provision against Aruze USA.
16 Thus, although the first acts perpetrated in furtherance of this fraud occurred in 2002, the
17 misconduct did not cause harm until recently, when Wynn Resorts purported to use the
18 redemption provision to redeem Aruze USA's shares in 2012 for a fraction of their true
19 value.

20 **F. Wynn Resorts Goes Public**

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

24 51. On October 25, 2002, Wynn Resorts conducted an initial public offering
25 ("IPO") on NASDAQ at \$13 per share. At this time, Mr. Okada and Mr. Wynn each
26 owned about 30% of the outstanding stock. Shortly thereafter, Mr. Okada became Vice
27 Chairman of Wynn Resorts' Board.

1 52. On April 28, 2005, Wynn Las Vegas opened. It was an instant success. On
2 September 10, 2006, Wynn Resorts opened in Macau. “Encore” hotels followed in both
3 locations. Again, each property has been very successful. None of this success would
4 have been possible without the capital funding, support, and expertise of Aruze USA and
5 Mr. Okada.

6 53. As one form of recognition for Aruze USA’s contributions, Wynn Resorts
7 included a high-end Japanese restaurant at both the Las Vegas and Macau resorts. These
8 restaurants were named “Okada.”

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

10 54. Although they have very different backgrounds and educational experiences,
11 both Mr. Wynn and Mr. Okada are of similar ages, interests, and ambitions. Beyond their
12 business dealings, Mr. Wynn gave every indication that he considered Mr. Okada to be a
13 close personal friend, and repeatedly called him his “partner.”

14 55. For example, at hearings before the Nevada State Gaming Control Board and
15 Nevada Gaming Commission, on June 4 and 17, 2004, respectively, Mr. Wynn affirmed
16 that “Mr. Okada was not only suitable” to receive a gaming license “but he was
17 desirable.” Repeatedly referring to Mr. Okada as his “partner,” Mr. Wynn said Mr. Okada
18 was “dedicated to the pursuit of excellence.”

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

26 57. And, indeed, Mr. Okada trusted Mr. Wynn. Mr. Wynn knew this, and
27 callously and illegally set out to exploit this trust for his advantage.
28

II. UNIVERSAL DISCLOSES AND ULTIMATELY PURSUES FOREIGN DEVELOPMENT PROJECTS

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

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

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

60. On April 25, 2008, Universal announced its planned casino project in the Philippines.

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

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

(emphasis added).

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

63. As a further example of Wynn Resorts’ knowledge and approval of Universal and Aruze USA’s activities in the Philippines, on April 4, 2008, Kevin Tourek, a member of Wynn Resorts’ Compliance Committee, emailed Frank Schreck, the then-head of Universal’s Compliance Committee. The email was regarding Universal’s investment in the Philippines. Mr. Tourek confirmed that – so long as Universal was in compliance with the laws of the Philippines – the investment would not be something that would concern Nevada regulators or Wynn Resorts.

64. Once again, on September 24, 2009, Wynn Resorts acknowledged Universal’s project in the Philippines. Wynn Macau’s IPO prospectus explicitly acknowledged Universal’s plans to develop a casino in the Philippines:

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

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

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

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

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

68. The Philippine government approached Universal as early as 2005 and courted Universal for years. The Philippine government ultimately secured an agreement that Universal would employ significant numbers of local people to work in the casinos. Press reports estimated that Universal's project could create as many as 15,000 jobs for Filipinos, and generate billions of dollars in tax revenues for the Philippine government. When Universal delayed the project in the wake of the 2008 financial crisis, the Philippine government again stepped up its efforts to encourage Universal to advance the development of its project. While Universal certainly expects the Manila Bay Project to be a "win-win" for the Philippines and Universal, the idea that Universal needed to curry special favor with Philippine government officials is profoundly mistaken.

C. Steve Wynn and Elaine Wynn Divorce

69. In March 2009, Mr. Wynn divorced Elaine Wynn. The divorce proved to be damaging to Mr. Wynn's financial position and standing within Wynn Resorts. By early 2010, Mr. Wynn had reached an agreement to split his ownership of Wynn Resorts' stock with Elaine Wynn. As a result of the divorce settlement, Aruze USA was now by far Wynn Resorts' largest stockholder, owning some 24,549,222 shares of Wynn Resorts, or 19.66% of the outstanding stock. Mr. Wynn would now own less than half what Aruze

1 USA owned of Wynn Resorts' stock. While neither Aruze USA nor Mr. Okada ever
2 made any threats against Mr. Wynn, the possibility loomed that Mr. Wynn could be losing
3 control of Wynn Resorts, as had happened ten years earlier, when Mr. Wynn lost control
4 of Mirage Resorts, Inc.

5 70. On January 6, 2010, Mr. Wynn obtained an Amended and Restated
6 Stockholders Agreement. The amended agreement altered the Stockholders Agreement
7 language regarding Aruze USA's right to nominate directors. Aruze USA could endorse
8 nominees so long as the majority of nominees were endorsed by Mr. Wynn. Although the
9 agreement required Mr. Wynn to support a minority slate of directors proposed by Aruze
10 USA, he never did so. On information and belief, Mr. Wynn obtained the Amended and
11 Restated Stockholders Agreement, with the intention of never supporting any director
12 proposed by Aruze USA. In fact, Mr. Wynn consistently refused efforts to consider
13 Aruze USA directors for the Board, in an effort to continue to monopolize control over
14 Wynn Resorts.

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

21 72. In January 2010, Mr. Okada indicated that he was willing to move ahead
22 with the amendments provided that Mr. Wynn reciprocated by allowing Aruze USA to
23 sell publicly the same number of shares as Mr. Wynn and Elaine Wynn. In this way,
24 Mr. Okada expected to receive liquidity for Aruze USA whenever Mr. Wynn and
25 Elaine Wynn asked permission to sell or transfer their stock.

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

73. Though Mr. Wynn had consistently declined to involve Wynn Resorts formally in the Philippine project, he began to reconsider the opportunity in 2010. On June 14, 2010, Mr. Wynn and Mr. Okada jointly visited Manila to conduct due diligence on behalf of Wynn Resorts and Universal. On information and belief, Mr. Wynn was considering pursuing the project in his individual capacity as well as on behalf of Wynn Resorts.

74. As illustrated in the photographs, this pre-arranged trip involved meetings with dignitaries and officials and informational presentations on the project.





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

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

7 76. In May 2011, Wynn Macau pledged to donate HK\$1 billion (about \$135
8 million) to the University of Macau Development Foundation. This contribution
9 consisted of a \$25 million contribution made in May 2011, and a commitment for
10 additional donations of \$10 million each year for the calendar years 2012 through 2022
11 inclusive. Suspiciously, Wynn Macau’s current gaming concession covers essentially the
12 same 10-year period expiring in June 2022. Wynn Macau and Wynn Resorts also
13 disclosed that Wynn Macau was in the process of seeking to obtain land in Macau and the
14 rights to develop a third casino in the area.

15 77. At a Board meeting in April, 2011, Mr. Okada objected to and voted against
16 this donation, which appears to be unprecedented in the annals of the University of
17 Macau, and in the history of Wynn Resorts. Mr. Okada objected to the unprecedented
18 size and duration of the commitment. It was unclear how the University of Macau would
19 use the funds. Mr. Okada wondered why a wealthy university that sits on government
20 land and largely caters to non-Macau residents might need or want such a large donation.
21 Mr. Okada, who is himself a significant philanthropist, wondered whether such a donation
22 actually benefits the people who live in Macau. He was concerned about the lack of
23 deliberation of the boards of Wynn Resorts and Wynn Macau (the donation was approved
24 at a joint meeting in Macau of the two boards), and that pending approvals in Macau
25 related to a new development in Cotai, and the coincidence of the date of the donation and
26 the term of Wynn Macau’s gaming license in Macau, might make it appear that Wynn
27 Macau and Wynn Resorts were paying for benefits.

1 78. Notably, for example, the Chancellor of the University of Macau is also the
2 head of Macao's government, with ultimate oversight of gaming matters.

3 79. While Wynn Resorts claims to have received a legal opinion sanctioning the
4 unprecedented donation, Wynn Resorts did not provide that legal opinion to Mr. Okada
5 or, on information and belief, to any other members of the board of either Wynn Macau or
6 Wynn Resorts. On information and belief, Mr. Wynn – and potentially others – misled
7 the Wynn Resorts' Board by securing its consent to the donation, without disclosing his
8 personal knowledge of the close connection between the University of Macau and
9 officials responsible for regulatory decisions related to Wynn Macau's gaming operations.

10 80. Mr. Okada's opposition to this donation caught the attention of the U.S.
11 Securities and Exchange Commission ("SEC"). According to Wynn Resorts 2011 Form
12 10-K, Wynn Resorts received a letter from the Division of Enforcement of the SEC
13 indicating the SEC has commenced an "informal inquiry" regarding matters in Macau.
14 Mr. Wynn, Ms. Sinatra (Wynn Resorts' General Counsel), and Mr. Miller (head of Wynn
15 Resorts' Compliance Committee) did not take kindly to Mr. Okada's scrutiny of the
16 donation. On information and belief, Mr. Wynn, Ms. Sinatra, and Mr. Miller set out to
17 discredit Mr. Okada, in an effort to distract attention from the problematic Macau
18 donation.

19 **F. Steve Wynn and Kim Sinatra Fraudulently Promise Kazuo Okada**
20 **Financing for the Philippine Project**

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

26 82. According to the transcript of the meeting, Mr. Wynn told Mr. Okada that
27 Elaine Wynn was very angry at Mr. Wynn for remarrying. Knowing she was going
28 through a difficult time, Mr. Okada expressed sympathy for Elaine Wynn. Mr. Wynn said

1 that Elaine Wynn had a desire to transfer her shares to a new owner, and that there was an
2 urgent need for Mr. Okada to immediately consent on Aruze USA's behalf to the transfer
3 of the securities under the Stockholders Agreement.

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

7 84. Mr. Wynn suggested that instead of having Aruze USA pledge its shares, he
8 had "good answers to solve [Mr. Okada's] . . . requests." Mr. Wynn suggested that Wynn
9 Resorts would make a loan to Aruze USA. Mr. Wynn told Mr. Okada that this was better
10 than Aruze USA liquidating its stock (which could have hurt Wynn Resorts' stock value),
11 and much better than a bank loan because a bank: (1) would set a credit line of only 50%
12 of the market value of Aruze USA's stock; (2) would require additional guarantees if the
13 market value of Aruze USA's stock decreases; and (3) could require forfeiture of Aruze
14 USA's stock if there was any delay in payment.

15 85. Mr. Wynn gave Mr. Okada an explicit personal assurance that financing
16 would occur. Mr. Wynn stated that this proposal would be good for Mr. Okada and good
17 for Wynn Resorts, because it will contribute to the stability of Wynn Resorts. And, based
18 on such assurances, Mr. Okada agreed to financing from Wynn Resorts, rather than
19 pledging Aruze USA's stock.

20 86. Unbeknownst to Mr. Okada, Universal, or Aruze USA at the time, Mr. Wynn
21 was simultaneously orchestrating Wynn Resorts' "investigation" to have Mr. Okada,
22 Aruze USA, and Universal deemed unsuitable. Indeed, Wynn Resorts has publicly
23 asserted that it began its "investigation" into the Philippines as early as February 2011,
24 well before Mr. Okada proposed to pledge Aruze USA's shares of Wynn Resorts' stock.
25 Through his assurances, however, Mr. Wynn took deliberate steps to keep Aruze USA,
26 Universal, and Mr. Okada associated with Wynn Resorts. If Wynn Resorts and Mr. Wynn
27 were truly concerned with any risk that Aruze USA, Universal, and Mr. Okada supposedly
28 posed to their gaming licenses, they would have allowed Aruze USA to liquidate its

1 position. Instead, to perpetrate the fraudulent scheme, and seek to forcibly redeem Aruze
2 USA's shares at a vast discount under extremely oppressive terms, Mr. Wynn instead
3 misled Aruze USA into not liquidating its shares.

4 87. Ms. Sinatra was present at the meeting, and participated in this fraudulent
5 scheme. On information and belief, Ms. Sinatra is a highly sophisticated and
6 knowledgeable attorney, and is one of the highest paid general counsels in the United
7 States. Toward the end of the meeting, Ms. Sinatra stated that draft loan agreements
8 would be provided to Aruze USA within 10 days to support the agreement reached
9 between Mr. Okada and Mr. Wynn. Neither Mr. Wynn nor Ms. Sinatra said anything
10 about internal or external limitations on loans to directors and officers. For example,
11 neither of them made any mention of Section 402 of the Sarbanes-Oxley Act ("SOX").
12 Unlike Japanese law that has no such prohibition, on information and belief, Ms. Sinatra
13 believed Section 402 barred any loan to Aruze USA by Wynn Resorts. On information
14 and belief, at the time of this meeting, Ms. Sinatra was intimately familiar with SOX and
15 Section 402, having overseen the implementation of SOX compliance policies at Wynn
16 Resorts that specifically addressed prohibitions on loans to officers and directors.

17 88. At the conclusion of the meeting, and in reliance on the assurances by
18 Mr. Wynn and Ms. Sinatra that Wynn Resorts would make a loan to provide liquidity for
19 Aruze USA and that loan documents would be forthcoming, Mr. Okada signed a waiver
20 and consent granting Elaine Wynn the option to transfer her stock. Simultaneously, Mr.
21 Tanaka of Aruze USA made a handwritten note to memorialize the agreement that Wynn
22 Resorts would provide financing to Aruze USA.

23 89. Later that day, in response to Mr. Tanaka's note and after Mr. Okada had
24 signed the waiver and consent about Elaine Wynn's stock, Ms. Sinatra prepared a draft
25 "Side Letter" to replace the one prepared by Mr. Tanaka. The "Side Letter" prepared by
26 Ms. Sinatra stated that Wynn Resorts would negotiate a loan from Wynn Resorts to Aruze
27 USA secured by Aruze USA's stock "*to the extent compliant with all state and federal*
28 *laws*" (emphasis added). On information and belief, Ms. Sinatra inserted this language

1 because she believed Section 402 of SOX prohibited the loan proposed by Mr. Wynn and
2 agreed to by both Mr. Wynn and Mr. Okada.

3 90. At the time, Wynn Resorts had extensive SOX compliance policies. Yet,
4 Ms. Sinatra said nothing to Mr. Okada or Aruze USA concerning any purported loan
5 prohibitions under SOX, leading Mr. Okada and Aruze USA to believe that financing
6 through Wynn Resorts was not only possible, but would be forthcoming in the near future.
7 Ms. Sinatra's role in this transaction makes clear that she was not working on Wynn
8 Resorts' behalf. Rather, in breach of her duty to Wynn Resorts, she intentionally sought
9 to deceive Mr. Okada for the personal benefit of Mr. Wynn, who would benefit from
10 stringing along Aruze USA.

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

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

25 93. In the same email, Ms. Sinatra then explained that Wynn Resorts was
26 negotiating with Deutsche Bank on a margin loan transaction, with Wynn Resorts acting
27 as a "backstop." Ms. Sinatra suggested holding a telephone conference with Aruze USA's
28 counsel to discuss the proposed transaction further. She did not dispute that Mr. Okada's

1 consent to the amendment in the Stockholders Agreement was based on Wynn Resorts'
2 agreement to continue to pursue financing for a loan to Aruze USA (using Aruze USA's
3 Wynn Resorts shares as collateral). At no point in time did Ms. Sinatra call into question
4 the Philippine project.

5 94. On July 15, 2011, Ms. Sinatra and Aruze USA's counsel held a telephone
6 conference to discuss the proposed financing from Deutsche Bank. Ms. Sinatra provided
7 background information on the state of the negotiations, and explained that Deutsche
8 Bank was considering a margin loan of \$800 million to Aruze USA. She stated that
9 Deutsche Bank expected that they would be able to provide draft documentation within
10 two to three weeks, and that the loan would be proposed to the Wynn Resorts Compliance
11 Committee thereafter.

12 95. On or about September 23, 2011, Ms. Sinatra called Aruze USA. Ms.
13 Sinatra informed Aruze USA that Wynn Resorts' Compliance Committee would be
14 meeting the following week regarding the Philippines, which could impact whether Wynn
15 Resorts would allow the loan.

16 96. Wynn Resorts' Compliance Committee is not an independent committee of
17 the Board. Rather, it is made up of one Wynn Resorts director, former Nevada Governor
18 Bob Miller, and two Wynn Resorts insiders. On information and belief, each member of
19 Wynn Resorts' Compliance Committee depends on Mr. Wynn for his livelihood and each
20 is beholden to Mr. Wynn. On information and belief, Mr. Wynn has plenary control over
21 the Compliance Committee. On September 30, 2011, the Compliance Committee refused
22 to permit the loan to Aruze USA.

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

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

1 98. Richard Morgan, the new Chairman of the Universal Compliance
 2 Committee, spoke with Mr. Schreck regarding his reasons for resignation. Mr. Schreck
 3 told Mr. Morgan that he did not resign from the Committees because of any suitability
 4 concerns about Mr. Okada. Mr. Morgan asked Mr. Schreck if he knew of any facts that
 5 gave Mr. Schreck concerns about Mr. Okada's suitability; Mr. Schreck told Mr. Morgan
 6 that he knew of no such facts.

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

11 **III. STEVE WYNN DIRECTS WYNN RESORTS TO CONDUCT A**
 12 **PRETEXTUAL INVESTIGATION FOR THE PURPOSE OF REDEEMING**
ARUZE USA'S SHARES

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

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

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

25 102. Second, Ms. Sinatra and Mr. Tourek said that Wynn Resorts has a "policy"
 26 that officers and directors cannot pledge their Company stock. This was the first mention
 27 of such a policy, despite extensive discussions of a loan secured by Aruze USA's stock.
 28

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

5 104. Fourth, Ms. Sinatra and Mr. Tourek proposed to change the Stockholders
6 Agreement to allow Aruze USA to sell or pledge shares, but subject to a voting trust,
7 which would allow Mr. Wynn to vote the shares, and a right of first refusal for Mr. Wynn
8 to purchase the shares. This proposal was improper. Ms. Sinatra and Mr. Tourek were
9 again advocating for Mr. Wynn, not for Wynn Resorts. This was another breach of duty
10 by Ms. Sinatra to Wynn Resorts and to its largest shareholder, Aruze USA.

11 105. Fifth, Ms. Sinatra and Mr. Tourek stated that Mr. Okada has a fiduciary duty
12 to present to Wynn Resorts any proposed competitive opportunities. Further, they stated
13 that if Mr. Okada has a competing casino business, he should consider stepping down
14 from the Board. This was the first mention of any "competitive" concerns. Mr. Wynn
15 and Wynn Resorts (and, indeed, Ms. Sinatra and Mr. Tourek) had known about
16 Universal's Philippine project for years. Universal had committed hundreds of millions of
17 dollars to pursuing the project. Wynn Resorts and Mr. Wynn had never objected to the
18 Philippine project.

19 106. Sixth, toward the end of the meeting, Ms. Sinatra gave Mr. Okada's counsel
20 a copy of the Articles of Incorporation of Wynn Resorts, with certain provisions
21 highlighted in yellow. The highlighted portions included the redemption provision. That
22 was the first time that redemption was ever obliquely mentioned to Mr. Okada or his
23 counsel.

24 107. Ms. Sinatra then brought her threat into stark reality. She stated that the
25 Compliance Committee would meet on October 31, 2011 (in advance of a November 1
26 Board meeting). She told Mr. Okada that she hoped a "resolution" would be reached
27 before those meetings regarding Mr. Okada's directorship and the voting rights of
28 Aruze USA's stock, so as to avoid presenting this matter to the Compliance Committee

1 and the Board. Ms. Sinatra's intent was clear – Wynn Resorts' compliance procedures
2 were being used to extract a personal benefit for Mr. Wynn.

3 **B. Steve Wynn and Kim Sinatra Try to Intimidate and Threaten**
4 **Kazuo Okada, While Hiding Supposed Evidence of Wrongdoing**

5 108. On an October 3, 2011 telephone call, Aruze USA's counsel asked
6 Ms. Sinatra to provide Aruze USA with a copy of the Compliance Committee's
7 investigative report regarding Mr. Okada. Ms. Sinatra replied that she would have to
8 check to see if a copy could be provided; in fact, she did not and has never provided a
9 copy of the investigative report to Aruze USA, Mr. Okada, or their counsel.

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

17 110. Mr. Okada's counsel told Mr. Wynn that, in all his years, he had never
18 before experienced a situation where the subject of an investigative report had never been
19 formally questioned or even permitted to respond to the accusations being levied against
20 him. Mr. Okada's counsel once again requested a copy of the investigative report so that
21 he and Mr. Okada's other attorneys could ensure they were advising Mr. Okada properly
22 and that the Wynn Directors could make a decision based on accurate information. Over
23 the course of the remainder of the October 4 meeting, counsel for Mr. Okada asked at
24 least two additional times for a copy of the investigative report. Ms. Sinatra finally
25 replied that Mr. Okada and his counsel could not see a copy of the investigative report
26 because it was "privileged." On information and belief, Ms. Sinatra once again
27 intentionally misrepresented the law (Mr. Okada, as a director of the Company, has a right
28

1 to see the Company's books and records, including its communications with counsel), in
2 breach of her duties to Wynn Resorts.

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

- 6 • That the Philippines were so corrupt that no one could possibly do business
7 in that country without violating the FCPA;
- 8 • That "research" showed Mr. Okada owned land without a Philippines
9 partner, and that this violated Philippines law;
- 10 • That the other directors were "convinced" that Mr. Okada's use of his Wynn
11 Resorts business card in other countries had caused a belief that Wynn
12 Resorts was involved in the Philippine project and that the Company would
13 not be in this position had he instead used his Universal business card;
- 14 • That Mr. Okada had used the Wynn Resorts' building design and other trade
15 secrets without permission; and
- 16 • That Mr. Okada had associated with persons who had later been indicted in
17 the Philippines on charges unrelated to the Philippine project.

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

25 113. Mr. Wynn closed the meeting by telling Mr. Okada that if he had any respect
26 for Mr. Wynn and the other members of the Board, he would voluntarily step down from
27 his role as a director and Vice Chairman of Wynn Resorts. At this time, Mr. Okada's
28 counsel explained to Mr. Wynn that Mr. Okada should not be required to respond to his

1 demand for resignation until he had time to further consider it. Mr. Wynn agreed and the
2 meeting was adjourned.

3 114. Around this same time, the Chairman of Universal's Compliance Committee
4 also requested a copy of the investigative report through the Chairman of Wynn Resorts'
5 Compliance Committee. This request has been ignored.

6 **C. A Letter From Steve Wynn's Outside Lawyer Confirms that, While**
7 **Wynn Resorts Had Already Determined the Outcome, a Pretextual**
8 **"Investigation" was Only Just Starting**

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

15 116. Curiously, Mr. Shapiro's letter admitted that the Compliance Committee was
16 only then beginning the very investigation that Mr. Wynn and Ms. Sinatra claimed to have
17 already been concluded. They also claimed to have already generated a report. Yet
18 Mr. Shapiro wrote that "The Compliance Committee of Wynn Resorts must fully
19 investigate the foregoing acts and have retained Louis J. Freeh . . . to conduct an
20 independent investigation." On information and belief, as of the date of Mr. Shapiro's
21 letter, Mr. Freeh had not started his investigation.

22 **D. Wynn Resorts Refuses to Allow Kazuo Okada and Aruze USA to**
23 **Review Any Supposed "Evidence"**

24 117. On October 24, 2011, Mr. Okada through his counsel made an initial
25 demand for documents regarding the Philippine investigation. Although he was plainly
26 entitled to such documents as a director under Nevada law, Wynn Resorts refused this and
27 numerous subsequent demands for documents. Wynn Resorts aimed to conduct a secret
28 investigation and never allow Mr. Okada or his counsel to scrutinize or respond to the
supposed "evidence" against him.

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

118. At the Board's November 1, 2011 meeting, Mr. Miller presented an oral report of an alleged investigation by the Compliance Committee into Mr. Okada's and Universal's activities in the Philippines. The report disclosed that the Compliance Committee had allegedly conducted one internal and two "independent" investigations into allegations of suitability, conflicts of interest, and possible breaches of fiduciary duties related to acquisition of land for the Philippine project and charitable contributions made by Universal. To date, the contents of these purported investigations have not been presented to Mr. Okada.

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

F. Kazuo Okada Seeks More Information Regarding Wynn Macau

120. The vehemence of the actions by Mr. Wynn, Ms. Sinatra, Mr. Miller, and the Board against Mr. Okada is highly suspicious. After all, Mr. Okada had raised concerns about the donation to the University of Macau before Wynn Resorts had raised any type of unsuitability allegations against Mr. Okada and before anyone associated with Wynn Resorts even mentioned the word "redemption" to him. Mr. Okada made several requests for access to Wynn Resorts' books and records for information relating to the donation made by Wynn Resorts to the University of Macau, all of which were denied without a valid basis. In the state court of Nevada, Mr. Okada even filed a petition for a writ of mandamus on January 11, 2012 to compel Wynn Resorts to grant him access to Wynn Resorts' books and records. *Okada v. Wynn Resorts, Ltd.*, case number A-12-65422-B, Department XI (the "Inspection Action"). At a hearing on February 9, 2012, the Court ordered Wynn Resorts to comply with Mr. Okada's reasonable requests.

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

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

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

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

123. While Wynn Resorts alleges in its Complaint that Mr. Okada "long evaded" his interview (Complaint at 2), the record conclusively contradicts this contention. Freeh Sporkin did not contact Mr. Okada or his counsel about an interview until January 9, 2012, at which time it demanded (not requested) an interview of Mr. Okada during the week of January 30 (*i.e.*, January 30-February 5). On January 15, 2012, four days after Mr. Okada filed his Inspection Action, Freeh Sporkin informed Mr. Okada's counsel that the "schedule has changed" and pressured Mr. Okada to agree to an interview *before* the week of January 30.

1 124. On January 19, 2012, Mr. Miller, Chair of Wynn Resorts' Compliance
2 Committee, wrote directly to Mr. Okada, threatening that if Mr. Okada failed to make
3 himself available for interviews with Freeh Sporkin on January 30 or 31, the Compliance
4 Committee "can only conclude that you have refused participation." The letter stated that
5 the Compliance Committee originally had a goal of receiving a report by the end of 2011,
6 which was extended to January 15, 2012. In addition to this being the first time anyone
7 shared the Compliance Committee's purported deadlines with Mr. Okada, these dates are
8 inconsistent with Freeh Sporkin making its initial request to conduct an interview of Mr.
9 Okada that would take place in the first week of February. It proved not to be the first
10 time Mr. Miller was "confused" about the "investigation" that was supposedly operating
11 under his direction.

12 125. Mr. Okada had only recently hired new counsel to assist with the response to
13 the Freeh Sporkin investigation. In order to prepare for the interview, the new counsel
14 requested that the parties seek a mutually convenient date for an interview by February
15 15, 2012. Freeh Sporkin then agreed to schedule the interview on February 15. This
16 undeniable record demolishes any claim that Mr. Okada avoided an interview with Freeh
17 Sporkin, let alone that he "long evaded" an interview.

18 **I. Freeh Sporkin Refuses to Provide Meaningful Information Regarding**
19 **the Investigation to Kazuo Okada**

20 126. While attempting to set a date to schedule the Freeh Sporkin interview,
21 Mr. Okada's counsel requested that Freeh Sporkin identify the specific matters under
22 review so that Mr. Okada could prepare appropriately for his interview. After all,
23 Mr. Okada is the Chairman of a publicly traded corporation – and cannot be expected to
24 know every operational detail in his organizations. In addition, translations between
25 Japanese and English are notoriously difficult because of subtleties in language.
26 Mr. Okada's counsel repeatedly requested documents that Freeh Sporkin might use in the
27 interview and topics so Mr. Okada could prepare for the interview and be ready to provide
28

1 information and documents that could help Freeh Sporkin (and the Board) understand the
2 facts concerning whatever topics and issues it wanted to discuss with Mr. Okada.

3 127. Freeh Sporkin refused to provide anything more than a statement that it was
4 investigating “all matters related to Mr. Okada’s, Universal’s, and Aruze’s activities in the
5 Philippines and Korea.” This was the first time that Korea was even mentioned as the
6 subject of any investigation by the Company. Again – the basis of Aruze USA’s supposed
7 “unsuitability” kept changing.

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

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

16 129. On February 15, 2012, Mr. Okada sat for a full-day interview with Mr. Freeh
17 and other lawyers for Freeh Sporkin.

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

28

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

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

6 132. At a press conference following the redemption of Aruze USA's stock,
7 Mr. Miller made a number of statements that will prove to be false. One stood out in
8 particular. Mr. Miller said:

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

13 133. Similarly, the Wynn Resorts Complaint states that "Freeh announced that he
14 would report his findings to the Board of Directors on February 18, 2012." (Compl. at ¶
15 43.)

16 134. Neither statement is true. Mr. Freeh said nothing regarding the date of the
17 completion of his report at the interview, and, in fact, said at the February 15, 2012
18 interview of Mr. Okada that his investigation was not complete and that his report was not
19 complete.

20 135. On February 16, 2012, Mr. Okada's counsel emailed Mr. Freeh stating:

21 Louis:

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

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

28 Joel Friedman called you about 900a today (PT) and left a

message for you to call a well as an email.

I can suggest two possibilities in response to your letter:

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

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

...

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

...

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

Best regards,

Louie

(emphasis added.)

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

Louis:

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

1 (emphasis added.)

2 138. Mr. Freeh responded “Thanks Tom and safe travels.”

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

5 Just to confirm, I will now deliver my report to the
6 Compliance Committee having completed my investigation
7 regarding the matters under inquiry. It is my understanding
8 that the Compliance Committee will thereafter provide all of
9 the Directors, including Mr. Okada, with a copy of the report.
10 As we both stated, Mr. Okada can then submit any responses
11 to the report which will be considered and evaluated.
12 However, the report I am submitting is not a ‘draft’ subject to
13 being finalized after Mr. Okada provides any response. Rather
14 this is akin to a final brief being submitted with the
15 opportunity for a response to be made.

16 Please let me know if you have any questions.

17 Best regards

18 Louie

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

24 141. In addition, Mr. Freeh’s statement that he was preparing a “final brief” is
25 very telling about how Mr. Freeh viewed his role in the process. Mr. Freeh was not
26 preparing an objective report of the facts by an “independent” investigator – he was
27 providing the Board with an argumentative document as an *advocate* against Mr. Okada.
28 But even so, Mr. Freeh clearly contemplated that Mr. Okada would and should have the
opportunity for a response. Nevertheless, spurred on by Mr. Wynn, the Board ignored
Mr. Freeh’s promise of an opportunity to respond to the report (and the express statements
in Mr. Freeh’s report that further investigation would be needed on certain topics), and
instead acted rashly to redeem Aruze USA’s stock on an incomplete factual record and a
faulty understanding of governing legal principles, including, for example, the application

1 of the FCPA to the facts, as well as Wynn Resorts' (lack of) contractual rights to attempt
2 to redeem Aruze USA's stock.

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

4 142. On February 15, 2012, scant hours after the completion of Mr. Freeh's
5 interview of Mr. Okada, Wynn Resorts noticed a special meeting of its Board. The
6 meeting was set for Saturday, February 18, 2012, at 9:00 a.m. in Las Vegas – which is
7 2:00 a.m. Sunday morning in Japan. Although the notice for the Board meeting went out
8 immediately following the conclusion of the interview of Mr. Okada, and was scheduled
9 to occur a mere three days after the interview, Mr. Wynn and Ms. Sinatra included on the
10 agenda a review of the Freeh Sporkin report.

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

13 143. Following the interview, Mr. Wynn communicated to Aruze USA through
14 intermediaries that, instead of having the Board consider the Freeh Sporkin report, Mr.
15 Wynn would be willing to buy Aruze USA's stock for his benefit at a significant discount.
16 A sale to Mr. Wynn was presented as an alternative to the embarrassment and regulatory
17 issues attendant to possible disclosure of the Freeh Sporkin report.

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

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

4 **A. Wynn Resorts Publicly Asserts That the Value of Aruze USA's Stock Is**
5 **\$2.9 Billion**

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

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

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

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

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

27 149. When it came time for the meeting, at 2:00 a.m. on Sunday morning,
28 Mr. Okada sat ready to participate by telephone. Mr. Wynn yelled at Mr. Okada's counsel
when he introduced himself. Mr. Wynn also said that Mr. Okada's counsel could not be

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

10 Mr. Okada did not sign the nondisclosure agreement.

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

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

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

1 153. At some point, someone at Wynn Resorts hung up the telephone, cutting
2 Mr. Okada off from the meeting. Mr. Okada waited to be reconnected, staying up until
3 the sun rose in Asia, all the while not knowing whether the Board had resolved anything
4 following the presentation by Mr. Freeh. Ms. Sinatra later claimed that cutting off the
5 telephone connection to Mr. Okada was a “misunderstanding.” No other contact was
6 made with Mr. Okada.

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

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

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

23 157. Despite repeated requests to Ms. Sinatra and Mr. Shapiro, Mr. Okada’s
24 counsel only obtained a copy of the “confidential” report when it sent a messenger to
25 court on February 21, 2012, the first court day following the weekend Board meeting.
26 Wynn Resorts continues to refuse to provide the Freeh Sporkin report’s exhibits to Mr.
27 Okada or Aruze USA.
28

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

2 158. In public statements, representatives of Wynn Resorts have claimed
3 redemption is complete and that the securities formerly held by Aruze USA have been
4 cancelled. Aruze USA disputes that this has happened. Among other reasons, as
5 explained elsewhere in this Counterclaim, the purported redemption is void *ab initio*.

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

7 159. Even if Aruze USA were bound by the redemption provision (which Aruze
8 USA disputes), the Articles of Incorporation only purport to allow redemption in three
9 situations.

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

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

18 162. Third, Wynn Resorts’ Articles of Incorporation profess that the Company
19 can redeem where a person “in the sole discretion of the board of directors of the
20 Corporation, is deemed likely to jeopardize the Corporation’s or any Affiliated
21 Company’s [a] application for, [b] receipt of approval for, [c] right to the use of, or [d]
22 entitlement to, any Gaming License.” Subsections [a] and [b] do not apply because, on
23 information and belief, Wynn Resorts has no present plan to apply for a license and is not
24 awaiting approval of any pending application. So, even under the standards of the
25 Articles of Incorporation, Wynn Resorts could only seek redemption upon a showing that
26 Aruze USA’s stock ownership is “likely to jeopardize” Wynn Resorts’ “right to the use of,
27 or entitlement to” its existing gaming licenses.
28

163. No such showing was made in the rushed Freeh Sporkin report. In fact, in the gaming industry, any impact on the right to use or entitlement to a gaming license requires action by the cognizant gaming authority. No gaming authority has found Aruze USA, Universal, or Mr. Okada to be “unsuitable.” Furthermore, association with an “unsuitable” person would only conceivably create a problem for a gaming license *after* that person has been found by a gaming authority to be unsuitable. Even then, such concerns can be addressed via a voting trust or orderly sale of shares. If Wynn Resorts’ true aim was to disassociate itself from Aruze USA in order to protect its interests, it failed miserably. Even if the redemption were effective, Aruze USA would now be Wynn Resorts’ largest holder of debt – a circumstance which would be impermissible under Nevada law if Aruze USA were truly “unsuitable.” Under the circumstances, it is obvious that the supposed redemption of Aruze USA’s shares was simply a pretext to seek to quiet a potential dissident shareholder and director, increase the relative ownership interests of the Board members by virtue of their shareholdings in Wynn Resorts, and to enhance and maintain Mr. Wynn’s personal control over Wynn Resorts.

E. Even if Aruze USA Was Subject to the Redemption Provision (Which it is Not), the Unilateral Blanket 30% Discount that Wynn Resorts Applied to the Stock is Erroneous and the Promissory Note is Unconscionably Vague, Ambiguous, and Oppressive

164. According to a press release dated February 19, 2012, Wynn Resorts issued a note in the amount of \$1.936 billion to Aruze USA. This amount is exactly 30% less than the market value of Aruze USA’s stock as measured by the closing price of Wynn Resorts’ stock on the Friday prior to the Saturday Board meeting. According to its press release, Wynn Resorts arrived at this value because “it engaged an independent financial advisor to assist in the fair value calculation and concluded that a discount to the current trading price was appropriate because of restrictions on most of the shares which are subject to the terms of an existing stockholder agreement.” The irony here is rich, because the Stockholders Agreement, by its terms, either precludes the redemption of Aruze USA’s stock altogether or, alternately, the transfer restrictions are not binding on

1 Aruze USA to the extent that they constitute an illegal restraint on alienability, and thus
2 could not legitimately impact the value of Aruze USA's shares so as to support a discount
3 against the market price.

4 165. The February 19, 2012 Wynn Resorts press release also falsely stated that
5 the redemption process in the Articles of Incorporation had "been [in place] since the
6 Company's inception." This is untrue, as Mr. Wynn unilaterally *amended* the Articles of
7 Incorporation to include the purported redemption language months *after Wynn Resorts*
8 *was created*, and nearly 90 days after Aruze USA agreed to invest in Wynn Resorts and
9 committed its interests in Valvino to Wynn Resorts. Wynn Resorts and Mr. Wynn thus
10 sought to continue their fraudulent scheme by publishing a false basis under which Wynn
11 Resorts purported to have the authority to redeem Aruze USA's shares of Wynn Resorts'
12 stock.

13 166. Nevertheless, hoping to unilaterally decide on a "clearance" price for
14 Aruze USA's almost 20% shareholder interest in the Company, Wynn Resorts relied
15 solely on one opinion from Moelis & Company ("Moelis"), *which has done business with*
16 *Wynn Resorts in the past*.

17 167. Mr. Wynn and Kenneth Moelis ("Mr. Moelis") – the founder of Moelis – go
18 way back. Mr. Moelis first worked with Mr. Wynn when Mr. Moelis worked at the
19 investment banking firm of Drexel Burnham Lambert ("Drexel"). At Drexel, Mr. Moelis
20 was the banker who helped Mr. Wynn finance his Golden Nugget Casino in Atlantic City
21 and Mirage casino in Las Vegas. On information and belief, Mr. Wynn has a close
22 personal and professional relationship with Mr. Moelis. According to press reports,
23 Mr. Moelis has stated that he would take the first flight out of LAX to rush to the
24 assistance of Mr. Wynn. Mr. Wynn reciprocates Mr. Moelis' loyalty and support.
25 Among other things, Mr. Wynn engaged Mr. Moelis to serve as the lead underwriter of
26 Wynn Resorts' \$210 million common stock offering in March 2009.

27 168. Mr. Wynn called on Mr. Moelis' loyalty in this case. Despite the fact that at
28 least some of the stock was exempted from the Stockholders Agreement, Moelis

1 discounted Aruze USA's more than \$2.7 billion shares of Wynn Resorts' stock by a round
2 30%.

3 169. The terms of the note are unreasonable and one-sided in the extreme,
4 completely lacking reasonable and customary terms used to protect and preserve the
5 interests of the note holder. Among other things, the hastily issued, ten-year \$1.936
6 billion promissory note is unsecured and fully subordinated, not merely to current
7 outstanding Wynn Resorts debt, but potentially to all future debt Wynn Resorts may incur,
8 and pays a mere 2% interest per annum. In contrast, for example, less than a month after
9 the purported redemption, Wynn Resorts issued \$900 million aggregate principal amount
10 in collateralized notes paying 5.375% interest. Moreover, though Nevada gaming
11 regulations do not permit an "unsuitable" person from holding debt of a publicly-traded
12 licensee, by its terms the note sent to Aruze USA is not even transferable. Wynn Resorts
13 prepared the promissory note without any input from Mr. Okada, or any representative at
14 Aruze USA, forcibly imposing an unsecured, non-transferrable, non-voting, un-
15 marketable, severely discounted and oppressive debt instrument on its largest shareholder.

16 **F. The Timing of the Redemption Demonstrates that Wynn Resorts**
17 **Redeemed Aruze USA's Shares Based on Material, Non-Public**
18 **Information that Was Not Incorporated Into the Redemption Price**

19 170. On March 2, 2012, Wynn Resorts released a Form 8-K.

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

22 As previously disclosed . . . Wynn Macau, Limited ("WML"),
23 an indirect subsidiary of the Registrant with ordinary shares of
24 its common stock listed on The Stock Exchange of Hong
25 Kong Limited, announced that Palo Real Estate Company
26 Limited ("Palo") and Wynn Resorts (Macau) S.A. ("Wynn
27 Macau"), each an indirect subsidiary of the Registrant,
28 formally accepted the terms and conditions of a land
concession contract (the "Land Concession Contract") from
the government (the "Macau Government") of the Macau
Special Administrative Region of the People's Republic of
China ("Macau") in respect of approximately 51 acres of land
in the Cotai area of Macau (the "Cotai Land"). The Land
Concession Contract permits Palo and Wynn Macau to
develop a resort containing a five-star hotel, gaming areas,

1 retail, entertainment, food and beverage, spa and convention
2 offerings on the Cotai Land.

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

21 The foregoing description of the Land Concession Contract is
22 qualified in its entirety by reference to the full English
23 translation of the Land Concession Contract (originally
24 published in the Gazette in traditional Chinese and
25 Portuguese), which is filed as Exhibit 10.1 hereto and
26 incorporated herein by reference. Dollar amounts in the Land
27 Concession Contract refer to Macau Patacas.

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

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

174. On information and belief, these positive developments in Macau (or
elsewhere in Wynn Resorts operational sphere) were imminent and known by Wynn
Resorts. To the extent that the redemption of Aruze USA's stock actually occurred, Wynn
Resorts redeemed Aruze USA's stock based on this material, non-public information.
Although Wynn Resorts claims to have purchased Aruze USA's stock using the current
stock market value, Wynn Resorts knew, but failed to disclose, that the stock market value
did not reflect the land concession contract that it had obtained in Macau. Therefore,

1 Wynn Resorts continued its fraudulent and misleading omission of this information in
2 calculating the redemption price knowingly based on materially misleading information.

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CLAIMS FOR RELIEF

COUNT I

Declaratory Relief

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

175. Aruze USA and Universal reassert and reallege Paragraphs 4 through 174 above as if set forth in full below.

176. Aruze USA and Universal seek a judicial declaration that the purported redemption of Aruze USA's shares is void *ab initio*, and that Aruze USA is the owner of 24,549,222 shares or 19.66% of the total outstanding common stock of Wynn Resorts, with all rights and privileges appurtenant thereto (including, but not limited to, payment of dividends and voting rights). This declaration is appropriate because, as alleged above: (1) the redemption provision in the Articles of Incorporation is inapplicable to the Wynn Resorts' stock owned by Aruze USA because Aruze USA entered into the Contribution Agreement, which prevented any further restrictions without agreement of the parties, before the enactment of the redemption provision, and Wynn Directors' acts were *ultra vires*; (2) the redemption provision in the Articles of Incorporation is inconsistent with Nevada law and public policy, and thus void; (3) the Stockholders Agreement bars redemption of the Wynn Resorts' stock owned by Aruze USA; (4) the Board lacked a sufficient basis for a finding of "unsuitability" or for redemption; and/or, (5) the redemption provision as written and as applied is unconscionable.

177. In addition or alternatively, Aruze USA and Universal seek a judicial declaration that the redemption provision in Wynn Resorts' Articles of Incorporation is invalid as a matter of law because it is impermissibly vague, contrary to law and public policy, and/or unconscionable. This declaration is appropriate because, among other things, Nevada gaming regulators are given the authority under the laws of Nevada to make determinations regarding "suitability." The redemption provision in Wynn Resorts' Articles of Incorporation purportedly relied on here by the Wynn Directors improperly and illegally usurps that authority. Furthermore, if and when Nevada gaming regulators

1 were to make such a determination, redemption that simply replaces equity with debt is
2 ineffective to effect a disassociation; it, therefore, would not comply with Nevada law.

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

10 179. In addition or alternatively, Aruze USA and Universal seek a judicial
11 declaration that the Board resolution to redeem Aruze USA’s shares was procedurally
12 and/or substantively defective, and contrary to law and public policy. As alleged in detail
13 above, this declaration is appropriate because (1) the Stockholders Agreement bars
14 redemption of the Wynn Resorts’ stock owned by Aruze USA; (2) the redemption
15 provision in the Articles of Incorporation is inapplicable to the Wynn Resorts’ stock
16 owned by Aruze USA because Aruze USA entered into the Contribution Agreement,
17 which prevented any further restrictions without agreement of the parties, before the
18 enactment of the redemption provision, and Wynn Directors’ acts were *ultra vires*; (3) the
19 Board lacked a sufficient basis for a finding of “unsuitability” or redemption and made its
20 findings without a thorough and complete review of relevant law, facts, and evidence; (4)
21 the redemption provision in the Articles of Incorporation is inconsistent with Nevada law
22 and public policy, and thus void; and, (5) the redemption provision, as written and as
23 applied, is unconscionable.

24 180. Alternatively, to the extent that redemption is not otherwise barred, Aruze
25 USA and Universal seek a judicial declaration that the form and amount of compensation
26 paid for Aruze USA’s shares was improper and/or inadequate and that Aruze USA is
27 entitled to cash in an amount equivalent to at least the closing price of the stock on
28 February 17, 2012. Indeed, Wynn Resorts asserted in a court filing dated January 27,

2012, that “[w]ith holdings valued at approximately \$2.9 billion, Aruze is one of Wynn’s largest shareholders.” As alleged in detail above, this declaration is appropriate because simply converting Wynn Resorts’ largest shareholder to Wynn Resorts’ largest creditor serves no valid legal purpose. Furthermore, the valuation by Moelis was not objective, independent, or the product of sound financial analysis, and, among other things, did not consider material non-public information available to Wynn Resorts that would militate in favor of a higher valuation, did not account for the premium that would be applied to such a large block of shares, and did not consider the extent to which transfer restrictions were not valid as to Aruze USA.

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

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

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

COUNT II

Permanent Prohibitory Injunction

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

184. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

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

10 186. For the reasons alleged above, the purported redemption is invalid as a
11 matter of law and violated applicable contracts, and/or depends on provisions of contracts
12 that are unenforceable as a matter of law. Even if there were a potentially valid legal
13 mechanism to redeem Aruze USA's stock, which there is not, redemption would be
14 inappropriate in this case because the Board lacked sufficient basis to find Aruze USA or
15 any of its affiliates or employees "unsuitable."

16 187. Harm will result if relief is not granted because Aruze USA's interest in
17 Wynn Resorts is not fungible and Aruze USA's status as the largest shareholder in Wynn
18 Resorts cannot be fully remedied through damages.

19 188. Injunctive relief poses no appreciable risk of undue prejudice to Wynn
20 Resorts and the Wynn Directors.

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

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

COUNT III

Permanent Mandatory Injunction

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

191. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

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

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

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

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

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

9

11 **Breach of Contract in Connection with Wynn Resorts' Involuntary Redemption**
12 **(By Aruze USA Against Wynn Resorts)**

200. The Contribution Agreement and the Stockholders Agreement form a contractual relationship and understanding (the “Agreement”) between, *inter alia*, Aruze USA, Wynn Resorts, Mr. Wynn, and Elaine Wynn.

202. Aruze USA's purchase of Wynn Resorts' shares under the Contribution Agreement did not impose any condition of redemption on Aruze USA, and therefore Wynn Resorts had no right to redeem Aruze USA's shares under the Agreement.

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

COUNT V

208. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

210. To the extent that the redemption provision in the Articles of Incorporation applies to Aruze USA's shares (despite the parties' understanding under the Agreement), Wynn Resorts' involuntary redemption breaches the terms of the Agreement.

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

4 213. Wynn Resorts improperly discounted the fair value of the Aruze USA stock
5 to the extent the Stockholders Agreement between Mr. Wynn, Elaine Wynn, and Aruze
6 USA is not enforceable for any reason, including that it imposes an unreasonable restraint
7 on alienation and is therefore unenforceable.

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

11 215. Among other things, although known to Wynn Resorts, Wynn Resorts did
12 not take into account material non-public information concerning positive developments
13 for Wynn Resorts regarding the Cotai land concession in Macau, as well as other positive
14 non-public information, when redeeming Aruze USA's shares for far less than the value
15 of the shares. Furthermore, Wynn Resorts' unilateral valuation did not account for the
16 premium that would be applied to such a large block of shares.

17 216. Aruze USA has been damaged in an amount greater than \$100,000.

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

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

COUNT VI

Breach of Fiduciary Duty

(By Aruze USA Against the Wynn Directors)

219. Aruze USA reasserts and realleges Paragraphs 4 through 174 above as if set forth in full below.

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

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

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

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

224. On information and belief, the Wynn Directors acted at the direction of Mr. Wynn and abandoned their own independence and objectivity in evaluating the

1 allegations. The Wynn Directors failed to conduct a fair, comprehensive, and thoughtful
2 investigation, and failed to ensure that they were properly and adequately informed before
3 acting.

4 225. Wynn Resorts, at the direction of Mr. Wynn, conducted an “investigation”
5 that was hurried, incomplete, one-sided, and unfair to Aruze USA, with a result that was
6 preordained by Mr. Wynn and his cohorts before the “investigator” was even hired.
7 Aruze USA was not given an opportunity to review the allegations against it or rebut or
8 address any findings of improper conduct or any other supposed basis for redemption.
9 The entire process was tainted by the desire to serve Mr. Wynn’s pretextual goals of
10 removing Aruze USA as the largest single shareholder of the Company, silencing Mr.
11 Okada, and consolidating and maintaining Mr. Wynn’s control over Wynn Resorts. Such
12 actions do not withstand any standard of fundamental fairness or due process.

13 226. Further, the purported redemption was voted on by persons with
14 irreconcilable conflicts of interest, including breaches of the duty of loyalty, the duty of
15 care, and the duty of good faith.

16 227. Through their acts, the Wynn Directors have acted in a manner that seeks to
17 deprive Aruze USA alone from its right to vote its shares, receive dividends, elect
18 directors and other benefits of stock ownership.

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

26 229. As a further direct and proximate result of the wrongful conduct by the
27 Wynn Directors, as alleged herein, Aruze USA was and continues to be damaged in an
28 amount in excess of \$100,000 to be proven at trial.